Amazon DSP Reseller Terms of Business

1. DEFINITIONS

The following definitions shall apply:

Capitalised terms used but not defined in this document shall have the meaning given to them in the MSA unless otherwise stated.

Ad(s): means advertising content of the Client used in connection with the Services;

Amazon Documentation shall mean all documents, information, brochures, directions, explanations and/or other related materials, furnished by Amazon to in connection with the Services;

Client Data: has the meaning set out in the MSA, and shall also include data derived from the Client's use of the Platforms;

Contract Year: means a one year period starting on the Effective Date or an anniversary of the Effective Date;

Platform: means the Amazon DSP Platform;

Platform Fees: means the charges associated with usage of the Platform; and

Territory: means the territories set out in the SOW;

2. CLIENT'S OBLIGATIONS

2.1 The Client shall:

2.1.1 be responsible for use of the Platform(s), and ensure its use of the Platform(s) compiles with any of its obligations in the Agreement relating to the Services;

2.1.2 be responsible for the Ads, including their content and ensuring that all Ads comply with Applicable Laws, rules, regulations and ad industry guidelines and relevant Third Party Terms.;

2.1.3 obtain and provide Brainlabs with all necessary rights, licences, consents and authorizations necessary to enable Brainlabs to store and deliver Ads via the Platform(s) and to purchase media on the Client's (or its client's) behalf;

2.1.4 cooperate with Brainlabs to integrate with its systems as mutually agreed, for example to enable the use of the Client Materials (such as the Client's proprietary data) in the Services.

2.1.5 contact Brainlabs directly for support relating to the Services and not Amazon .

2.2 Client hereby represents, warrants and covenants throughout the Term that:

2.2.1 the Ads, Campaigns and other promotional or marketing activities undertaken by the Client using the Platform(s) and/or Services will not be deceptive, misleading, obscene, defamatory or illegal, and will not infringe, misappropriate or violate any IPRs or other rights of any third party or otherwise breach Applicable Law;

2.2.2 it has the right and authority to grant any and all

licences granted or purported to be granted hereunder and in the manner contemplated by this Agreement;

2.2.3 it will not, and it will ensure that its Representatives do not, use any device, software or routine to interfere with the proper working of the Platform(s) or the Services

2.2.4 its use of the Platform(s) shall at all times be in accordance with the Third Party Terms set out at Clause 10 of these Amazon Reseller Terms of Business ("**Reseller Terms**") and such other reasonable instructions as may be communicated by Brainlabs to the Client from time to time;

2.2.5 it will not (and will not allow any third party to) provide any Ad that when viewed or clicked on by a visitor(s), causes such visitor(s)'s device to download any software application. The Client hereby acknowledges and agrees that Brainlabs may take remedial action if any Ads violate the terms of this Agreement and the Third Party Terms (including rejecting Ads, removing non-conforming Ads from the Platform(s) and Services, and immediately suspending access to the Platform(s)), however Brainlabs has no obligation to review any Ads for accuracy or potential liability; and

2.2.6 it will not collect or disclose any Personal Data in connection with the Platform(s) or Services.

2.2.7 at the Effective Date it has less than 1,000 globally and the number of the Client's employees subsequently reaches or exceeds 1,000 employees, Client shall upon becoming aware notify Brainlabs within no more than 7 Business Days.

3. INTELLECTUAL PROPERTY RIGHTS

3.1 Subject to the terms of the Agreement, and in accordance with any terms of use that may be communicated by Brainlabs to the Client from time to time, Brainlabs will make the Platform available to the Client and its Representatives as may be approved by Brainlabs from time to time. Brainlabs or Amazon may modify the Platform(s) at any time in its sole and absolute discretion.

3.2 Brainlabs grants to the Client (including its Representatives, as may be approved by Brainlabs from time to time) the non-exclusive right and licence during the SOW Duration to access and use (i) the Platform and all updates thereto and (ii) the Amazon Documentation (if applicable and solely for the purposes of training and support and provided that it maintains Amazon's name and/or logo as provided), subject to and in accordance with the terms of the Agreement and any other terms of use that may be communicated by Brainlabs to the Client from time to time. As between the Parties, Brainlabs retains all ownership of the Platform and Documentation and neither the Client, nor any Representatives gains any proprietary right, title or interest in or to the Platform or Documentation other than the limited rights granted by Brainlabs hereunder. If the Client requests or suggests customizations, modifications or other specific programming to modify or improve the Services (including

the Platform) (collectively, **"Modifications"**), the Client agrees that all IPRs in or to all such Modifications are hereby assigned to Brainlabs and shall be the exclusive property of Brainlabs. The Client agrees to sign all documents reasonably required to give legal effect to the ownership provisions as set out above if requested by Brainlabs

4. MONTHLY FEES

In the event that Amazon increases the fees that it charges Brainlabs for providing the Client access to the Platforms or Services, Brainlabs may increase the Monthly Fees by the equivalent percentage by giving notice to the Client of such increase. Notwithstanding the provisions of the MSA all Charges payable under the terms of this Agreement shall be paid by the Client within 14 days of receipt of the invoice.

5. LIMITATION OF LIABILITY

5.1 EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN OR REQUIRED BY APPLICABLE LAW, NEITHER PARTY MAKES ANY WARRANTY, EXPRESS OR IMPLIED, AND ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY ARE HEREBY DISCLAIMED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE.

5.2 THE CLIENT ACKNOWLEDGES THAT THE PLATFORM(S) TRANSACTS IN REAL TIME AND THAT THE CLIENT HAS NO RECOURSE OR CLAIM FOR ANY TRANSACTION THAT OCCURS, OR DOES NOT OCCUR, BASED ON ERRONEOUS INFORMATION DELIVERED OR INPUT BY THE CLIENT.

5.3 BRAINLABS MAKES NO REPRESENTATION THAT OPERATION OF THE PLATFORM OR SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, AND PROVIDES NO ASSURANCES THAT CLIENT WILL ACHIEVE ANY SPECIFIC BUSINESS RESULTS FROM USE OF THE PLATFORM AND/OR SERVICES.

5.4 SUBJECT TO CLAUSE 11.1 OF THE MSA, BRAINLABS' TOTAL LIABILITY TO THE CLIENT IN RESPECT OF ALL LOSSES ARISING UNDER OR IN CONNECTION WITH THE AGREEMENT IN ANY CONTRACT YEAR, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE, SHALL IN NO CIRCUMSTANCES EXCEED THE GREATER OF (i) 125% OF THE MONTHLY FEES PAID OR PAYABLE TO BRAINLABS UNDER THE AGREEMENT IN THAT CONTRACT YEAR OR (ii) £500,000. FOR THE AVOIDANCE OF DOUBT, WHEN CALCULATING THE AMOUNT REFERRED TO AT PART (i) OF THIS CLAUSE 5.5 OF THESE RESELLER TERMS, ANY THIRD PARTY EXPENSES (INCLUDING, WHERE APPLICABLE, MEDIA SPEND AND ANY SURCHARGES APPLIED IN CONNECTION WITH INDUSTRY TAXES) SHALL BE EXCLUDED. IF THIS AMOUNT NEEDS TO BE CALCULATED BEFORE THE END OF THE RELEVANT CONTRACT YEAR, THIS WILL BE CALCULATED ON A PRO-RATA BASIS. ANY LIMITATION OF LIABILITY, UNDER CLAUSES 11.1 AND 11.2 OF THE MSA SHALL NOT APPLY TO THE CLIENT'S INDEMNIFICATION OBLIGATIONS PURSUANT TO CLAUSE 6.1 BELOW.

6. INDEMNIFICATION

6.1 Subject to Clause 6.2 of these Reseller Terms, the Client shall indemnify, defend and hold harmless Brainlabs and the Brainlabs Group and each of its directors, officers, employees and agents and its and their respective successors, heirs and assigns (collectively, the **"Brainlabs Parties"**) against any liability, damage, loss or expense (including reasonable attorneys' fees and expenses of litigation) (collectively, "**Losses**") in connection with any third-party claim, suit, action, demand or judgment ("**Claim**") in connection with any Claim arising from or in connection with:

6.1.1 (a) Client's use of the Platform in violation of this Agreement; (b) Client's violation of the Platform Policies; (c) any Platform Materials, including any actual or alleged infringement or misappropriation of any Intellectual Property Right by any Platform Materials (including the systems and Technology used by Client to bid on any Impression or in connection with the delivery of any Ads (unless those systems and Technology are part of the Amazon DSP or Publisher Properties); (d) services and products advertised on Destinations; (e) fraud, intentional misconduct, gross negligence, or violation of publicity or privacy rights by Client, its subcontractors, agents and suppliers in connection with this Agreement. Publishers are intended third-party beneficiaries of this clause 6.1.1, if permitted under applicable Law.

6.1.2 any acts or omissions of the Client in relation to this Agreement; and

6.1.3 any claim by Amazon or any of its affiliates or Group Companies relating to a breach or alleged breach by Brainlabs or the Client of the Third Party Terms. arising from the Client's acts or omissions in relation to this Agreement. Capitalised Terms used in this clause 6.1 but not otherwise defined herein shall have the meaning set out in the Amazon Third Party Terms at https://advertising.amazon.com/dsp/agreement/en

6.2 In all cases in which an indemnified party seeks indemnification hereunder, the indemnified party will; (i) provide the indemnifying party with prompt notice of any such Claim (provided that the failure to provide prompt notice will only relieve the indemnifying part of its obligation to the extent it is materially prejudiced by such failure and can demonstrate such prejudice); (ii) permit the indemnifying party to assume and control the defence of such action upon the indemnifying party's written notice to the indemnified party of the indemnifying party's intention to indemnify (provided that the indemnified party (at its cost) may participate in the defence and settlement of such action with counsel of its own choosing), and (iii) upon the indemnifying party's written request, and at no expense to the indemnified party, provide to the indemnifying party all available information and assistance reasonably necessary for the indemnifying party to defend such claim. The indemnifying party will not enter into any settlement or compromise of any such claim which would result in any liability to or otherwise adversely affect the indemnified

party without the indemnified party's prior written consent, which will not unreasonably be withheld or delayed.

7. TERMINATION

7.1 In addition to the termination rights set out in the MSA, Brainlabs may suspend or terminate the Agreement with immediate effect at any time if:

7.1.1 Amazon terminates its reseller agreement with Brainlabs or if Brainlabs ceases to possess the necessary consents and licences required to provide the Services;

7.1.2 the Client fails to comply with it Data Protection obligations under the Agreement; or

7.1.3 the Client violates any Third Party Terms related to the Platform(s).

7.1.4 failure by the Client fails to pay any invoice on time shall be considered to be a material breach that is 'capable of remedy' under 12.2.1 of the MSA, provided it is remedied within three (3) days of receiving notice from Brainlabs that the invoice is due.

7.2 Brainlabs may immediately suspend access to the Platform and Services on notice to the Client if, and for such time as the Client breaches the Agreement (including its payment obligations) or if Brainlabs, in its sole and absolute discretion, reasonably determines that the Client (or any of its Representatives) is or is likely to endanger the security, integrity, or availability of the Platform.

7.3 In addition to the termination rights set out in the MSA, the Client may terminate the Agreement upon one month's written notice to Brainlabs if Brainlabs increases the Monthly Fees pursuant to Clause 4 of these Reseller Terms.

8. CONSEQUENCES OF TERMINATION

8.1 If Brainlabs is unable to provide the Services during the Term for any reason whatsoever, including, without limitation, an occurrence of bankruptcy or a discontinuation of Brainlabs' business, and if Amazon elects not to assume the terms of the Agreement, then the Client will enter into Amazon 's standard agreement(s) with respect to the applicable Services for a period of no less than the balance of the term of this SOW, the pricing terms for which will be negotiated in good faith at the time of such transition.

8.2 Upon termination or expiry of the Agreement, all rights and licences granted under this Agreement will cease immediately and each Party shall, on request by the other Party, either return or destroy all materials and documents in their possession (including in the case of the Client the Amazon Documentation) belonging to or provided by the other Party.

9. EXCLUSIVITY AND ASSIGNMENT

9.1 The Client agrees that Brainlabs (and its subcontractors, as applicable) shall be the exclusive provider of the Services to the Client throughout the Term.

9.2 Notwithstanding the restrictions on assignment and other dealings in the MSA, Brainlabs may, with the consent of the Client, assign or transfer this Agreement to Amazon.

10. THIRD PARTY TERMS

The Client acknowledges that the Platforms shall be provided by Amazon as set out in the following Third Party Terms. The Client agrees that these Reseller Terms are subject to and shall comply with the following Third Party Terms in connection with its receipt and enjoyment of the Services, as if it were the "Customer" or relevant counterparty to Amazon in such Third Party Terms (except in relation to payment to Amazon): Client shall notify Brainlabs in writing immediately, and in all cases within no more than 7 Business Days, upon becoming aware of any actual or suspected violation of the Third Party Terms by a Client, describing in detail the facts and circumstances relating to such event.

- https://advertising.amazon.com/dsp/agreement/en
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