

Terms of Use

These Sizmek Terms of Use were last updated on September 04, 2020.

SIZMEK TERMS OF USE

BY ACCEPTING THESE TERMS OF USE, EITHER BY CLICKING A BOX ONLINE INDICATING YOUR ACCEPTANCE, OR BY EXECUTING A MASTER SERVICES AGREEMENT OR ORDER THAT REFERENCES THESE TERMS OF USE, OR BY 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 AFFILIATES; PROVIDED, THAT IF YOUR COMPANY HAS SEPARATELY EXECUTED A MASTER SERVICES AGREEMENT OR ORDER WITH SIZMEK FOR THE SERVICES AND YOU ARE AUTHORIZED BY SUCH COMPANY TO CREATE A USER ACCOUNT, THIS SENTENCE DOES NOT APPLY TO YOU. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH ALL OF THE TERMS AND CONDITIONS SET FORTH IN THESE TERMS OF USE, YOU MUST NOT ACCEPT THESE TERMS OF USE AND YOU MAY NOT USE THE SERVICES.

1. Definitions. Terms and expressions not otherwise defined in the body of 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 terms and conditions specified by Sizmek from time to time for certain Services and attached to an Order.

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, whether through the ownership of at least fifty percent (50%) of the voting interest of such party, through contractual provisions, or otherwise, and includes that entity’s officers, directors, agents, employees, successors and assigns.

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 in the MSA or the applicable Order, who is responsible for payment to Sizmek.

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) unless Customer Personal Data is specifically excluded.

H. “Customer Material(s)” means any Advertisement, creative, content, data, information 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—including IP addresses and pseudonymous data with cookie ID, user ID, Device ID, mobile ID, or other persistent identifier(s)—about user activity or engagement with Advertisements or Site Content.

J. “Fees” means the fees or rates for the use of the Services as set forth in each Order.

K. “GDPR” means the European General Data Protection Regulation (Regulation (EU) 2016/679) and any implementation or successor thereof.

L. “GDPR Agreement” means (where applicable) the [GDPR Addendum](#) or a separately executed GDPR agreement between Sizmek and Customer or its Affiliates that pertains to the Services.

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

O. “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 header or HTTP 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.

P. “Order” means an order for Services that is signed by Customer or submitted to Sizmek by means of a Sizmek online click-thru or self-service online 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.

Q. “Privacy Rules” means, collectively: (i) the requirements of any privacy and data protection laws, treaties, inter-governmental agreements, and regulations to which a party is subject in the conduct of its business; (ii) with respect to all processing of personal data by or on behalf of a party to this Agreement in, or transfer of personal data to, the United States of America, the EU-U.S. Privacy Shield Framework Principles as set forth in Annex II to the Commission Implementing Decision of 12.7.2016 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequacy of the protection provided by the EU-U.S. Privacy Shield (“Privacy Shield Principles”); (iii) 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) enacted legislation and regulations under the California Consumer Privacy Act, California Civil Code Section 1798.100 *et seq.* and any other applicable law of a state within the United States; (c) 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, including mobile devices; (d) the advertising industry self-regulatory codes and principles promulgated by the Digital Advertising Alliance (“DAA”), and the European Interactive Digital Advertising Alliance (“EDAA”), as each such rules, guidelines, codes or set of principles may be amended from time to time by the promulgating entity or any successor entity; (iv) any other relevant FTC, DAA, or EDAA code or principles relating to the collection and use of data obtained from individual persons for advertising purposes; and (v) any amendments, modifications, extensions, supplements or replacements of or to any of the foregoing.

R. “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 related services for agencies and their customers using Sizmek professional services, the System, or the technology and services of third party service providers and Sizmek alliances; and (iii) the data, products and services of third parties that Sizmek may make available to Customer from time to time.

S. “Site(s) Content” means all materials, data, images, texts, sounds, information or other content contained in or around and/or linked to any Site (as defined in Section 6.9).

T. “Sizmek”, “we” and “us” means the Sizmek Contracting Entity as specified in Section 15 and any of its applicable Affiliates.

U. “System” means the Sizmek product accessible via the Internet for the provision and use of the Services, including any administration 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) in or related to the product that Sizmek makes available in the course of providing the Services.

V. “Term” has the meaning given to such term in the MSA or the applicable Order. 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.

W. “Territory of Sales” means Customer’s territory of sales, as determined by Sizmek.

X. “Third Party User” means any third party contractor, client, advertiser, agency, or publisher, as applicable, that accesses and uses the Services through Customer’s Account (as defined in Section 3.1).

2. Ordering and Use of Services

2.1 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 method approved by Sizmek shall be binding upon Customer, including electronic signatures or other indications of assent to the terms of this Agreement, such as assent given through the use of an online ordering process. No supplemental or different terms presented by Customer, such as in a purchase or insertion order, or change made by Customer in writing or otherwise to an MSA, Order, or these Terms of Use, shall be binding upon Sizmek unless set forth in a written amendment executed by both parties in accordance with Section 14.

2.2 Subject to payment by Customer to Sizmek of the Fees as set forth in these Terms of Use and pursuant to Section 3, 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, creative, or third party services, may be subject to Additional Terms and Conditions which will be provided or referenced in the applicable Order.

3. Access to System and Account

3.1 Customer may access certain Services through an administrative website or, subject to Section 3.2, and to the extent applicable, an application programming interface (“API”) for the System maintained and controlled by Sizmek. For access to the System, Sizmek will provide Customer with one or more logins and passwords for access to Customer’s account and corresponding administrative controls (“Customer’s Account”) by authorized personnel of Customer and/or Third Party Users (“Customer’s Representatives”). In order to use the System, Customer will, and will procure that Customer’s Representatives represent, warrant and covenant that they will, provide Sizmek with accurate, truthful and complete registration information and agree to the terms of this Agreement and any other Additional Terms and Conditions for use of

the System that Sizmek may otherwise reasonably require. Upon acceptance of any application made by Customer, each of Customer's Representatives will be assigned with a user name and password that will allow access to the System, and will become a registered user. Customer will ensure that each of Customer's Representatives that is provided registered user access to the System keeps its registration information accurate and up-to-date and does not share its password or registered user name with any third party except as otherwise set forth in this Agreement, 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 immediate termination of Customer's Account. 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 breach 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 authorizes Sizmek to set up API access under Customer's Account: (a) Customer'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 Sizmek may require regarding API use; (b) Sizmek will provide access to the API in accordance with Customer's written instructions and any additional usage terms set forth in the Order; (c) Customer acknowledges and agrees that Sizmek's only obligations with respect to Customer and/or any Third Party User provided access to Sizmek's API ("3rd Party API User") are those specifically undertaken by Sizmek in the Order and Sizmek otherwise has no responsibility or liability for Customer's or any 3rd Party API User's performance or obligations under any separate agreement that may exist among Customer, any of Customer's clients and any 3rd Party API Users; (d) Customer is solely responsible for obtaining any 3rd Party API User's written agreement to any Additional Terms and Conditions required for access to the API and returning a copy thereof to Sizmek; and (e) Sizmek may suspend providing API access without liability to Customer or any 3rd Party API User, or any of their respective Affiliates or clients, if Sizmek believes, in its sole discretion, that the receipt or processing of any Customer Data via the API violates any Privacy Rules or otherwise may result in liability for Sizmek or any of its Affiliates or any of their respective customers.

4. Limited Rights; Ownership

4.1 Sizmek hereby grants to Customer, and Customer hereby accepts, a non-exclusive, non-transferable (except as expressly provided in this Agreement), and limited 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. All rights not expressly assigned or licensed in this Agreement are reserved by Sizmek in full.

4.2 Except as expressly provided herein, 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 of the Services or any Intellectual Property Right or any other Sizmek Intellectual Property or any proprietary right or title therein or thereto.

4.3 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, for any purpose, including to sell, sublicense, disclose, publicly display, and create derivative works from such Sizmek Intellectual Property, but solely as incorporated into or embedded in such deliverables and not separately therefrom; provided further that, 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 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.

4.5 Customer grants Sizmek a non-exclusive license during the Term to use, copy, modify, process and distribute Customer Materials and Customer Data solely for the purpose of providing the Services in accordance with this Agreement and subject to its terms.

4.6 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 (assuming no user opt-out of such use has been communicated to Sizmek, including as provided in Section 6.7) 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 (as defined in Section 6.2) or identify any living individual, Customer, Customer's clients, or any of their respective products or brands.

4.7 Customer grants Sizmek a non-exclusive license during the Term to use its (and its Third Party Users', as applicable) name and trademarks in marketing materials, the customer ad showcase area of the System, and customer lists; provided, that Customer has the right to notify Sizmek in writing if it does not agree to any of the foregoing uses of its name and trademarks. 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. Any information provided hereunder by either party which is clearly marked as “confidential” or designated to be confidential by the terms of this Agreement, including, in particular, the terms and Fees set forth in the MSA and any Orders (“**Confidential Information**”) will not be used, disclosed or reproduced by the other party without the express written consent of the party providing such information, other than for the performance of such party’s obligations under this Agreement. “**Confidential Information**” will include all information furnished by or on behalf of either party to the other party, whether furnished before or after the date of this Agreement and regardless of the form in which it is or was communicated or maintained, that is marked as “confidential” or that, from all of the circumstances, the receiving party knows or has reason to know or could reasonably be expected to believe that the disclosing party intended or expected the secrecy of such information to be maintained, that contains or otherwise reflects information concerning the disclosing party, including, without limitation, technical data, know-how, unpublished patent applications, research, product plans or proposals, product applications, inventions, experimental results, trade secrets, processes, designs, drawings, business plans or proposals, implementation strategies, methods of operation, standard operating procedures, marketing information, presentations, programs and strategies, pricing information, promotional information and techniques, analytical procedures, agreements with or information of third parties, financial information and conditions, and information relating to engineering, marketplaces, suppliers or vendors, services, customers, personnel data and marketing, and any other confidential information concerning the business and affairs of the disclosing party, and will include all notes, studies, reports, memoranda and other documents prepared by the receiving party or its representatives that contain or reflect any Confidential Information. Confidential Information does not include information that: (a) is or becomes generally known or available to the public through no act or failure to act by the receiving party; (b) is lawfully in the possession of the receiving party at the time of disclosure, as demonstrated by the receiving party’s written records immediately prior to the time of disclosure; (c) is hereafter furnished to the receiving party by a third party, as a matter of right and without restriction on its disclosure; (d) is required to be disclosed by applicable law or regulation; provided, that the receiving party will promptly notify the disclosing party of such request, furnish only the minimum portion of Confidential Information that the receiving party is advised by legal counsel is legally required to be furnished, and assist the disclosing party, if requested, in obtaining a protective order or other reliable assurance that confidential treatment will be accorded to such portion of the Confidential Information as is required to be disclosed. 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 (a) 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 (b) 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 Sizmek and Customer (and its Third Party Users) each represents and warrants that it will at all times comply in full with the requirements of any applicable Privacy Rules and will refrain from engaging in any behavior that renders or is likely to render the other party in breach of any applicable Privacy Rules.

6.2 To the extent that Sizmek processes personal data about any natural person (“**Personal Data**”, which may be referred to as “personally identifiable information” or “Personal Information” or similar term in the Privacy Rules of some countries) 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) 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 Privacy Rules enforceable in the geographic territories where such processing occurs, or if not defined in any territory, they will have their plain language meanings in that territory. To the extent the GDPR applies to Sizmek’s processing of Customer Personal Data, such processing is also subject to the applicable GDPR Agreement, which is incorporated by reference into this Agreement.

6.3 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 the Privacy Rules, process any Customer Personal Data for its own purposes.

6.4 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 in order to provide the individual who provides such Customer Personal Data with the requested goods, services or information requested from Customer; provided, that Customer agrees not to, and will require its clients and any third parties with whom it shares Customer Personal Data not to: (a) merge or attempt to merge user data obtained via the Services with any existing Customer Personal Data; or (b) re-identify any individual with any Customer Personal Data, in each case without first obtaining the express, opt-in consent of such individual to such merger or re-identification; further provided, that this requirement does not apply where such Customer Personal Data is the lawfully obtained proprietary information of Customer.

6.5 Sizmek will have in place and maintain throughout the Term appropriate technical and organizational measures to prevent 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 Customer authorizes Sizmek to subcontract processing of Customer Data under this Agreement to one or more third parties provided that Sizmek: (a) complies with the Privacy Rules; (b) flows down its obligations to protect the Customer Data to any subcontractor it appoints; and (c) will remain responsible for any failure to comply with the Privacy Rules by any subcontractor it appoints to process Customer Data.

6.7 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, or to research, augment or improve Sizmek's own proprietary Ad Technologies 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, to enable the use of such Ad Technologies in compliance with the Privacy Rules. In particular, Customer will ensure that individuals are informed of their ability to refuse or opt-out of Sizmek Ad Technologies at any time by visiting Sizmek's opt-out page available at <https://www.sizmek.com/> 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 or third party Ad Technologies deployed or used by Customer via the Services.

6.8 Use of the Services is also governed by Sizmek's privacy policy ("Privacy Policy"), which is incorporated into this Agreement by reference. The Privacy Policy can be found at Sizmek's website and is available for review at <https://www.sizmek.com/privacy-policy/> or any other location specified by Sizmek from time to time. Customer will maintain, implement and at all times comply with a publicly-available privacy policy that in all material respects meets or exceeds the substantive provisions of Sizmek's Privacy Policy.

6.9 Without limiting Sections 6.7 or 6.8, where Customer is an owner or publisher of one or more websites, applications or other digital properties in which Advertisements are displayed (each, a "Site") it will comply with the Privacy Rules and commercially reasonable 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 by the Sites, the Site's use of any such data and any disclosures or transfer of such data to third parties, and the types of Ad Technologies used by the Site to collect such 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.

6.10 Customer will not append any third party tags to Sizmek's tags, nor will Customer allow any third party tracking or tagging (collectively "**Third Party Tags**") through the System unless any provider requesting to implement Third Party Tags is in full compliance with this Section 6

and the Privacy Rules, including, without limitation, by presenting users with notice and choice to 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 in the System. Sizmek reserves the right to validate any Third Party Tags or provider thereof for compliance with this Section 6 and the Privacy Rules, and for authenticity, and is under no obligation to allow the implementation of Third Party Tags. Sizmek may create lists of providers of Third Party Tags who are certified to append Third Party Tags in the System, and reserves the right to block any providers who are not validated for compliance; and without derogating from the above, Customer will be solely responsible for any Third Party Tags implemented through the System by Customer or any provider or other person authorized to act on Customer's behalf, including any damage, cost or claim resulting from appending such Third Party Tags.

6.11 Amazon Europe Core S.à.r.l. (“AEC”) (or other duly designated Amazon Affiliate) is the independent data controller in respect of any “personal data” within the meaning of applicable laws of the European Economic Area, including the GDPR, 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 its designee or successor in interest).

6.12 Provisions Regarding CCPA Data. We will act as your service provider (as defined by the California Consumer Privacy Act, California Civil Code Section 1798.100 *et seq.* (“CCPA”)) as to any Personal Information (as such term is defined in the CCPA) that we process on your behalf pursuant to this Agreement. We will not use or disclose such Personal Information for purposes other than (a) business purposes for providing the Service, or (b) as may otherwise be permitted under CCPA. 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 the combination of Personal Information for cross-context behavioral advertising. This section applies solely to the extent that CCPA applies.

7. Customer Responsibilities

7.1 As between the parties, Customer is solely responsible for: (a) all aspects of any Customer Materials created, delivered, or managed through or 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 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 local, state, federal and international laws, rules, treaties, inter-governmental agreements and governmental orders, regulations and regulatory codes of practice applicable to its business.

7.2 Customer represents and warrants that it will not (and will procure that its Third Party Users do not) use the Services in connection with, or to promote campaigns, Advertisements or other Customer Materials or Site Content containing: (a) content that is an invasion of privacy, degrading, defamatory, libelous, unlawful, profane, obscene, pornographic, hate material or discriminatory; (b) content that 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) content that infringes the personal rights or Intellectual Property Rights of any third party; (d) content, links or codes that promote or reference 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 (as defined below), worms, Trojan horses, time bombs, cancelbots, bots or other code that generate fraudulent or invalid advertising traffic, corrupted files or similar software; or (e) content that 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. **“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; or (iv) violate the written policies of any advertising exchange or publisher that Customer may have access to through the System, as such policies may be updated from time to time. Customer shall use a reputable third party Malware detection vendor to scan all ads that are served to websites in connection with Customer’s use of the Services. Without limiting any of its rights under this Agreement, Sizmek may immediately suspend or terminate Customer’s access to the Services without notice and may terminate this Agreement or any Order without any liability to Customer, if Customer fails to comply with this Section 7.

7.3 Customer represents and warrants that: (a) 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 for the Services requested on such advertiser’s behalf; (b) neither it nor its Third Party Users are currently the subject of any investigation or prosecution by any governmental or regulatory body or agency that may have a material detrimental effect on users of Customer’s products, services or advertising, or on Sizmek, any of its Affiliates or any of their respective customers; or (c) if it or any of its Third Party Users becomes involved or is named in any investigation or prosecution by any governmental or regulatory body or agency 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 represents and warrants 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 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 (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) neither Customer nor its Third Party Users, nor any of their respective users, will use the System or any of the Services in a way or for any purpose that infringes or misappropriates any third party's Intellectual Property Rights or personal or other proprietary rights or in order to harass, abuse, or harm another person; (c) it will ensure that the Customer Materials, the contents of such Customer Materials, the Site Content and any data provided by, or delivered on behalf of, Customer or any Third Party Users to Sizmek, and Customer's and its Third Party Users' promotional and marketing materials and activities in connection with their use of the System or Services, will not be in violation of any third party's rights, including Intellectual Property Rights, and will not be defamatory, fraudulent, obscene, misleading or otherwise illegal; (d) it will 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 (e) if Sizmek considers, in its sole discretion, that any Customer Materials breach any of the requirements set forth in this Section 7, 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 Customer will ensure that it and any Third Party Users comply with this Agreement. Sizmek may audit Customer's use of the Services 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. Sizmek may suspend or terminate Customer's or Third Party User's access to the Services upon notice to Customer if Sizmek reasonably determines that Customer or Third Party User has breached this Agreement.

7.6 Customer represents and warrants that Customer and its financial institution(s) are not subject to sanctions or otherwise designated on any list of prohibited or restricted parties or owned or controlled by such a party, including but not limited to the lists maintained by the United Nations Security Council, the U.S. government (e.g., the U.S. Department of Treasury's Specially Designated Nationals list and Foreign Sanctions Evaders list and the U.S. Department of Commerce's Entity List), the European Union or its member states, or other applicable government authority. Customer will not directly or indirectly export, re-export, transmit, or cause to be exported, re-exported or transmitted, any commodities, software or technology to any country, individual, corporation, organization, or entity to which such export, re-export, or transmission is restricted or prohibited, including any country, individual, corporation, organization, or entity under sanctions or embargoes administered by the United Nations, U.S. Departments of State, Treasury or Commerce, the European Union, or any other applicable government authority.

7.7 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, 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 this Section 7, or any other representations, warranties, terms, conditions or obligations of Customer as provided in this Agreement. 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) giving Customer sole control of the defense thereof and any related settlement negotiations upon the 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; and (d) having the right to participate in, but (subject to Section 7.7(b)) not control, any such defense or settlement, at Sizmek's sole cost and expense. Customer will not enter into any settlement or compromise of any such claim, which settlement or compromise would result in any liability to or otherwise adversely affect any indemnified party (including any settlement that requires the indemnified party to admit fault or attributes fault to the indemnified party), without Sizmek's prior written consent, which will not unreasonably be withheld or delayed. 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 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 local, state, federal and international laws, rules, treaties, inter-governmental agreements and governmental orders, regulations and regulatory codes of practice

8.2 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, costs, damages or liabilities, including legal fees, costs, and expenses, arising out of or related to any third party action to the extent it is based upon a claim that the System or Services, or use thereof in accordance with and subject to the limitations set forth in this Agreement, infringes 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) giving Sizmek sole control of the defense thereof and any related settlement negotiations; and (c) cooperating and, at Sizmek's request and expense, assisting in such defense. Customer shall have the right to participate in, but not control, any such defense or settlement, at Customer's sole cost and expense. Customer 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 Customer may deem necessary or appropriate to protect its interests. 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; or (iii) accept return of any deliverables provided as a result of the Services, 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, or data not supplied by Sizmek if such infringement would have been avoided if not for the combination with such products, equipment, software, or data; (D) any use of any release of the System or Services other than the most current release made available to Customer; or (E) any modification of the System or Services by Customer, its agents or subcontractors. THIS SECTION 8.2 STATES SIZMEK'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY FOR ANY THIRD PARTY CLAIMS OF INFRINGEMENT.

9. Fees

9.1 All Fees payable under this Agreement by Customer will be made in accordance with the payment terms set forth in this Section 9, and are exclusive of any applicable taxes payable in connection with the Services, including, without limitation, VAT or any relevant local sales taxes, for which Customer will be responsible. All usage of any Services will be determined by Sizmek metering. Non-payment of any Sizmek invoice in accordance with the payment terms set forth in this Section 9 will be a material breach of this Agreement. Customer waives all claims related to Fees, unless made within 60 days after the date charged. Unless otherwise agreed by Sizmek in advance in writing, Customer may not offset any payment due under this Agreement against any other payment to be made under this Agreement.

9.2 Unless otherwise agreed between Sizmek and Customer in an MSA or Order, 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.

9.3 Unless otherwise agreed in an Order or MSA, 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, then the Fees for such Services will be Sizmek's then-applicable standard rates.

9.4 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 you are exclusive of applicable taxes and duties, including, without limitation, VAT, excise taxes, sales and transaction taxes, and gross receipts taxes ("**Indirect Taxes**"). You will provide such information to Sizmek as reasonably required to determine whether Sizmek is obligated to collect Indirect Taxes from you. Sizmek shall not collect, and you shall not pay, any such Indirect Tax or duty for which you furnish

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 you 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, you 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 you 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 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 its standard 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 If Customer fails to pay any amount payable by it under this Agreement in accordance with Section 9.2, 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, after as well as before judgment, 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 (INCLUDING THE INTERNET), 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. CUSTOMER ACKNOWLEDGES AND AGREES THAT NEITHER CUSTOMER NOR ITS THIRD PARTY USERS HAVE ENTERED INTO THIS AGREEMENT IN RELIANCE ON ANY PROMISES (WHETHER INNOCENT OR NEGLIGENT) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT.

11. Limitation of Liability

11.1 EXCEPT AS EXPRESSLY SET FORTH IN SECTION 11.3, IN NO EVENT (EXCLUDING THE EVENT OF BREACH OF SECTION 4, 5, 6 OR 7 BY CUSTOMER) WILL EITHER PARTY ON BEHALF OF ITSELF AND ITS AFFILIATES BE LIABLE FOR ANY LOSSES OR DAMAGES THAT MAY BE SUFFERED BY THE OTHER PARTY, WHETHER THE SAME ARE SUFFERED INDIRECTLY OR ARE CONSEQUENTIAL, AND WHETHER THE SAME ARISE IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE HOWSOEVER, THAT FALL WITHIN ANY OF THE FOLLOWING CATEGORIES: (a) SPECIAL DAMAGES EVEN IF THE RELEVANT PARTY WAS AWARE OF THE CIRCUMSTANCES IN WHICH SUCH SPECIAL DAMAGES COULD ARISE; (b) LOSS OF PROFITS; (c) LOSS OF ANTICIPATED SAVINGS; (d) LOSS OF BUSINESS OPPORTUNITY; (e) LOSS OF GOODWILL; OR (f) LOSS OR CORRUPTION OF DATA.

11.2 IN NO EVENT WILL SIZMEK'S LIABILITY UNDER THIS AGREEMENT, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL AMOUNT ACTUALLY PAID TO SIZMEK BY CUSTOMER UNDER THIS AGREEMENT DURING THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE FIRST OF ANY CLAIMS IS MADE IN CONNECTION WITH THIS AGREEMENT.

11.3 THE EXCLUSIONS AND LIMITATIONS SET FORTH IN THIS SECTION 11 AND ELSEWHERE IN THIS AGREEMENT WILL APPLY TO THE FULLEST EXTENT PERMISSIBLE AT LAW, BUT NEITHER PARTY WILL EXCLUDE OR LIMIT LIABILITY FOR: (a) DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE OR THAT OF ITS OFFICERS, EMPLOYEES, CONTRACTORS OR AGENTS ACTING IN THE COURSE OF THEIR DUTIES; (b) FRAUD OR FRAUDULENT MISREPRESENTATION; OR (c) ANY OTHER LIABILITY WHICH MAY NOT BE EXCLUDED OR LIMITED BY LAW.

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 as set forth in the MSA or the applicable Order, in which case the Term will thereafter renew on a month-to-month basis until either party terminates this Agreement or the applicable Order by giving thirty (30) days' prior written notice to the other party. 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). Unless otherwise provided in an Order, Sizmek may terminate this Agreement or such Order for any reason upon thirty (30) days' prior written notice to Customer. The requirement to make any payment that has become due, in addition to Sections 4 through 8 and 10 through 15 of these Terms of Use, will survive the completion, expiration, termination, or cancellation of this Agreement for any reason, as will any other provision of this Agreement that is intended to survive in accordance with its terms.

13. Force Majeure. Neither party will be responsible for delay or failure in performing obligations under this Agreement resulting from the occurrence of an event beyond the control of such party. Such force majeure events include lightning, flood, hurricane, tornado, fire, war, terrorism, strikes, lockouts or other labor disputes, decisions or omissions of authorities and new legislation. Any party that wishes to invoke an event as set forth above will notify the other party of the occurrence of the force majeure event. Should the force majeure event continue for more than thirty (30) days, the party claiming the force majeure event will have the right to terminate this Agreement with immediate effect by giving written notice to the other party. In the event that Customer exercises its right to terminate this Agreement under this Section 13, it will immediately pay to Sizmek all Fees incurred, due and payable to Sizmek under the terms of this Agreement up to the effective date of such termination.

14. General. This Agreement represents the entire understanding between the parties and supersedes all prior written and all 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. 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. Notwithstanding the foregoing, if Customer has an existing agreement in force with Sizmek that specifically overrides a previous version of the Sizmek Terms of Use, then such existing agreement will remain in full force and effect until expiration or termination in accordance with its terms, without modification by these Terms of Use, to the extent such agreement is in direct conflict with the Terms of Use. These Terms of Use will apply to all MSAs and Orders

submitted in connection with this Agreement, and any preprinted, additional, or supplemental terms in, on or associated with any Customer-submitted ordering documents, including purchase or insertion orders, will not apply and will not be binding upon Sizmek. 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 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 Collectors@sizmek.com. 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 otherwise 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 is a third-party beneficiary of this Agreement, and nothing in this Agreement shall be construed to prevent the Sizmek Contracting Entities, acting on behalf of AEC, or AEC, acting on its own behalf, from exercising any rights or remedies granted to the Sizmek Contracting Entities under this Agreement or applicable law. 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. No waiver of any right, power, condition or remedy is effective unless given in writing and signed by the party waiving such right or condition. No failure or delay on the part of a party in exercising any right, power, condition or remedy under this Agreement will operate as a waiver, 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. 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. Any claim against Sizmek and/or its Affiliates will be adjudicated on an individual basis and will not be consolidated in any proceeding with any claim or controversy of any other party. 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. 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. Sizmek Entity You Are Contracting With in Your Territory of Sales, Governing Laws, Jurisdiction, Venue, Notices. 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 below in Table A. This Agreement will be governed by the applicable Governing Laws that correspond with the Territory of Sales as specified in Table A below, without regard to conflict of laws rules or principles. You and Sizmek consent to personal jurisdiction and venue in the courts corresponding to the Territory of Sales as specified in Table A, and the appellate courts having jurisdiction of appeals in such courts, and each party hereby expressly waives any objection or defense thereto. **With respect to any proceeding or action arising out of or in any way relating to this Agreement (whether in contract, tort, equity or otherwise), the parties knowingly, intentionally and irrevocably waive their 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 Table A, 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	Corporate Offices	Territory of Sales
Amazon Advertising LLC	410 Terry Avenue North, Seattle, WA 98109 USA	United States, Canada, Brazil, Argentina
Amazon Online UK Limited	1 Principal Place, Worship Street, EC2A 2FA, London, United Kingdom	Europe, Middle East, any other location not otherwise listed in this chart
Amazon (China) Holding Company Limited	5F, Tower A, Ocean International Center N°.56 Dongshihuanzhonglu, Chaoyang District, Beijing	China, Hong Kong
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

These Sizmek Terms of Use were last updated on September 4, 2020