



# Electronic Payment Authorization + Client Agreement Terms & Conditions

**KUWARE INC.**

108 Wild Basin Rd Ste 250, Austin, TX 78746

## **ELECTRONIC PAYMENT AUTHORIZATION**

*Please complete all the fields. You may cancel this authorization at any time by contacting us.  
This authorization will remain in effect until canceled.*

I <Your Name>, authorize **KUWARE INC.** to charge my bank account for agreed upon purchases. I understand that my information will be saved on file for future transactions to my bank account.

### **BANK ACCOUNT INFORMATION**

**Account Type :** <Checking/Savings>

**Account Use :** <Business/Personal>

**Accountholder's Name :** <Accountholder Name>

**Account Number :** XXXXXXXXX

**Routing Number :** XXXXXXXXX

**Bank or Credit Union Name:** <Bank or Credit Union Name>

## **CLIENT AGREEMENT TERMS & CONDITIONS**

### **1. The Agreement**

This Agreement forms a legally binding agreement between Client and Kuware and governs the Client's access and use of Kuware's services (the "Kuware Services"). This Agreement also covers Kuware's fulfillment of services (the "Kuware Services"). Hereinafter, "you" and other third-person pronouns will refer to Client.

BY ACCESSING OR USING ANY OF THE Kuware SERVICES, YOU AGREE TO BE BOUND AND ABIDE BY THIS AGREEMENT AND ANY AMENDMENTS THERETO. READ THIS AGREEMENT CAREFULLY BEFORE USING ANY OF THE Kuware SERVICES, ESPECIALLY SINCE THIS AGREEMENT MAY AFFECT YOUR LEGAL RIGHTS, SUCH AS REQUIRING BINDING INDIVIDUAL ARBITRATION, AND LIMITING YOUR RIGHT TO BRING A LAWSUIT OR CLASS ACTION. IF YOU DO NOT AGREE TO THESE TERMS, PLEASE IMMEDIATELY CEASE USE OF ANY OF THE Kuware SERVICES.

## **2. Kuware Services**

The Kuware Services including all Marketing and Advertising Services fulfilled by Kuware and associates working with Kuware.

The Kuware Services will specifically include the ability and responsibility of Kuware to deal with all requisite third parties.

## **3. Responsibilities**

### **3.1 Kuware's RESPONSIBILITY FOR RELEASE**

The Client will own the visual elements that Kuware creates for this project. Kuware will give the Client source files and finished files and the Client should keep them somewhere safe as Kuware is not required to keep a copy. The Client owns all elements of text, images, and data provided by the Client unless someone else owns them.

Kuware will own the unique combination of these elements that constitutes a complete design and Kuware will license that to the Client, exclusively and in perpetuity for this project only unless Kuware agrees otherwise. Kuware can provide a separate estimate for that.

### **3.2 Client RESPONSIBILITY FOR ACCURACY**

The Client shall be responsible for the accuracy, completeness, and propriety of information concerning its products and services which it furnishes to Kuware verbally or in writing in connection with the performance of this Agreement.

### **3.3 MUTUAL COOPERATION**

Kuware agrees to use its best efforts to fulfill and exceed the Clients' expectations of the deliverables. The Client agrees to aid Kuware in doing so by making available needed information pertaining to the business and its digital assets and will cooperate in expediting the work.

## **4. Term of engagement**

The minimum term of engagement of Kuware by client to provide for a monthly payable service is for a duration of three months, any exception to this will have to be explicitly approved by Kuware. Three full months of a management fee of service will be payable in case of earlier cancellation unless explicitly approved by Kuware.

## **5. Termination**

5.1 Any cancellations must be provided through email or appropriate forms.

5.2 This Agreement may also be immediately terminated in the event that there is a breach of the terms of this Agreement by either Party. This Agreement will also immediately terminate upon the death of the Client, the inability of the Client to pay the Fees required, the liquidation, dissolution, or discontinuance of Kuware by Kuware in any manner, or the filing of any petition by or against Kuware under federal or state bankruptcy or insolvency laws.

5.3 If upon termination there exist any materials furnished by Kuware or any services performed

by Kuware for which the Client has not paid Kuware in full, until such time as the Client has paid Kuware in full the Client agrees not to use any such materials, in whole or in part, or the product of such services.

## **6. Cancellation of Implementation in Progress**

The Client has the right to modify, reject, cancel, or stop any and all implementation work in process. However, the Client agrees to reimburse Kuware for all costs and expenses Kuware incurred prior to the Client's change in instructions, and which relate to non-cancelable commitments, and to defend, indemnify and hold us harmless for any liability relating to such action. Kuware agrees to use its best efforts to minimize such costs and expenses.

## **7. Terms of Payment**

7.1 All payments will be made via Pre-Authorized credit card or if invoiced then through ACH.

7.2 In case of overdue invoices, the scope, nature, and extent of delivery of the services promised in the overdue invoices will be up to the discretion of Kuware including, but not limited, to a cessation of ongoing projects until the payment is received with appropriate interest, and Kuware will not be liable for any losses experienced by the Client as a result of these changes.

7.3 In the event that Kuware incurs legal fees, costs, and disbursements in an effort to collect its invoices, in addition to interest on the unpaid balance, the Client agrees to reimburse Kuware for these expenses.

## **8. Late Fees**

For all overdue payments a fine of 20% per month of the overdue balance will be charged, unless otherwise agreed upon by the parties.

## **9. Limited License**

9.1 Client acknowledges and agrees that Kuware's name, services, and any logos, designs, text, graphics, software, content, files, materials, and any other intellectual property rights contained therein, including without limitation, any copyrights, patents, trademarks, proprietary or other rights arising thereof, are owned by Kuware or its affiliates, licensors, or supplier

9.2 Client acknowledges and agrees that the source and object code of certain Kuware Services and the format, directories, queries, algorithms, structure, and Kuware of the same are the intellectual property, proprietary, and confidential information of Kuware and its affiliates, licensors, and suppliers.

9.3 Client expressly agrees not to do anything inconsistent with Kuware's ownership of all of the intellectual property discussed herein. Client further agrees that there are no rights, title, or interest in or to any Kuware Services, except as stated in this Agreement. In addition, except as expressly set forth in this Agreement, Client is not conveyed any right or license by implication, estoppel, or otherwise in or under any patent, trademark, copyright, or other proprietary rights of Kuware or any third party.

9.4 For any Kuware Services which enable you to use any software, content, equipment, or

other physical or nonphysical materials owned or licensed by us, we grant you a limited, revocable, non-exclusive, non-sublicensable, non-transferable license to access and use the specific Kuware Services, and any related software, content, equipment or other materials FOR YOUR PERSONAL, AND COMMERCIAL USE IN THE COURSE OF BUSINESS ONLY.

## **10. Restrictions**

You are prohibited from, and expressly agree that you will not:

- (i) circumvent or disable any content protection system or digital rights management technology used with any Kuware Services;
- (ii) decompile, reverse engineer, disassemble, or otherwise reduce any Kuware Services to a human-readable form;
- (iii) remove identification, copyright, or other proprietary notices in or on the Kuware Services;
- (iv) access or use any Kuware Services in an unlawful or unauthorized manner, or in a manner that suggests an association with our content, products, services, or brands, unless you have an executed agreement with us that allows for such activity;
- (v) use, alter, copy, modify, store, sell, reproduce, distribute, republish, download, publicly perform, display, post, transmit, create derivative works of, or exploit any Kuware Services or any part thereof, except as expressly authorized in this Agreement or as part of the Kuware Services provided to you;
- (vi) introduce a virus or other harmful component, or otherwise tamper with, impair, or damage any Kuware Services or connected network, or interfere with any person or entity's use or enjoyment of any of the Kuware Services;
- (vii) access, monitor, or copy any element of the Kuware Services using a robot, spider, scraper, or other automated means or manual process without our express written permission;
- or
- (viii) sell, resell, or make commercial use of the Kuware Services, unless you have an executed agreement with us that expressly allows for such activity.

## **11. NON-SOLICITATION**

DURING THE TERM OF OUR ENGAGEMENT AND FOR A PERIOD OF THREE (3) YEAR IMMEDIATELY THEREAFTER, AGENCY PARTNER AGREES NOT TO SOLICIT ANY EMPLOYEE OR INDEPENDENT CONTRACTOR OF KUWARE ON BEHALF OF OR ANY OTHER BUSINESS ENTERPRISE, NOR SHALL INDUCE ANY EMPLOYEE OR INDEPENDENT CONTRACTOR ASSOCIATED WITH THE KUWARE. TO TERMINATE OR BREACH AN EMPLOYMENT, CONTRACTUAL OR OTHER RELATIONSHIP WITH KUWARE. IN THE EVENT AGENCY PARTNER HIRES OR OTHERWISE INDUCES ANY EMPLOYEE OR INDEPENDENT CONTRACTOR ASSOCIATED WITH KUWARE TO TERMINATE OR BREACH AN EMPLOYMENT, CONTRACTUAL OR OTHER RELATIONSHIP WITH THE KUWARE IN VIOLATION OF THIS NON-SOLICITATION PROVISION, AGREES TO PAY TO KUWARE AN AMOUNT OF \$150,000 AS LIQUIDATED DAMAGES, NOT A PENALTY AS DAMAGES FOR SUCH ACTION BY

ARE HARD TO ESTIMATE.

## **12. Third-party Services**

Certain Kuware Services may integrate, be integrated into, or be provided in connection with third-party websites, services, content, and/or materials ("Third-Party Services"). We do not control any Third-Party Services. We additionally make no claim or representation regarding the third-party services and accept no responsibility for, the quality, content, nature, or reliability of Third-Party Services accessible from our websites, application, software, or any other element of the Kuware Services. There is no implied affiliation, endorsement, or adoption by Kuware of these Third-Party Services and we shall not be responsible for any content provided on or through these Third-Party Services. You should read the terms of use and legal agreements that apply to these Third-Party Services.

## **13. Client Consents**

13.1 Client agrees to hold Kuware, its owners, affiliates, and representatives, harmless from any damage, whether tangible or intangible, that may happen to Client while participating in the Kuware Services.

13.2 Client agrees that Kuware offers its services with no guarantee of results of any kind. Client agrees that any results that occur during their engagement, whether positive or negative, are the effects of Client's own personal choices.

13.3 Client agrees and verifies that all of the information they have given Kuware and its representatives is accurate, up to date, and without the omission of any requested information.

13.4 Client agrees and verifies that even if they have omitted any necessary personal information, whether knowingly or unknowingly, they will hold Kuware harmless against all liability for any damages that may occur to Client or others because of Client's actions or inactions.

13.5 Client agrees to notify Kuware of any changes or upcoming changes concerning their personal information.

## **14. Assumption of Risk**

14.1 Client agrees and understands that their participation in the Kuware Services may involve risks. These risks may lead to tangible or intangible harm, and Client agrees that these risks may result not only from their own actions but also from the actions of others.

14.2 With the knowledge and understanding of these risks, Client chooses, of their own will and volition, to continue participating in the Kuware Services.

14.3 All recommendations are made in good faith and on the basis of information provided to us at the time. Though each Party shall make all reasonable efforts to affect the commercial success of this agreement, both Parties recognize the inherent risks in the creation and

execution of new marketing campaigns, thus neither Party guarantees such success. Because the achievement of specific results is not assured, our statements shall not under any circumstances be interpreted as representations, warranties, or guarantees.

14.4 We can't guarantee that our work will be error-free (we're human!) so we can't be liable to you or any third party for damages, including lost profits, lost savings, or other incidental, consequential or special damages, even if you've advised us of them.

**14.5 There will be no refund under any circumstances on Setup fees after onboarding call is completed, and management fees after the campaign goes live.**

#### **15. Indemnification**

**Client agrees to defend and indemnify Kuware and any of its affiliates (if applicable) and hold them harmless against any and all legal claims and demands, including reasonable attorney's fees, which may arise from or relate to Client's use or misuse of the activities, Client's breach of this Agreement, or Client's conduct or actions. Client agrees that Kuware shall be able to select its own legal counsel and may participate in its own defense if so desired.**

#### **16. Representation**

Client agrees that they are over 18 (eighteen) years of age and may legally consent to and enter into this Agreement.

#### **17. Entire Agreement**

This Agreement constitutes the entire understanding between the Client and Kuware with respect to any and all use of the activities and facilities. This Agreement supersedes and replaces all prior or contemporaneous agreements or understandings, written or oral, regarding the Parties' relationship.

#### **18. Counterparts**

This Agreement may be executed in counterparts, all of which shall constitute a single agreement. The Agreement shall be effective as of the date set forth above.

#### **19. Survival**

Any provision of this Agreement which by its terms imposes continuing obligations on either of the parties shall survive termination of this Agreement.

#### **20. Severability**

If any part or subpart of this Agreement is held invalid or unenforceable by a court of law or competent arbitrator, the remaining parts and sub-parts will be enforced to the maximum extent possible. In such conditions, the remainder of this Agreement shall continue in full force.

## **21. Dispute Resolution**

In case of a dispute between the Parties relating to or arising out of this Agreement, the Parties shall first attempt to resolve the dispute personally and in good faith. If these personal resolution attempts fail, the Parties shall then submit the dispute to binding arbitration. The arbitration shall be conducted in the county and state noted in the GOVERNING LAW provision of this Agreement. The arbitration shall be conducted by a single arbitrator, and such arbitrator shall have no authority to add Parties, vary the provisions of this Agreement, award punitive damages, or certify a class. The arbitrator shall be bound by applicable and governing Federal law as well as the law of Texas.

Each Party shall pay its own costs and fees. Claims necessitating arbitration under this section include, but are not limited to: contract claims, tort claims, claims based on federal and state law, and claims based on local laws, ordinances, statutes, or regulations. Intellectual property claims by Kuware will not be subject to arbitration and may, as an exception to this sub-part, be litigated. The Parties, in agreement with this sub-part of this Agreement, waive any rights they may have to a jury trial in regard to arbitral claims.

Notwithstanding anything to the contrary herein, either party may seek preliminary injunctive relief to preserve the status quo prior to the submission of a claim to arbitration.

## **22. Governing Laws**

This Agreement shall be governed by the laws of the State of Texas, USA. It is agreed by the parties to this agreement, that all disputes and matters whatsoever arising under or in connection with this Agreement (whether it be under contract, tort, other legal theories, or specific statutes) shall be adjudicated, if at all, in and before a court located in Austin, TX, USA, to the exclusion of the courts of any other province, state, or country.

## **23. Notices**

All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the first page of this Agreement. All notices shall be delivered by email or at the address which the parties may designate to each other, personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only if (a) the receiving Party has received the Notice and (b) the Party giving the Notice has complied with the requirements of this Section.

## **24. Limitation of Liability; Damages**

KUWARE'S SOLE LIABILITY TO CLIENT FOR ANY LOSS, LIABILITY OR DAMAGE, INCLUDING

ATTORNEY'S FEES, FOR ANY CLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT, ANY EXHIBIT OR THE SERVICES, REGARDLESS OF THE FORM OF ACTION, SHALL BE LIMITED TO CLIENT'S ACTUAL DIRECT OUT-OF-POCKET EXPENSES WHICH ARE REASONABLY INCURRED BY CLIENT AND SHALL NOT EXCEED THE AMOUNT OF THE FEES ACTUALLY PAID TO Kuware BY CLIENT UNDER THIS AGREEMENT DURING THE TWO (2) MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH SUCH CLAIM ACCRUED. IN NO EVENT SHALL KUWARE BE LIABLE TO CLIENT OR ANY THIRD PARTY FOR LOST PROFITS, LOST DATA, CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES, HOWSOEVER ARISING OUT OF OR RELATED TO THIS AGREEMENT REGARDLESS OF THE BASIS OF THE CLAIM.

**25. Force Majeure.**

Kuware shall not be deemed in default or otherwise liable under this Agreement due to its inability to perform its obligations by reason of any fire, earthquake, flood, snowstorm, epidemic, pandemic, accident, explosion, casualty, strike, lockout, labor controversy, riot, civil disturbance, act of public enemy, embargo, war, act of God, or any municipal, county, state or national ordinance or law, or any executive, administrative or judicial order (which order is not the result of any act or omission which would constitute a default hereunder), or any failure or delay of any transportation, power, or communications system or any other or similar cause beyond Kuware's reasonable control.

**26. Confidentiality**

Kuware acknowledges its responsibility, both during and after the term of its appointment, to use all reasonable efforts to preserve the confidentiality of any proprietary or confidential information or data developed by Kuware on behalf of the Client or disclosed by the Client to Kuware.

Document Confidentiality: The contents of this Agreement are confidential and may not be shared by the Client without the prior written permission of Kuware.

**Date Signed:**

Your Name

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