

# KLIXTER'S INC. ADVERTISER AGREEMENT

THIS AGREEMENT is made on the \_\_\_\_\_ day of \_\_\_\_\_, 2021 between Klixters, Inc., a Delaware corporation, with its principal office at 922 SE 14<sup>th</sup> Place, Cape Coral., Florida, and hereinafter, referred to as Klixters, and \_\_\_\_\_ with its principal office at \_\_\_\_\_, and, hereinafter, referred to as Advertiser.

WHEREAS, Klixters seeks to partner with advertisers, marketers, distributors and/or manufacturers of consumer products and services; and

WHEREAS, Klixters has developed a program and electronic platform to deliver advertising to consumers on multiple digital devices, including cell phones using its Web App.; and

WHEREAS, Klixters has a growing membership of consumers who are motivated financially to participate in Klixters advertising program and to provide valuable feedback to the Advertiser; and

WHEREAS, the Advertiser seeks to participate in Klixters unique direct advertising program and platform;

NOW, THEREFORE, for the mutual consideration set forth herein, it is agreed by the parties as follows:

1.0 ADVERTISER'S RESPONSIBILITIES: The Advertiser shall produce, at its expense, and provide to Klixters for its approval, video commercials of 30-to-90 seconds in duration promoting its products and/or services. The commercials shall be provided to Klixters within the time frame of the marketing plan described in the attached Schedule A.

1.1 Each commercial delivered to Klixters shall be accompanied by an Advertiser-produced three-to-five question rating/survey to be completed by Klixters members who have viewed the advertisement.

1.2 The Advertiser shall advise Klixters of the audience to be targeted by each commercial. The parties shall agree on the characteristics of the Klixters members who will have the opportunity to view each of the commercials. The Advertiser's access to Klixters membership shall not be exclusive.

1.3 Each commercial or other transmission provided by the Advertiser to Klixters shall be subject to review and may be rejected for any reason. Klixters, in its sole discretion, shall determine whether the each commercial or other transmission is appropriate for viewing by its membership. The Advertiser shall not submit to Klixters any video, rating, survey nor any other transmission which contains hateful, profane or inflammatory language. The Advertiser shall not submit content which promotes personal attacks, violence or discrimination. The Advertiser shall not provide content which is misleading, fraudulent or deceptive, nor transmit any content which violates a third party's intellectual property rights or another's right to privacy or confidentiality Klixters shall have the right to reject what it considers to be political advertising.

1.4 The Advertiser shall obtain all rights, authorizations, licenses, releases and consents needed to legally permit the Advertiser to use music, text, logos, images and persons in its commercials. To the extent necessary, the Advertiser also shall obtain the ability to assign those rights, authorizations, licenses and consents to Klixters if an assignment is required for Klixters to carry out its obligations pursuant to this Agreement.

1.5 Notwithstanding Klixers right to review the content of the Advertiser's commercials, ratings, surveys and other transmissions, the Advertiser solely shall be responsible for the content of same and for all claims which may arise from the viewing of its content by Klixers members, and all claims asserted by third parties based on the content provided by the Advertiser to Klixers.

1.6 The Advertiser shall comply with all of Klixers procedures in regard to its access to the Klixers platform. The Advertiser shall be responsible for the acts and/or omissions of all persons and entities who access Klixers platform using the Advertiser's exclusive and password-protected access code. The Advertiser shall take all reasonable steps to prohibit use of its access protocol by unauthorized persons or entities.

1.7 The Advertiser shall pay all fees due Klixers as set forth on Schedule A. Should the Advertiser breach its payment obligation, the Advertiser's outstanding balance shall accrue interest at the rate of 1.5 percent per month or 18 percent per annum. Should Klixers initiate a collection action due to the Advertiser's breach of its payment obligation, it shall be entitled to an award of reasonable counsel fees and costs.

1.8 Should the Advertiser fail to comply with its obligations, Klixers, in its sole discretion, shall have the right to suspend or terminate the Advertiser's access to its platform, and/or to suspend or terminate the Advertiser's campaign and/or to terminate this Agreement.

2.0 KLIXTERS' OBLIGATIONS: Klixers shall use its proprietary software and data base to direct the Advertiser's commercials to its members possessing the characteristics sought by the Advertiser. Klixers will monitor its members' viewing of each commercial and will compile and format the members' responses to the Advertiser's rating or survey for each commercial.

2.1 Klixers will provide the Advertiser with password-protected access to online information regarding the marketing plan described in Schedule A. The Advertiser will be able to monitor the advertising campaign in real time. The information available to the Advertiser will include the number of members who have viewed each commercial and the responses provided by members to the corresponding rating or survey.

2.2 Klixers shall make a commercially reasonable effort to obtain the highest number of member views of each commercial and it shall encourage members to complete and return their responses to the corresponding rating or survey. Klixers cannot guarantee that any specific number of members will view a particular commercial, nor can it guarantee that a particular percentage of those who do view it will complete and return the corresponding rating or survey. Klixers may provide estimates of viewership based on historical data.

2.3 Klixers compensation shall be based on the number of its members who view each commercial and complete and submit the corresponding rating or survey during the lifespan of each commercial's advertising campaign. The Advertiser acknowledges that the statistics compiled by Klixers shall be the sole and definitive measurement of Klixers performance. No other measurements nor statistics shall be used to determine the compensation to be paid to Klixers by the Advertiser. Klixers shall be paid per full view. A view shall be compensable when a Klixers member views a commercial and submits responses to the Advertiser's corresponding rating or survey or both.

3.0. KLIXTERS' CONTENT: All content, including, modifications or new versions of any Advertiser content PREPARED OR delivered by Klixters under this Agreement, and all related intellectual property rights, shall remain the sole and exclusive property of Klixters. The Advertiser agrees that Klixters shall retain sole and exclusive title to all Klixters content and agrees to and hereby makes all assignments necessary to provide Klixters such sole and exclusive title. This Agreement does not grant the Advertiser rights nor licenses to any of Klixters' content, nor to any Klixters' trademarks. Klixters expressly reserves all such rights. The Advertiser shall maintain back-up copies of all commercials, ratings, surveys and other transmissions provided to Klixters, which shall not be liable for loss or damage to any Advertiser submissions or content

4.0 ADVERTISER REPRESENTATIONS: The Advertiser represents and warrants to Klixters that the Advertiser holds all necessary rights to permit the use of the advertisement for the purpose of this Agreement. The Advertiser represents that the use, reproduction, distribution, transmission or display of advertisement, selected keywords, any data regarding users, and any material to which users can link, and any products or services made available to users, through the advertisement will not violate any criminal laws or any rights of any third parties nor contain any material that is unlawful or otherwise objectionable, including any material encouraging conduct that would constitute a criminal offense, give rise to civil liability, or, otherwise, violate any applicable law.

5.0. TERM. This Agreement will commence on the date set forth at the top of the first page. Unless terminated in accordance with the terms herein, this Agreement shall remain in force and effect for the length of the advertising campaign described in Schedule A, or for the term as set forth in one or more mutual amendments of Schedule A

5.1. TERMINATION FOR BREACH. Either party may terminate this Agreement if the other party breaches any material term of this Agreement and fails to cure such breach within thirty (30) days following written notice thereof from the non-breaching party.

5.2. MODIFICATION: Neither party may modify the terms of this Agreement unilaterally. Modification of this Agreement must be memorialized in writing and signed by authorized representatives of both parties. Once the Advertiser's commercial has been accepted by Klixters, the Advertiser cannot terminate the marketing campaign for that commercial for any reason prior to the end of the campaign's lifespan. In the event of termination, the Advertiser shall remain liable for the amount due Klixters as calculated by the formula set forth in Schedule A.

6. INDEMNIFICATION: The advertiser shall indemnify, defend and hold harmless Klixters and its employees, directors, agents, and representatives from any and all claims, costs, losses, damages, judgments, interest, legal fees and expenses arising from its negligence or from any claim, action, audit, investigation, inquiry, or other proceeding arising from the Advertiser's misrepresentations, or breach of warranty or obligations set forth in this Agreement and/or the Advertiser's violation of any right of privacy, publicity rights or any intellectual property rights. This provision also shall apply upon the Advertiser's violation of any law, ordinance, rule, or regulation of the United States, or of any State or of any other country or should the Advertiser use of the unique name, password or other appropriate security code.

7. NO WARRANTIES: THE USE OF "KLIXTERS" IN THIS SECTION MEANS KLIXTERS INC, ITS PROCESSORS, ITS SUPPLIERS, AND ITS LICENSORS AND THEIR RESPECTIVE SUBSIDIARIES, AFFILIATES, AGENTS, DIRECTORS, AND EMPLOYEES. KLIXTERS SERVICES ARE PROVIDED "AS IS" WITHOUT REPRESENTATION OR WARRANTY, WHETHER IT IS EXPRESS, IMPLIED, OR STATUTORY. WITHOUT

LIMITING THE FOREGOING, KLIXTERS SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON- INFRINGEMENT. KLIXTERS DOES NOT WARRANT OR REPRESENT THAT THE SERVICES WILL MEET THE ADVERTISER'S REQUIREMENTS NOR THAT THE SERVICES WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, UNINTERRUPTED, ERROR-FREE, WITHOUT DEFECT OR SECURE. KLIXTERS DOES NOT WARRANT NOR REPRESENT THAT THE SERVICES ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. KLIXTERS DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICES ADVERTISED OR OFFERED BY A THIRD PARTY AND EXPRESSLY DISCLAIMS ANY WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON- INFRINGEMENT THEREFOR.

8. LIMITATION OF LIABILITY: TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, KLIXTERS SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES, WHICH MAY RESULT FROM THE USE OF, INABILITY TO USE, OR UNAVAILABILITY OF KLIXTERS' SERVICES. KLIXTERS SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE WHICH IS NOT REASONABLY FORSEEABLE. KLIXTERS SHALL NOT BE RESPONSIBLE FOR ANY DAMAGE, LOSS, OR INJURY RESULTING FROM HACKING, TAMPERING, OR OTHER UNAUTHORIZED ACCESS OR USE OF AN ADVERTISER'S ACCOUNT, NOR THE INFORMATION CONTAINED THEREIN. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE TOTAL LIABILITY OF KLIXTERS IS LIMITED TO THE LESSER OF THE AMOUNT OF FEES EARNED BY KLIXTERS IN CONNECTION WITH ADVERTISER'S USE OF THE KLIXTER'S' SERVICES DURING THE ONE (1) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM FOR LIABILITY, OR \$500.00. THIS LIMITATION OF LIABILITY SECTION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS, EVEN IF KLIXTERS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THIS LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.

9. INABILITY TO PERFORM: Except as otherwise provided herein, if Klixters is unable to perform any of its obligations hereunder as a result of a force majeure, labor dispute, law, government action or order, or similar causes beyond Klixters' reasonable control, it shall promptly notify the Advertiser. The Advertiser's sole and exclusive remedy for a delay or failure to perform under this section shall be receipt of services of substantially equivalent value to what were lost as a consequence of such delay or failure to perform. In no event shall such a delay or failure to perform constitute a breach of this Agreement nor provide Advertiser with any other right, claim or remedy.

10.0. DISPUTE RESOLUTION: The Advertiser agrees to provide Klixters with a written description of any dispute or claim which may arise pursuant to this Agreement. The parties shall discuss the issue in good faith in an attempt to resolve it. If the dispute or claim is not resolved within sixty (60) days after Klixters receipt the written notice, the parties agree to participate in mediation. They shall select a mediator within 75 days of Klixters receipt of the written notice. If the parties cannot agree on a mediator within that time frame, they shall request that a mediator be appointed by the American Arbitration Association, or by a judge of a court of competent jurisdiction. If mediation is unsuccessful, then the parties shall participate in binding arbitration.

10.1 BINDING ARBITRATION: If the parties are unable to resolve a dispute or problem under Section 10.0, they agree to resolve the dispute or claim by binding arbitration using the American Arbitration Association ("AAA") and its Commercial Arbitration Rules and Supplementary Procedures for Consumer Related Disputes. the arbitration shall be conducted in Lee County, Florida unless the parties agree to an alternate site. Each party shall be responsible for paying its

assessed AAA filing, administrative and arbitrator fees in accordance with AAA rules. The award rendered by the arbitrator shall include costs of arbitration, reasonable attorneys' fees and reasonable costs for expert and other witnesses, and any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Nothing in this section shall prevent either party from seeking injunctive or other equitable relief from a court as necessary to prevent the actual or threatened infringement, misappropriation, or violation of that party's data security, intellectual property rights, or other proprietary rights.

10.2 ALL CLAIMS MUST BE BROUGHT IN THE PARTIES' INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF IN A CLASS ACTION NOR AS A CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. THE ARBITRATOR MAY NOT CONSOLIDATE CLAIMS UNLESS ALL PARTIES CONSENT. THE PARTIES WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY OR TO INITIATE OR PARTICIPATE IN A CLASS ACTION.

11.0 ENTIRE AGREEMENT: This Agreement constitutes the entire agreement between the parties with respect to its subject matter and constitutes and supersedes all prior agreements, representations and understandings of the parties, written or oral. No amendment to this agreement will be effective unless it is in writing and signed by both parties.

11.1 CHOICE OF LAW: This Agreement shall be governed by the law of the State of Florida without regard to its choice of law provisions. Any proceeding arising out of this Agreement shall be commenced only in a court or arbitration of competent jurisdiction located in Lee County, Florida, and the parties hereby submit to the exclusive jurisdiction of those courts and arbitrations for purposes of any such proceeding.

11.2 SEVERABILITY: If any provision of this Agreement is invalid or unenforceable under applicable law, then it will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law, and the remaining provisions will continue in full force and effect.

11.3 NO WAIVER: This Agreement does not limit any party's rights as to trade secret, copyright, patent, or other laws. No waiver of any term of this Agreement will be deemed a further or continuing waiver of such term or any other term.

11.4. ASSIGNMENT: This Agreement and any rights and licenses granted therein, may not be transferred or assigned by Advertiser, and any attempted transfer or assignment will be null and void.

11.5 AVERTISER'S LOGO: The advertiser authorizes Klixters Inc. to use their logo of their brand on Klixters website for marketing purpose.

11.6 AUTHORIZED REPRESENTATIVES: The parties represent that their respective representatives who have signed this Agreement have been authorized to do so in a Resolution adopted by each parties' Board of Directors in compliance with each party's bylaws.

Klixters Inc.

Advertiser

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By:

By: