

Terms and Conditions for KPM Services

Effective Date: *October 1, 2023*

PLEASE READ THESE TERMS AND CONDITIONS FOR KPM SERVICES CAREFULLY. BY SUBMITTING AN INTAKE FORM OR OTHERWISE ACCESING OR USING THE KPM SERVICES, CLIENT AGREES TO ABIDE BY AND BE BOUND BY THE TERMS DESCRIBED HEREIN AND BY ALL TERMS, POLICIES AND GUIDELINES INCORPORATED BY REFERENCE (COLLECTIVELY WITH ANY MUTUALLY EXECUTED ORDERS, THE "**KPM TERMS**"). IF CLIENT DOES NOT AGREE TO ALL OF THESE TERMS, DO NOT USE KPM SERVICES.

These KPM Terms are entered into by and between 84.51 LLC, with offices at 100 W 5th St., Cincinnati, OH 45202 (referred to herein as "**Kroger Precision Marketing**" or "**KPM**") and the Client (as defined below).

These KPM Terms are not intended to alter any separately executed version of these KPM Terms that Client has entered into with KPM for the KPM Services, and to the extent of any these terms conflict, the terms of Client's separately executed written agreement for the KPM Services will prevail. If you are using the KPM Services on behalf of any entity, you represent and warrant that you are authorized to accept these KPM Terms on such entity's behalf.

1. Definitions

- (a) "**Ad**" means any advertisement provided by Client.
- (b) "**Advertiser**" means, as applicable, the (i) advertiser submitting the applicable Intake Form on its own behalf or (ii) the advertiser for which the submitting Agency is the agent under an applicable Intake Form.
- (c) "**Advertising Materials**" means artwork, copy, or active URLs for Ads.
- (d) "**Affiliate**" means, as to an entity, any other entity directly or indirectly controlling, controlled by, or under common control with, such entity. "Control" (including, with correlative meanings, the terms "Controlled by" and "under Control with") means the power to vote 51% or more of the voting interests of an entity or ownership of 51% or more of the beneficial interests in income or capital of an entity.
- (e) "**Agency,**" or "**Agent,**" means, if applicable, the advertising agency submitting the Intake Form and entering into these KPM Terms.
- (f) "**Audience Data Usage Period**" means the length of time Client may use the Audience Segment Data in media execution as set out in the applicable Order. The Audience Data Usage Period is subject to the Buying Platform's retention policies.
- (g) "**Audience Segments**" means segment meta data relating to Kroger audiences that is made available for selection in connection with the KPM Services.
- (h) "**Audience Segment Data**" means an aggregated set of pseudonymous identifiers relating to Audience Segments selected by Client on an applicable Intake Form. For clarity, Audience Segment Data does not include Directly Identifying Information.
- (i) "**Buying Platform**" means a third-party media buying platform approved by KPM for use in connection with Campaigns that may include demand side platforms and social media platforms. A list of approved Buying Platforms is available at: <https://www.krogerprecisionmarketing.com/working-with-us.html>.

(j) **“Campaign”** means an advertising or promotional campaign for an Advertiser using Audience Segment Data that is enabled and managed through a Buying Platform.

(k) **“Client”** means the Party submitting an Intake Form requesting KPM Services. For clarity, Client is (i) the Agency, if any, acting on behalf of the Advertiser listed on the applicable Intake Form if the Agency is submitting the Intake Form, or (ii) the Advertiser directly submitting the Intake Form for KPM Services. If an Agency is the Party ordering KPM Services, any references to Client in these KPM Terms will be deemed to reference both the Agency and Advertiser.

(l) **“Directly Identifying Information”** means identifiers that allow the direct identification of individuals and include name, address, telephone number, email address, financial account numbers, and government issued identifiers.

(m) **“Exposure Data”** means log level data (i.e., Campaign-level data at the impression level regarding the exposure of an advertising campaign executed through a Buying Platform) regarding the exposure of a Campaign, but in all events excluding Audience Segment Data.

(n) **“Grocery Retailer”** means a seller of grocery items including packaged or fresh foods and beverages sold for off-premises consumption or health and beauty supplies sold directly to customers. By way of example, Target, Walmart, Walgreens, Instacart and Amazon are considered Grocery Retailers.

(o) **“Intake Form”** means the form submitted by a Client to request KPM Services in connection with Campaign(s).

(p) **“KPM Audience Services”** means the KPM service offering through which clients may request the delivery of, and KPM will - as per accepted Orders - deliver, Audience Segment Data to Buying Platform(s) for Campaigns based on available Audience Segments.

(q) **“KPM Services”** means the KPM Audience Services and Measurement Services.

(r) **“Kroger”** means, individually and collectively, The Kroger Co. and its Affiliates.

(s) **“Kroger Ad Platform”** means the online platform, including any related application programming interfaces (“APIs”), made available by KPM where Clients may submit Intake Forms for KPM Services and review Measurement Results. The Kroger Ad Platform is currently accessible via: <https://prism.8451.com/activation/dashboard/>, but may change with notification to Client.

(t) **“Kroger Marks”** means any trademarks and service marks, whether registered or unregistered, logos, indicia, or other designs owned, controlled, or licensed by Kroger.

(u) **“Kroger Materials”** means any documents, data, know-how, methodologies, software, and other materials that are provided to Client or used by KPM in connection with the KPM Services. Without limitation, Kroger Materials include Audience Segments, Audience Segment Data, Service Data, Account Data, Measurement Results, APIs, and the Kroger Ad Platform.

(v) **“Kroger Sites”** means websites that are owned, operated, or controlled by KPM or Kroger.

(w) **“Measurement Results”** means any aggregated or summary Campaign measurement results and related analytics, reporting, or other materials that are delivered to Client hereunder in the course of providing Measurement Services.

(x) **“Measurements Services”** mean measurement services provided by KPM to Client with respect to a Campaign pursuant to accepted Order(s).

- (y) **“Order”** has the meaning set forth in Section 2(a).
- (z) **“Party”** or **“Parties”** means Client or KPM, individually or collectively, as appropriate.

(aa) **“Personal Data”** means any information that (i) identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular individual or household; or (ii) the applicable Privacy Requirements otherwise define as protected personal information, personally identifiable information, personal data, or the like. For clarity, Directly Identifying Information is a subset of Personal Data.

(bb) **“Policies”** means KPM’s policies and guides applicable to the KPM Services that are the subject of an Order. Client can access Policies at <https://www.krogerprecisionmarketing.com/working-with-us.html>, and Client is responsible for regularly checking the Policies for any updates.

(cc) **“Privacy Requirements”** means all applicable U.S. federal, state, and local privacy laws, rules, regulations, statutes, ordinances, decrees, directives, advertising industry self-regulatory codes, guidelines and standards, and platform terms and policies applicable to a particular Party’s performance of its obligations under these KPM Terms. This includes, but is not limited to, the California Consumer Privacy Act of 2018 (“CCPA”), the Virginia Consumer Data Protection Act, the Colorado Privacy Act, Section 5 of the Federal Trade Commission Act, state data breach notification Privacy Requirements, the Controlling the Assault of Non-Solicited Pornography and Marketing (“CAN-SPAM” Act), the Telephone Consumer Protection Act (“TCPA”), the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq, the Self-Regulatory Principles of the Digital Advertising Alliance (“DAA”) (including for online and mobile) (“DAA Principles”), and all binding interpretations of the DAA Principles, whether by the DAA or by the Council of Better Business Bureaus in an accountability proceeding or otherwise, the Code of Conduct of the Network Advertising Initiative (“NAI Code”), and any similar privacy, cybersecurity, or data protection laws applicable to the protection and processing of Personal Data that may be enacted during the term of these KPM Terms.

(dd) **“Site,” “Sites,”** or **“Network Properties”** means websites that are not owned, operated, or controlled by KPM, but on which Advertiser or Agency has a contractual right to serve Ads.

(ee) **“Third Party Ad Server”** means a third party that will serve or track Ads.

(ff) **“Tracking Devices”** means the use of cookies, pixels, clear GIFs, log files, web beacons, or other tracing or tracking files to collect data.

2. Intake Forms and Orders

(a) Client may submit Intake Forms to KPM from time to time to request KPM Services. KPM will make commercially reasonable efforts to notify Client within two (2) business days of receipt of an Intake Form if the requested KPM Services can be fulfilled for the proposed Campaign or if KPM declines to accept the Intake Form. The contents of submitted Intake Form may be modified by KPM via communications with Client. An Intake Form will not be deemed approved or accepted until KPM accepts the Intake Form, with such modifications made as per the prior sentence, in writing (email sufficient) (such accepted Intake Form, an **“Order”**).

(b) Modifications to Orders accepted by KPM will be made and acknowledged by the Parties in writing (email sufficient). Without limiting the foregoing, either Party may at any time propose any modifications in writing to any Order (including Campaigns and KPM Services that are the subject of such Order) that a Party believes to be reasonably necessary to comply with applicable laws and regulations including applicable Privacy Requirements, and the Parties shall work together in good faith to agree to mutual revisions to Orders to address such compliance.

3. Buying Platform

(a) For each Order, Client may select from the available Audience Segments and use the associated Audience Segment Data in conjunction with the Buying Platform(s). Unless otherwise agreed between the Parties in a separate agreement, fees for KPM Services will be incorporated into the fees Client pays directly to the Buying Platform(s) and shall be payable by Client in accordance with the payment terms set forth in Client's agreement with such Buying Platform(s).

(b) Media inventory management is performed by Client or Client's Buying Platform. KPM bears no responsibility or liability for management of media inventory.

4. Data Use Rights

(a) License. Subject to these KPM Terms, KPM hereby grants a limited, revocable, nonexclusive, nontransferable license to Client to: (i) access and use the Kroger Ad Platform solely for the purpose of submitting Intake Forms requesting KPM Services and reviewing Measurement Results for accepted Orders; and (ii) during the applicable Audience Data Usage Period, permit the applicable Buying Platform(s) to use approved Audience Segment Data in media execution in connection with Campaign(s), in each case as set forth in the applicable Order.

(b) Use Restrictions. Client shall not, and shall not request or permit any third party to: (i) publish Audience Segment Data; (ii) use Audience Segment Data to create profiles of any individuals or to re-identify or otherwise reverse engineer Audience Segment Data or to derive Personal Data from, or merge Personal Data with, any non-Personal Data made available by KPM, its partners, Affiliates, or service providers; (iii) use such Audience Segment Data for reengaging any individuals in any manner; or (iv) sell, rent, transfer, or provide access to such Audience Segment Data to any ad network, ad exchange, advertising broker, other advertising service, or other third party (other than Buying Platforms) without KPM's prior written approval. Notwithstanding any of the foregoing, Client may reengage or otherwise direct Ads to audiences that may overlap with Advertiser's existing audience data that was developed independent of any of KPM's advertising service offerings.

(c) Prohibited Uses. Client is prohibited from using the KPM Services to send or facilitate advertising or other communications in violation of applicable law or industry standards. Without limiting the foregoing, Client shall not use the KPM Services to send or facilitate any advertising, for (i) adult entertainment (i.e., pornography), (ii) firearms (iii) illegal gambling, or (iv) any other product or service that is illegal in the country or locality in which it is sent or received, including to discriminate on the basis of race, gender, religion, sexual orientation, or in any way that could be deemed unfair under applicable law. Further, Client shall not combine Audience Segments, or otherwise use the KPM Services, for the purposes of inferring or determining (or attempting to infer or determine) (v) employment eligibility, (vi) credit eligibility, (vii) health care eligibility, or (viii) insurance eligibility underwriting and pricing. Without limiting the foregoing, Client is prohibited from creating or using the KPM Services to target (or intended to target): (ix) based upon attributes or inferences that, if applied to a single individual or household, would be considered sensitive personal information, sensitive data, or special categories of Personal Data as defined by applicable Privacy Requirements; or (x) individuals under the age of 16.

(d) Right to Remove. Notwithstanding the license grant in Section 4(a) or anything else herein to the contrary, KPM reserves the right to remove individuals and households from Audience Segment Data: (i) who have exercised their rights under the Privacy Requirements or otherwise opted out of use of their data for marketing purposes including interest-based advertising; (ii) if KPM makes a determination, in its sole discretion, that it cannot make such individuals or households available for inclusion in Audience Segment Data based upon applicable laws or without violating the rights of a third party; or (iii) if KPM otherwise determines, in its sole but reasonable discretion, that certain individuals or households are not appropriate to be included in the Audience Segment Data.

(e) Service Data. Notwithstanding anything to the contrary herein, KPM may collect and use Service Data to develop, improve, support, and operate its and its Affiliates' products and services. As between KPM and Client, all right, title, and interest in and to the Service Data, and all intellectual property rights therein, belong to and are retained solely by KPM. KPM may not share any Service Data that

includes Client's Confidential Information with a third party except (i) in accordance with Section 11 (Confidentiality), or (ii) to the extent Service Data is aggregated or anonymized in such a manner such that neither Client nor Client's authorized users can be identified. As used herein, "**Service Data**" means query logs and any other data or information collected by or on behalf of KPM relating to access or use of the KPM Services by authorized users of the Kroger Ad Platform.

(f) Account Data. In connection with the KPM Services, Client acknowledges that KPM may collect and process Account Data for its own purposes, including for the purposes of: (i) processing orders; (ii) managing the relationship with Client; (iii) carrying out KPM's core business operations, such as accounting and filing taxes; (iv) detecting, preventing, and investigating security incidents, fraud, and other abuse or misuse of the KPM Services; (v) performing identity verification; (vi) complying with KPM's legal or regulatory obligations; or (vii) any other purpose described in its posted privacy policy. As used herein, "**Account Data**" means business contact information that KPM collects to administer its relationship with Client.

5. Destination URLs and Use of Kroger Marks

(a) If applicable, if Client executes media using Audience Segment Data that drives to non-Kroger Sites where direct linking to a form captures Personal Data, Client must (except to the extent otherwise required by applicable law) delete any Audience Segments, Audience Segment Data, or other Kroger Materials that are linked to such Personal Data and must refrain from creating and adding attributes to such Personal Data related to the Audience Segments, Audience Segment Data, or other Kroger Materials. Without limitation, for any Campaign utilizing Audience Segment Data which drives to non-Kroger Sites where direct linking to a form captures certain Personal Data for a sweepstakes or contest sign-up, Client must (except to the extent otherwise required by applicable law) delete all Audience Segments, Audience Segment Data, or other Kroger Materials linked to any such Client collected data after completion of the Campaign and refrain from creating and adding attributes to such Client collected data related to the Audience Segments, Audience Segment Data, or other Kroger Materials to such Client collected data. Notwithstanding any of the foregoing, Client may reengage or otherwise direct Ads to audiences that may overlap with Advertiser's existing audience and segment data that was developed independent of any KPM Services. Client represents, warrants, and covenants that it will collect and process Personal Data that is the subject of this Section 5(a) in compliance with applicable Privacy Requirements. If the applicable Campaign is initiated by an Agency but the Advertiser is collecting the Personal Data, then Agency represents, warrants, and covenants that it will require Advertiser to collect and process Personal Data in compliance with applicable Privacy Requirements.

(b) Client may not use any Kroger Mark in any manner, including on an Advertiser or other-directed Site, or in any Advertising Materials, unless Client first obtains prior written permission from KPM. When use of the of Kroger Mark is approved, Client must comply with the Kroger Trademark Use Guide and the Kroger Logo Standards Guide available in the Policies.

(c) In connection with the use of Audience Segment Data or execution of Campaigns, Client is prohibited from directing individuals to digital destinations that are owned by Grocery Retailers or their Affiliates other than Kroger Sites.

6. Third Party Ad Serving and Tracking (applicable if Third Party Ad Server is used)

(a) Client must submit Advertising Materials in accordance with the KPM Offsite Media Tagging Guide located in the Policies. Without limiting the foregoing, Client may not use tagging for any purpose not expressly permitted by the KPM Offsite Media Tagging Guide including: (i) collecting Personal Data, (ii) manipulating page content, or (iii) altering destination URLs.

(b) In addition to the foregoing, in connection with the use of the Audience Segment Data, Client will not use Tracking Devices for the purposes of segmentation or enhancement of customer relationship management (CRM) system, or supplementing data profiles through the use of data collected

via cookies or other similar tracking technologies. Data Management Platform (DMP) pixels are not permitted on or within Third Party Ad Server tracking of media execution utilizing Audience Segment Data. The use of “piggy-backing pixels” is prohibited unless Client obtains prior written permission and consent by KPM.

(c) KPM reserves the right to monitor Campaign pixels at any time to confirm compliance with these KPM Terms including applicable Policies. Upon request, Client will reasonably cooperate with (and to the extent necessary facilitate) such monitoring and confirmation.

7. **Publicity and Case Studies**

(a) **Publicity.** KPM, on the one hand, and Agency and Advertiser, on the other, will not use the other’s trade name, trademarks, logos, or Ads in any public announcement (including, but not limited to, in any press release) regarding the existence or content of these KPM Terms without the other’s prior written approval.

(b) **Case Studies.** Client shall not participate in an event or provide or contribute to any written or recorded case studies or testimonials relating to any KPM Services without KPM’s prior written consent (email sufficient), not to be unreasonably withheld. For any such approved events, case studies, or testimonials, Client authorizes KPM to use, reproduce, translate, display, and distribute recaps and recordings of such events, case studies and testimonials, including for marketing purposes.

8. **Measurement Services**

(a) In connection with a Campaign, KPM will provide the Measurement Services as per accepted Orders.

(b) Client hereby authorizes and directs KPM to obtain Exposure Data necessary or useful for KPM to perform the Measurement Services on Client’s behalf from the Buying Platform and Client shall authorize and direct Buying Platform to disclose such Exposure Data to KPM for this purpose. As between the Parties, Client shall be responsible for obtaining all necessary rights, authorizations, or consents required for the Buying Platform to provide or make available Exposure Data to KPM.

(c) If KPM is unable to obtain the Exposure Data (and if Client is unable to procure Exposure Data on KPM’s behalf), then KPM may cancel the related Order for Measurement Services without penalty or liability.

(d) Client may use Measurement Results provided by KPM solely for its internal business use. For clarity, if Client is an Agency working on a Campaign for an Advertiser, then the Agency may use the applicable Measurement Results internally as needed to provide services to such Advertiser. Without limiting the foregoing, Client shall refrain from making public statements regarding the Measurement Results unless Client first obtains KPM’s prior written consent, not to be unreasonably withheld.

(e) KPM and Client (on behalf of itself and its Affiliates) agree to be bound by the applicable terms and conditions in the **Data Processing Addendum** set forth at <https://www.krogerprecisionmarketing.com/working-with-us.html> (the “**DPA**”), which is hereby incorporated into and made part of these KPM Terms by reference.

9. **Intellectual Property Rights.** As between Client and KPM, subject only to the limited use rights granted hereunder, all intellectual property rights and all other rights in and to the Kroger Materials shall be owned by KPM. All other rights in and to the KPM Materials are expressly reserved by KPM and its Affiliates.

10. **Beta Offerings.** From time to time, KPM may make Beta Offerings available to Client. Client may, in its sole discretion, choose to use a Beta Offering. KPM may discontinue a Beta Offering at any time, in its sole discretion, or decide not to make a Beta Offering generally available. “**Beta Offerings**” means products,

features, or services that are identified as alpha, beta, not generally available, limited release, developer preview, or any similar products, features, or services offered by KPM that are otherwise identified as being experimental or undergoing testing (e.g., “Pilot”, “Test” or an “Evaluation”). BETA OFFERINGS ARE PROVIDED “AS IS” AND “AS AVAILABLE” WITHOUT ANY WARRANTIES, REPRESENTATIONS, OR COVENANTS OF ANY KIND AND KPM WILL HAVE NO LIABILITY AND NO INDEMNIFICATION OR DEFENSE OBLIGATION FOR ANY BETA OFFERING WHATSOEVER.

11. Confidentiality

(a) **“Kroger Confidential Information”** means any information disclosed by Kroger to Client, either directly or indirectly, in writing, orally or by inspection of tangible objects that is designated as “Confidential,” “Proprietary,” or some other similar designation or that should reasonably be understood by KPM to be confidential given the nature of the information and circumstances surrounding its disclosure. Notwithstanding the foregoing, Kroger Confidential Information includes these KPM Terms, pricing and fees charged for the KPM Services, Kroger Materials, and may also include information disclosed to KPM or an Affiliate by third parties. **“Client Confidential Information”** means any information disclosed by Client, either directly or indirectly, in writing or by inspection of tangible objects that are designated as “Confidential,” “Proprietary,” or some other similar designation or that should reasonably be understood by KPM to be confidential given the nature of the information and circumstances surrounding its disclosure. **“Confidential Information”** means the Kroger Confidential Information or Client Confidential Information in the context applicable to the receiving or disclosing Party. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is or becomes generally known and available to the public through no fault of or breach of these KPM Terms by the receiving Party; (ii) is rightfully known by the receiving Party before being disclosed by or on behalf of the disclosing Party; (iii) is independently developed by the receiving Party without use of or reference to the disclosing Party’s Confidential Information; or (iv) the receiving Party rightfully obtains from a third party without restriction on use or disclosure provided such third party is not and was not prohibited from disclosing such Confidential Information.

(b) Neither Party will use or disclose the other Party’s Confidential Information except as necessary for the performance of these KPM Terms. Notwithstanding the foregoing, each Party may disclose Confidential Information of the other Party to its employees, agents, and subcontractors that need to know such Confidential Information for the purpose of performing its obligations under these KPM Terms, provided that each such employee, agent, and subcontractor shall have been apprised of the confidential nature of the information and are themselves subject to nondisclosure obligations at least as restrictive as those contained herein. Notwithstanding the foregoing, a Party may disclose the Confidential Information of the other Party (i) to any court or regulatory authority of competent jurisdiction if the disclosure is required by law or by a valid order of such court or regulatory authority, provided that if legally permissible, as much notice as is reasonably possible shall be given to the other Party before such disclosure, or (ii) on a confidential basis to its legal or financial advisors. The receiving Party shall promptly, without undue delay, notify the disclosing Party in the event it becomes aware of any loss or disclosure of the Confidential Information of the disclosing Party.

(c) Each Party’s obligations under this Section 11 will survive termination or expiration of these KPM Terms for a period of five (5) years, except for Confidential Information that constitutes a trade secret under any applicable law, in which case, such obligations shall survive for as long as such Confidential Information remains a trade secret under such law.

(d) Except if and as expressly permitted elsewhere in these KPM Terms, Client must not, and must not allow any third party to: (i) use Kroger Materials in an application services provider, service bureau, or similar capacity for third parties; (ii) transfer or sublicense Kroger Materials to any third party; (iii) use any Kroger Materials in conflict with the terms and restrictions of the licensing model and other requirements specified herein and in the Policies, or in accepted Orders; (iv) except to the extent permitted by applicable mandatory law, modify, translate, enhance, or create derivative works from the Kroger Materials, or reverse engineer, decompile, or otherwise attempt to derive source code

from any Kroger Materials; (v) remove any copyright or other proprietary notices on or in any copies of the Kroger Materials; (vi) violate or circumvent any technological restrictions within the Kroger Materials, such as via software or services; (vii) access the Kroger Materials via any automated means, such as via robotic process automation; or (viii) access or use the Kroger Materials (A) for purposes of competitive analysis of the Kroger Materials or KPM Services, including in the development or provision of a competing software product or service, (B) in any manner or for any purpose or application prohibited by law, regulation, or government order or decree in any relevant jurisdiction, or (C) in any manner or for any purpose or application not permitted by these KPM Terms.

12. Representations and Warranties; Disclaimer

(a) Mutual Representations and Warranties. Each Party represents and warrants to the other Party that (i) it has the full power and authority to enter into these KPM Terms, to grant the rights and licenses granted hereunder, and to perform its obligations hereunder; (ii) when executed and delivered by such Party, these KPM Terms will constitute a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms; and (iii) it will comply with applicable laws in its performance under these KPM Terms.

(b) Additional Client Representations and Warranties.

(i) Client represents and warrants that: (A) Client owns, licenses, or otherwise has the right to provide, make available, or direct others to make available any data disclosed or made available by or on behalf of Client to KPM hereunder (including Exposure Data) for KPM to provide KPM Services in accordance with these KPM Terms and the applicable Order(s); and (B) any data or other materials provided or made available by Client, directly or indirectly, to KPM hereunder (including Exposure Data) for KPM's use in accordance with these KPM Terms and the applicable Order(s) will not infringe any intellectual property right or other proprietary or privacy right of any third party.

(ii) Advertiser represents and warrants that: (A) Advertiser has all necessary licenses and clearances to use the content contained in the Ads and Advertising Materials as specified in the Order(s) and subject to these KPM Terms, including any applicable Policies, and (B) the Ads and Advertising Materials will comply with applicable laws.

(iii) Agency represents and warrants that it has been appointed as Agent for Advertiser and as the Agent for Advertiser it is authorized to bind Advertiser to these KPM Terms, including the indemnity obligations in Section 13. For the avoidance of doubt, Agency further represents, warrants, and covenants that any written instructions or directions provided to KPM for the KPM Services on behalf of Advertiser are made by Agency in its capacity as Agent for Advertiser and with the authorization of Advertiser.

(c) Additional KPM Representations and Warranties. KPM represents and warrants that: (i) the KPM Services will be provided in a professional and workmanlike manner in accordance with any published documentation; (ii) KPM owns or has a license to use and has obtained all consents and approvals necessary to provide the Audience Segment Data to Buying Platforms for Client's use in accordance with these KPM Terms and the applicable Order(s); and (iii) its provision of the Audience Segment Data for Client's use in accordance with these KPM Terms and the applicable Order(s) will not infringe any intellectual property right or other proprietary right or privacy right of any third party.

(d) EXCEPT AS EXPRESSLY SET FORTH IN THESE KPM TERMS, NEITHER PARTY MAKES, AND EXCEPT AS REQUIRED BY LAW, EACH PARTY HEREBY SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES ARISING FROM THE COURSE OF DEALING OR COURSE OF PERFORMANCE. KPM DOES NOT WARRANT THAT THE KPM SERVICES OR KROGER MATERIALS WILL OPERATE UNINTERRUPTED OR THAT THEY WILL

BE FREE FROM DEFECTS OR THAT THEY WILL MEET CLIENT'S REQUIREMENTS, ACHIEVE ANY INTENDED RESULT, OR BE COMPATIBLE OR WORK WITH ANY OTHER SOFTWARE, APPLICATION, SYSTEM, OR SERVICE. ANY STATEMENTS, WRITTEN OR ORAL, KPM PROVIDES TO CLIENT REGARDING THE NUMBER OF INDIVIDUALS IN AN AUDIENCE SEGMENT IS AN ESTIMATE ONLY. KPM MAKES NO PROMISES OR GUARANTEES AS TO THE EFFECTIVENESS OF ANY CAMPAIGN, THE NUMBER OF INDIVIDUALS IN AN AUDIENCE SEGMENT, OR THE RESPONSE, IF ANY, OF AN AUDIENCE SEGMENT.

13. Indemnification

(a) Advertiser shall defend, indemnify, and hold KPM, its Affiliates, and any directors, officers, shareholders, and employees of any of the foregoing (collectively, "**KPM Indemnified Parties**") harmless from and against any and all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs, or expenses of whatever kind (including but not limited to any reasonable attorneys' fees, disbursement and administrative or court costs) ("**Losses**") arising out of or resulting from any claim, suit, action or proceeding (each an "**Action**") by a third party arising out of or resulting from (i) Advertiser's breach of any of its representations and warranties contained herein; or (ii) the content or subject matter of any Ad or Advertising Materials.

(b) Agency shall defend, indemnify, and hold KPM Indemnified Parties harmless from and against any and all Losses arising out of or resulting from any Action by a third party arising out of or resulting from Agency's breach of any of its representations and warranties contained herein.

(c) KPM shall defend, indemnify, and hold Client, its respective Affiliates, and any directors, officers, shareholders, and employees of any of the foregoing (collectively, "Client Indemnified Parties") harmless from and against any and all Losses arising out of or resulting from any Action by a third party arising out of or resulting from: (i) any allegation that the Kroger Materials as provided by KPM hereunder and used in accordance with these KPM Terms infringes the intellectual property rights of such third party; or (ii) any allegation that the Audience Segment Data as provided by KPM for the uses permitted herein violates a right of privacy of such third party or that KPM otherwise did not have the necessary rights to provide the Audience Segment Data to the Buying Platform for the uses by Client as permitted herein and the applicable Order(s). Notwithstanding the foregoing, KPM will have no liability or obligation for any Action or Losses to the extent such Action or Losses arise out of or result from any: (A) access to or use of the Kroger Materials in combination with non-KPM services, software or data; (B) use of the Kroger Materials for a purpose or in a manner for which the Kroger Materials were not designed; (C) failure to implement and use any modifications, upgrade, replacements, or enhancements of the Kroger Materials that have been made available to Client, either directly or indirectly; (D) modification to the Kroger Materials made without KPM's express written approval; or (E) any Beta Offerings.

(d) The Party seeking indemnification hereunder shall promptly notify the indemnifying Party in writing of any Action and cooperate with the indemnifying Party at the indemnifying Party's sole cost and expense. The indemnifying Party shall immediately take control of the defense and investigation of such Action and shall employ counsel of its choice to handle and defend the same, at the indemnifying Party's sole cost and expense. The indemnifying Party shall not settle any Action in a manner that adversely affects the rights of the indemnified party without the indemnified party's prior written consent, which shall not be unreasonably withheld or delayed. The indemnified party may, at its own cost and with counsel of its own choosing, participate in, but not control, the defense of any Action for which the indemnifying Party is controlling the defense.

(e) Notwithstanding anything to the contrary in these KPM Terms, the indemnifying Party is not obligated to indemnify, hold harmless, or defend the indemnified party against any Losses to the extent that such Losses arise out of or result from, in whole or in part, the indemnified party's: (i) gross negligence or more culpable act or omission (including recklessness or willful misconduct); or (ii) bad faith failure to materially comply with any of its material obligations set forth in these KPM Terms. Beta Offerings are completely excluded from the indemnities provided in this Section 13.

14. Limitation of Liability

(a) EXCEPT AS OTHERWISE PROVIDED IN SECTION 14(c), IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT OR LOSS OF DATA OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) EXCEPT AS OTHERWISE PROVIDED IN SECTION 14(c), IN NO EVENT WILL EITHER PARTY'S LIABILITY ARISING OUT OF OR RELATED TO THESE KPM TERMS, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE GREATER OF (1) \$500,000; OR (2) THE AGGREGATE AMOUNTS PAID OR PAYABLE BY CLIENT FOR THE KPM SERVICES (INCLUDING SUCH AMOUNTS PAID OR PAYABLE TO BUYING PLATFORMS) IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

(c) The exclusions and limitations in Section 14(a) and Section 14(b) shall not apply to:

(i) A Party's indemnification obligations hereunder;

(ii) Losses arising out of or relating to a Party's gross negligence, willful misconduct, or intentional acts; or

(iii) Losses arising out of or relating to a Party's failure to comply with its obligations under Section 11 (Confidentiality).

15. Cancellation and Termination

(a) Either Party may cancel a Campaign that is the subject of an accepted Order at any time upon written notice (email will suffice) to the other Party. Upon receipt, KPM will discontinue Audience Delivery Services. KPM will continue to provide Measurements Services, if applicable, relating to Campaign results received prior to the date of cancellation.

(b) These KPM Terms shall continue until terminated, as provided herein. Either Party may terminate these KPM Terms by providing the other Party with at least thirty (30) days' prior written notice. If, following termination of these KPM Terms, the Parties enter into a new Order to be bound by these KPM Terms, the KPM Terms will so apply to such new Order.

(c) The rights and obligations of the Parties set forth in this Section 15(c) and Sections 1, 9, 11, 12, 13, 14, and 16, and any right or obligation of the Parties in these KPM Terms which, by its nature, should survive termination or expiration of these KPM Terms, will survive any such termination or expiration of these KPM Terms. Further, upon termination of these KPM Terms, the KPM Terms will continue to apply to all then outstanding Orders until their expiration or other termination.

16. Miscellaneous Terms

(a) These KPM Terms shall be governed by and construed in accordance with the internal laws of New York without giving effect to any choice or conflict of law provision or rule (whether of New York or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of New York. Any legal suit, action, or proceeding arising out of or related to these KPM Terms or the KPM Services provided hereunder shall be instituted exclusively in the federal courts of the United States or the courts of New York in each case located in the New York County, New York, and each Party

irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. Service of process, summons, notice, or other document by mail to such Party's address set forth herein shall be effective service of process for any suit, action, or other proceeding brought in any such court.

(b) Neither Party shall assign this Agreement, or any of its rights or delegate any of its obligations hereunder, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed; provided, however, that either Party may assign this Agreement in its entirety, without such consent but upon written notice to the other Party, to (a) to an Affiliate of such Party, or (b) an entity that acquires all or substantially all of the business or assets of such Party to which these KPM Terms pertain, whether by merger, reorganization, acquisition, sale, or otherwise, except that in no case may Client make an assignment or delegation to a Grocery Retailer. Any purported assignment or delegation in violation of this Section shall be null and void. KPM may subcontract any or all of its obligations hereunder.

(c) If any provision of these KPM Terms is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that these KPM Terms will otherwise remain in full force and effect and enforceable. KPM shall not be liable for any failure or delay in its performance due to causes beyond KPM's reasonable control, and its performance shall be delayed until the cessation of such cause. These KPM Terms, together with the Orders and DPA (to the extent applicable) entered into hereunder and all exhibits, annexes, and addenda hereto and thereto are the complete and exclusive statement of the mutual understanding of the Parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of these KPM Terms. In the event of a conflict between these KPM Terms and any Orders, these KPM Terms shall prevail unless otherwise expressly indicated in the Orders. No third party is intended to be or shall be a third-party beneficiary of any provision under these KPM Terms. KPM and Client shall be the only parties entitled to enforce the rights set out in these KPM Terms. The relationship between the Parties is that of independent contractors. No agency, partnership, joint venture, or employment is created as a result of these KPM Terms, and neither Party has authority of any kind to bind the other Party in any respect whatsoever. The heading references herein are for convenience purposes only and shall not be deemed to limit or affect any of the provisions hereof. Unless otherwise indicated to the contrary herein by the context or use thereof (i) the words "hereof," "hereby," "herein," "hereto," and "hereunder" and words of similar import shall refer to these KPM Terms as a whole and not to any particular Section or paragraph of these KPM Terms, (ii) the words "include," "includes" or "including" are deemed to be followed by the words "without limitation," (iii) unless otherwise required by the context, the word "or" is non-exclusive and has the same meaning as "and/or," (iv) references to a "Section" or "Exhibit" are references to a section of, or exhibit to these KPM Terms, and (v) derivative forms of defined terms will have correlative meanings.