

SIZMEK AD SERVER TERMS OF USE

January 1, 2023

BY EXECUTING A MAIN SERVICES AGREEMENT OR ORDER THAT REFERENCES THESE TERMS OF USE, OR BY REGISTERING FOR OR USING THE SERVICES, YOU AGREE TO ALL OF THE TERMS AND CONDITIONS SET FORTH IN THESE TERMS OF USE. IF YOU ARE ACCEPTING THESE TERMS OF USE ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS OF USE, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS APPLICABLE AFFILIATES.

ALL INDIVIDUAL USERS REGISTERING FOR OR USING THE SERVICES ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY: (A) ACKNOWLEDGE AND AGREE THAT SUCH COMPANY OR OTHER LEGAL ENTITY WILL HAVE FULL ACCESS TO AND AUTHORITY OVER INFORMATION CONTAINED IN YOUR USER ACCOUNT (INCLUDING AND NOT LIMITED TO: ORDER HISTORY, CHANGE LOGS, ADDRESSES, PAYMENT DETAILS, AND OTHER INFORMATION ASSOCIATED WITH YOUR ACCOUNT) AND (B) HEREBY AGREE TO RELEASE SIZMEK FROM ANY AND ALL LIABILITY FOR ANY OF YOUR ACCOUNT INFORMATION PROVIDED TO OR USED BY YOUR ORGANIZATION, THE ADMINISTRATOR(S) OF YOUR ORGANIZATION, AND ANY OTHER USERS ASSOCIATED WITH YOUR ORGANIZATION.

1. Definitions. Terms and expressions not otherwise defined in these Terms of Use will have the following meanings:

A. "Ad" or "Advertisement" means a commercial notice, announcement or message made in a public medium to an advertiser's customers or prospective customers to promote a person, entity, brand, product, service, or event.

B. "Additional Terms and Conditions" means those additional product/service terms, policies, and other conditions specified by Sizmek from time to time for certain Services, including as may be attached to an Order or posted on the System or another Sizmek site.

C. "Ad Technologies" means, collectively, digital advertising technologies that include advertising tags (such as pixels, clear GIFs and similar methods), cookies, device identifiers or other identifiers and similar technologies.

D. "Affiliate" of a party means an entity that, directly or indirectly through one or more entities, controls, is controlled by or is under common control with that party, where "control" means the possession, direct or indirect, of the power to direct the management and policies of such party.

E. "Agreement" means, collectively, these Terms of Use, any MSA, and any Orders, including all schedules and attachments thereto and all amendments to any of the foregoing.

F. "Customer", "you" and "your" means the organization(s) identified as such in the Agreement or the applicable Order.

G. "Customer Data" means, other than Non-Proprietary Data, all campaign data collected by Sizmek hereunder on behalf of or received from Customer, its advertisers or the agencies representing Customer, including any data, information, or materials that Customer, its Affiliates, or any third-party vendors or partners on Customer's behalf may disclose or submit to Sizmek and any and all Customer Reports; provided, Customer Data does not include Non-Proprietary Data or other data or information that Sizmek receives outside of its performance of the Services for Customer, even if such information is identical to a portion of data comprising Customer Data. References to Customer Data include Customer Personal Data (as defined in Section 6.2 (Customer Personal Data)) unless Customer Personal Data is specifically excluded.

H. “Customer Material(s)” means any Advertisement, creative, content, data, information, Customer or third-party Ad Technology, or material of any kind created, managed, or delivered by or on behalf of Customer or its Third-Party Users using the Services, and includes, without limitation, any creative works, content, data, information, media plan or material of any kind referenced by or accessed via an Advertisement, such as by a URL or other method.

I. “Customer Report” means any report or summary prepared for Customer in connection with the Services containing information—which may include IP addresses and pseudonymous data with cookie ID, advertising device ID, or other persistent identifier(s)—about Ad delivery or user activity or engagement with Advertisements or Site Content.

J. “DPA” (formerly also referred to as the “**GDPR Agreement**”) means (as applicable) the Data Processing Addendum or a separately executed data processing agreement between Sizmek and Customer or its Affiliates that pertains to the Services.

K. “Fees” means the fees or rates for the use of the Services as set forth in the Agreement or applicable Order.

L. “GDPR” means the European General Data Protection Regulation (Regulation (EU) 2016/679) and any implementation or successor thereof. Any reference in the Agreement to the applicable law of the European Economic Area, including the GDPR, that is directly applicable or directly effective in the United Kingdom at any time is a reference to such law as it applies in England and Wales from time to time including as retained, amended, extended, re-enacted or otherwise given effect on or after 11pm on the 31 of January 2020.

M. “Intellectual Property Rights” means all rights including future rights in inventions, patents, designs, copyrights, trademarks, service marks, databases and topography rights (whether or not any of those is registered and including applications for registration of the foregoing, renewals, extensions, continuations, divisions and reissues) together with all trade secrets, know-how and all rights or forms of protection of a similar nature or having equivalent or similar effect to any others which may subsist anywhere in the world.

N. “Laws” means any applicable federal, state, provincial, county, municipal or other local laws, rules, regulations, ordinances or judicial decisions enacted or issued by a court or other governmental authority of any jurisdiction.

O. “LGPD” means the Brazilian Federal Law no. 13,709/2018 (Brazilian General Data Protection Law) and its regulations.

P. “MSA” means any Main or Master Services Agreement or similar contract entered into between you and Sizmek for the Services, including all schedules and attachments thereto, as amended from time to time.

Q. “Non-Proprietary Data” means any non-proprietary and anonymous or pseudonymous data that may be generated or obtained by Sizmek in connection with the Services, including data included in a HTTP(S) header or HTTP(S) response, such as user agent strings and time stamps; IP addresses; URLs not provided by or on behalf of Customer; and persistent and non-persistent identifiers, such as session IDs, cookie IDs, cache-based IDs, mobile advertising identifiers and device IDs.

R. “Order” means an order for Services that is signed by Customer or submitted to Sizmek by means of a Sizmek online click-through or similar tool and that is accepted by Sizmek, which may include, without limitation, an order, statement of work, schedule, attachment, order details provided in a user interface, or insertion order, as amended from time to time.

S. “Privacy Rules” means, collectively: (i) any applicable Laws, including privacy and data protection Laws; (ii) the following digital advertising industry rules to the extent applicable to the conduct of a party’s business in the territories where such rules apply: (a) all United States Federal Trade Commission (“**FTC**”) rules and guidelines regarding the collection, use and/or disclosure of information from or about a unique user of a website, application and/or mobile website and/or the device associated with such user; (b) Children’s Online Privacy Protection Act and its rules and regulations; (c) enacted legislation and regulations under (1) the California Consumer Privacy Act, California Civil Code Section 1798.100 et seq., as amended, including by the California Privacy Rights Act of 2020, and its regulations (“**CCPA**”)

and (2) the Virginia Consumer Data Protection Act ("**VCDPA**"), as amended, and any rules and regulations promulgated thereunder (the CCPA and VCDPA collectively, the "**U.S. State Privacy Laws**"); (d) the GDPR and all enacting legislation of European Union member states of directives of the European Parliament and Council related to the processing of personal data or the storage of or access to information stored on an individual person's computing equipment; (e) the LGPD and its regulations; and (f) the advertising industry self-regulatory codes and principles promulgated by the Digital Advertising Alliance ("**DAA**"), the European Interactive Digital Advertising Alliance ("**EDAA**"), and any other self-regulatory or similar authority of any jurisdiction applicable to Customer, as such rules, guidelines, codes or set of principles may be amended from time to time by the promulgating entity or any successor entity; and (iii) any amendments, modifications, extensions, supplements or replacements of or to any of the foregoing.

T. "Services" means, collectively, the products and services specified in the MSA or the applicable Order, which may include, without limitation: (i) provision of digital advertising solutions (e.g., ad serving and measurement, dynamic creative optimization) in or through the System enabling the creation, delivery, management, measurement, and analysis of digital advertising; (ii) professional, creative, and similar services related thereto; and (iii) other data, products and services that Sizmek may make available to Customer in connection with the foregoing from time to time.

U. "Site" means one or more websites, applications, or other digital properties on which Advertisements are displayed or measured or Ad Technologies are used pursuant to this Agreement.

V. "Site Content" means all materials, data, images, texts, sounds, information, or other content contained in or around and/or linked to any Site.

W. "Sizmek", "we" and "us" means the Sizmek Contracting Entity as specified in Section 15.1 (Contracting Entities) and any of its applicable Affiliates.

X. "System" means the Sizmek product accessible via the Internet for the provision and use of the Services, including any website through which Sizmek provides access to such product and all software (including source and object code), updates, enhancements, documentation or other materials (excluding Customer Materials and Third-Party Offerings) in or related to the product that Sizmek makes available in the course of providing the Services.

Y. "Term" has the meaning given to such term in the MSA or the applicable Order, subject to the termination rights set forth herein. If no term is specified in the MSA or the Order or otherwise in Section 12 (Term and Termination), the Agreement continues until terminated by either party upon 30 days' written notice to the other.

Z. "Territory of Sales" means Customer's territory of sales, as determined by Sizmek.

AA. "Third-Party Offerings" means services, integrations, or content made available by any third party (and selected and/or engaged by you) through the System or otherwise in conjunction with the Services.

BB. "Third-Party User" means any third-party contractor, client, advertiser, agency, publisher, or API Integrator, as applicable, that accesses and uses the Services through the Customer's Account (as defined in Section 3.1 (Account Access)).

2. Overview.

2.1 Ordering. Customer may request Services by submitting an Order for the selected Services to Sizmek. Sizmek may reject any Order in its sole discretion. Any signature or acceptance method approved by Sizmek shall be binding upon Customer, including electronic signatures or other indications of assent to the terms, such as assent given through the use of an online ordering or campaign management process.

2.2 Terms Overview. Subject to payment by Customer to Sizmek of the Fees and Customer's compliance with other terms of the Agreement, Sizmek will make the Services available to Customer (and its Third-Party Users, as applicable) in accordance with the terms of this Agreement. Notwithstanding the foregoing, Customer acknowledges and agrees that

certain Services, including, without limitation, professional or creative services, may be subject to Additional Terms and Conditions. Third-Party Offerings may be subject to the third-party providers' terms and licenses, and as between Sizmek and Customer, the Customer is solely responsible for compliance with such terms for any Third-Party Offerings. Without derogating from the foregoing, if any such Third-Party Offering requires Sizmek to enter into an agreement or other terms with the third-party provider on the Customer's behalf, Customer authorizes Sizmek to do so.

3. Account Creation and Access.

3.1 Account Access. Customer may access certain Services through an administrative website or, subject to Section 3.2 (API Use), and to the extent applicable, an application programming interface ("**API**") provided by Sizmek. For access to the System, Sizmek will enable Customer to set up one or more logins and passwords for access to Customer's account ("**Customer's Account**") and corresponding administrative controls, where applicable, for access and use by authorized personnel of Customer and/or its Third-Party Users ("**Customer's Representatives**"). In order to use the System, Customer will, and will ensure that Customer's Representatives will, provide Sizmek with accurate, truthful, and complete registration information and agree to, and comply with, the terms of this Agreement and any other Additional Terms and Conditions that Sizmek may otherwise require. Customer will ensure that each of Customer's Representatives that is provided access to the System keeps its registration information accurate and up-to-date and does not share its login information with any third party, and Customer agrees that any failure by any Customer Representative to do so will constitute a breach of this Agreement by Customer, which may result in (in addition to any other available remedies) termination of Customer's Account. Customer authorizes Sizmek to verify Customer's registration information from time to time, including by obtaining credit reports and references about Customer. Customer will immediately notify Sizmek in writing of any change in authorization, any unauthorized use of any Customer's Account, or any other account-related security issue of which it becomes aware. Upon termination of this Agreement for any reason, Sizmek will have the right to disable and delete each Customer Representative's access to Customer's Account immediately and to delete all Customer Data thirty (30) days after termination or expiration of this Agreement.

3.2 API Use. If Customer accesses the System or Services via API (which access Sizmek may grant or deny in its sole discretion), Customer's (and any API Integrator's) use of the API is deemed to be a use of the System and is subject to the terms of this Agreement and any Additional Terms and Conditions regarding API use. If Customer requests Sizmek to enable API access under the Customer's Account for a third party (each, a "**API Integrator**") (which request Sizmek may grant or deny in its sole discretion), (i) Sizmek will provide access to the API in accordance with Customer's written instructions and any additional terms as set forth in the applicable Order; (ii) Customer acknowledges and agrees that Sizmek has no responsibility or liability for Customer's or any API Integrator's performance or obligations under any agreement that may exist between or among Customer, any of Customer's clients, and any API Integrator; and (iii) Customer is responsible for obtaining any API Integrator's written agreement to any Additional Terms and Conditions required for access to the API. Sizmek may at any time suspend or terminate API access without liability to Customer or any API Integrator, or any of their respective Affiliates or clients.

3.3 Customer Affiliates. Customer Affiliates may accede to the Customer's Agreement for the purchase of Services, subject in each case to Sizmek's written consent (which Sizmek may grant, deny, or withdraw in its sole discretion at any time, and which may also be specified in the applicable MSA) and successful completion of Sizmek's registration process by each such Customer Affiliate. Customer shall be (a) responsible for informing any Customer Affiliate authorized to purchase Services under the Customer's Agreement of the rates applicable to such Customer Affiliate in accordance with such Agreement, and (b) jointly and severally liable to Sizmek for the failure of any such Customer Affiliate to pay any fees due under, or otherwise comply with, the Agreement. Each Customer Affiliate must be an Affiliate of Customer at all times when such Customer Affiliate accesses or uses the Services pursuant to the Customer's Agreement. If a Customer Affiliate ceases to be an Affiliate of Customer, such former Customer Affiliate will promptly notify Sizmek. Upon ceasing to be an Affiliate of Customer, if such former Customer Affiliate continues to access and use the Services, Sizmek reserves the right to terminate the Services or to continue providing Services to such Customer Affiliate pursuant to Sizmek's then-applicable standard terms.

4. Limited Rights; Ownership.

4.1 Limited License. Sizmek hereby grants to Customer, and Customer hereby accepts, a non-exclusive, non-transferable (except as expressly provided in this Agreement), limited, and revocable right for Customer to access and use the System in accordance with this Agreement solely during the Term and for the sole purpose of using the Services for its internal business purposes. Except as expressly permitted by this Agreement, Customer may not, directly or indirectly or by itself or through any other person or entity, use, rent, lease, sell, transfer (by sublicense, assignment, operation of law, change in control or otherwise), time share, modify, reproduce, copy, make derivative works from, distribute, publish, use to provide service bureau services, or publicly display the System. Moreover, Customer will not (and will ensure that Customer's Representatives do not) reverse engineer, decompile, or otherwise attempt to discover the source code for the System or any of the Services.

4.2 Sizmek Intellectual Property. Except as expressly provided in the Agreement, Sizmek has and will have the sole and exclusive ownership of all right, title and interest in and to the System and all applicable Services and all Intellectual Property Rights in the System and applicable Services, any enhancements thereto, any documentation or other materials regarding the use thereof and related thereto, any machine learning and the results and outputs of such machine learning that occur prior to, during, or after Customer's use of the Services, and any Sizmek proprietary data provided to Customer by Sizmek in whatever form or media (collectively, "**Sizmek Intellectual Property**"). Neither this Agreement, nor anything contained herein, will be construed as a sale of the System or any proprietary right or title therein or thereto, or of any other Sizmek Intellectual Property. All rights not expressly assigned or licensed in this Agreement are reserved by Sizmek in full.

4.3 Deliverables. If any deliverable to Customer produced by Sizmek's Services includes Sizmek Intellectual Property, then Sizmek will remain the sole and exclusive owner of such included Sizmek Intellectual Property, and Sizmek grants Customer only a non-exclusive, revocable, worldwide, royalty-free license to use such Sizmek Intellectual Property, solely as incorporated into or embedded in such deliverables and not separately therefrom, and solely for use in connection with the System. Additionally, any use of a deliverable containing any trademark of Sizmek or its Affiliates will be subject to Sizmek's prior written approval and is subject to Sizmek's Trademark Usage Guidelines (provided separately). Subject to the preceding sentence, Customer will own all right, title and interest in and to such deliverables, including the Intellectual Property Rights therein.

4.4 Customer Materials. As between Sizmek and Customer, Customer has and will have the sole and exclusive ownership of all right, title and interest in and to the Customer Materials, Customer Data, and the Site Content where applicable, and all Intellectual Property Rights in the same, except for any Sizmek Intellectual Property embedded therein or as otherwise provided in the Agreement. Customer grants Sizmek a non-exclusive license to use, copy, modify, process, publicly display, and distribute Customer Materials and Customer Data for the purpose of providing the Services pursuant to this Agreement.

4.5 Statistics. Customer agrees that Sizmek may use and disclose certain data, including Customer Data and Non-Proprietary Data, derived from Customer's use of the System and Services to create aggregated data and statistics about the Services and its features, which Sizmek may provide to others, including Sizmek's customers, potential customers and the general public, provided that such aggregated data and statistics do not contain any Customer Personal Data or identify any living individual, Customer, Customer's clients, or any of their respective products or brands.

4.6 Publicity. Customer grants Sizmek a non-exclusive license to use its (and its Third-Party Users', as applicable) name, published Ads, and trademarks in marketing materials, including without limitation the customer ad showcase area of the System and customer lists. Customer may elect to provide suggestions, ideas, or other feedback ("**Suggestions**") to Sizmek in connection with the Services or the System (including any related technology or content). Sizmek will be free to use, disclose, reproduce, modify, sublicense, transfer, distribute and exploit Suggestions in any manner and without compensating Customer.

5. Confidential Information. "**Confidential Information**" means all nonpublic information obtained pursuant to or in connection with this Agreement or the Services by a party from or on behalf of the other party that is designated as confidential or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably

should be considered as confidential. Confidential Information includes, without limitation, (i) nonpublic information relating to the disclosing party's technology, products, services, processes, data, customers, business plans and methods, finances and other business affairs, (ii) third-party information that the disclosing party is obligated to keep confidential, and (iii) the nature, content and existence of the parties' relationship, including the terms of the Agreement and any applicable rates. Confidential Information does not include any information that (a) is or becomes generally known or available to the public without breach of the Agreement (provided, however, information that is rumored or reported does not become public based only on such rumors or reports), (b) was known by the receiving party prior to its receipt from the disclosing party, (c) is disclosed to the receiving party from any third party, except where the receiving party knows, or reasonably should know, that such disclosure constitutes a wrongful or tortious act, or (d) is independently developed by the receiving party without use of any Confidential Information. Except as provided in the Agreement, the receiving party will not disclose Confidential Information without the disclosing party's consent. The receiving party will take reasonable measures to avoid disclosure, dissemination, or unauthorized use of Confidential Information. The receiving party may disclose Confidential Information as required to comply with orders of governmental entities that have jurisdiction over it or as otherwise required by Law. The disclosing party acknowledges that the receiving party may now have, or in the future may develop or receive, information that is the same as, or similar to, Confidential Information without having breached this Agreement. Nothing in this Section (x) prevents Sizmek from using, for any purpose and without compensating the disclosing party, information retained in the memory of Sizmek's personnel who have had access to Confidential Information or (y) obligates Sizmek to restrict the scope of employment of its personnel; provided, however, that this Section does not create a license under any copyright or patent of the disclosing party.

6.Data Protection and Privacy.

6.1 Compliance. Sizmek and Customer (for itself and for its Third-Party Users) each represents and warrants that it will at all times comply in full with the requirements of all applicable Laws, including (in Customer's case) notifying Sizmek of requests to opt-out, delete, correct, and access Personal Data by users whose Personal Data (as defined below) is provided to Sizmek pursuant to this Agreement. Customer will not engage in any behavior that renders or is likely to render Sizmek or its Affiliates to be in breach of any applicable Laws or Privacy Rules.

6.2 Customer Personal Data. To the extent that Sizmek processes personal data about any natural person ("**Personal Data**", which may also be referred to as "personally identifiable information," "personal information," "personally referable information," or similar term under the Laws of some jurisdictions) supplied or collected by or on behalf of Customer ("**Customer Personal Data**") in the course of providing the Services, it will do so as a data processor or service provider acting on behalf of Customer (as data controller, or as an agent or processor acting on behalf of a third-party data controller), except as set forth in Section 6.11, and in accordance with the requirements of this Agreement. The terms "data processor," "service provider," "data controller," "process" and their derivatives will have the meanings ascribed to them under the Laws applicable to the relevant Personal Data, or if not so defined, they will have their plain language meanings in the territory where the processing occurs. To the extent that a DPA applies to Sizmek's processing of Customer Personal Data, such processing is also subject to the applicable DPA, which is incorporated by reference into this Agreement.

6.3 Customer Instructions. Sizmek will process any Customer Personal Data in accordance with Customer's lawful instructions under applicable Privacy Rules and will not: (a) assume any responsibility for determining the purposes for which or the manner in which Customer Personal Data is processed; or (b) other than certain Non-Proprietary Data that may be Personal Data under applicable Laws, process any Customer Personal Data for its own purposes.

6.4 Additional Policies. Customer will process and disclose Customer Personal Data in accordance with the provisions of Customer's privacy policy and applicable Privacy Rules, and if Sizmek is instructed by Customer to collect any Customer Personal Data through any Services, Customer will use such Customer Personal Data solely for the purposes identified within the Customer Materials and Customer's privacy policy. Customer will not, and will require its clients and any third parties with whom it shares Customer Personal Data not to: (a) merge or attempt to merge Customer Personal Data obtained via the Services with any other Personal Data; or (b) attempt to personally identify any individual using any Customer Personal Data obtained via the Services, in each case without first obtaining any requisite consent of the

applicable individual(s) (e.g., as may be required under applicable Law or privacy policy) to such action. Customer will not use the Services for interest-based advertising to children under age 13 (or any other applicable age threshold as defined by applicable Privacy Rules), and Customer will not use the Services to collect, use, or disclose (or enable any third party to collect, use, or disclose) Personal Data from children under age 13 (or any other applicable age threshold as defined by applicable Privacy Rules). Customer will not use the Services to (i) collect or process information about or reach audiences based on sensitive personal information, as defined by applicable Privacy Rules, such as certain financial status or health and medical information or (ii) collect or process information that can be used to directly identify a natural person (e.g., email address).

6.5 Technical and Organizational Measures. Sizmek will have in place and maintain throughout the Term appropriate technical and organizational measures to protect against accidental or unauthorized destruction, loss, alteration, or disclosure of Customer Data. Customer acknowledges that Sizmek shall have the right to delete Customer Data in accordance with Sizmek's data retention policies and to disclose, modify, or delete Customer Personal Data in accordance with this Agreement or as required by Privacy Rules.

6.6 Subcontractors. Customer authorizes Sizmek to subcontract processing of Customer Data under this Agreement to one or more third parties provided that Sizmek: (a) complies with applicable Laws; (b) flows down its obligations to protect the Customer Data to any subcontractor it appoints; and (c) remains responsible for any failure to comply with the applicable Laws by any subcontractor it appoints to process Customer Data.

6.7 Ad Technologies. In the course of performing the Services, Ad Technologies may be used by Sizmek in relation to websites or applications of Customer, its Third-Party Users, their respective customers, and other websites, applications, and online and mobile presences to improve, analyze, and measure the success of advertising campaigns delivered using the Services, and/or to research, augment or improve Sizmek's own Services in a way that does not identify Customer, its Third-Party Users, or their respective customers. Customer will ensure that it (and its Third-Party Users, where applicable) obtains all appropriate and necessary consents, and provides all necessary information and opt-out choices, to enable the use of such Ad Technologies in compliance with the Privacy Rules. Customer will also ensure that individuals are informed of their ability to refuse or opt-out of Sizmek Ad Technologies at any time, e.g., by visiting Sizmek's opt-out page available at <http://www.sizmek.com/privacy-policy/> or any other location specified by Sizmek from time to time. Customer agrees that Sizmek has no responsibility or liability for any Customer Ad Technologies, third-party Ad Technologies, Third-Party Offerings, or other third-party contractors deployed or used by Customer via or in connection with the Services.

6.8 Site Requirements. Without limiting any other provision of Section 6 (Data Protection and Privacy), Customer represents, warrants, and covenants that it will for each Site (or, if a Site is not owned or managed by Customer, that each applicable publisher, operator, or other applicable party will) comply with the Privacy Rules and other applicable industry standards and practices, including: (a) maintaining a privacy policy conspicuously on each Site that complies with the Privacy Rules and, at a minimum, includes disclosures on Customer's interest-based advertising activities, the types of data collected from users of the Site, the Site's use of any such data and any disclosures or transfer of such data to third parties, the types of Ad Technologies used by the Site to collect such data, and where required by Privacy Rules, obtaining individuals' consent or providing opt-out choices for the applicable collection and processing of Personal Data; (b) providing a brief explanation within Customer's and each Site's privacy policy explaining that it works with third-party ad providers and, if applicable, allows such third-party ad providers to engage in interest-based advertising activities, serve Customer Materials and use Ad Technologies on the Site to collect user data for use in connection with the delivery of advertising and content; and (c) including in Customer's and each Site's privacy policy, where applicable, a conspicuous link to an industry opt-out page that allows users to opt-out of the interest-based advertising activities of third-party ad providers, such as the opt-out tools made available by the DAA or EDAA from time to time.

6.9 Third-Party Technologies. Customer will not append any Customer or third-party Ad Technologies (collectively "Third-Party Tags") to Sizmek's Ad Technologies or Ads delivered by Sizmek, nor will Customer allow any such third-party tracking or tagging through the System unless such Third-Party Tags and the provider thereof are in full compliance with Section 6 (Data Protection and Privacy), and the Privacy Rules, including, without limitation, by presenting users with notice and choice to (as applicable) consent to and/or opt-out of data collection and processing in

connection with such Third-Party Tags. Customer will provide Sizmek and any client it represents, where applicable, with notice of any Third-Party Tags Customer wishes to implement via the Services. Sizmek reserves the right to validate any Third-Party Tags or provider thereof for compliance with Section 6 and the Privacy Rules, for authenticity, and otherwise, and is under no obligation to allow the implementation of Third-Party Tags and may prohibit any such implementation at any time. Sizmek may create lists of Third-Party Tags that are permitted to be implemented via the Services. Without derogating from the above, Customer will be solely responsible for any Third-Party Tags implemented via the Services or any provider or other person acting or authorized to act on Customer's behalf, including for any damage, cost or claim resulting from appending such Third-Party Tags.

6.10 Applicable Entities. Amazon Europe Core S.à.r.l. ("**AEC**") (or other duly designated Sizmek Affiliate) is the independent data controller in respect of any "personal data" within the meaning of applicable Laws of the European Economic Area and the United Kingdom that may be processed by Sizmek as a data controller. Amazon Serviços de Varejo do Brasil Ltda. ("**ASVB**") (or other duly designated Sizmek Affiliate) is the independent data controller in respect of any "personal data" within the meaning of applicable Laws of Brazil that may be processed by Sizmek as a data controller. Customer acknowledges and agrees that applicable Sizmek Affiliates may act as data processors (or sub-processors) for AEC or ASVB, as applicable (or their applicable designee(s) or successor(s) in interest).

6.11 Provisions Regarding U.S. State Privacy Laws. Sizmek will act as your service provider or processor (as defined by applicable U.S. State Privacy Laws) as to any "Personal Information" or "Personal Data" (as such term is defined in the U.S. State Privacy Laws) that Sizmek processes on your behalf pursuant to the Agreement, except, where the CCPA applies, for cross-context behavioral advertising (as defined in the CCPA). Sizmek will not use or disclose such Personal Information or Personal Data for purposes other than (a) business purposes for providing the Services, to the extent Sizmek acts as your service provider, or (b) as may otherwise be permitted under the U.S. State Privacy Laws. These purposes include ad delivery, frequency capping, security and fraud detection, debugging, forecasting, reporting and measurement, and improving and developing features for the Service, but exclude cross-context behavioral advertising. Sizmek shall make available to you all information in its possession necessary to demonstrate compliance with applicable Laws and shall notify you if it determines it can no longer meet its obligations under applicable Laws. You have the right, upon notice, to the extent required by applicable Laws and using materials generally made available by Sizmek for such purposes, to (i) ensure that Sizmek uses Personal Information or Personal Data, as applicable, provided pursuant to this Agreement in a manner consistent with your obligations under the U.S. State Privacy Laws and (ii) request Sizmek to suspend or discontinue the applicable processing of the Personal Information or Personal Data, as applicable, to the extent necessary to stop or remediate unauthorized use of Personal Information or Personal Data. You are solely responsible for ensuring that Third-Party Users and Third-Party Tags process any Personal Information or Personal Data in compliance with the U.S. State Privacy Laws. This section applies solely to the extent that the U.S. State Privacy Laws apply.

7. Customer Responsibilities.

7.1 General. As between the parties, Customer is solely responsible for: (a) all aspects of any Customer Materials created, delivered, managed through, processed, or linked to the Services; (b) all campaign settings, including settings in the System designated as "Stop Serving", as determined and inserted by or on behalf of Customer on the System; and (c) all aspects of campaign management, including data entry, ads, pricing, budget, maximum number of impressions, flight parameters, pacing, campaign set up and trafficking, targeting constraints, monitoring ad status, advertiser requirements and objectives, and campaign performance. Customer is solely responsible for any conditions, representations, or warranties it makes to its advertisers regarding actual or expected campaign performance, and for any make-goods it may issue to advertisers. Customer represents, warrants, and covenants that it will conduct (and ensure that its Third-Party Users conduct) all of its marketing, business, and other activities related to the Customer Materials, its use of the Services, and its performance of its obligations and exercise of its rights under Agreement in compliance with all applicable Laws and Privacy Rules.

7.2 Acceptable Use. Customer represents, warrants, and covenants that it will not (and will ensure that its Third-Party Users do not) use the Services in a manner that, or in connection with, or to promote campaigns, Advertisements, or other Customer Materials or Site Content (including code or links) containing content that: (a) is invasive of privacy,

degrading, defamatory, libelous, unlawful, profane, obscene, pornographic, harassing, abusive, hateful, or discriminatory; (b) promotes any illegal or fraudulent activity, including, without limitation, the promotion of gambling where prohibited, illegal substances, software piracy or hacking, or invalid advertising traffic; (c) infringes the personal, intellectual property, or other rights of any third party; (d) promotes or references software piracy and/or activities generally understood as Internet abuse, including the sending of unsolicited bulk messages or the distribution or use of spyware, Malware, worms, Trojan horses, time bombs, cancelbots, bots, or other code that generates fraudulent or invalid advertising traffic, corrupted files, or similar software; (e) it knows or reasonably should have known to be false, fraudulent or misleading, including content, links or codes that facilitate the creation or use of fraudulent or invalid advertising traffic; or (f) is otherwise in violation of this Agreement or the Additional Terms and Conditions. **“Malware”** means software or applications, or websites associated with software or applications, that (i) may be used to disrupt, damage, take control of, misuse, or otherwise use or disable a computer or computer system or operation; (ii) impermissibly view or collect information; (iii) access computer systems to display or distribute unwanted or illicit advertising, content or software; (iv) violate the policies of any applicable advertising exchange or publisher; or (v) may otherwise be harmful or inappropriate as determined by Sizmek in its sole discretion. Without derogating from Customer’s responsibility for the foregoing, Customer shall use commercially reasonable means for preventing Malware upload or transmission to the Sizmek System or otherwise in connection with Customer’s use of the Services.

7.3 Customer Status. Customer represents and warrants that it is a business, not a consumer, and has the rights, authority, and any required permission and consent to enter into this Agreement, and if applicable that it is acting as an agent for a disclosed principal, its advertiser, and that as such, Customer has the authority as agent to incur the Fees charged by Sizmek and perform any other actions in connection with the Services on such advertiser’s behalf. To the extent Customer acts on behalf of any advertiser client under this Agreement, (i) Sizmek reserves the right to send invoices for Fees and make available Reports to the advertiser client to which they pertain, and (ii) Customer and such advertiser client will be jointly and severally responsible for the payment of Fees. Customer will, upon our request, provide Sizmek with contact information for the advertiser client on whose behalf Customer is acting. Customer represents and warrants that (a) neither it nor its Third-Party Users are currently the subject of any investigation or prosecution by any regulatory authority in connection with a matter that may have a material detrimental effect on users of Customer’s applicable products, services, or advertising, or on Sizmek, any of its Affiliates or any of their respective customers; or (b) if it or any of its Third-Party Users becomes involved or is named in any investigation or prosecution by any regulatory authority in connection with a matter that may have a material detrimental effect on Sizmek or users of Sizmek’s products, services, or advertising, then Customer will immediately provide notice to Sizmek of such action, investigation, complaint or other proceeding, in which event Sizmek may terminate this Agreement immediately.

7.4 Customer Conduct. Customer represents, warrants, and covenants that: (a) it and its Third-Party Users have or will obtain all necessary rights, licenses, consents, waivers, and permissions, including, without limitation, from advertisers, publishers, users, and other third parties, to allow Sizmek: (i) to store and deliver the Customer Materials and otherwise provide the Services and operate the System on behalf of Customer; (ii) to make any technical or other modifications that it may deem necessary to facilitate the delivery of the Advertisements and related Customer Materials; provided, that Sizmek will not make any amendments to the creative content of any Advertisements or Customer Materials except as requested or permitted by Customer; (iii) to use any Customer Data provided to or collected by Sizmek in the provision of the Services for Customer and according to Customer’s or its Third Party Users’ instructions and as otherwise permitted under this Agreement; and (iv) to receive, transfer, and process any Customer Data from or to any third party according to Customer’s or its Third-Party Users’ instructions, whether by API, FTP, or other data transfer method; (b) notify Sizmek of any errors in any Customer Materials and any complaints or claims made in respect of any Customer Materials as soon as the same comes to its attention; and (c) if Sizmek considers, in its sole discretion, that any Customer Materials breach any of the requirements set forth in Section 7 (Customer Responsibilities), or may subject Sizmek to material adverse risks, and Sizmek requests that such Customer Materials be removed or amended, then Customer will withdraw such Customer Materials from the System or amend such Customer Materials to Sizmek’s satisfaction.

7.5 Compliance Monitoring. Customer will ensure that it and any Third-Party Users comply with this Agreement. Sizmek may audit Customer's use of the Services (including, for the avoidance of doubt, via clicks on Ads or landing pages) and observe all of Customer's activity on the Services. Customer will promptly notify Sizmek of any suspected or alleged breach of this Agreement and will cooperate with Sizmek regarding: (a) any investigation by Sizmek of any suspected or alleged violation of this Agreement; and (b) any action by Sizmek to enforce the terms and conditions of this Agreement. Without any liability to Customer and without prejudice to Sizmek's other rights under the Agreement, Sizmek may at any time, with or without notice, limit, suspend, or terminate Customer's or any Third-Party User's access to the Services and/or System or terminate any Order or the Agreement, if Sizmek considers, in its sole discretion, that Customer or Third-Party User has breached this Agreement or is otherwise using the System or the Services in a manner that may be harmful to Sizmek, its other customers, or other third parties.

7.6 Trade Law Compliance. In connection with this Agreement, Customer will comply with all applicable import, re-import, sanctions, anti-boycott, export, and re-export control Laws, such as the Export Administration Regulations, the International Traffic in Arms Regulations, and economic sanctions programs implemented by the Office of Foreign Assets Control. Customer understands that some of the software, technology or related information that Customer and its employees or contractors may have access to may be subject to export control Laws and regulations (the "**Export Controlled Materials**"). Customer will not, without prior written approval from Sizmek, allow any of its employees or contractors to have access to or use of any Export Controlled Materials if such access or use would require an export license.

7.7 Indemnification by Customer. Customer agrees to indemnify, defend, and hold harmless Sizmek, its Affiliates, and their respective officers, directors, employees, and agents from and against any and all losses, costs, damages or liabilities, including, without limitation, legal fees, costs and expenses (collectively, "**Losses**"), arising out of any third-party claim or action related to Customer's or any Third-Party User's breach of any of the obligations and warranties set forth in Section 7 (Customer Responsibilities), any other representations, warranties, terms, conditions, or obligations of Customer as provided in this Agreement, or the Customer Materials. The foregoing obligations are conditioned on Sizmek: (a) notifying Customer promptly in writing of such action (provided that the failure to provide prompt notice will only relieve the Customer of its obligation to the extent that it is materially prejudiced by such failure and can demonstrate such prejudice); (b) permitting Customer to control the defense thereof and any related settlement negotiations upon Customer's written notice to Sizmek of Customer's intention to indemnify; and (c) cooperating and, at Customer's request and expense, assisting in such defense. Customer will in no event agree to any settlement of any claim that involves any commitment, other than the payment of money by Customer, without Sizmek's prior written consent. Sizmek is hereby authorized (but not obligated) prior to, during, and after the notice period to file any motion, answer or other pleading and to take any other action that Sizmek shall deem necessary or appropriate to protect its interests.

8. Sizmek Responsibilities.

8.1 Sizmek Representations. Sizmek represents and warrants that: (a) it is duly authorized to enter into this Agreement and provide the Services hereunder; and (b) its provision and operation of the Services is in compliance with all applicable Laws.

8.2 Indemnification by Sizmek. Sizmek agrees to indemnify, defend, and hold harmless Customer, its Affiliates, and their respective officers, directors, employees and agents from and against any and all Losses, arising out of or related to any third-party action to the extent it is based upon a claim that the System or Services infringe any Intellectual Property Right of a third party. The foregoing obligations are conditioned on Customer: (a) notifying Sizmek promptly in writing of such action (provided that the failure to provide prompt notice will only relieve Sizmek of its obligation to the extent that it is materially prejudiced by such failure and can demonstrate such prejudice); (b) permitting Sizmek to control the defense thereof and any related settlement negotiations; and (c) cooperating and, at Sizmek's request and expense, assisting in such defense. Without limitation of the foregoing, if the System or Services become, or in Sizmek's sole opinion are likely to become, the subject of an infringement claim, Sizmek may, at its option and expense: (i) procure for Customer the right to continue using the System or Services; (ii) replace or modify the System or Services so that they become non-infringing; (iii) accept return of any deliverables provided as a result of the Services, and/or (iv) terminate

this Agreement or the applicable Order, in whole or in part, as appropriate, upon written notice to Customer and refund Customer any Fees pre-paid in respect of the Services upon such termination. Notwithstanding the foregoing, Sizmek will be relieved of its obligation under this Section 8.2 to the extent that any third-party action is based upon: (A) any Customer Materials; (B) any use of the System or Services not in accordance with this Agreement; (C) any use of the Services in combination with products, equipment, software, data, or other materials not supplied by Sizmek; (D) any use of any release of the System or Services other than the most current release made available to Customer; (E) any modification of the System or Services by Customer, its agents, or subcontractors; or (F) any use of the Services or the System after Sizmek has notified Customer to discontinue such use. THIS SECTION 8.2 STATES SIZMEK'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY FOR ANY THIRD-PARTY CLAIMS OF INFRINGEMENT.

9. Fees; Payment.

9.1 General. All payments of Fees under this Agreement by Customer will be made in accordance with the payment terms set forth in Section 9 (Fees; Payment). All usage of Services will be determined by Sizmek metering. Customer waives all claims related to Fees, unless made within 60 days after the date charged. All amounts payable by Customer under this Agreement will be paid to Sizmek without setoff or counterclaim, and without any deduction or withholding. Customer authorizes Sizmek to verify Customer's registration information from time to time, including by obtaining credit reports and references about Customer.

9.2 Invoicing; Payment. Unless otherwise agreed between Sizmek and Customer in an MSA or Order or provided for in Section 15.3 (Sales Partners), Sizmek shall invoice Customer on a monthly basis, and payment of Sizmek invoices shall be due to Sizmek within net thirty (30) days of the invoice date and shall be made by wire transfer or other method approved by Sizmek. Customer agrees to pay Sizmek such Fee amounts in the applicable local currency invoiced by Sizmek, or such other currencies as Customer and Sizmek may mutually agree from time to time. Customer agrees to provide Sizmek with an authorized email address so that Sizmek may transmit invoices via email delivery. Sizmek will not be required to use any online portal or electronic system provided by Customer in order to issue invoices to Customer or receive payment from Customer.

9.3 Rates. Unless otherwise agreed in an Order or MSA or provided for in Section 15.3 (Sales Partners), the Fees for the Services will be Sizmek's then-applicable standard rates. If Customer uses any Services for which the Fees are not specified in an MSA or Order or provided for as described in Section 15.3, then the Fees for such Services will be Sizmek's then-applicable standard rates.

9.4 Taxes. Each party will be responsible, as required under applicable Law, for identifying and paying all taxes and other governmental fees and charges (and any penalties, interest, and other additions thereto) that are imposed on that party upon or with respect to the transactions and payments under this Agreement. All fees payable by Customer are exclusive of applicable taxes and duties, including, without limitation, VAT, excise taxes, sales and transaction taxes, and gross receipts taxes ("**Indirect Taxes**"). Customer will provide such information to Sizmek as reasonably required to determine whether Sizmek is obligated to collect Indirect Taxes from Customer. Sizmek shall not collect, and Customer shall not pay, any such Indirect Tax or duty for which Customer furnishes Sizmek a properly completed exemption certificate or a direct payment permit certificate or for which Sizmek may claim an available exemption from Indirect Tax. All payments made by Customer to Sizmek under this agreement will be made free and clear of any withholding or deduction for taxes. If any such taxes (for example, international withholding taxes) are required to be withheld on any payment, Customer will pay such additional amounts as are necessary so that the net amount received by Sizmek is equal to the amount then due and payable under this Agreement. Sizmek will provide Customer with such tax forms as are reasonably requested in order to reduce or eliminate the amount of any withholding or deduction for taxes in respect of payments made under this Agreement.

9.5 "Stop Serving" and Similar Settings. With respect to ad serving services, Customer will be billed per the following scenarios with respect to System settings: The designated ad format (e.g., video) will continue to be served until the predefined stop event (if any), after which default images will continue to be served instead, in each case as set forth in the System. Impressions served until the stop event (if any) will be billed at their applicable rate, and any impression served afterwards will be billed at the default image rate. Notwithstanding any "stop serving" settings or termination of

an Order by Customer, Customer will pay Sizmek at the applicable rates for professional, creative, and other related services rendered through the date of termination, cancellation, or “stop serving” setting, regardless of the number of impressions served.

9.6 Nonpayment. If Customer fails to pay any amount payable by it under this Agreement in accordance with Section 9 (Fees; Payment), Sizmek may charge Customer interest on the overdue amount (payable by Customer immediately on demand) from the due date up to the date of actual payment, at the rate of 1.5% per month or the highest rate allowed by Law, whichever is less. Such interest will accrue on a daily basis and be compounded on a monthly basis. Customer will also be responsible for payment of all reasonable expenses (including attorneys’ fees and costs) incurred by Sizmek in collecting any overdue amounts from Customer.

10. DISCLAIMER. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE SYSTEM, AND THE SERVICES ARE PROVIDED “AS IS” AND ON AN “AS AVAILABLE” BASIS AND SIZMEK DOES NOT MAKE OR GIVE ANY REPRESENTATION, WARRANTY, CONDITION OR OTHER TERM (COLLECTIVELY, “PROMISES”) OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE WITH RESPECT TO THE SYSTEM OR THE SERVICES, AND EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, SIZMEK DISCLAIMS ALL IMPLIED PROMISES WITH RESPECT TO THE SYSTEM AND THE SERVICES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED PROMISES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR QUIET ENJOYMENT, AND ANY PROMISES ARISING OUT OF ANY COURSE OF DEALING, PERFORMANCE, OR TRADE USAGE. SIZMEK WILL NOT BE HELD RESPONSIBLE FOR: (A) ANY ERRORS OR INACCURACIES IN ANY CUSTOMER MATERIALS OR SITE CONTENT; (B) SERVICE INTERRUPTIONS DUE TO FACTORS REPRESENTING INHERENT RISKS ASSOCIATED WITH THE USE OF ELECTRONIC COMMUNICATIONS, INCLUDING NETWORK INTERRUPTIONS, COMMUNICATIONS FAILURES, THIRD-PARTY SERVER DOWNTIME, POWER OUTAGES, OR SYSTEM FAILURES; OR (C) ANY UNAUTHORIZED ACCESS TO, USE OF, ALTERATION OF OR DELETION, DESTRUCTION, DAMAGE OR LOSS OF CUSTOMER’S OR ANY THIRD-PARTY USER’S CUSTOMER MATERIALS, SITE CONTENT OR OTHER MATERIALS, DATA, IMAGES, SOUNDS, TEXT INFORMATION, OR CONTENT. SIZMEK MAY DISCONTINUE ANY ASPECT OF THE SYSTEM OR THE SERVICES, OR MAY CHANGE THE NATURE, FEATURES, FUNCTIONS, SCOPE OR OPERATION OF THE SYSTEM OR THE SERVICES, AT ANY TIME. SIZMEK ALSO DOES NOT IN ANY WAY MAKE ANY PROMISES THAT THE SYSTEM OR THE SERVICES WILL BE PROVIDED IN AN UNINTERRUPTED MANNER, ERROR-FREE, OR FREE FROM HARMFUL COMPONENTS. IN ADDITION, SIZMEK MAKES NO PROMISES THAT THE SYSTEM OR THE SERVICES WILL MEET CUSTOMER’S REQUIREMENTS OR EXPECTATIONS OR THAT CUSTOMER WILL ACHIEVE ANY PARTICULAR RESULT FROM USING THE SYSTEM OR THE SERVICES.

11. Limitation of Liability. IN NO EVENT (TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW) WILL (A) SIZMEK BE LIABLE FOR ANY LOSS OF DATA, LOSS OF PROFITS, COST OF COVER, OR OTHER SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, EXEMPLARY, OR RELIANCE DAMAGES ARISING FROM OR IN RELATION TO THIS AGREEMENT, HOWEVER CAUSED AND REGARDLESS OF THEORY OF LIABILITY AND (B) SIZMEK’S LIABILITY FOR DAMAGES UNDER THIS AGREEMENT EXCEED THE AMOUNT OF FEES PAID BY CUSTOMER TO SIZMEK UNDER THIS AGREEMENT FOR THE SIX-MONTH PERIOD PRECEDING THE DATE ON WHICH THE FIRST OF ANY CLAIMS IS MADE IN CONNECTION WITH THIS AGREEMENT.

12. Term and Termination. The Term of this Agreement and any Order will be as set forth in the MSA or the applicable Order unless: (a) terminated earlier in accordance with this Section 12; or (b) the Services continue to be used by Customer after the expiration of the Term set forth in the applicable MSA or Order (provided that Sizmek is under no obligation to permit such continued use). Either party may terminate this Agreement immediately if: (i) the other party is in material breach hereunder and fails to cure such breach within ten (10) calendar days of written notice being provided by the party seeking to terminate; or (ii) the other party becomes insolvent or seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against the other party (and not dismissed within ninety (90) days). Sizmek may also terminate this Agreement and/or any Order, with or without cause, upon thirty (30) days’ prior written notice to Customer. The requirement to make any payment that has become due, in addition to Sections 4 (Publicity) through 8 (Sizmek Responsibilities) and 10 (Disclaimer) through 15 (Contracting Entities; Governing Laws; Jurisdiction) of these Terms of Use, will survive the completion, expiration, termination, or cancellation of this Agreement for any reason. Without

derogating from the above, Sizmek also reserves the right to suspend and/or terminate any and all Customers' Accounts after ninety (90) days of inactivity.

13. Force Majeure. Sizmek will not be responsible for any delay or failure in performing obligations under this Agreement which delay or failure results from any cause beyond its reasonable control. Such force majeure events may include acts of God, storms or other elements of nature, fires, epidemics, wars, terrorism, riots, strikes, lockouts or other labor disputes, decisions or omissions of authorities, and new legislation.

14. General.

14.1 Entire Agreement; Amendment. This Agreement represents the entire understanding between the parties and supersedes all prior written and prior and contemporaneous oral agreements relating to the subject matter hereof. The parties may not amend these Terms of Use, the MSA, or any Order except by a written agreement of the parties that identifies itself as an amendment to these Terms of Use, the MSA, or such Order, as applicable; provided that Sizmek may modify these Terms of Use at any time by posting such modification on the System or applicable Sizmek website or by notifying Customer by email, and such revised Terms of Use will supersede and replace all earlier versions. Any such changes will be effective upon the posting, and Customer is responsible for informing itself of all applicable changes or notices. If Customer does not agree to any such modification, its sole remedy is to terminate this Agreement upon written notice to Sizmek. CUSTOMER'S AND ITS THIRD-PARTY USERS' CONTINUED USE OF THE SYSTEM OR ANY PORTION OF THE SERVICES WILL BE DEEMED TO BE ACCEPTANCE BY CUSTOMER AND ITS THIRD-PARTY USERS OF ANY SUCH MODIFIED VERSION OF THESE TERMS OF USE. These Terms of Use will apply to all MSAs and Orders submitted in connection with this Agreement. Any preprinted, additional, or supplemental terms in, on or associated with, any Customer-submitted ordering documents, including purchase or insertion orders, or any of Customer's electronic invoicing, payment, or other portals, will not apply and will not be binding upon Sizmek.

14.2 Notice. Sizmek may provide notices to Customer, at Sizmek's option, by email to the email address provided by Customer to Sizmek, by mail to the postal address provided by Customer to Sizmek, or by posting on the System or any Sizmek website to which Customer has access in connection with this Agreement. It is Customer's responsibility to ensure that the email address and any other contact and registration information it provides to Sizmek is updated and correct at all times during the Term. Changes to Customer's contact information should be sent to Customer's designated Sizmek service representative, with a copy via email to Sizmek-Collectors@amazon.com.

14.3 Relationship of the Parties. Customer and Sizmek are independent contractors and nothing in this Agreement will give Customer the right, power or authority to create any obligation or responsibility on behalf of Sizmek. Except as expressly set forth in this Agreement, neither Customer nor Sizmek will have any right, power, or authority to create any obligation or responsibility on behalf of the other and this Agreement is not intended to benefit, nor will it be deemed to give rise to any rights in, any third party. Notwithstanding the foregoing, Customer acknowledges and agrees that (a) Sizmek may perform any of its obligations or exercise any of its rights under this Agreement through one or more of its Affiliates and (b) AEC and ASVB are third-party beneficiaries of this Agreement, and nothing in this Agreement shall be construed to prevent the Sizmek Contracting Entities, acting on behalf of AEC or ASVB, or AEC or ASVB, acting on its own behalf, from exercising any rights or remedies granted to the Sizmek Contracting Entities under this Agreement or applicable Law.

14.4 Assignment. Customer may not assign its obligations under this Agreement without prior written consent of Sizmek. Any attempt to assign in violation of this section is void in each instance. Sizmek may assign this Agreement (or any of its rights and obligations under this Agreement) (i) to any of its Affiliates; or (ii) in connection with any merger, consolidation, reorganization, sale of all or substantially all of its assets or any similar transaction.

14.5 Waiver; Severability. No failure or delay on the part of Sizmek in exercising any right, power, condition or remedy under this Agreement will operate as a waiver by Sizmek, nor will any single or partial exercise of any such right, power, condition or remedy preclude any other or further exercise or the exercise of any other right, power, condition or remedy by Sizmek. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective only to the minimum extent necessary without invalidating the remaining provisions of this

Agreement or affecting the validity or enforceability of any provision in any other jurisdiction. Notwithstanding anything to the contrary herein, nothing in the Agreement shall, or shall be interpreted or construed to, induce or require either party hereto to act in any manner (including taking or failing to take any actions in connection with a transaction) which is inconsistent with or penalized under any U.S. Laws, regulations, rules or requirements that apply to any party to the Agreement.

14.6 Interpretation. As used in this Agreement, the word “including” is a term of enlargement meaning “including without limitation” and does not denote exclusivity. The defined terms herein will apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun will include the corresponding masculine, feminine, and neuter forms. All references in these Terms of Use to “Sections” will be deemed to be references to the corresponding Section of these Terms of Use unless the context requires otherwise. The section headings and subheadings contained in these Terms of Use are included for convenience only, and will not limit or otherwise affect the interpretation of these Terms of Use. It is the express wish of the parties that this Agreement be drafted in English. (The following is a French translation of the preceding sentence: C’est à la demande expresse des parties que la présente convention soit rédigée en anglais.) This Agreement and every part of this Agreement is controlled by the English language and if the terms of this Agreement or any part thereof are translated into any language, for convenience or any other reason, the English language version will control and the English language interpretation will prevail with respect to any conflicts of interpretation.

15. Contracting Entities; Governing Laws; Jurisdiction.

15.1 Contracting Entities. The Sizmek legal entity providing the Services, the laws governing the interpretation of this Agreement, and the jurisdiction and venue for all disputes hereunder will be determined as follows: This Agreement is between you and the Sizmek contracting entity that corresponds with your Territory of Sales, as set forth in the table below. This Agreement will be governed by the applicable Governing Laws that correspond with the Territory of Sales as specified in the table below, without regard to conflict of laws rules or principles. Customer and Sizmek consent to personal jurisdiction and venue corresponding to the Territory of Sales as specified in the table below, and each party hereby expressly waives any objection or defense thereto. **Customer and Sizmek agree that any dispute resolution proceedings will be conducted only on an individual basis and not in a class, consolidated, or representative action. With respect to any proceeding or action arising out of or in any way relating to this Agreement, the parties knowingly, intentionally and irrevocably waive any right to trial by jury.** All notices to Sizmek will be made in writing to the applicable Sizmek Contracting Entity at the corresponding address specified in the table below, with a copy to: Amazon, Attn: General Counsel, 410 Terry Avenue North, Seattle WA 98109, with a required copy via email to sizmek-legal@amazon.com. Notices should be sent by certified first-class mail, return receipt requested, or a nationally recognized delivery service. Notices will be deemed received based on the delivery date shown on the written delivery confirmation notice.

Sizmek Contracting Entity	Address	Territory of Sales	Governing Laws	Jurisdiction and Venue
Amazon Advertising LLC	410 Terry Avenue North, Seattle, WA 98109 USA	United States, Canada, Brazil, Argentina	The laws of the state of Washington	State or Federal courts in King County, Washington

Amazon Online UK Limited	1 Principal Place, Worship Street, EC2A 2FA, London, United Kingdom	Europe	The laws of the Grand Duchy of Luxembourg	The courts in the district of Luxembourg City
Amazon Online UK Limited	1 Principal Place, Worship Street, EC2A 2FA, London, United Kingdom	Any other location not otherwise listed in this chart	Laws of England and Wales	The courts of England and Wales located in London, England
Amazon (China) Holding Company Limited	5F, Tower A, Ocean International Center N°.56 Dongshihuanzhonglu, Chaoyang District, Beijing	China	Laws of the People's Republic of China (PRC)	The courts of PRC in Beijing, except for Customers located in Hong Kong and Taiwan (refer to Section 15.2 instead)
Servicios Comerciales Amazon Mexico S. de R.L. de C.V.	Juan Salvador Agraz No. 73, Piso 7, Colonia Santa Fe, Delegacion Cuajimalpa de Morelos, Mexico City	Mexico	The laws of the state of Washington	State or Federal courts in King County, Washington

15.2 CIETAC Arbitration. With respect to any Customer of Amazon (China) Holding Company located in Taiwan or Hong Kong, any dispute arising out of or relating to this Agreement will be resolved by arbitration in Beijing pursuant to China International Economic Trade Arbitration Commission rules.

15.3 Sales Partners. Services in certain locales may be provided by third-party resellers (each, a “Reseller”), in accordance with separate agreement(s) between Customer and such third party(ies) (each, a “Reseller Agreement”), which set forth the fees to be paid by Customer to Reseller for the services provided by Reseller, as well as any other terms that may apply as between Customer and Reseller. Customer acknowledges that any Reseller Agreement is not binding on Sizmek, and that Sizmek will not be responsible for (i) any obligations under a Reseller Agreement, (ii) the acts or omissions of the Reseller, or (iii) any products or services provided to Customer by the Reseller. Customer is to work with the Reseller in case of any refund or credit requests or other disputes regarding any services purchased from the Reseller. Customer shall comply with the Terms of Use in its use of the System and the Services even if purchased through a Reseller. If Customer purchases Services from a Reseller, Customer acknowledges and agrees that Reseller will have access to Customer’s Account and Customer Data and other information in connection with the Services.

15.4 Other Account Types. Certain account types in the System are intended primarily for certain limited purposes, such as (i) the development, production, and management of creative assets to be incorporated into Ads (each, a “Creative Account”) or (ii) for reporting and/or payment of Fees (e.g., for Ads delivered to applicable Sites) (each, a “Paying Account”). Any such special-purpose accounts are referred to as “Other Account Types”. Customer acknowledges and agrees that such Other Account Types may have limited access, privileges, and functionality. Customer will be responsible for any Other Account Types to the extent linked to the Customer’s Account, for any Customer Materials in any such Other Account Types, and for any materials supplied by any Other Account Type to Customer’s Account. Even if

an Other Account Type is (subject in each case to Sizmek's written consent) set up for reporting and payment of Fees incurred on behalf of Customer, e.g., by an agency on behalf of Customer as its advertiser client, Customer remains responsible to Sizmek for payment of any Fees to the extent not paid by the applicable Other Account Type.