



Creator Master Services Agreement

BRKFST MARKETING PLATFORM

CREATOR MASTER SAAS SUBSCRIPTION AND SERVICES AGREEMENT

This Master SaaS Subscription and Services Agreement (this “**Agreement**“), effective as of the date this Creator created its account (the “**Effective Date**“), is by and between Agency Within LLC, d/b/a brkfst (“**brkfst**“), and a “**Creator**”. Brkfst and Creator may be referred to herein collectively as the “**Parties**” or individually as a “**Party**.”

RECITALS

WHEREAS, brkfst provides access to the Platform and Services to its customers; and

WHEREAS, Creator desires to access and subscribe to the Platform and Services, and brkfst desires to provide Creator access to the Platform and Services, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1) **Services.**

- a) **Purpose.** This Agreement sets forth the terms and conditions under which brkfst agrees to provide access to (i) certain hosted “software as a service” (“**Services**”) for certain software applications (each such application together with any applicable documentation thereto, and programming and user interfaces therefor, a “**Platform**”) to Authorized Users, as further set forth on each brief (a “**Brief**”). Subject to the terms and conditions of this Agreement, during the Term, brkfst shall use commercially reasonable efforts to provide Creator and Authorized Users access to each of the Platform and the Services.
- b) **Services.** Each applicable Brief shall specify and further describe the Services to be provided in accordance with the representations and warranties set forth herein, and shall identify, each applicable Platform, user limitations, fees, Service term and other applicable terms and conditions.
- c) **Changes to Platform.** Brkfst may, in its sole discretion, make any changes to any Platform that it deems necessary or useful to: (i) maintain or enhance (a) the quality or delivery of brkfst’s products or services to its customers, (b) the

competitive strength of, or market for, brkfst's products or services, or (c) such Platform's cost efficiency or performance; or (ii) to comply with applicable law.

- d) Changes to Terms. Brkfst may make changes to the terms and conditions of this Agreement at any time. Upon a change to the terms and conditions herein, Creator shall have the option of agreeing to the updated terms and conditions or discontinuing Creator's access to the Platform, effective immediately, provided that brkfst may not retroactively change any pricing accepted by a Creator in a pre-existing Brief. Brkfst may implement changes to the terms and conditions of this Agreement by emailing such updated terms and conditions to Creator at the email address provided by such Creator to brkfst. By continuing to use the Platform after receipt of updated terms and conditions to this Agreement, a Creator thereby accepts and agrees to such updated terms and conditions to this Agreement.

2) **Access and Use; License**.

- a) Provision of Access; License. Subject to and conditioned on Creator's compliance with all terms and conditions of this Agreement, brkfst hereby grants Creator a non-exclusive, non-sublicensable, non-transferable (except in compliance with Section 12(g) hereof), worldwide license to access and use the Platform and Services during the Term, solely for use by Authorized Users in accordance with the terms and conditions herein. Such use is limited to Creator's internal use. Brkfst shall provide to Creator the necessary passwords and network links or connections to allow Creator to access the Platform and Services. For the avoidance of doubt, this Agreement solely covers Creator's access to and use of the Platform and the Services themselves, not the underlying accounts and/or controls.
- b) Use Restrictions. Creator shall not use the Platform or Services for any purposes beyond the scope of the access granted in this Agreement. Creator shall not at any time, and shall not permit any person, including but not limited to any Authorized Users at any time, to directly or indirectly, (i) copy, modify, or create derivative works of the Platform or Services, in whole or in part; (ii) sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Platform or Services; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Platform or Services, in whole or in part; (iv) remove any proprietary notices from the Platform or Services; or (v) use the Platform or Services in any manner or for any purpose that infringes upon, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.
- c) Creator Compliance. Creator shall use, and will ensure that all Authorized Users use, the Platform and Services in full compliance with this Agreement, brkfst's end-user terms of use and all applicable laws and regulations. Creator represents and warrants that it (i) has accessed and reviewed the terms of use and/or other policies relating to the Platform and Services provided by brkfst, (ii) understands the requirements thereof, and (iii) agrees to comply therewith. Although brkfst has no obligation to monitor Creator's use of the Platform, brkfst may do so and

may prohibit any use it believes may be (or alleged to be) in violation of the foregoing.

- d) Reservation of Rights. Brkfst reserves all rights not expressly granted to Creator in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Creator or any third party any intellectual property rights or other right, title, or interest in or to the Brkfst IP.
 - e) Suspension. Notwithstanding anything to the contrary in this Agreement, brkfst may temporarily suspend Creator's, and any Authorized User's, access to the Platform or all or any portion of the Services if: brkfst reasonably determines that (A) there is a threat to or attack on any of the brkfst IP; (B) Creator's or any Authorized User's use of the brkfst IP disrupts or poses a security risk to the brkfst IP or to any other customer or vendor of brkfst; (C) Creator, or any Authorized User, is using the brkfst IP for fraudulent or illegal activities;; or (D) brkfst's provision of the Platform or Services to Creator or any Authorized User is prohibited by applicable law; (ii) any vendor of brkfst has suspended or terminated brkfst's access to or use of any third-party services or products required to enable Creator to access the Platform or Services; or (iii) brkfst believes that Creator is in violation of this Agreement (any such suspension described in subclause (i), (ii), or (iii) a "**Service Suspension**"). Brkfst shall use commercially reasonable efforts to provide written notice of any Service Suspension to Creator and to provide updates regarding resumption of access to the Platform and Services following such Service Suspension. Brkfst shall use commercially reasonable efforts to resume providing access to the Platform and Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Brkfst will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Creator or any Authorized User may incur as a result of a Service Suspension.
 - f) Aggregated Statistics. Notwithstanding anything to the contrary in this Agreement, brkfst may monitor Creator's use of the Platform and Services and collect and compile Aggregated Statistics. As between brkfst and Creator, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by brkfst. Creator acknowledges that brkfst may compile Aggregated Statistics based on any Creator Data input into the Platform and Services. Creator agrees that brkfst may (i) make Aggregated Statistics publicly available in compliance with applicable law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable law; provided, that such Aggregated Statistics do not identify Creator or Creator's Confidential Information.
- 3) Creator Responsibilities.
- a) General. Creator is responsible and liable for all uses of the Platform and Services resulting from access provided by Creator, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Creator is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would

constitute a breach of this Agreement if taken by Creator will be deemed a breach of this Agreement by Creator. Creator shall make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Platform and Services, and shall cause Authorized Users to comply with such provisions.

- b) Third-Party Products. Brkfst may, from time to time, make Third-Party Products available to Creator. For purposes of this Agreement, such Third-Party Products are subject to their own terms and conditions and the applicable flow-through provisions. If Creator does not agree to abide by the applicable terms for any such Third-Party Products, then Creator should not install or use such Third-Party Products.

4) **Omitted**.

- 5) **Fees and Payment**. Creator may be entitled to certain fees ("Fees") as set forth in a Brief, however brkfst does not and cannot guarantee that any particular Brand Campaign or Brief will result in any Fees due to Creator.

- 6) **Confidential Information**. From time to time during the Term, either Party may disclose or make available to the other Party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media/in written or electronic form or media, that is/and whether or not marked, designated, or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving Party at the time of disclosure; (c) rightfully obtained by the receiving Party on a non-confidential basis from a third party; or (d) independently developed by the receiving Party. The receiving Party shall not disclose the disclosing Party's Confidential Information to any person or entity, except to the receiving Party's employees who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its obligations hereunder. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party, to the extent permitted by applicable law, and made a reasonable effort to obtain a protective order; or (ii) to establish a Party's rights under this Agreement, including to make required court filings. Upon the expiration or termination of the Agreement, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed. Each Party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire two years from the date such Confidential Information is first disclosed to the receiving Party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable

law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

7) **Intellectual Property Ownership; Feedback.**

- a) **Brkfst IP.** Creator acknowledges that, as between Creator and brkfst, brkfst owns all right, title, and interest, including all intellectual property rights, in and to the brkfst IP and, with respect to Third-Party Products, the applicable third-party provider own all right, title, and interest, including all intellectual property rights, in and to the Third-Party Products.
- b) **Creator Data.** Brkfst acknowledges that, as between brkfst and Creator, Creator owns all right, title, and interest, including all intellectual property rights, in and to the Creator Data. Creator hereby grants to brkfst a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Creator Data and perform all acts with respect to the Creator Data as may be necessary for brkfst to provide the Platform and Services to Creator, and a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display Creator Data compiled in the Aggregated Statistics.
- c) **Feedback.** If Creator, or any of its employees or contractors, sends or transmits any communications or materials to brkfst orally, by mail, email, telephone, or otherwise, suggesting or recommending changes to the brkfst IP, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like (“**Feedback**“), brkfst is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Creator hereby assigns to brkfst, on Creator’s behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, and brkfst is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although brkfst is not required to use any Feedback.
- d) **Brand Trademarks.** A Brand and its designees, successors and assigns shall own all right, title and interest in and to all trademarks, service marks, trade names, logos and other related intellectual property furnished by a Brand hereunder (collectively the “**Brand Marks**”). Each Brand grants to brkfst and Creator, if selected by Brand, a royalty free, non-exclusive, non-transferable license to (in the case of brkfst) use the Brand Marks during the term of this Agreement in order to provide the Services or as otherwise permitted hereunder, and (in the case of Creator) a royalty free, non-exclusive, non-transferable license to use the Brand Marks to create Content pursuant to a Brand Campaign for the term of the Agreement. Brand represents and warrants to brkfst that Brand owns or controls or has obtained all rights and necessary authorizations, consents, licenses, sublicenses and releases in connection with the Brand Marks, and has full power and authority to so use, and to license, sublicense or otherwise grant to Creator and brkfst the right to use, such intellectual property, in the manner set forth herein or in any Brief, and that any such authorized use by Creator or brkfst will

not infringe or otherwise violate the rights of any third party, including, without limitation, any Intellectual Property Rights held by a third party. For the avoidance of doubt, brkfst makes no representations or warranties concerning the Brand Marks of any Brand to Creator.

- e) **Creator Content.** All intellectual property rights in Creator Content shall be retained by its Creator. Creator hereby grants the particular Brand sponsoring a particular Brand Campaign, a sole and exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Creator's Content, but only in the particular Brand's Campaign on the Platform pursuant to this Agreement. Creator hereby grants brkfst a royalty-free, sublicensable, worldwide license to reproduce, distribute, and otherwise use and display the Creator's Content to promote brkfst's Services and Platform and for any other purpose, including, but not limited to, the right to sublicense Creator Content to a Brand for perpetual worldwide reproduction, distribution, and all other use and display. Creator represents and warrants that Creator has all rights, authorizations, consents, licenses, sublicenses, clearances and releases including with respect to all underlying elements or other works incorporated into any Content (including without limitation the dialog/monologue, music and lyrics performed, name, voice, photos and likeness for any person who appears in or is identifiable in any Content) (collectively, the "**Clearances**") and including as required by applicable data protection laws and regulations) required for the grant by Creator to brkfst and the applicable Brand of the rights and licenses granted to them with respect to the Content or otherwise required or used by Creator in connection with the development, creation or distribution of Content or performance of Creator's obligations to brkfst, and Creator further represents and warrants that Creator has full power and authority to so use, and to license, sublicense or otherwise grant to brkfst the right to use, license and sublicense to a Brand, all such rights and licenses, in the manner set forth in herein; that any such authorized use by Creator, brkfst or by a Brand will not infringe, misappropriate or otherwise violate the rights of any third party, including, without limitation, any intellectual property or proprietary rights, moral rights or rights of publicity or privacy held by a third party; that Brand will not be required to pay any sums or incur any obligations to any person or entity as a result of their authorized use or the exploitation of any Content, other than their obligations to brkfst; and that no Content shall include any content that is defamatory, likely to be considered offensive or that could adversely affect the name, reputation, or goodwill of a Brand.

For the avoidance of doubt, brkfst makes no representations or warranties concerning the Content of any Creator to any Brand.

8) **Warranties and Warranty Disclaimer.**

- a) EACH PARTY REPRESENTS AND WARRANTS THAT IT HAS THE LEGAL POWER TO ENTER INTO THIS AGREEMENT. ADDITIONALLY, CREATOR WARRANTS THAT (I) CREATOR OWNS OR HAS A LICENSE TO USE AND HAS OBTAINED ALL CONSENTS AND APPROVALS NECESSARY FOR

THE PROVISION AND USE OF ALL OF THE CREATOR DATA THAT IS PLACED ON, TRANSMITTED VIA OR RECORDED BY A PLATFORM AND THE SERVICES; (II) THE PROVISION AND USE OF CREATOR DATA AS CONTEMPLATED BY THIS AGREEMENT AND EACH PLATFORM AND THE SERVICES DOES NOT AND SHALL NOT VIOLATE CREATOR'S PRIVACY POLICY, TERMS OF USE OR OTHER AGREEMENT TO WHICH CREATOR IS A PARTY OR ANY LAW OR REGULATION TO WHICH CREATOR IS SUBJECT TO; (III) NO CREATOR DATA WILL INCLUDE SOCIAL SECURITY NUMBERS OR OTHER GOVERNMENT-ISSUED IDENTIFICATION NUMBERS, FINANCIAL ACCOUNT NUMBERS, CREDIT CARD OR DEBIT CARD NUMBERS, CREDIT REPORT INFORMATION OR OTHER PERSONAL FINANCIAL INFORMATION, HEALTH OR MEDICAL INFORMATION OR OTHER INFORMATION THAT IS SUBJECT TO INTERNATIONAL, FEDERAL, STATE, OR LOCAL LAWS OR ORDINANCES NOW OR HEREAFTER ENACTED REGARDING DATA PROTECTION OR PRIVACY; AND (IV) CREATOR HAS ACCESSED AND REVIEWED ANY TERMS OF USE OR OTHER POLICIES RELATING TO THE PLATFORM AND SERVICES PROVIDED BY BRKFST, UNDERSTANDS THE REQUIREMENTS THEREOF, AND AGREES TO COMPLY THEREWITH.

- b) THE PLATFORM, SERVICES AND BRKFST IP ARE PROVIDED "AS IS", AND BRKFST HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. BRKFST SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. BRKFST MAKES NO WARRANTY OF ANY KIND THAT THE PLATFORM, SERVICES, OR BRKFST IP, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CREATOR'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.
- c) BRKFST MAKES NO WARRANTY OF ANY KIND CONCERNING ANY PRODUCT OR SERVICE OFFERED OR GIVEN BY A BRAND TO A CREATOR FOR A BRAND CAMPAIGN. CREATOR UNDERSTANDS AND ACKNOWLEDGES THAT ANY PRODUCT OR SERVICE CREATOR RECEIVES IN CONNECTION WITH USE OF THE PLATFORM (OTHER THAN THE SERVICES DESCRIBED HEREIN) COMES DIRECTLY FROM BRAND AND THAT BRKFST MAKES NO WARRANTY OR REPRESENTATION CONCERNING ANY PRODUCT OR SERVICE PROVIDED BY A BRAND TO A CREATOR.
- d) CREATOR UNDERSTANDS AND ACKNOWLEDGES THAT THERE IS NO GUARANTEE THAT CREATOR WILL RECEIVE A FEE FOR CREATING CONTENT. BRKFST DOES NOT AND CANNOT GUARANTEE THAT A

CREATOR WILL RECEIVE ANY FEES FOR PARTICIPATING IN A PARTICULAR BRAND CAMPAIGN. CREATOR UNDERSTANDS AND ACKNOWLEDGES THAT THE TOTAL AVAILABLE POOL OF CREATOR FEES FOR A BRAND CAMPAIGN MAY BE SPLIT BY ONE OR MORE OTHER CREATOR(S) AS DETERMINED BY THE APPLICABLE BRAND.

9) **Indemnification.**

- a) **Brkfst Indemnification.** Brkfst shall indemnify, defend, and hold harmless Creator from and against any and all losses, damages, liabilities, and costs (including reasonable attorneys' fees) ("Losses") incurred by Creator resulting from any third-party claim, suit, action, or proceeding ("Third-Party Claim") that alleges the Platform or Services, or any use of the Platform or Services in accordance with this Agreement, infringes or misappropriates such third party's US intellectual property rights/US patents, copyrights, or trade secrets, provided that Creator promptly notifies brkfst in writing of the claim, cooperates with brkfst, and allows brkfst sole authority to control the defense and settlement of such claim. If such a claim is made or appears possible, Creator agrees to permit brkfst, at brkfst's sole discretion, to (A) modify or replace the Platform or Services, or any component or part thereof, to make it non-infringing, or (B) obtain the right for Creator to continue its use. If brkfst determines that neither alternative is reasonably available, brkfst may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Creator. This Section 9(a) will not apply to the extent that the alleged infringement arises from: (A) use of the Platform or Services in combination with data, software, hardware, equipment, or technology not provided by brkfst or authorized by brkfst in writing; (B) modifications to the Platform or Services not made by brkfst; (C) Creator Data; or (D) Third-Party Products.
- b) **Creator Indemnification.** Creator shall indemnify, hold harmless, and, at brkfst's option, defend brkfst from and against any Losses resulting from any Third-Party Claim that the Creator Data, or any use of the Creator Data in accordance with this Agreement, infringes or misappropriates such third party's intellectual property rights and any Third-Party Claims based on Creator's or any Authorized User's (i) negligence or willful misconduct; (ii) use of the Platform or Services in a manner not authorized by this Agreement; (iii) use of the Platform or Services in combination with data, software, hardware, equipment, or technology not provided by brkfst or authorized by brkfst in writing; or (iv) modifications to the Platform or Services not made by brkfst, provided that Creator may not settle any Third-Party Claim against brkfst unless brkfst consents to such settlement, and further provided that brkfst will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.
- c) **Sole Remedy.** THIS SECTION 9 SETS FORTH CREATOR'S SOLE REMEDIES, AND BRKfst'S SOLE LIABILITY AND OBLIGATION, FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE PLATFORM OR SERVICES INFRINGE, MISAPPROPRIATE, OR

OTHERWISE VIOLATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY. IN NO EVENT WILL BRKFST'S LIABILITY UNDER THIS SECTION 9 EXCEED \$50,000.

10) **Limitations of Liability.** IN NO EVENT WILL BRKFST BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND/OR OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS INTERRUPTION, DELAY, OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER BRKFST WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL BRKFST'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, EXCEED (i) THE TOTAL AMOUNTS PAID AND AMOUNTS ACCRUED BUT NOT YET PAID TO BRKFST UNDER THIS AGREEMENT IN THE THREE-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM, OR (ii) \$25,000, WHICHEVER IS LESS.

11) **Term and Termination.**

- a) **Term.** The initial term of this Agreement begins on the Effective Date and, unless terminated earlier pursuant to this Agreement's express provisions, will continue in effect until 1 year from such date (the "**Initial Term**"). This Agreement will automatically renew for additional successive 1 year terms unless earlier terminated pursuant to this Agreement's express provisions, or unless either Party gives the other Party written notice of non-renewal at least 30 days prior to the expiration of the then-current term (each a "**Renewal Term**" and together with the Initial Term, the "**Term**").
- b) **Termination.** In addition to any other express termination right set forth in this Agreement:
 - i) Brkfst may terminate this Agreement, effective on written notice to Creator, if Creator breaches any of its obligations under Section 2 or Section 6 hereof;
 - ii) either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured 15 days after the non-breaching Party provides the breaching Party with written notice of such breach;
 - iii) either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party, where applicable, (A)

- becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) files or has fled against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business; or
- iv) either Party may terminate this Agreement, for any reason or no reason, upon 30 days' written notice to the other Party.
 - c) Effect of Expiration or Termination. Upon expiration or earlier termination of this Agreement, Creator shall immediately discontinue use of the Brkfst IP and, without limiting Creator's obligations under Section 6 hereof, Creator shall delete, destroy, or return all copies of the Brkfst IP and certify in writing to brkfst that the Brkfst IP has been deleted or destroyed.
 - d) Survival. This Section 11(d) and Sections 5, 6, 7, 9, 10, 12, and 13 hereof shall survive any termination or expiration of this Agreement. No other provisions of this Agreement survive the expiration or earlier termination of this Agreement.

12) Miscellaneous.

- a) Entire Agreement. This Agreement, together with any other documents incorporated herein by reference and all related Exhibits, if any, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement, the related Exhibits, if any, and any other documents incorporated herein by reference, the following order of precedence governs: (i) first, this Agreement, excluding its Exhibits, if any; (ii) second, the Exhibits to this Agreement as of the Effective Date, if any; and (iii) third, any other documents incorporated herein by reference.
- b) Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") must be in writing and must be delivered by email. Creator's Notice email address shall be the email address provided in Creator's account. Brkfst's notice address is legal@brkfst.io. Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving Party; and (ii) if the Party giving the Notice has complied with the requirements of this Section.
- c) Force Majeure. In no event shall either Party be liable to the other Party, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement (except for any obligations to make payments), if and to the extent such failure or delay is caused by any circumstances beyond such Party's reasonable control, including but not limited to food, fire, earthquake, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns, pandemic, exclusive of the

COVID-19 pandemic, or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo.

- d) Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof, and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- e) Severability. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect their original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
- f) Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of New York. Any dispute arising out of or relating to this Agreement, or its subject matter, shall be resolved exclusively by binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association (“AAA”). Either Party may send a notice to the other Party of its intention to file a case with the AAA under this Section (“**Arbitration Notice**”). The arbitration will be conducted in Queens, New York by a single arbitrator knowledgeable in the commercial aspects of “software as a service” arrangements and intellectual property. The Parties will mutually appoint an arbitrator within thirty (30) days of the Arbitration Notice. If the Parties are unable to agree on an arbitrator, then the AAA will appoint an arbitrator who meets the foregoing knowledge requirements. The arbitration hearing will commence within sixty (60) days after the appointment of the arbitrator and the hearing will be completed and an award rendered in writing within sixty (60) days after the commencement of the hearing. The arbitrator will provide detailed written explanations to the Parties to support their award and regardless of outcome, each Party shall pay its own costs and expenses (including attorneys’ fees) associated with the arbitration proceeding and fifty percent (50%) of the fees of the arbitrator and the AAA. The arbitration award will be final and binding and may be enforced in any court of competent jurisdiction.

- g) Assignment. Creator may not assign any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of brkfst. Any purported assignment or delegation in violation of this Section 12(g) will be null and void. Brkfst may assign any rights or obligations under the Agreement to an affiliate or in the event of a change in control. No assignment or delegation will relieve the assigning or delegating Party of any of its obligations hereunder. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.
- h) Export Regulation. Creator shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), that prohibit or restrict the export or re-export of the Platform or Services or any Creator Data outside the US.
- i) Publicity. During the term of this Agreement, Creator agrees that brkfst may identify Creator as a customer in brkfst's promotional materials, on its website (brkfst.io), on brkfst's various social media channels, and/or in a press release. If furnished by Creator, brkfst may use a quote from Creator. Notwithstanding anything herein to the contrary, Creator acknowledges that brkfst may disclose the existence and terms and conditions of this Agreement to its advisors, actual and potential sources of financing and to third parties for purposes of due diligence.
- j) Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 6 or, in the case of Creator, Section 2, would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.
- k) Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.
- l) Contractual Statute of Limitations. The time limit for either Party to file (in a court of law) any claim for breach of contract or any other causes of action arising under this Agreement against the other Party shall be six (6) months from the date of any alleged breach of the Agreement or six (6) months from the date any other cause of action arising under the Agreement accrued.

13) Definitions.

“**Aggregated Statistics**” means data and information related to customers use of the Platform or Services that is used by brkfst in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Platform or Services.

“**Authorized User**” means customer’s employees, consultants, contractors, and agents (i) who are authorized to access and use the Platform or Services under the rights granted to customer pursuant to this Agreement and (ii) for whom access to the Platform or Services has been purchased hereunder.

“**Brand**” means a customer which utilizes brkfst and the Platform pursuant to a Brand Campaign Order Form.

“**Brand Campaign**” means an advertising campaign initiated by a Brand through the Platform via a Brand Campaign Order Form and Brief(s).

“**Brand Data**” means, other than Aggregated Statistics, information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Brand or an Authorized User through the Platform or Services.

“**Brief**” means a brief that a Brand submits on brkfst to solicit and select Content submissions from Creator(s).

“**Brkfst IP**” means the Platform, Services, and any and all intellectual property provided to Brand or any Authorized User in connection with the foregoing, including but not limited to copyrights, moral rights, trademark and trade name rights, trade secrets, patents, designs, algorithms, and all derivative works thereof. For the avoidance of doubt, Brkfst IP includes Aggregated Statistics and any information, data, or other content derived from Brkfst’s monitoring of Brand’s access to or use of the Platform or Services, but does not include Brand Data.

“**Content**” means the multimedia content (such as a video) delivered by a Creator to brkfst and/or the Platform pursuant to a Brief.

“**Creator**” means a customer which utilizes brkfst and the Platform pursuant to a Brand Brief.

“**Creator Data**” means, other than Aggregated Statistics, information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Creator or an Authorized User through the Platform or Services.

“**Services**” means the software-as-a-service offering described in Section 1 and in an applicable Order Form.

“**Third-Party Products**” means any third-party products described in an Order Form provided with or incorporated into the Platform or Services.