



## AP Terms & Conditions for Brands

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WELCOME TO THE ACCELERATION PARTNERS (“AP,” “US,” “WE,” “OUR”) ADVANTAGE PROGRAM.

BY SIGNING AN ORDER FORM REFERENCING THESE TERMS, YOU ARE CONFIRMING THAT YOU UNDERSTAND THESE TERMS, AND THAT YOU AGREE TO ALL OF THE PROVISIONS OF THESE TERMS. THE ORDER FORM, THESE TERMS AND CONDITIONS AND ANY ADDENDA COLLECTIVELY FORM OUR “**AGREEMENT**”. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE LEGAL AUTHORITY TO BIND THE ENTITY TO THIS AGREEMENT. THIS AGREEMENT WILL BE EFFECTIVE ON THE “EFFECTIVE DATE” STIPULATED ON THE ORDER FORM. WE MAY CHANGE THE TERMS OF THIS AGREEMENT AT ANY TIME FOR ANY REASON BY POSTING THOSE CHANGES ON OUR WEBSITE AND, IF THE CHANGES ARE MATERIAL AS DETERMINED IN OUR DISCRETION, SENDING YOU AN EMAIL NOTICE; PROVIDED, HOWEVER, THAT ANY CHANGES WILL NOT APPLY RETROACTIVELY AND WILL BECOME EFFECTIVE NO SOONER THAN 14 DAYS AFTER THEY ARE POSTED. IF YOU DO NOT AGREE TO THE MODIFIED AGREEMENT, YOU SHOULD DISCONTINUE THE USE OF THE SERVICES. THIS AGREEMENT INCLUDES DISPUTE RESOLUTION THROUGH ARBITRATION, FOR WHICH YOU HAVE THE OPPORTUNITY TO OPT-OUT. PLEASE READ THIS AGREEMENT IN FULL.

### 1. Definitions.

“**Aggregated Statistics**” means data and information related to Client’s use of the Services that is used by AP in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services.

“**Authorized User**” means Client’s employees, consultants, contractors, and agents (i) who are authorized by Client to access and use the Services under the rights granted to Client pursuant to the Agreement and (ii) for whom access to the Services has been purchased hereunder.

“**AP Materials**” means the Services, Documentation, AP Systems and any and all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, software, and other technologies and inventions that are provided or used by AP in connection with the Services. For the avoidance of doubt, AP Materials include Aggregated Statistics and any information, data, or other content derived from AP’s monitoring of Client’s access to or use of the Services, but do not include Client Data. For the further avoidance of doubt, AP Materials include all Partner Identification Information except that which constitutes Client Data under this Agreement.

“**AP Systems**” means the information technology infrastructure used by or on behalf of AP in performing the Services, including all computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by AP or through the use of third-party services.

“**Client Data**” means, other than Aggregated Statistics, information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Client or an Authorized User through the Partner Marketing Services, including, as between the parties, Partner Identification Information transmitted by or on behalf of Client or an Authorized User through the Services.

“**Documentation**” means AP’s user manuals, handbooks, and guides relating to the Services provided by AP to Client either electronically or in hard copy form.

“**Order Form**” means a form signed by Client and by AP setting out the Services and Partner Marketing Services Client has purchased.

“**Partner Identification Information**” means data and information used to identify Partners including, without limitation, Partner names, domains, URLs,



social media information, contacts, and contact information provided via AP's Partner databases and Services.

**"Partners"** means third parties that AP's Partner Marketing Services are designed to help AP's prospective Clients connect with, including affiliates, publishers, agencies, influencers, content creators, advertisers, brands, and merchants.

**"Partner Marketing Services"** has the meaning set forth in the Order Form.

**"Third-Party Products"** means any third-party products incorporated into the Services.

## 2. Services Access and Use.

(a) Access. Subject to and conditioned on Client's payment of Fees and compliance with the Agreement, AP grants Client a non-exclusive, non-transferable (except in compliance with Section 13(g)) right to access and use the Services during the Term, solely for use by Authorized Users in accordance with the terms and conditions herein. Such use is limited to Client's internal use.

(b) Documentation License. Subject to the terms and conditions contained in the Agreement, AP grants to Client a non-exclusive, non-sublicensable, non-transferable (except in compliance with Section 13(g)) license to use the Documentation during the Term solely for Client's internal business purposes in connection with Client's use of the Services.

(c) Use Restrictions. Client shall not use the Services for any purposes beyond the scope of the access granted in the Agreement. Client shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (i) copy, modify, or create derivative works of the Services or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Services or Documentation; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Services, in whole or in part; (iv) remove any proprietary notices from the Services or Documentation; or (v) use the Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.

(d) Reservation of Rights. AP reserves all rights not expressly granted to Client in the Agreement. Except for the limited rights and licenses expressly granted under the Agreement, nothing in the Agreement grants, by implication, waiver, estoppel, or otherwise, to Client or any third party any intellectual property rights or other right, title, or interest in or to the AP Materials.

(e) Suspension. Notwithstanding anything to the contrary in this Agreement, AP may temporarily suspend Client's and any Authorized User's access to any portion or all of the Services if: (i) AP reasonably determines that (A) there is a threat or attack on any of the AP Materials; (B) Client's or any Authorized User's use of the AP Materials disrupts or poses a security risk to the AP Materials or to any other Client or vendor of AP; (C) Client, or any Authorized User, is using the AP Materials for fraudulent or illegal activities; (D) subject to applicable law, Client has ceased to continue Client's business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) AP's provision of the Services to Client or any Authorized User is prohibited by applicable law; (ii) any vendor of AP has suspended or terminated AP's access to or use of any third-party services or products required to enable Client to access the Services; or (iii) in accordance with Section 5(a) (any such suspension described in subclause (i), (ii), or (iii), a **"Service Suspension"**). AP shall use commercially reasonable efforts to provide written notice of any Service Suspension to Client and to provide updates regarding resumption of access to the Services following any Service Suspension. AP shall use commercially reasonable efforts to resume providing access to the Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured. AP will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Client or any Authorized User may incur as a result of a Service Suspension.

(f) Aggregated Statistics. Notwithstanding anything to the contrary in this Agreement, AP monitor Client's use of the Services and collect and compile Aggregated Statistics. As between Provider and Client, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by AP. Client acknowledges that AP may compile Aggregated Statistics based on Client Data input into the Services. Client agrees that AP may (i) make Aggregated Statistics publicly available in compliance with applicable law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable law; provided that such Aggregated Statistics do not identify Client or Client's Confidential Information.



(g) Service Levels. Subject to the terms and conditions of this Agreement, AP shall use commercially reasonable efforts to make the Services available. AP warrants that Services shall be provided in a professional manner consistent with generally accepted industry standards. Any Services performed in breach of this warranty will be re-performed.

(h) Acceptance of Work. For the purposes of this Agreement, any work delivered (either partially or in full) to the Client under this Agreement will be deemed accepted by Client in the event the specific work or deliverable is not disputed by Client in writing or via electronic communication within ten (10) business days of receipt by Client. If any work or deliverable is not disputed in writing (including by email) by Client within such period, then (i) Client will be deemed to have accepted the work or deliverable; and (ii) Client agrees that it shall be obligated to make payment in full for such work or deliverable per this Agreement (including payment for expenses per the other terms of Section 5 of this Agreement), even in the case of a termination of this Agreement by either party.

(i) Changes. AP reserves the right to make any changes to the Services and AP Materials that AP deems necessary or useful in AP's sole discretion.

### 3. Client Responsibilities for Services.

Client is responsible and liable for all uses of the Services and Documentation resulting from access provided by Client, directly or indirectly, whether such access or use is permitted by or in violation of the Agreement. Without limiting the generality of the foregoing, Client is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of the Agreement if taken by Client will be deemed a breach of the Agreement by Client. Client shall use reasonable efforts to make all Authorized Users aware of the Agreement provisions as applicable to such Authorized User's use of the Services, and shall cause Authorized Users to comply with such provisions.

### 4. Partner Marketing Services.

(a) Work.

(i) AP shall perform the Partner Marketing Services and provide the related deliverables that may be specified in an Order Form or

Statement of Work, if applicable. Except as set forth in Section 4(a)(ii), as between AP and Client, all right, title, and interest in any deliverables, and all intellectual property rights therein, provided to Client by AP in performing the Partner Marketing Services shall belong to Client. AP agrees that with respect to any deliverables that qualify as "work made for hire" as defined in 17 U.S.C. §101, such deliverables are hereby deemed "work made for hire" for Client. To the extent any of the deliverables do not constitute "work made for hire," AP hereby irrevocably assigns to Client all right, title, and interest in and to the deliverables, including all intellectual property rights therein.

(ii) Except for Partner Identification Information that constitutes Client Data, AP and its licensors are, and shall remain, the owners of all right, title, and interest in and to the Partner Identification Information contained in any deliverables. AP hereby grants to Client an irrevocable, worldwide, perpetual, royalty-free, fully paid up, non-exclusive license to use and otherwise exploit such Partner Identification Information contained in any deliverables, provided that in doing so Client may not violate any other terms of this Agreement. Client may assign, transfer, and sublicense (through multiple tiers) such rights to others without AP's approval. For the avoidance of doubt, nothing in this Section 4(a)(ii) shall entitle Client to continued access to the Partner Marketing Services beyond that access which is provided for in Section 11(c)(ii) following expiration or termination of this Agreement.

(b) Client Obligations. Client shall:

(i) cooperate with AP in all matters relating to the Partner Marketing Services, including without limitation collaborating to identify suitable Partners for Client, and appoint a Client employee to serve as the primary contact with respect to the Partner Marketing Services and who will have the authority to act on behalf of Client with respect to matters pertaining to the Partner Marketing Services;

(ii) respond promptly to any AP request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for AP to perform the Partner Marketing Services in accordance with the requirements of this Agreement;



- (iii) provide such information as AP may reasonably request, in order to carry out the Partner Marketing Services, in a timely manner, and ensure that it is complete and accurate in all material respects; and
- (iv) fairly compensate Partners AP recruits for Client based on their performance and in a timely manner.

## 5. Fees and Payment

(a) Fees. Client shall pay the fees ("**Fees**") as set forth in any applicable Order Form. If Client fails to make any payment when due, without limiting AP's other rights and remedies, AP may suspend Client's and Client's Authorized Users' access to any portion or all of the of Partner Marketing Services to Client until such amounts are paid in full.

(b) Taxes. All Fees and other amounts payable by Client under the Agreement are exclusive of taxes and similar assessments. Client is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Client hereunder, other than any taxes imposed on AP's income.

## 6. Confidential Information.

From time to time during the Term, either party may disclose or make available to the other party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media and whether or not marked, designated, or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving party at the time of disclosure; (c) rightfully obtained by the receiving party on a non-confidential basis from a third party; or (d) independently developed by the receiving party. The receiving party shall not disclose the disclosing party's Confidential Information to any person or entity, except to the receiving party to exercise its rights or perform its obligations hereunder. Notwithstanding the foregoing, each party may disclose Confidential Information to the limited

extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the party making the disclosure pursuant to the order shall first have given written notice to the other party and made a reasonable effort to obtain a protective order; or (ii) to establish a party's rights under this Agreement, including to make required court filings.

## 7. Intellectual Property Ownership; Data; Subcontracting.

(a) AP Materials. Client acknowledges that, as between Client and AP, AP owns all right, title, and interest, including all intellectual property rights, in and to the AP Materials and, with respect to Third-Party Products, the applicable third-party providers own all right, title, and interest, including all intellectual property rights, in and to the Third-Party Products.

(b) Client Data. AP acknowledges that, as between AP and Client, Client owns all right, title, and interest, including all intellectual property rights, in and to the Client Data. Client hereby grants to AP a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Client Data and perform all acts with respect to the Client Data as may be necessary for AP to provide the Partner Marketing Services to Client, a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display Client Data incorporated within the Aggregated Statistics, and a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display any and all Partner Identification Information that constitutes Client Data under this Agreement. Notwithstanding anything herein to the contrary, AP retains the right to use for other purposes any general market research that it performs, develops or collects in the course of performing Partner Marketing Services under this Agreement as long as in the good faith determination of AP the use of such materials does not (a) reflect adversely on Client or Client's products or services; (b) adversely affect Client's competitive positioning. To the extent AP incorporates any AP Materials into the Partner Marketing Services, such AP Materials shall remain the sole and exclusive property of AP. AP hereby grants to Client a non-exclusive, limited, irrevocable, royalty-free, world-wide license to use solely for its own benefit that portion of AP Materials as it exists at the time of the engagement that is necessary for Client to make use of the Partner Marketing Services.



(c) Data; Subcontracting. Notwithstanding any provision to the contrary in this Agreement, AP will be permitted to collect, use, reproduce, display, store, modify, reformat, process, and create derivative works from data collected via the Partner Marketing Services in perpetuity for its own internal research and development purposes, including improvement of the Partner Marketing Services and/or AP Materials, in each case in accordance with applicable laws and regulations. AP shall not share data with any third party, except as follows: (i) AP may share data with any of AP's independent contractor(s) for purposes of improving Partner Marketing Services and/or AP Materials; provided, however, such independent contractor(s) are subject to a non-disclosure agreement for purposes of protecting data from unauthorized disclosure; (ii) AP may share data with the express written consent of Client; and/or (iii) AP may share data as required to satisfy regulatory or other legal obligations.

## 8. Representations and Warranties; Warranty Disclaimer.

(a) Mutual. Each party represents and warrants to the other party that:

- (i) it is duly organized, validly existing and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization, or chartering;
- (ii) it has the full right, power, and authority to enter into this Agreement, to grant the rights and licenses granted hereunder, and to perform its obligations hereunder;
- (iii) the execution of this Agreement by its representatives whose signature is set forth at the end hereof has been duly authorized by all necessary corporation action of the party; and
- (iv) when executed and delivered by such party, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.

(b) AP. AP represents and warrants to Client that:

- (i) it shall perform the Partner Marketing Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with commercially reasonable

industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement; and

- (ii) it is in compliance with, and shall perform the Partner Marketing Services in compliance with, all applicable laws.

(c) Disclaimer. THE AP MATERIALS ARE PROVIDED "AS IS" AND, EXCEPT FOR THE EXPRESS WARRANTIES IN THIS AGREEMENT, AP HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. AP SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. AP MAKES NO WARRANTY OF ANY KIND THAT THE AP MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CLIENT'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

## 9. Indemnification.

(a) AP Indemnification.

- (i) AP shall indemnify, defend, and hold harmless Client from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) ("**Losses**") incurred by Client resulting from any third-party claim, suit, action, or proceeding ("**Third-Party Claim**") that the Services, or any use of the Services in accordance with the Agreement, infringes or misappropriates such third party's US intellectual property rights, unless the material causing the claim was provided by Client for incorporation into AP's Services, and provided that Client promptly notifies AP in writing of the claim, cooperates with AP, and allows AP sole authority to control the defense and settlement of such claim.
- (ii) If such a claim is made or appears possible, Client agrees to permit AP, at AP's sole discretion, to (A) modify or replace the Services, or component or part thereof, to make it non-infringing, or (B) obtain the right for Client to continue use. If AP determines that neither alternative is reasonably available, AP may terminate the Agreement,





in its entirety or with respect to the affected component or part, effective immediately on written notice to Client.

- (iii) This Section 9(a) will not apply to the extent that the alleged infringement arises from: (A) use of the Services in combination with data, software, hardware, equipment, or technology not provided by AP or authorized by AP in writing; (B) modifications to the Services not made by AP; (C) Client Data; or (D) Third-Party Products.

(b) Client Indemnification. Client shall indemnify, hold harmless, and, at AP's option, defend AP from and against any Losses resulting from any Third-Party Claim that the Client Data, or any use of the Client Data in accordance with the Agreement, infringes or misappropriates such third party's intellectual property rights and any Third-Party Claims based on Client's or any Authorized User's (i) negligence or willful misconduct; (ii) use of the Services in a manner not authorized by the Agreement; (iii) use of the Services in combination with data, software, hardware, equipment, or technology not provided by AP or authorized by AP in writing; or (iv) modifications to the Services not made by AP, provided that Client may not settle any Third-Party Claim against AP unless AP consents to such settlement, and further provided that AP will have the right, at AP's option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.

(c) Sole Remedy. THIS SECTION 9 SETS FORTH CLIENT'S SOLE REMEDIES AND AP'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

## 10. Limitations of Liability.

IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER OR IN CONNECTION WITH THE AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY, OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN

EACH CASE REGARDLESS OF WHETHER SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL AP'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL AMOUNTS PAID OR PAYABLE TO AP UNDER THE AGREEMENT IN THE TWELVE-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

## 11. Term and Termination.

### (a) Term.

- (i) The "**Term**" of the Agreement shall be the duration of the then in effect Initial Term or Renewal Term(s) of the applicable Order Form(s). For the avoidance of doubt, the Term will commence on the Effective Date set forth in the initial Order Form and will continue until all Order Forms are terminated in accordance with Section 11(b) of the Agreement, or all Order Forms have expired.
- (ii) The "**Initial Term**" of each Order Form will commence on the Effective Date set forth on such Order Form and will continue for the subscription period set forth in such Order Form. Unless otherwise set forth in the Order Form, each Order Form will automatically renew after the Initial Term for additional periods of the same duration as the Initial Term (each, a "**Renewal Term**"), unless either party gives prior written notice of its intent not to renew such Order Form no less than thirty (30) days prior to the end of the then-current term.

(b) Termination. In addition to any other express termination right set forth in this Agreement:

- (i) AP may terminate the Agreement, effective on written notice to Client, if Client: (A) fails to pay any amount when due hereunder, and such failure continues more than 10 days after AP's delivery of written notice thereof; or (B) breach any of its obligations under Section 2(c) or Section 6;
- (ii) either party may terminate this Agreement, effective on written notice to the other party, if the other party breaches this Agreement, and such



breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured 30 days after the non-breaching party provides the breaching party with written notice of such breach, provided that, notwithstanding anything in the foregoing, the sole and exclusive remedy for a breach of service warranty is re-performance; or

- (iii) either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

Notwithstanding anything to the contrary, unless the termination was by Client due to a material breach of the Agreement by AP, Client shall also pay to AP immediately following termination (subject to invoicing and payment terms consistent with this Agreement) any recurring fee amounts that would have been applicable under the Order Form for the remainder of its then-current term.

(c) Effect of Expiration or Termination; Post-Termination Access.

- (i) Except as otherwise set forth in Section 11(c)(ii), upon expiration or earlier termination of this Agreement, Client shall immediately discontinue use of the AP Materials and, without limiting Client's obligations under Section 6 Client shall delete, destroy, or return all copies of the AP Materials and certify in writing to AP that the AP Materials have been deleted or destroyed. No expiration or termination will affect Client's obligation to pay all Fees that may have become due before such expiration or termination or entitle Client to any refund.
- (ii) Notwithstanding anything to the contrary herein, for a period of thirty (30) days after the expiration or termination of this Agreement, Client may retrieve Client Data from the Services and AP shall provide Client

with the same Client Data retrieval assistance that AP generally makes available to all Clients.

(d) Survival. This Section 11(d) and Sections 1, 4, 5 6, 7, 8(c), 9, 10, 12 and 13 survive any termination or expiration of this Agreement. No other provisions of this Agreement survive the expiration or earlier termination of this Agreement.

**12. Non-solicitation.**

Client agrees that, during the Term and for twelve (12) months following its expiration or termination for any reason, it will not directly or indirectly solicit or hire any person who is then an AP employee or independent contractor, or employee or independent contractor of any AP sub-contractor or held such position within the preceding twelve (12) months and in any case who provided Service to Client or had any material interaction with Client hereunder ("Restricted Employees") without the prior express written consent of AP. . Hiring of persons who apply themselves based on publicly available job descriptions is excepted from this non-solicitation clause.

**13. Miscellaneous.**

(a) Entire Agreement. This Agreement, together with any other documents incorporated herein by reference and all related Exhibits, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement, the related Exhibits, and any other documents incorporated herein by reference, the following order of precedence governs: (i) first, this Agreement, excluding its Exhibits; (ii) second, the Exhibits to this Agreement as of the Effective Date; and (iii) third, any other documents incorporated herein by reference.

(b) Publicity. Neither party shall use the other party's trademarks, service marks, trade names, logos, domain names, or other indicia of source, association, or sponsorship, in each case, without the prior written consent of the other party, which consent shall not be unreasonably withheld, provided, however, that AP may include Client's name, logo and other indicia on AP's website for the purposes of the Services, and on AP's lists of its current or former Clients in promotional and marketing materials.



(c) Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") must be in writing and addressed to the parties at the addresses set forth in the Order Form (or to such other address that may be designated by the party giving Notice from time to time in accordance with this Section). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile or email at [aplegal@accelerationpartners.com](mailto:aplegal@accelerationpartners.com) (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving party; and (ii) if the party giving the Notice has complied with the requirements of this Section.

(d) Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each party. No waiver by any party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof, and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(e) Severability. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties shall negotiate in good faith to modify this Agreement so as to effect their original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

(f) Dispute Resolution; Governing Law; Venue; Submission to Jurisdiction. The Agreement is governed by the law, jurisdiction, venue set out in the table below, without regard to any conflict of laws principles that would require the application of the laws of another jurisdiction. Any controversies, claims or disputes arising out of or relating to this Agreement must be resolved by confidential mediation or arbitration in accordance with the procedural rules set out in the table below. The decisions of the arbitrator will be binding and

conclusive upon all parties and judgment upon any award rendered by the arbitrator may be entered by any court of competent jurisdiction. If Client wishes to opt-out of using mediation or arbitration as a dispute resolution mechanism, Client must send, within thirty (30) days of the Effective Date, a notice to [aplegal@accelerationpartners.com](mailto:aplegal@accelerationpartners.com). If Client opts out of arbitration, Client submits to the exclusive jurisdiction of the courts set out in the table below.

AP counterparty	Notice must be provided to <a href="mailto:aplegal@accelerationpartners.com">aplegal@accelerationpartners.com</a> and by post	Governing law; Mediation/Arbitration Rules and Venue applicable; Courts with exclusive jurisdiction
Acceleration Partners, LLC	6 Liberty Sq, PMB 96813, Boston, MA 02109	Commonwealth of Massachusetts; AAA Commercial Arbitration Rules and Mediation Procedures; Venue: Boston, MA; Commonwealth of Massachusetts
Acceleration Partners Limited	C/O Tmf Group, 13th Floor, One Angel Court, London, England, EC2R 7HJ	English law; CEDR Model Mediation Procedure and UNCITRAL Arbitration Rules; Venue: London, England; English courts

(g) Assignment. Client may not assign any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of AP, which consent shall not be unreasonably withheld, conditioned, or delayed. Any purported assignment or delegation in violation of this Section will be null and void. No assignment or delegation will relieve the assigning or delegating party of any of its obligations hereunder. This Agreement is binding upon and inures to the benefit of the parties and their respective permitted successors and assigns.

(h) Equitable Relief. Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under Section 6 or, in the case of Client, Section 2(c), would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other party will be entitled to equitable relief, including a restraining order, an injunction, specific





performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

## Partner Programs Addendum

By signing the Order Form, you have indicated that these terms and conditions are applicable and hereinafter incorporated within AP Terms & Conditions for Brands, to which this Partner Program Addendum is attached, as if fully set forth therein. These terms are applicable to programs AP manages ("Partner Programs") in relation to companies with whom Client partners for online marketing purposes and that have entered into a written agreement directly with Client for performance of such relevant services, within the scope contemplated by this Agreement ("Partners").

1. Client Content. Client is solely responsible for all content it provides to AP or approves for use in connection with Client's products and services. All such content, products and services must comply with all applicable laws, rules and regulations. AP will make reasonable efforts to promote compliance by Partners with the Federal Trade Commission's Guides Concerning the Use of Endorsements and Testimonials in Advertising regarding disclosure of affiliate links and potential payments from Client, as well as similar disclosure requirements applicable in countries outside of the United States, to the extent applicable to the actions of Partners. Notwithstanding anything to the contrary, Client acknowledges that AP is not a law firm and is not providing legal advice, and in no event shall AP ever be liable for the acts or omissions of any Partners.
2. Clarification of Partner Liability and Relationship to Client. It is agreed and understood that Partners are not contractors, consultants or agents of AP, and that AP has not assigned its obligations under this Agreement to any such Partners. AP and Client acknowledge and agree that AP will not be liable for any acts of Partners, Client's sole remedy being in the terms and conditions of the contract between Client and the Partner. Likewise, Client alone is responsible for its actions in relation to its Partners, and for fulfilling all of its obligations under its contracts with Partners, and Client accordingly agrees to comply with Section 8 of this Agreement by defending, indemnifying and holding harmless all AP Indemnified Parties from and against any and all Damages that may be imposed on, incurred by, or asserted against any AP Indemnified Party as the result of a Partner's claim or threatened claim against Client or AP arising out of the Client-Partner relationship (subject to the process requirements set forth in Section 8 of this Agreement).
3. Tax Matters. Client acknowledges that the laws applicable in certain jurisdictions, whether adopted as a statute, rule, regulation, directive, or pronouncement of an agency may result in Client being treated as having a taxable presence in such jurisdiction for income, gross receipts, sales and use, transfer, and any other tax purposes based on an Internet marketing affiliate thereof doing business in such jurisdiction or other economic or business activities, which may result in tax reporting, withholding, and payment obligations within any such jurisdiction. Client shall be solely responsible for ensuring that it is in compliance with all applicable laws, rules, and regulations, including but not limited to those regarding the tax laws of federal, state, local, or non-U.S. jurisdictions. Client is strongly encouraged to seek independent professional tax and legal advice. Client acknowledges and agrees that (i) neither AP, nor any of its or its affiliates' officers, directors, members, managers, employees, or agents have provided any tax advice to Client, and (ii) Client either has sought or will seek such advice or has decided not to seek such advice in its own sole discretion. AP shall not be liable to Client for any act, omission, or failure to act with respect to any tax matters whatsoever.