

## Advertiser Pass Through Terms

Advertiser acknowledges that Agency entered into a Framework Agreement (“**Agreement**”) with TikTok Information Technologies UK Limited (“**TikTok**”) for the provisions of certain services set out there under. This document (“**Pass Through Terms**”) governs the relationship between the Agency and the Advertiser in relation to the services provided by TikTok under the Agreement and supplements the agreement in place between Agency and Advertiser.

The Pass Through Terms commence on the date a specific IO or Order is placed in the interest of the Advertiser and will remain in force for all the duration of the agreement between Agency and Advertiser.

The above mentioned Agreement and these Pass Through Terms incorporates by reference the IAB Standard Terms and Conditions for Internet Advertising Media Buys One Year or Less (v. 3.0) located at [https://www.iab.com/wp-content/uploads/2015/06/IAB\\_4As-tsandcs-FINAL.pdf](https://www.iab.com/wp-content/uploads/2015/06/IAB_4As-tsandcs-FINAL.pdf) (“**IAB Standard Terms**”).

Agency may update this document from time to time at its own discretion in order keep pace with changes in industry best practices and applicable laws and regulations and to ensure users’ rights are honored appropriately.

### Definitions and Interpretation.

The following terms have the meanings set out below:

- i. “**Ad**” means any advertisement provided to Tik Tok by Agency on behalf of an Advertiser;
- ii. “**Ad Metrics**” means any data collected, received or derived from or in connection with the placing of Ads on the Platforms, including all data from reports provided to Agency or its Advertisers from time to time and Collected Data (as defined in the IAB Standard Terms);
- iii. “**Advertiser**” means the Agency’ client placing a specific IO or Order for the placement of an Ad on TikTok Platforms;
- iv. “**Advertising Materials**” means any artwork, images, copy, hashtags, sticker, lens, music, videos, or other creative (including any Content produced by a Creator for a specific Campaign) provided by or on behalf of Agency to TikTok or otherwise submitted, uploaded or provided through the TikTok Ads Platform, as it relates to the IO or Order”;
- v. “**Affiliate**” means, as to an entity, any other entity directly or indirectly controlling, controlled by, or under common control with, such entity;
- vi. “**Agency**” means Omnicom Media Group S.r.l. and its Affiliates, including, Optimum Media Direction S.r.l., PHD S.r.l. and Heart & Science S.r.l.
- vii. “**Applicable Data Protection Laws**” means any and all applicable privacy and data protection laws that apply to the processing of personal data permitted by this Pass Through Terms;
- viii. “**Auction Ad**” means any Ad placed via the TikTok Ads Platform pursuant to an Order;
- ix. “**Campaign**” means an advertising campaign for the distribution of Advertising Materials by the TikTok on Platforms for the benefit of Agency or Advertiser as specified in an IO or Order;
- x. “**IO**” any insertion order submitted by Agency in the interest of Advertiser for the purchase of digital media space for Reservation Ads from TikTok;
- xi. “**Order**” any order submitted via the TikTok Ads Platform by Agency in the interest of Advertiser for the purchase of digital media space for Auction Ads from TikTok
- xii. “**Platform(s)**” means TikTok and any other platforms that are owned, operated or controlled by TikTok and its Affiliates (which shall also be referred to as the “TikTok Properties”) or those platforms that are not owned, operated or controlled by TikTok or its Affiliates but on which TikTok has a contractual right to serve Ads (which shall also be referred to as the “Network Properties”). The Parties may decide the applicable Platform on each IO or Order;
- xiii. “**Reservation Ad**” means any Ad placed pursuant to an IO;
- xiv. “**Security Credentials**” means usernames assigned to personnel of Agency and passwords provided to or selected by such personnel. Agency will treat Security Credentials as the confidential information of TikTok;
- xv. “**Third Party Ad Server**” means a third party that will serve and/or track Ads; and
- xvi. “**TikTok Ads Platform**” means TikTok’s hosted enterprise auction platform that enables customers to bid on advertising inventory on the Platforms.

## 1. Authority

Advertiser acknowledges that: (i) Agency has the authority to assume *vis a vis* TikTok the obligations or to accept TikTok's conditions set forth in this Pass-through Terms for the performance of an IO and Order in the interest of Advertiser; (ii) each representation, warranty, or obligation of Agency towards TikTok herein set forth will be deemed to include an obligation on the part of the Advertiser; (iii) by requesting the performance of an IO or Order through the Agency, the Advertiser accepts and agrees to comply with the Pass-through Terms and that the Pass-through Terms will apply to the relationship between the Advertiser and the Agency supplementing any agreement in place and prevailing on any other differing provision.

## 2. Ad distribution

Advertiser authorizes Agency and TikTok to distribute Ads and Advertising Materials via the Platforms, in accordance with this Pass Through Terms and pursuant to each IO and Order.

## 3. TikTok Ads Platform.

### i. Use of TikTok Ads Platform.

Advertiser acknowledges that: a) TikTok provides Agency with a non-exclusive, non-transferable license to access and use the TikTok Ads Platform, as may be modified from time to time, for bidding, managing and reporting advertising inventory purchases in relation to its auction-based advertising on the TikTok Ads Platform and for no other purposes; b) TikTok may at any time, in its sole and absolute discretion, invalidate the Security Credentials without giving any reason or prior notice and shall not be liable or responsible for any loss or suffered damages or arising out of or in connection with or by reason of such invalidation.

### ii. Availability.

Advertiser acknowledges that TikTok and Agency makes no warranties or representations concerning the TikTok Ads Platform, including: (i) that it will meet Agency's or its Advertisers' requirements. TikTok does not guarantee the reach or performance of any particular Ads submitted or any Campaign; (ii) that it will be uninterrupted, timely, secure or free from error; and (iii) that defects in the operation or functionality of any software provided to Agency as part of the TikTok Ads Platform will be corrected.

Advertiser acknowledges that no conditions, warranties, or other terms (including any implied terms as to satisfactory quality, fitness for purpose) apply to the TikTok Ads Platform except to the extent that they are expressly set out in the Pass Through Terms. Furthermore, TikTok may change, suspend, withdraw, or restrict the availability of all or any part of the TikTok Ads Platform for business and operational reasons at any time without notice, including to conduct testing and maintenance, and such activities may temporarily impact the serving of Auction Ads or the functioning of the TikTok Ads Platform. TikTok reserves the right to conduct such activities at its own discretion. TikTok may withdraw the TikTok Ads Platform from use and may also withdraw any product or service in whole or in part in any jurisdiction. TikTok will not be liable for any unavailability of the TikTok Ads Platform except for any credits or makegoods provided pursuant to this Pass-through Terms for guaranteed or reserved advertising inventory.

### iii. Agency's warranties.

Advertiser acknowledges that Agency, in the interest of Advertiser, has represented to TikTok that:

- (i) it is the owner of, or is licensed to use, the entirety of Ads, Advertising Materials, Agency testimonials and Landing Pages ("**Landing Page(s)**") meaning any websites, devices and applications that an Ad links or redirects to as well as all of their requisite parts;
- (ii) it has the full right and authority to use all trademarks, marks, logos, brands, service marks, trade names, copyright (including relevant moral rights) and related rights, database rights and any other content contained in the Ads, Advertising Materials, testimonials and Landing Pages, and has paid and will pay all applicable royalties and fees in connection with such rights as they fall due;
- (iii) it will not violate the data restrictions set out in this Pass Trough Terms;
- (iv) it will comply with the terms of Music Clearances of the Pass Trough Terms;
- (v) the Ads, Advertising Materials, testimonials and Landing Pages: (a) do not violate any applicable law, regulation or other code or standard governing advertising practices and content in the territory to which

the Campaign is targeted, including but not limited to, any law, regulation or code governing the ability to advertise certain products, services and industries, governing false or deceptive advertising, sweepstakes, gambling, file-sharing, or trade disparagement; (b) do not contain any misrepresentations or content that is defamatory or violates any rights of privacy or publicity; (c) do not contain any adult sexual content, pornographic content, any child pornography, or link(s) to such content; (d) do not contain any link(s) to software piracy or contain or link to any malware, spyware or other malicious code; (e) do not contain any link(s) to any form of illegal activity or services, drugs, drug paraphernalia, or any controlled substances; (f) do not contain any gratuitous displays of violence, self-harm, obscene or vulgar language, or abusive content, or content which endorses or threatens physical harm; (g) do not contain any content promoting any type of hatemongering (i.e. racial, political, ethnic, religious, gender-based, sexuality-based, or personal); and (h) do not and will not infringe any copyright, related right, moral right, database right, trademark, patent, trade secret, or other proprietary right; and (i) comply with all applicable advertising policies as may be announced and amended from time to time, including the [TikTok Ad Serving Policy](#)<sup>1</sup> the [Industry Entry Policy](#)<sup>2</sup> and the [Ads Creative Policy](#)<sup>3</sup> (for the avoidance of doubt, the foregoing requirements (a)-(i) shall be considered to form part of TikTok's Policies);

(vi) it will comply with all applicable laws in connection with the Pass Through Terms;

(vii) it shall comply with the [TikTok Ad Serving Policy](#)<sup>4</sup>, the [Industry Entry Policy](#)<sup>5</sup> and the [Ads Creative Policy](#)<sup>6</sup>;

(viii) it shall comply with and acknowledges Sections 3, 5, 11 - 13 and 21 of the [General TikTok for Business Platform Terms](#)<sup>7</sup>; and

(ix) in the event that Agency is required to act as agent and not principal for media buying, it has the authority as Advertiser's agent to bind Advertiser to the terms of the Agreement and each IO and/or Order, and all of Agency's actions related to this Agreement and each IO and/or Order will be within the scope of such agency.

Advertiser acknowledges that no warranties, conditions or other terms apply to any goods or services supplied by TikTok under this Pass Through Terms unless expressly set out in this Pass Through Terms. To the fullest extent permitted by law, Advertiser acknowledges that TikTok and Agency hereby disclaim any and all implied conditions or warranties, including any warranties of merchantability, fitness for a particular purpose, necessary skill, exercise of due skill, care and diligence, or relating to the effectiveness of any Campaigns or Ads distributed under this Pass Through Terms.

Advertiser acknowledges and agrees that it is solely responsible for the content of Ads, including the key words and other elements selected for Ads targeting, Uniform Resource Locators (URLs), Landing Pages and applications that Ad viewers will be redirected to and products and services that are advertised. Advertiser represents and warrants that it has all necessary licences and clearances to use the Ads and Ad Materials and any Music contained in the Ads and any Advertising Materials. TikTok, with the express written permission of Advertiser, may reproduce Ad Materials in promotional presentations.

#### **4. Disclaimer and Cancellation.**

Advertiser acknowledges that TikTok will not be liable to compensate Agency, Advertiser or any third party in any of the following events: (i) failure to provide Ads and/or Advertising Materials in a timely manner which causes delay or cancellation of a Campaign; (ii) the Landing Page is not accessible due to reasons not attributed to TikTok or Agency or because TikTok has removed it for Advertiser's breach of the warranties set out under Clause 3, iii of the Pass Through Terms; and/or (iii) TikTok's performance under the applicable IO, an Order is suspended, interrupted or the relevant data disappears which cannot be retrieved due to disconnection of network or servers and disasters beyond reasonable expectation. Advertiser acknowledge that in case of cancellation of an Auction Ad through the TikTok For Business Platform, the Auction Ad may run for 24 hours after such notification and Advertiser is responsible for payment for Ads that run.

---

<sup>1</sup> <https://ads.tiktok.com/i18n/official/policy/adPolicy>

<sup>2</sup> <https://ads.tiktok.com/help/article?aid=6685586866860720134>

<sup>3</sup> <https://ads.tiktok.com/help/article?aid=6684149081637388293>

<sup>4</sup> <https://ads.tiktok.com/i18n/official/policy/adPolicy>

<sup>5</sup> <https://ads.tiktok.com/help/article?aid=6685586866860720134>

<sup>6</sup> <https://ads.tiktok.com/help/article?aid=6684149081637388293>

<sup>7</sup> <https://ads.tiktok.com/i18n/official/policy/disclaimer>

Furthermore, TikTok reserves the right to suspend and/or cancel at any time any Campaign or any Order in its sole discretion without prior notice to Agency or Advertiser.

#### **5. TikTok Business Products (Data) Terms.**

Advertiser acknowledges that Agency has agreed with TikTok that where Agency or an Advertiser wishes to access or use, or authorise any third party to access or use, any TikTok Business Products (as defined in the TikTok Business Products (Data) Terms<sup>8</sup> and which include TikTok Pixel, APIs, SDKs, scripts, cookies, and other device data collection technologies made available through the TikTok for Business Platform (which includes the TikTok Ads Platform) for the purpose of displaying and/or targeting advertising, and for matching, measurement, analytics and attribution in connection with advertising), this use will be governed by, and the parties, including Advertiser, shall comply with, the terms of the TikTok Business Products (Data) Terms, as may be modified from time to time.

Therefore, if Agency uses the TikTok Business Products, or shares or enables the collection of data via the TikTok Business Products, on behalf of an Advertiser, the Advertiser agrees to the TikTok Business Products (Data) Terms and TikTok will be entitled to enforce such agreement directly against the Advertiser. Where this is the case, all obligations, rights and liability in respect of the use, sharing and collection shall arise solely between TikTok and the relevant Advertiser according to the TikTok Business Product (Data) Terms.

If Advertiser authorises its third party mobile measurement partner(s) to send it Ad Metrics that is also TikTok European Data (as defined in the TikTok Controller to Controller Data Terms<sup>9</sup>), then Advertiser agrees that the TikTok Controller to Controller Data Terms, as may be modified from time to time, shall apply to such data sharing and shall be deemed to form part of this Pass Through Terms.

Except as expressly stated in these terms, if there is any conflict between the terms of the TikTok Business Products (Data) Terms or the TikTok Controller to Controller Data Terms and this Pass Through Terms, the terms of the TikTok Business Products (Data) Terms and the TikTok Controller to Controller Data Terms shall prevail to the extent of such conflict.

#### **6. Data Restrictions and Measurement.**

Advertiser will not (i) create compilations or combinations of Ad Metrics; (ii) co-mingle Ad Metrics with other data or across advertising campaigns on platforms other than the Platform; (iii) sell, rent, transfer, disclose or provide access to Ad Metrics to any Affiliate, third party, ad network, ad exchange, advertising broker, or other advertising service; (iv) associate (or attempt to associate) Ad Metrics with any identifiable person or user; (v) use Ad Metrics for repurposing, including for retargeting or appending data to a non-public profile regarding a user; (vi) use Ad Metrics for, or provide Ad Metrics to, any other social media or advertising platforms other than Platform; (vii) build, create, develop, augment, supplement, or assist with the building, creation, development, augmentation, or supplementation of any segments, profiles, or similar records on any user, device, or browser; (viii) de-aggregate or de-anonymize, or attempt to de-aggregate or de-anonymize, Ad Metrics; (ix) use any means or form of scraping or data extraction to access, query or otherwise collect advertising-related information from any Platform or the TikTok Ads Platform without TikTok's prior written consent; or (x) circumvent these provisions in any way to avoid the Applicable Data Protection Laws.

The Advertiser may not embed in Advertising Materials any user identification or tracking technologies (including any first or third-party cookies, pixels, images, beacons, code, tags or persistent identifiers or other Third Party Ad Server) without written authorisation by TikTok.

Where a Third Party Ad Server is approved by TikTok, it may suspend or withdraw its authorisation at any time, at TikTok's sole discretion, without assigning any reason and without any liability to the Advertiser. Advertiser warrants that it will not, and will not enable or permit, any third-party to generate automated, fraudulent or otherwise invalid impressions, inquiries, clicks or conversions on the Platform and acknowledges that TikTok has no liability in respect of the same. Notwithstanding any provision of this PassThrough, the collected or generated Ad Metrics may only be used by Agency, Advertiser, or a third party acting on their behalf and only for the purposes of:

---

<sup>8</sup> <https://ads.tiktok.com/i18n/official/policy/product>

<sup>9</sup> <https://ads.tiktok.com/i18n/official/article?aid=998850064133680764>

- i. optimising the effectiveness of the Ads on the Platforms for the Advertiser whose Campaign the Ad Metrics relate to;
- ii. analysing, and creating reports about, a specific Campaign run on the Platforms by the Advertiser whose Campaign the Ad Metrics relate to;
- iii. in the case of aggregated reports only, planning the relevant Advertiser's advertising strategy, while at all times complying with Applicable Data Protection Laws.

Advertiser will cause any third parties used on its behalf for the Campaign or in connection with an Order (including any Third Party Ad Servers), to comply with the obligations set forth in this Clause 6.

#### **7. Use of Advertisement Materials, Advertiser Testimonials and Landing Pages.**

Advertiser authorizes Agency to grant TikTok and its Affiliates with a worldwide, irrevocable, fully paid, royalty free, non-exclusive and sub-licensable licence to use all intellectual property and proprietary rights and any other content contained in the Advertising Materials and their requisite parts including testimonials and the Landing Pages, for the purposes of: (i) TikTok performing the Agreement; (ii) TikTok's internal reporting or analysis; and (iii) with the express written permission of the Advertiser, external marketing or promotion of the advertisement services of TikTok and its Affiliates. This licence shall allow Ads and Advertising Materials to be displayed on the Platform in accordance with the functionality of the Platform and the specific ad products chosen by the Advertiser for each Campaign from time to time, including the right for users of the Platform to download, react with and share the Ads outside the Platform where applicable. Advertiser acknowledges and agrees that, depending on the specific ad product chosen for a Campaign, the Ads and Advertising Materials may remain on the Platform or elsewhere on the Internet after a Campaign has ended and that this shall not be a breach of this Pass Through Terms.

#### **8. Music Clearances**

Advertiser shall be solely responsible for obtaining, prior to the start date of the Campaign period or upload to the TikTok Ads Platform (as applicable), all rights in and to all music (e.g., sound recordings and musical works, etc.) selected for the Campaign as described in the IO, the Order or otherwise included in the Advertising Materials (collectively, the "Music"), which may be necessary to make the uses permitted under this Pass Through Terms including the right: (i) (save in respect of public performance/communication to the public rights for which TikTok is responsible) for TikTok to host, store, stream, perform (including publicly perform), reproduce, make available and distribute the Music and Videos (defined below) on the Platform; (ii) for TikTok to create clips (not to exceed sixty (60) seconds in duration) from sound recordings which comprise the Music for use in connection with the Campaign; (iii) where applicable, including in respect of Hashtag Challenges, for end users of the Platform to select and incorporate clips of the Music into videos created by such users which are related to the Campaign ("Videos"); (iv) for end users of the Platform to upload Videos to the Platform, to save same to their devices and to "share" same, within the Platform and on other sites and services and/or via email, SMS and messaging services or to a Platform-branded embedded player which can be embedded into third party websites and applications; (v) for TikTok to post Videos on the Platform and on TikTok's social network accounts and to distribute, via email and SMS, communications about Advertiser joining the Platform, Advertiser posting Videos, the Music on the Platform, and the availability of Videos on the Platform; and (vi) for TikTok to feature and promote, within the Platform, the Videos. Agency shall ensure at all times that the use of the Music in accordance with this Agreement (including as set out in this Clause) will not violate any law or infringe any proprietary or intellectual property rights of any third party and will otherwise be free of any claims.

#### **9. Creator and Other Services.**

Advertiser acknowledges that:

- i. Additional terms and conditions (which are outside the scope of this Pass Through Terms) apply to certain products and services offered by TikTok, such as creator services, Hashtag Challenges, and Lives (meaning, the collaboration of the Parties for the promotion of livestream content on the Platform), and TikTok may require to enter into supplemental agreement(s) in respect thereof.
- ii. Advertiser's use of TikTok products which involve promotions with prizes require TikTok's express written approval in advance and TIKTok accepts no liability for such prizes and/or promotions. TikTok does not,

and Advertiser shall not hold TikTok out to, sponsor or endorse Hashtag Challenges and Advertiser will include appropriate disclaimer language in respect of the same in its terms and conditions (including that TikTok has no control over the Hashtag Challenge or its prizes).

- iii. If applicable, Advertiser or Agency and Media Company on Advertiser's behalf, may engage creators, either directly or indirectly to create or distribute content ("**Content**") which may relate to Advertiser or its products or services ("**Creators**"). Advertiser acknowledges and agrees that Creator remains the owner of Creator's Content, accordingly any usage of the Content by Advertiser must be negotiated separately between Advertiser (or Agency on its behalf) and Creator. With respect to any Advertiser production requirements, claims about Advertiser's products or services, calls to action, or other promotional messages (collectively, "**Messaging**") that Advertiser requires Creators to include in the Content, Advertiser will remain solely liable for such Messaging. Advertiser shall ensure that such Messaging does not include any misrepresentations or deceptive advertising about its products or services.

#### **10. Indemnity.**

Advertiser acknowledges that it will indemnify and hold harmless Agency, TikTok and their Affiliates, and each of their officers, directors and employees (collectively, the "**Indemnified Parties**"), from and against any and all expenses, damages and losses of any kind (including reasonable legal fees and costs) incurred by any of the Indemnified Parties arising out of or in connection with any claim by a third party against any of the Indemnified Parties resulting from: (a) any actual or alleged breach of Advertiser's representations, warranties, covenants or obligations set out in the Pass Through terms (including those released by Agency on Advertiser's interest); (b) any reproduction, distribution, communication to the public, making available, public performance or display or any other use of Ads, Advertising Materials and/or Landing Pages supplied (or which the TikTok is given access to) by or on behalf of Advertiser. For the avoidance of doubt, Advertiser agrees that TikTok may (if necessary) enforce this indemnity for and on behalf of any of the Indemnified Parties and may account directly to them for sums recovered on foot of this indemnity relating to their losses.

#### **11. Liability.**

Advertiser acknowledges that Agency, TikTok and their Affiliates, subject to the limitations set forth under the following paragraph, and except in the case of any liability arising under Clause 10 above, shall not be liable for any indirect, consequential, incidental, special, punitive or exemplary damages (including damages for loss of business profits, loss of business opportunity, loss of or corruption of data, business interruption or loss of goodwill) arising out of the Pass Through Terms, whether such liability arises in contract, tort (including negligence) or otherwise, and even if such Party has been advised of the possibility of such loss or damage.

Nothing limits any liability for: (i) death or personal injury caused by negligence; (ii) fraud or fraudulent misrepresentation; (iii) any other liability which cannot legally be limited; or (iv) any breach of Confidentiality's obligations.

Advertiser acknowledges that, subject to the limitations set forth by this Clause and save for liability arising under Clause 11 (which shall be unlimited), Agency and TikTok (including their respective Affiliates', directors', officers', and employees') total aggregate liability arising under the Pass Through Terms in each consecutive 12 month period commencing on the date of signature of the Agreement or the anniversary of the signature date (a "Year"), shall not exceed the aggregate amount paid and payable under the Pass Through Terms and all IOs and or Orders placed for the Advertiser in respect to the relevant Year.

Advertiser acknowledges that Advertiser, Agency and TikTok (including their respective Affiliates' (which shall, for the avoidance of doubt, in the case of TikTok include TikTok Technology Limited), directors', officers', and employees') total aggregate liability arising out of or in connection with the TikTok Business Products (Data) Terms and/or the TikTok Controller to Controller Data Terms, whether such liability arises in contract, tort (including negligence) or otherwise, and whether arising under the Pass Trough Terms, the Agreement or any other agreement between the Parties for the purchasing of advertising inventory, in each case shall not exceed 250,000 USD.

Advertiser acknowledges that Advertiser, Agency and TikTok are relying on the limitations of liability stated herein and that those limitations are an essential basis of the bargain between the parties

## **12. Confidentiality.**

**“Confidential Information”** includes (i) all information marked as “Confidential”, “Proprietary”, or similar by the disclosing party (**“Discloser”**) when made available by or on behalf of the Discloser (before or after the date of this Agreement) to the receiving party (**“Recipient”**) and/or its Affiliates; and (ii) information and data provided by or on behalf of the Discloser (before or after the date of this Agreement), which under the circumstances surrounding the disclosure should be reasonably deemed confidential or proprietary, exchanged between Advertiser, Agency and TikTok related to the performance of the services covered by the Pass Through Terms. During the validity of the Pass Through Terms and for two years afterwards, Recipient will protect Confidential Information in the same manner that it protects its own information of a similar nature, but in no event with less than reasonable care by reference to good industry standards. Recipient shall not disclose Confidential Information to anyone except an employee, agent or Affiliate, with a strict need to know the same (**“Representative(s)”**), and who is bound by confidentiality and non-use obligations at least as protective of Confidential Information as are those in this Clause 12 - and the Recipient hereby acknowledges and agrees that it shall be liable for the acts or omissions of each such Representative in relation to the Confidential Information as if they were the acts or omissions of the Recipient. **“Confidential Information”** will not include information which: (i) was previously known to Recipient; (ii) was or becomes generally available to the public through no fault of Recipient; (iii) was rightfully in Recipient’s possession free of any obligation of confidentiality at, or prior to, the time it was communicated to Recipient by Discloser; (iv) was developed by employees or agents of Recipient independently of, and without reference to, Confidential Information; or (v) was communicated by Discloser to an unaffiliated third party free of any obligation of confidentiality. Notwithstanding the foregoing, the Recipient may disclose Confidential Information of the Discloser to the minimum extent required by a valid order by a court or other governmental body, as otherwise required by law or the rules of any applicable securities exchange, or as strictly necessary to establish the rights of either party under this Pass Through Terms. Before the Recipient makes such a disclosure it shall, to the extent permitted by law, use all reasonable endeavours to give the Discloser as much notice of this disclosure as possible, and shall take into account the reasonable requests of the Discloser in relation to the content of this disclosure. Nothing in this Pass Through Terms limit any liability for breach of this Clause 12.