

Upfluence Software

Terms and Conditions

1. Company's Services

(a) Scope of Agreement.

These Terms and Conditions ("Terms" or the "Agreement") are entered into as of the Effective Date listed in the initial Order Form by and between Upfluence Inc. ("Company") and the customer ("Customer") set forth in the Order Form. PLEASE READ THESE TERMS CAREFULLY.

Company has developed [influencer marketing software](#) and a related digital software platform (collectively, the "Platform") that allows customers to, among other things, identify and manage their relationships with influencers ("Influencers") operating on various social media channels. Company desires to allow Customer to use the Platform, along with applicable Company applications, data, materials, programs, software, and other [services](#) offered in connection with the Platform (collectively, the "Service(s)"), pursuant to the terms of this Agreement.

(b) The Platform.

Customer's specific order terms are outlined in the attached Order Form(s), which are incorporated herein by reference. Company provides its Platform as a "Software as a Service" offering. As part of the Services, Customer shall have access to materials explaining how to use the features and capabilities of the Platform, including the advanced search features. Customer acknowledges that Company does not market, sell, or advertise any products or services to Influencers, nor does Company communicate with, retain, or pay Influencers via the Platform. Company furthermore does not buy or sell non-aggregated or non-anonymized consumer data, and there is no delivery or shipment obligation, as part of the Services. To the extent that the Services may link to websites and make available through such websites or otherwise any content of third parties, including [social media platforms](#) and Influencer posts or data, Customer acknowledges that Company is not responsible for any third-party websites or content. Company is continually updating the Services and reserves the right to perform maintenance on the Services and to update prices accordingly as outlined in Section 4. This Agreement does not include any custom development of software or the Services for Customer. To the extent that the Customer may seek development services or other services or products from Company, the parties may enter into one or more Statement of Work ("SOW") referencing this Agreement and setting out the terms under which such products or services may be provided, and which shall otherwise be governed by the terms of this Agreement. In the event that there may be an irreconcilable direct conflict between the terms of an SOW and this Agreement, those conflicting terms in the SOW shall govern; provided, however that any conflicting terms in an SOW shall only apply to such SOW, and not to any future SOW(s).

(c) Support.

Company shall use commercially reasonable efforts to make the Platform available to Customer 99% of the time during any given calendar month, 7 days a week, except for (i) planned downtime; (ii) downtime caused by third-party actions; or (iii) downtime caused by circumstances beyond Company's reasonable control. Company shall provide reasonable notice, if practical, to Customer of any downtime; and Customer shall promptly report any issues with the Services or support to Company. Company shall provide Technical Support to Customer via both telephone and electronic mail during

“Support Hours,” which are weekdays from 9:00 am to 5:00 pm Eastern Time, excluding Federal Holidays and any unavailable dates/times otherwise communicated to Customer. Customer may initiate a helpdesk ticket during Support Hours by calling (415) 366-0167 or any time by emailing help@upfluence.com. Company will use commercially reasonable efforts to provide an initial response to all Helpdesk tickets within 1 business day, during Support Hours. Company may update its support terms by posting or providing new support terms at any time. Customer is responsible for reviewing any updated support terms.

2. Customer’s Account

(a) Requirements.

Customer shall create and maintain an account (“Account”) on the Platform with a unique username and password prior to and as a condition of using the Services. Use of Customer’s Account shall be solely for “Authorized Users,” which means Customer’s employees, contractors, and agents who are authorized by Customer to access and use the Services pursuant to this Agreement and who will be bound by this Agreement. Customer is responsible for maintaining the confidentiality of its Account username and password; and Customer shall promptly notify Company of any unauthorized access to its Account. Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access, or use the Services, including modems, hardware, servers, software, operating systems, networking, and the like. Customer is solely responsible for maintaining its data and regular backups of its data. Although Company has no obligation to monitor Customer’s Account or use of the Services, Company may prohibit any use of the Services, in whole or in part, or may refuse or suspend any username or password or account, that Company reasonably believes violates or is about to violate any laws or this Agreement. Company reserves rights to audit Customer’s Account, and Customer shall reasonably assist and cooperate with any audit of Customer’s Account.

(b) Prohibitions.

In using the Services and its Account, Customer agrees that it will not: (i) publish any material that is false, defamatory, harassing, or obscene; (ii) violate privacy rights or promote bigotry, racism, or harm; (iii) menace or harass any person or cause damage or injury to any person or property; (iv) rent, lease, lend, sell, sublicense, transfer, distribute, or make the Services available to any third party or any unlicensed person within or without the Customer's organization, contract with any "sub-customer" to use or make available the Services, or allow anyone other than Authorized Users to access its Account; (v) access or seek to reverse engineer the Service software code; (vi) make derivative works of, sell, sublicense, lease, transfer, copy, gift, reverse engineer, scrape, decompile, alter, modify, conceal, eliminate, or render inoperable any part of the Services; or (vii) violate any Applicable Laws as outlined below.

(c) Communications.

Customer is solely responsible for any communications on the Platform with third-party Influencers. In sending or posting any Customer content or communications ("Customer Content") to third parties on the Platform, Customer represents that: (i) it is the sole owner of or has all rights necessary for such Customer Content; (ii) the Customer Content does not infringe or violate the rights of any third party; and (iii) the Customer Content is truthful and accurate. Company reserves the right to use and retain Customer Content, including for backup, archival, and audit purposes. Customer will not use the Services to transmit any emails in violation of CAN-SPAM, including email: (i) with a "from line" that is materially false or misleading or does not accurately identify the person sending the email; (ii) with a subject line that is misleading, false, or misrepresentative or is likely to mislead the recipient about the content of the email; or (iii) that does not include a clear and conspicuous identification that the email is an advertisement or solicitation, a clear and conspicuous notice of the opportunity to decline to receive further communications, the name or registered fictitious business name of Customer, and a valid physical postal address of the Customer. With respect to calls, faxes, text, SMS, MMS, or social media messages (collectively, "SMS Marketing"), Customer will not use the Services to engage in SMS Marketing

except to contact Influencers who have provided Customer with “prior express written consent,” as that phrase is defined in the TCPA, to be contacted via SMS Marketing by Customer. Customer shall maintain, pursuant to commercially reasonable standards, records of, and shall promptly comply with, any unsubscribe, opt-out, or do not call request. To the extent that Company provides any suppression list to Customer, Customer shall regularly scrub its database(s) against such list no less than every 7 days and shall not send any communications to anyone on such list. As outlined in Section 8, Company shall have no liability for the deletion or failure to store Customer Content, messages, or other content or communications or transaction information that is maintained or transmitted by the Services.

(d) Applicable Laws.

By creating an Account and using the Services, Customer agrees to comply with the terms of this Agreement and all applicable laws (“Applicable Laws”), including all federal, state, local, and foreign statutes, laws, ordinances, rules, and regulations, including but not limited to the Telephone Consumer Protection Act, 47 U.S.C. §227, as amended, and its implementing regulations and applicable F.C.C. rulings and orders (collectively, “TCPA”), CAN-SPAM Act of 2003 (“CAN-SPAM”), California’s Anti-Spam Act, Cal. Bus. & Prof. Code §17529 et seq. (“California’s Anti-Spam Act”), the Federal Trade Commission Act and related rules, regulations, and [guidelines](#) (collectively, “FTC Act”), any applicable credit card merchant guidelines, child protection laws, laws regarding unfair and deceptive acts and practices, intellectual property and proprietary rights, defamation, and privacy, including if applicable the California Consumer Privacy Act (“CCPA”), Cal. Civil. Code §1798.100 et seq., international laws, including if applicable the United Kingdom Data Protection Act of 1998 (as amended) (“UK Data Protection Act”), the General Data Protection Regulation (GDPR) (EU) 2016/679 (“GDPR”) as amended and adopted by the UK and member states of the EU, and all related directives, acts, and regulations, and all federal laws, regulations, rules, and undertakings prohibiting or restricting the export or re-export of the Services or Customer Content outside of the United States; for clarity, in using the Services, Customer may not remove or export from the United States or allow the export or re-export of the Services or anything related thereto, or violate any restrictions, laws, or regulations of the United States Department of

Commerce or Department of Treasury Office of Foreign Assets Control or any other United States or foreign agency or authority.

(e)

To the extent Customer provides data or personal information of any consumer or third party to Company, it shall do so in keeping with all Applicable Laws, its own website terms and conditions, and privacy policies, and Customer is solely responsible and liable for, and shall promptly act upon and provide to Company, as applicable, any opt-out or requests for information made by Customers and pertaining to their personal information. Customer shall also promptly advise Company (and maintain such advice current) of the zip codes, countries of domicile of consumers, and shall further refrain from knowingly providing Company with any personal information of any person under the age of 14. Finally, in the event that Company may receive a request for information, notice of audit or complaint or claim under any privacy statute or Applicable Law, it shall advise Company of such notice, complaint or claim promptly, unless prohibited by Applicable Law.

3. Intellectual Property and Confidentiality

(a) Company's IP.

Company shall own all rights, title, and interest in and relating to the Services, including any software, applications, inventions, improvements, modifications, data, data organization structure, scripts, methods of doing business, algorithms, know-how, source codes, tags, links, pixels, underlying technology, and technology developed in connection with the Services, and it shall own, to the full extent permitted by law, any aggregated or anonymized data comprising, created from, or pertaining to, information provided to Company by Customer (or provided directly to Company by users) in

connection with any retail web product module(s) that may be provided under this Agreement (including, without limitation, transaction data, social media handles, email addresses, and other related information pertaining to such retail web module) (all such data referred to as “Aggregated Data”), as well as Company’s name, logos, trademarks, trade names, service marks, copyrights, URLs, slogans, and other intellectual property (collectively, “Company’s IP”). Company’s IP does not include content provided by Influencers or other third-parties, but it does include Company’s software, layers of capabilities, and other parts of the Services. Subject to this Agreement, Company hereby grants to Customer a revocable, non-transferable, non-exclusive, royalty free, limited license to use the Services solely for the term and purposes of this Agreement. For clarification, this limited license also applies to Company’s IP that is expressly distributed or provided to Customer for use on Customer’s premises or devices, such as if Customer integrates with Company’s software via API to use data internally; in such cases, Customer shall only use Company’s IP for internal business purposes pursuant to the terms of this Agreement and shall not disclose or distribute the data to third parties for any purposes. Company may revoke Customer’s right to use Company’s IP by providing written notice of revocation; however, such revocation will not apply retroactively. Customer shall not claim any other interest in Company’s IP, make derivative works of, sell, sublicense, lease, transfer, copy, gift, reverse engineer, scrape, decompile, alter, modify, conceal, eliminate, or render inoperable Company’s IP, or attempt to do or assist in the foregoing. Upon termination of this Agreement, or upon Company’s written request, Customer will promptly destroy and discontinue the use of the Services. Company reserves all rights relating to Company’s IP and the license outlined above, and nothing in this Agreement shall restrict or limit Company’s use of the same for any purpose.

(b) Customer’s IP.

Customer shall own all rights, title, and interest in and relating to Customer’s data, including Customer Content, and Customer’s name, logos, trademarks, trade names, service marks, copyrights, URLs, slogans, and other intellectual property (collectively, “Customer’s IP”). Subject to this Agreement, Customer hereby grants to Company a perpetual, royalty free, worldwide, assignable, transferable, sub-licensable license to use, reproduce, and display Customer’s

IP, as well as data and information applicable to any retail web product module made available by Company and licensed by Customer as set forth in the Order Form (including, without limitation, customer transactional data and information pertaining to such retail web product modules provided by Company), as a part of marketing, advertising, carrying out, improving and updating the Services. Customer may revoke Company's right to use Customer's IP by providing written notice of revocation; however, such revocation will not apply retroactively or to any aggregate or statistical data that does not identify Customer by name and that Company may use in relation to the Services. Company shall not claim any other interest in Customer's IP. Upon termination of this Agreement, Company shall retain the right to use Customer's IP in connection with the Services as outlined above, unless expressly and validly revoked upon Customer's written request to Company, and provided that Company shall, to the full extent permitted by law, retain ownership of all Aggregated Anonymized Data; to the extent that for any reason, Company shall not be deemed to own such Data, it shall have a perpetual, worldwide, irrevocable and paid-up-in-full license to use any such Data that has, prior to effective date of revocation, been integrated into any materials, algorithms, or other materials to improving its Platform and Services offerings, and for any other bona fide commercial purpose.

(c) Confidentiality.

Each Party agrees to use the other Party's Confidential Information solely for the purposes of this Agreement and to refrain from disclosing the other Party's Confidential Information to any third party, unless disclosure is: (i) necessary and permitted in connection with the receiving party's performance of its obligations or exercise of its rights under this Agreement or any other agreement between the Parties; (ii) required by law, provided that the receiving party uses reasonable efforts to give the disclosing party reasonable notice so as to afford the disclosing party an opportunity to intervene and seek appropriate relief for the protection of its Confidential Information from use or disclosure; or (iii) made with the consent of the disclosing party. "Confidential Information" includes the terms of this Agreement and any information that is treated or marked as confidential by either Party, including trade secrets, technology, business strategies, and information pertaining to customers, pricing, marketing, know-how,

processes, products, and services. The term “Confidential Information” does not include information that: (i) at the time of the disclosure or thereafter is or becomes generally available to the public other than as a result of its disclosure by the receiving party in violation of this Agreement; (ii) was or becomes available to the receiving party on a non-confidential basis from a source other than the disclosing party; (iii) is independently developed by the receiving party without the use of any Confidential Information; or (iv) was in the possession of the receiving party prior to being disclosed to the receiving party by the disclosing party. To the extent that, through use of the Platform and provision of the Services, any information or data that would constitute “Confidential Information” and which may be provided to both parties by any third party, shall be deemed the Confidential Information of each party, and may be utilized as each party’s own Confidential Information.

(d) No Misuse of Information.

Given the exchange of Confidential Information, each respective Party agrees that it will not: (i) solicit or circumvent any business relationships involving the other Party, unless there was a prior-existing relationship with the respective Party; or (ii) publish any statement about the other Party that contains Confidential Information or that is libelous, harassing, abusive, obscene, vulgar, sexually explicit, or clearly false or misleading. Company reserves the right to terminate this Agreement and Customer’s Account at any time without liability to Company should Company determine, in its sole and absolute discretion, that Customer engaged or engages in fraud, dishonesty, or any other misrepresentation (collectively, “Fraud”), including but not limited to scraping or reverse engineering the Services, that causes or is likely to cause harm to Company. Customer acknowledges that there is a potential for third-party fraud, which is outside the control of Company, and that Company shall not be liable for any instances of fraud by third parties.

4. Payment of Fees

(a) Fees.

Customer shall timely pay Company all Fees described in the Order Form(s) (including “Base Fees” for any particular Platform feature or module) in full without any setoff, deduction, refund, or credit, except as expressly provided for herein. Unless otherwise specified in the Order Form, Company may increase Fees in its sole discretion up to 2 times per calendar year upon 30 days’ written notice to Customer, or at the end of any Term as defined in Section 5. Fees shall be due by the monthly date that the recurring billing commences as set forth in the Order Form(s) (with no pro-rating). As may be reflected in the Order Form(s) or invoices, additional fees will be added and due for any software upgrades, additional modules, or any additional products or services requested by Customer. Company further reserves the right to add additional fees for implementation and/or setup if applicable. If Customer’s use of the Services exceeds the Service Capacity set forth on the Order Form(s), or if payment of additional Fees is otherwise owed, Customer shall be billed and pay for all such Fees. The Parties shall each be responsible for the payment of their own taxes and other obligations. Unpaid Fees are subject to a charge of 3% per month on any outstanding balance, or the maximum amount permitted by New York law. In the event of a failure to pay, Customer will also be liable to Company for all expenses of collection, including but not limited to collection agency and reasonable attorney’s fees, and court costs and other recoverable fees and expenses to the full extent allowed by law, as well as any fees relating to credit card charges or chargebacks. Customer agrees that it will not seek any chargebacks, except in cases involving third-party theft or fraud (e.g., if a charge was fraudulently authorized by someone who stole Customer’s credit card). It shall be a material breach of this Agreement, resulting in immediate termination of this Agreement and the Services, as well as collection efforts, without any further notice to Customer if: (i) Customer fails to timely pay all Fees; or (ii) Customer expressly states that it will not timely pay all Fees.

1. If the Customer is on a monthly billing plan, including, without limitation the “Community Size Plan” (relating to the number influencers available in their “CRM”), the Customer will be billed as reflected in the applicable Order Form. Thereafter, the Customer can make changes to the size of its plan and the number of available influencers available to it by upgrading or downgrading the plan using the “billing and usage” settings for the Customer’s account, accessible via the Customer’s account settings. To do so, the Customer will be

provided a fee schedule, and will select a Community Size Plan reflecting the maximum number of influencers in its Community Size. The Customer will be charged by, and pay to, Company each month, the monthly fee that corresponds to the Community Size it chooses. Upgrades (and the monthly charges relating thereto) will be effective immediately upon selection of a new Community Size and prorated based on Customer's billing cycle. Downgrades will be effective as of the first day of billing period following the month in which the downgrade was made, and Customer's will not be entitled or subject to any pro rata adjustment of charges for downgrades in the Community Size Plan made mid-month. The fee schedule for the Community Size Plan is set forth in Exhibit A.

2. To the extent that the Order Form calls for the payment of fees charged in connection with usage or on a per-transaction basis, including, without limitation, use exceeding service capacity set forth on the Order Form ("Service Capacity"), additional database access fees or database increases, unit/transaction-based fees (including click-through based fees), or package upgrades (collectively "Variable Fees"), such Variable Fees shall be paid as set forth in the Order Form, and payment may be due in advance with respect to anticipated charges, or, unless otherwise provided in the Order Form, shall be due and payable with the next installment of Base Fees.
3. Some Variable Fees may be billed with respect to prior billing period(s), depending on the character of the fees, such as, without limitation, fees with respect to use exceeding Service Capacity.
4. If applicable, the fee schedule for Variable Fees pertaining to captured ID's is set forth in Exhibit A. For purposes of any fees pertaining to or based on a number of "Active Influencers" in a given month, each new social media handle captured during a calendar month (or with respect to a social media handle captured in a prior month, but which is not cancelled before the applicable calendar month) shall be an "Active Influencer", regardless whether the user may cancel its participation during such month relating to the calculation of Variable Fees. (For avoidance of doubt, an Active [Influencer](#) shall be considered "Active" for purposes of any calculation on Exhibit A if its participation in the Program may be active at any time in a given calendar month, calculated on the basis of the Eastern time zone in the United States.) If any Active Influencer may terminate its participation in a given month,

it shall not be deemed an Active Influencer for the *subsequent* calendar month.

(b) Service Credits.

If the Services are unavailable for any reason, including planned or unplanned downtime, Customer's sole remedy shall be to obtain "Service Credits," which shall be 5% of Fees paid during the last 30 days for each day that the Services are unavailable, provided that: (i) Customer notified Company in writing within 24 hours of the start of the unavailability; (ii) the unavailability did not stem from Customer's actions or termination of this Agreement; (iii) the unavailability lasted more than 3 consecutive hours; (iv) the maximum Service Credits shall be for 7 days for any 1 calendar month; and (v) the Service Credits may only be applied in the same month, or the immediate next month, of the unavailability.

(c) Fee Disputes.

If Customer disputes any issue(s) relating to Fees, including the amount of Fees or Service Credits in light of Services or support provided, Customer must notify Company's customer support department in writing of the dispute, and submit any evidence supporting Customer's position, within 15 days after the dispute arose by emailing help@upfluence.com with the subject line "Fee Dispute." If the Parties are unable to reach a resolution as to the amount of Fees due, Company's reasonable determination shall govern. In any action or proceeding to enforce rights under this Agreement, including to recover outstanding Fees, the prevailing party will be entitled to recover reasonable costs and attorney's fees.

5. Term and Termination

(a) Term and Renewal.

The duration of this Agreement shall be from the Effective Date through the Initial Term as outlined in the Order Form(s). This Agreement shall be automatically renewed for additional periods of 12 months based on the Renewal Date, as the Renewal Term(s), (“Renewal Term”) (collectively, “Term(s)”) , unless otherwise provided in the Order Form or terminated earlier in accordance with this Agreement. The Renewal Date shall replace the Effective Date, based on the first payment date or the issuance of account credentials, whichever occurred first (“Renewal Date”). This Agreement will automatically renew for additional Renewal Terms, unless terminated by either Party with at least a 30 days’ previous notice before the end of the current Term; and Company will provide at least 30 days’ notice of each Renewal Term to Customer.

(b) Termination.

In the event that: (i) Customer breaches or threatens to breach its obligations in Sections 2-4 or 6; (ii) the Services or a material part of the Services become unavailable due to third-party actions or in Company’s sole discretion; (iii) Company suspends or terminates Customer’s Account for violation or threatened violation of this Agreement or any Applicable Laws; or (iv) Company elects to terminate this Agreement pursuant to Section 7 in the event of an allegation of infringement, Company may, in its sole and absolute discretion, immediately terminate this Agreement for any or no reason upon 30 days’ notice to Customer. In the event that either Party: (i) files a voluntary petition in bankruptcy; (ii) makes an assignment for the benefit of its creditors; or (iii) breaches this Agreement and fails to remedy its breach within 30 days of written notice of its breach, this Agreement shall automatically terminate.

(c) Effect of Termination.

Upon termination of this Agreement, Customer will immediately discontinue use of the Services and pay all outstanding Fees. Customer will not be

entitled to any setoff, deduction, refund, or credit of Fees, except as expressly provided for herein, and termination will not excuse Customer from paying Fees under this Agreement. Termination will end Customer's right to use the Services; and Customer agrees that Company has no obligation to retain any Customer Content or other data for Customer. Without limiting any other provisions, Sections 3-4 and 6-11 shall expressly survive any termination.

6. Representations and Warranties

(a) Company's Warranties.

Company represents and warrants that, subject to Section 8: (i) Company's IP and Services shall not knowingly infringe on any third-party right or interest; and (ii) Company shall use reasonable efforts to maintain the material aspects of the Services and related support, as outlined in Section 1, in a professional manner during the Term(s) of this Agreement, but disclaims any conduct by third parties.

(b) Customer's Warranties.

Customer represents and warrants that, subject to Section 8: (i) Customer's IP and Customer Content shall not knowingly infringe on any third-party right or interest; and (ii) Customer's use of the Services and any use of Customer's Account shall at all times comply with all Applicable Laws and all terms of this Agreement, including Sections 2-4.

7. Defense and Indemnification

(a) Company's Obligations.

Subject to Section 8, Company shall defend, indemnify, and hold harmless Customer, its directors, officers, employees, agents, successors, and assigns from and against any and all claims, actions, losses, liability, damages, costs, and expenses (including reasonable attorney's fees and court costs) (collectively, "Claims") arising from or related to Company's knowing violation(s) of its representations and warranties in Section 6. However, if a Claim arises from or relates to an allegation of infringement, Company may, in its sole discretion, opt to: (i) replace or modify the Service to be non-infringing to Company's satisfaction, provided that such modification or replacement contains substantially similar features and functionality; (ii) obtain a license for Customer to continue using the Service; or (iii) if neither of the foregoing are commercially practicable, terminate this Agreement and Customer's rights hereunder and provide Customer a refund of any prepaid unused Fees for the Services.

(b) Customer's Obligations.

Subject to Section 8, Customer shall defend, indemnify, and hold harmless Company, its directors, officers, employees, agents, successors, and assigns from and against any and all Claims arising from or related to Customer's Account as outlined in Section 2, Customer's violation(s) of its representations and warranties in Section 6, or, as applicable any claims made or threatened by a consumer arising from or relating to (i) the Customer's provision (or failure to adequately provide) any product or service, (ii) any violation by Customer of its own website terms and conditions, any privacy policies, (iii) any violation of Applicable Laws by Customer or its employees, or (iii) the operation of Customer's website or business, including any claims of discrimination, infringement or other wrongful acts.

(c) Notice.

This Section requires that the indemnitee provide the indemnitor with prompt written notice of any claim. The indemnitee shall have the right to

participate in the defense and to retain defense counsel at its expense. The indemnitor shall not have authority to settle any claim on the indemnitee's behalf without the indemnitee's prior written consent.

8. Limitation of Liability and Disclaimer of Warranty

THESE PROVISIONS APPLY TO THE MAXIMUM EXTENT PERMITTED BY LAW. THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE." COMPANY DOES NOT WARRANT THAT OPERATION OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. THE SERVICES MAY, FROM TIME TO TIME, BE UNAVAILABLE, INCLUDING DUE TO PLANNED OR UNPLANNED DOWNTIME, THIRD-PARTY ACTIONS, OR FACTORS BEYOND COMPANY'S REASONABLE CONTROL. CUSTOMER'S SOLE REMEDY FOR UNAVAILABILITY OF THE SERVICES ARE SERVICE CREDITS OUTLINED IN SECTION 4. COMPANY SHALL NOT OTHERWISE BE LIABLE FOR ANY LOSS, INTERRUPTION, DELAY OR UNAVAILABILITY OF THE SERVICES, INCLUDING ANY INFORMATION, DATA OR CONTENT PROVIDED VIA THE PLATFORM OR SERVICES, DATA SECURITY, OR LOSS OF CUSTOMER'S DATA. COMPANY SHALL NOT BE LIABLE FOR ANY LOSS, DELETION, OR FAILURE TO STORE ANY CONTENT, INCLUDING CUSTOMER CONTENT. CUSTOMER ACKNOWLEDGES THAT THE SERVICES MAY RELY UPON THIRD PARTIES, INCLUDING FOR TECHNICAL FUNCTIONS, INFLUENCER CONTENT, AND ACCESS TO SOCIAL MEDIA PLATFORMS; NONETHELESS, COMPANY SHALL NOT BE LIABLE TO CUSTOMER FOR ANY THIRD-PARTY CONTENT OR ACTIONS, INCLUDING: (a) INFLUENCER CONTENT (E.G., POSTS OR DATA); (b) ACTIONS BY SOCIAL MEDIA PLATFORMS, SUCH AS CHANGES IN TERMS; (c) SERVICES (E.G., INTERNET OR PAYMENT PROCESSING SERVICES), or (d) CONSUMER CLAIMS PERTAINING TO THE DATA PROVIDED BY CUSTOMER TO COMPANY.

EXCEPT AS EXPRESSLY PROVIDED IN SECTION 6, COMPANY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING

BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT; AND COMPANY SHALL NOT BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, STATUTORY, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST REVENUE, LOST PROFITS, OR LOSS OF CONTENT, DATA, OR BUSINESS, ARISING FROM OR RELATED TO THE PERFORMANCE UNDER, OR BREACH OF, THIS AGREEMENT OR THE SERVICES, INCLUDING ACCURACY OF ANALYTICS OR DATA PERTAINING TO OR OBTAINED FROM CONSUMERS OR THIRD PARTIES, FOR THIRD-PARTY CONDUCT, VIRUSES, HACKING, THREATS, OR DATA SECURITY OR PRIVACY ISSUES. IN NO EVENT WILL THE AGGREGATE LIABILITY OF COMPANY OR ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS, AND ASSIGNS, WHETHER UNDER CONTRACT, TORT, STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL FEES THAT CUSTOMER PAID TO COMPANY IN THE 6 MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS ITS ESSENTIAL PURPOSE AND REGARDLESS OF ANY NOTICE OTHERWISE.

9. Force Majeure

Except as otherwise expressly provided in this Agreement, neither Party shall be deemed in default of this Agreement to the extent that performance is prevented by circumstances beyond that Party's reasonable control, including natural disasters, shutdowns, malfunctions, technical failures, or third-party data security breaches or criminal misconduct.

10. Governing Law, Arbitration, Jurisdiction, and Equitable Relief

(a) Choice of Law.

This Agreement shall be treated as though it was executed and performed in the State of New York and shall be governed and construed in accordance with the State laws of New York without regard to conflict of law principles.

(b) Limitations Period.

ANY CAUSE OF ACTION BY CUSTOMER ARISING OUT OF OR RELATING TO THE SERVICES OR THIS AGREEMENT MUST BE INSTITUTED WITHIN 1 YEAR AFTER THE CAUSE OF ACTION AROSE OR WILL BE FOREVER WAIVED.

(c) Requirement of Arbitration.

The Parties agree that, except as otherwise provided below, any claim or dispute of any nature between Customer and Company arising out of or relating to the Services or this Agreement shall be decided by neutral, binding and confidential arbitration before a representative of JAMS in New York, New York unless Customer and Company mutually agree to a different arbitrator, who shall render an award in accordance with the substantive laws of New York and JAMS' Streamlined Arbitration Rules & Procedures. The arbitrator shall award reasonable costs (including, without limitation, the JAMS fee) and attorney's fees incurred, to the prevailing party. A final judgment or award by the arbitrator may then be duly entered and recorded by the prevailing party in the appropriate court as final judgment.

(d) Remedies in Aid of Arbitration and Equitable

Relief.

This agreement to arbitrate will not preclude Customer or Company from seeking provisional remedies in aid of arbitration, including without limitation orders to stay a court action, compel arbitration, or confirm an arbitral award, from a court of competent jurisdiction. Furthermore, this agreement to

arbitrate will not preclude either Customer or Company from applying to a court of competent jurisdiction for a temporary restraining order, preliminary injunction, or other interim or conservatory relief, as necessary, including to enforce Section 3. Customer acknowledges and agrees that this provision would allow Company, among other things, to seek an injunction for threatened or actual infringement or use of Company's IP or to protect Company's Services, including its Platform and data. THE PROPER VENUE FOR ANY ACTION PERMITTED UNDER THIS SUBSECTION REGARDING EQUITABLE RELIEF WILL BE THE FEDERAL AND STATE COURTS IN NEW YORK, NEW YORK; THE PARTIES HEREBY WAIVE ANY OBJECTION TO THE VENUE AND PERSONAL JURISDICTION OF SUCH COURTS.

(e) Waiver of Class Action, Joinder, and Jury.

NEITHER CUSTOMER NOR COMPANY WILL JOIN ANY ARBITRAL CLAIM WITH THE CLAIM OF ANY OTHER PERSON OR ENTITY IN ANY LAWSUIT, ARBITRATION, OR OTHER PROCEEDING. NO ARBITRAL CLAIM WILL BE RESOLVED ON A CLASS-WIDE BASIS. NEITHER CUSTOMER NOR COMPANY WILL ASSERT AN ARBITRAL CLAIM IN A REPRESENTATIVE CAPACITY ON BEHALF OF ANYONE ELSE. EACH PARTY KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY WAIVES ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY.

11. Third-Party Content

The Services may contain and link to third-party websites or content. Company has no obligation to review the accuracy or completeness of third-party websites or content. Company does not have control over third parties, each of which may have its own terms and/or privacy policy. Customer assumes all responsibility for any harm resulting from third-party content or websites. Customer is responsible for reviewing and agreeing to any third-party terms. Company makes no warranties or representations regarding any third-party products or services. To the fullest extent permitted by law, Company expressly disclaims any liability regarding representations, claims, or warranties relating to third-party products or services.

12. Miscellaneous

The Parties' execution of this Agreement (and any subsequent Order Form(s)) constitutes their complete agreement as to the terms and conditions relating to the subject matter hereof and supersedes any prior verbal, written, or other agreements regarding the matters outlined in this Agreement. Except as expressly provided for herein, this Agreement may not be modified except by an instrument in writing signed by each Party. If the terms of this Agreement conflict with any Order Form(s), the Order Form(s) will govern with respect to such term(s) and invoicing/payment/support terms/renewal terms/special terms; otherwise this Agreement shall govern and control. This Agreement will be binding upon and will inure to the benefit of the Parties, their successors, and permitted assigns. This Agreement is not assignable, transferable or sublicensable by Customer except with Company's prior written consent. Company may assign or transfer this Agreement, and any and all rights granted hereunder, in its sole discretion, at any time, without Customer's consent. The failure to exercise a right or require performance of an obligation under this Agreement shall not affect a Party's ability to exercise such right or require such performance at any time thereafter nor shall the waiver of a breach constitute waiver of any subsequent breach. The Parties are independent contractors; this Agreement does not create any agent, joint venture, principal, employer, employee, or owner relationship. Headings are for convenience only and do not constitute a part of this Agreement. All notices under this Agreement shall be in writing, unless otherwise expressly stated, using the contact information provided above. Each Party had the reasonable opportunity to rely on legal advice from counsel with respect to this Agreement, which shall not be construed against the drafter. The agent signing on behalf of the Parties shall be authorized signatories as outlined in the Order Form(s), which are incorporated herein by reference, and the Parties represent that they have read and agree to be bound by the terms of the signed Order Form(s) and these Terms. This Agreement may be executed in counterparts and by electronic signature through the Order Form(s). If any provision of this Agreement or application thereof is held invalid, the invalidity shall not affect other provisions, which can be given effect without the invalid provisions and to this end the provisions of this Agreement are declared to be severable.

Exhibit A

Exhibit A

Maximum Community Size	Price	Frequency
Up to 100 creators	Free	month
Up to 250	\$ 20.00	month
Up to 500	\$ 50.00	month
Up to 1000	\$ 85.00	month
Up to 2000	\$ 145.00	month
Up to 3000	\$ 205.00	month
Up to 4000	\$ 265.00	month
Up to 5000	\$ 325.00	month
Up to 7500	\$ 450.00	month
Up to 10000	\$ 575.00	month

Up to 15000	\$ 825.00	month
Up to 20000	\$ 1,075.00	month
Up to 25000	\$ 1,325.00	month
Up to 50000	\$ 2,575.00	month
Up to 75000	\$ 3,825.00	month
Up to 100000	\$ 5,075.00	month

Upfluence Additional

Product Terms

EFFECTIVE DAY 10 MAY 2023

THESE UPFLUENCE ADDITIONAL PRODUCT TERMS (“ADDITIONAL PRODUCT TERMS”) DESCRIBE THE SPECIFIC TERMS FOR CERTAIN UPFLUENCE SERVICES OR FEATURES THEREOF OFFERED BY UPFLUENCE (“ADDITIONAL PRODUCTS”). BY USING THE ADDITIONAL PRODUCTS, YOU AGREE THAT THE UPFLUENCE TERMS OF SERVICE (“TOS”) OR UPFLUENCE MASTER SERVICE SUBSCRIPTION AGREEMENT (“MSSA”) RESPECTIVELY, THE “AGREEMENT”, AS APPLICABLE, BETWEEN UPFLUENCE AND THE ENTITY THAT ENTERED INTO THE AGREEMENT WITH UPFLUENCE (“CUSTOMER” OR “YOU”) IS HEREBY INCORPORATED AND THE APPLICABLE ADDITIONAL PRODUCT TERMS DESCRIBED BELOW FORM A PART OF THE AGREEMENT.

In the event of a conflict with the Agreement and the Additional Product Terms, the Applicable Product Terms will control to the extent of the conflict. A violation of these Additional Product Terms is a violation of the Agreement. Capitalized terms not defined herein have the meaning given to them in the Agreement.

The services covered by these Additional Product Terms are:

ChatGPT Compose, ChatGPT Reply, and ChatGPT Assist.

ChatGPT Compose, ChatGPT Reply, and ChatGPT Assist are separate, stand-alone Services accessible apart from other Upfluence Service(s) to which you subscribe. These services are AI-powered technology that facilitate customer support conversations through the Upfluence platform and are powered by large language models (LLM) provided by third party AI companies (“Third Party LLM Provider”) as well as Upfluence’s proprietary machine learning.

Processing by Third Party LLM Providers. When using ChatGPT Compose, ChatGPT Reply, or ChatGPT Assist, Third Party LLM Provider acts as a sub-processor of personal data submitted to these services, including personal data that may be contained in Inputs (defined below) or other Customer Data. All personal data processing activities will be governed by the DPA in place between Upfluence and Customer.

Location of Processing. Currently, Third Party LLM Provider’s services are hosted in the United States only. If Customer elects to use ChatGPT Compose, ChatGPT Reply, or ChatGPT Assist, personal data sent to such Third Party LLM Providers will be processed in the United States (as described in our sub processors page).

ePHI Data. Any Business Associate Agreement entered into between Customer and Upfluence does not apply to ChatGPT Compose, ChatGPT Reply, or ChatGPT Assist. Customer shall be solely responsible for any electronic protected health information (ePHI) submitted to these services by Customer, and Upfluence is not subject to any additional obligations that apply to such ePHI.

Inputs and Outputs. Questions, data, content or information submitted to ChatGPT Compose, ChatGPT Reply, or ChatGPT Assist by or on behalf of Customer (including help center content provided and/or instructed to be used by Customer) (“Inputs”) and answers or other results generated by these services based on such Inputs (“Outputs”) are deemed Customer Data under the Agreement and subject to the rights, restrictions and obligations applicable thereto. Notwithstanding the foregoing, third parties may submit information or materials that generate results that are identical or similar to Outputs (“Third-Party Results”), and Customer acknowledges it has no right, title or interest in or to any Third-Party Results.

Accuracy. Outputs may contain material inaccuracies and may not reflect correct, current or complete information. Do not mislead anyone that Output is human-generated. Do not rely, or encourage others to rely, on any Outputs without independently evaluating their accuracy and appropriateness of use, including by using human review. Upfluence makes no representations or warranties and provides no indemnities with respect to Outputs.

Rights to Use. Customer permits Third Party LLM Provider to use Inputs and Outputs or other Customer Data submitted to ChatGPT Compose, ChatGPT Reply, or ChatGPT Assist as necessary to provide and maintain these services, comply with applicable Laws, and enforce its respective policies.

Restrictions on Use. In addition to any general obligations and restrictions pertaining to Customer’s use of Services under the Agreement, Customer represents and warrants that:

1. Customer’s use of ChatGPT Compose, ChatGPT Reply, or ChatGPT Assist will not breach or violate the AUP or any third party terms, policies or other agreements, including applicable OpenAI policies, nor will Customer use these services to generate content for dissemination in electoral campaigns or content that encourages violence, terrorism, or other serious harm;
2. Customer will only provide and/or instruct to be used help center content from publicly accessible website(s) or other sources where its use (including data extraction) is explicitly permitted and/or where Customer is authorized to do so; and

Customer will not, nor permit others, to: (i) use ChatGPT Compose, ChatGPT Reply, or ChatGPT Assist to develop any models that compete with Upfluence or Third Party LLM Provider or (ii) use any method to extract data, or infer

information, from these services or otherwise attempt to discover underlying components of these services (e.g., models, algorithms, systems) (except to the extent such restrictions are contrary to applicable law).

1. Customer will be fully responsible for use of ChatGPT Compose, ChatGPT Reply, or ChatGPT Assist (including any and all Inputs submitted) by any Permitted User and Person as if performed by Customer.

Usage Limits;

Availability. Upfluence may monitor and limit or suspend Customer's usage of ChatGPT Compose, ChatGPT Reply, or ChatGPT Assist if Upfluence believes it may negatively affect the security, operability, or integrity of any Services (including, without limitation, bypassing or circumventing any rate limits), violate the Agreement or otherwise impose liability on Upfluence. No service level agreement with Upfluence applies to ChatGPT Compose, ChatGPT Reply, or ChatGPT Assist.