

## TERMS OF SERVICES FOR BRANDS

PLEASE READ THESE TERMS OF SERVICE CAREFULLY BEFORE USING OUR PLATFORM

*Terms last updated on 6 October 2024*

### 1. Who we are and how to contact us

- 1.1. <https://gifted.social> is a website owned and operated by **MHW GLOBAL LTD T/A GIFTED SOCIAL** (“we” “us” “our”). We are a limited company registered in England and Wales under company number 15036367 and have our registered office at 8 Farm Crescent, St. Albans, Hertfordshire, United Kingdom, AL2 1UQ.
- 1.2. We provide a suite of solutions including software and AI applications which we make available to registered users and subscribers on our Platform in connection with the facilitation, management and execution of influencer marketing Collab Opportunities and related promotional collaborations.
- 1.3. If you have any questions about us or these terms of service, you can contact us by writing to us here: <https://gifted.social/contact>.

### 2. By using our Platform you accept these terms

- 2.1. By using our Platform, you confirm that you accept these terms of service and signify your agreement to be bound by them (“**Agreement**”).
- 2.2. This Agreement refers to the following additional terms, which also apply to your use of our Platform:
  - 2.2.1. Our Privacy and Cookie Policy which explains how we collect, use and store your personal data.
  - 2.2.2. Our Platform Terms & Acceptable Use Policy <https://gifted.social/gifted-acceptable-use-policy.pdf> which sets out how you may use our Platform.
  - 2.2.3. Our Influencer Standard Terms <https://gifted.social/gifted-influencer-terms-of-service.pdf> which sets out the standard terms and conditions that an Influencer shall be bound to comply with, and which (clauses 3, and 5.1 – 11.8 (inclusive)) be incorporated by reference to each Collab.
- 2.3. If you do not agree to these terms and policies, you should not use our Platform.

### 3. Important definitions

3.1. Defined terms in this Agreement will have the following meaning ascribed to them or as otherwise indicated:

**“Brand”** refers to “you” as referred to in these terms of service, being any company, entity, business or organization that uses our Platform.

**“Collab”** refers to the mutually agreed arrangement between a Brand and Influencer in connection with each Collab Opportunity and which forms a binding agreement between a Brand and Influencer. Each ‘Collab’ is made up of the Collab Brief incorporating the Influencer Standard Terms (clauses 3, and 5.1 – 11.9 (inclusive)) mutatis mutandis as if entered directly between you and an Influencer.

**“Content”** refers to any content, of whatsoever kind, including without limitation social media posts, media, information, images, artwork, photographs, audio, video, audio-visual, and/or text content which is produced by an Influencer in accordance with a Collab Brief and supplied to a Brand pursuant to an agreed Collab in connection with each Collab Opportunity.

**“Collab Brief”** refers to the specific terms and conditions relating to each Collab in connection with each Collab Opportunity, including without limitation the respective roles and responsibilities of a Brand and an Influencer in connection with the Collab Opportunity, the scope of work, Content requirements, Content usage requirements, deadlines, deliverables and the provision of Content performance metrics and related data.

**“Collab Invitation”** refers to a notification submitted by a Brand to an Influencer (or Influencers) via our Platform which signifies the Brand’s invitation to an Influencer (or Influencers) to take part in a ‘pre-approval’ selection process for a Collab Opportunity (or Collab Opportunities). When a ‘Collab Invitation’ is accepted by an Influencer, such Influencer shall be pre-approved for a ‘Collab Offer’ or ‘Collab Offers’.

**“Collab Materials”** refers to any materials or documents owned by or licensed to a Brand which are relevant to a Collab Opportunity and supplied by a Brand to us, or an Influencer, for the purposes of a Collab, including without limitation such logos, pictures, photographs, designs, copy, instructions, products, demos, policies, and/or brand guidelines.

**“Collab Offer”** refers to the formal offer submitted by a Brand to an Influencer via the Platform which signifies the Brand’s intention to take part in the Collab Opportunity with a pre-approved Influencer and intention to be bound by and to perform the related Collab in accordance with the terms of the Collab Brief.

**“Collab Opportunity” or “Collab Opportunities”** refers to a specific, or a combination of, influencer marketing collaboration(s) or promotional opportunity(ies) listed or advertised by a Brand on our Platform.

**“Collab Request”** refers to the formal offer submitted by an Influencer to a Brand via the Platform which signifies the Influencer’s intention to take part in the Collab Opportunity and to be bound by and to perform the related Collab in accordance with the terms of the Collab Brief.

**“Gifted Affiliate”** means any of our agents, ambassadors, and/or representatives or any of our affiliate or group entities and, in relation to our affiliate or group entities, each of its respective successors, and/or assigns.

**“Gifted Product/Service”** refers to the gifted product or service, benefit in kind, or any other incentive of any kind which a Brand supplies to an Influencer in consideration of the Content produced by an Influencer in accordance with a Collab Brief.

**“Incentive(s)”** means any incentive offered by us to an Influencer to encourage participation in a Collab Opportunity.

**“Influencer”** refers to any individual or entity that uses our Platform and who engages in content creation and the distribution of such content across social media platforms.

**“Intellectual Property Rights”** refers to all copyright and neighbouring and related rights, moral rights, , patents, utility models, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), trademarks, service marks, trade names, domain names, rights in get-up and trade dress, design rights, rights in computer software, database rights, any applications for the protection or registration of these rights and all rights in the nature of unfair competition rights or rights to sue for passing off and all renewals, revivals and extensions thereof and all other intellectual property rights howsoever arising and in whatever media, in each case, whether or not registered or capable of registration and including all rights to apply for and be granted renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future throughout the world.

**“Onboarding”** refers to our registration process and the set-up of up a Brand’s profile on our Platform. Similar expressions in this Agreement including ‘Onboard’ or ‘Onboarded’ shall have the same meaning as the context implies.

**“Platform”** refers to our website hosted at <https://gifted.social> and any of our mobile applications, software, programme or other proprietary technology owned and operated by us.

**“Process”** has the meaning given to such term in the UK GDPR.

**“Services”** refers to providing access to our Platform which enables the facilitation, organization, management and execution of influencer marketing opportunities between Brands and Influencers registered on our Platform.

**“Virus”** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

**“UK GDPR”** means the version of the European General Data Protection Regulation (2016/679) retained in the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act of 2018.

#### **4. Our Services and Platform – How does it work?**

##### **Subscription**

- 4.1. Whilst you can browse our website for free, certain parts of our Platform and Services will not be available to you unless you Onboard and/or subscribe to our Platform and Services.
- 4.2. To access to our Platform and Services your profile must be Onboarded to our Platform. Once Onboarded, you will have certain limited access to our Platform which will allow you certain functionality of the Platform and to browse our roster of Influencers registered on our Platform. You will only be able to complete a Collab with an Influencer once you have subscribed to one of our paid subscription tiers made available on our Platform from time to time. If, following a period of three (3) months from the date of Onboarding (**“Trial Period”**), you have not deleted your Account and/or you choose not to subscribe to our Platform, then certain functionalities or accessibility to our Platform may become limited to you.
- 4.3. We currently offer three (3) types of paid subscription tiers:

| <b><i>Subscription Tier</i></b> | <b><i>Access Features/ Functions</i></b>                                               | <b><i>Tier Pricing</i></b> |
|---------------------------------|----------------------------------------------------------------------------------------|----------------------------|
| <i>Starter</i>                  | <i>Execute up to 1 Collab per month; 1 user account and £75 per additional Collab.</i> | <i>£99 (ex VAT)</i>        |

|                     |                                                                                                      |                      |
|---------------------|------------------------------------------------------------------------------------------------------|----------------------|
| <i>Professional</i> | <i>Execute up to 3 Collab(s) per month; 5 user accounts and £50 per additional Collab.</i>           | <i>£249 (ex VAT)</i> |
| <i>Premium</i>      | <i>Execute up to 6 Collab(s) per month, unlimited user accounts &amp; £25 per additional Collab.</i> | <i>£499 (ex VAT)</i> |

- 4.4. The type of subscription tier you have subscribed to will determine the scope of user access to our Platform and related Services that we provide.
- 4.5. As part of our Platform subscription process, we may ask you to provide us with certain information about you, such as user names and email address, company information, your business and/or market sectors, product and/or service categories, and your billing details.
- 4.6. The information requested via our Platform Onboarding process will be Processed in accordance with our Privacy Policy including without limitation to: (i) contact you with information about our Services; (ii) contact you updates to our Platform and Services, (iii) contact you about your subscription to our Platform and/or any receipts for purchases you have made; (iv) improve our Platform and Services to you, including to train artificial intelligence, machine learning or any other system, models, programs and/or technology operated by us; and; (v) charge your account for the applicable subscription fees for your chosen subscription plan in accordance with clause 5.
- 4.7. Upon subscription to our Platform, you will receive an email to confirm the completion of, and details relating to, your account (“**Account**”) and chosen subscription plan. It is your responsibility to keep your Account details private and confidential. We accept no liability to you or any third party for any loss or damage arising from your failure to keep your Account details private and confidential.
- 4.8. It is your responsibility to keep and maintain true, accurate, current and complete information concerning your Account.
- 4.9. We shall, in our sole discretion, have the right to reject Onboarding or subscription to our Platform. We have the right to conduct any checks that we, in our sole discretion, deem appropriate to confirm your suitability for subscription to our Platform.
- 4.10. You are forbidden from sharing your username and password to your Account with third parties. If you believe your Account has been compromised, you must notify us immediately by contacting us at: <https://gifted.social/contact>. If your Account has been compromised or if we have reason to believe that that you are sharing your Account details with third parties, we reserve the right, in our sole discretion, to (i) disable your Account

until further notice to you; (ii) retroactively assess and issue additional subscription fees payable by you in connection with the services offered/ accessed by you outside the scope of our agreed terms, in each instance, on our then current per-user pricing, and (iii) exercise any other rights or remedies we may have in this Agreement, including without limitation our termination rights set out in clause 12.

4.11. You can change your subscription plan at any time so that you can access more Collab Opportunities subject to and as permitted within the upgraded plan available on our Platform from time to time. You will be charged the applicable fees for your upgraded plan and will be granted immediate access to the features available within that plan. Going forward, you will be billed on your chosen upgraded plan until you cancel or downgrade your subscription plan.

4.12. You may downgrade your subscription, but you may lose certain rights granted to you associated with your previous plan. Going forward, you will be billed on your chosen downgraded plan until you cancel or further downgrade your subscription.

#### **Collab Participation**

4.13. Once you have been Onboarded to our Platform and have created your subscription Account, you will be able to access various features on our Platform, including the ability to list or advertise Collab opportunities on our Platform, send Collab Invitations for which you seek Influencer participation and participate in Collabs.

4.14. You will be required to provide certain information and criteria concerning your requirements for Influencer participation in the form of a Collab Brief for each Collab Opportunity, such as, but not limited to, sector focus, Influencer age, demographics, Influencer follower count, Collab Opportunity dates and location, all of which may be done via our Platform. You agree that we may use this information together with our proprietary technology made available via our Platform to match your requirements with Influencer candidates suitable for the Collab Opportunity based on the information you have provided. If there are any requirements that you are unable to specify via our Platform, please contact us here: <https://gifted.social/contact> and we will do our best to meet your requirements.

4.15. In using our Platform and Services, you agree that you shall not access, store, distribute or transmit any Viruses, or any material during the course of your use of the Platform and Services that:

4.15.1. is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

4.15.2. facilitates illegal activity;

4.15.3. depicts sexually explicit images;

4.15.4. promotes unlawful violence;

4.15.5. is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

4.15.6. is otherwise illegal or causes damage or injury to any person or property;

and we reserve the right, without liability or prejudice to you, to disable your Account and access to our Platform and to any material that breaches the provisions of this clause.

4.16. In using our Platform and Services, you agree that all communications with an Influencer concerning a Collab Opportunity and/or Collab will be exclusively undertaken via our Platform. We maintain a close relationship with Influencers registered on our Platform and we may monitor, from time to time, Influencer profiles and the appearance or posting of any Content thereon outside of the Platform in connection with any Collab. Notwithstanding the foregoing, it remains your sole responsibility to:

4.16.1. compile the Collab Brief in connection with each Collab Opportunity;

4.16.2. submit the Collab opportunity and Collab Brief for listing on our Platform in accordance with our Acceptable Use Policy;

4.16.3. ensure that the details of your Collab Opportunity and/or Collab Brief are accurate and complete;

4.16.4. supply all necessary Collab Materials in connection with a Collab Opportunity;

4.16.5. comply with, and perform all applicable terms of, a Collab, including without limitation providing the Gifted Product/ Service to the Influencer in connection with such Collab.

and we accept no liability, and you agree that we shall not be responsible for, any claims, losses, liabilities, damages, costs or expenses in relation to your failure to comply with this clause 4.16 with respect to our Services.

4.17. You may send Influencers Collab Invitations on our Platform. Such Collab Invitations will allow you to select and pre-approve certain Influencers who you deem are suitable for a specific Collab Opportunity. An Influencer may accept or decline a Collab Invitation.

4.18. You may receive a Collab Request from an Influencer in connection with your Collab Opportunity listed on our Platform from time to time, but you are not obliged to accept such Collab Request from them. Where you do accept a Collab Request, you acknowledge and agree that such acceptance will form a legally binding Collab agreement between you

and the Influencer, and you agree and undertake to comply with the terms of such agreed Collab.

- 4.19. Each Collab will incorporate our Influencer Standard Terms (clauses 3, and 5.1 – 11.9 (inclusive)) mutatis mutandis to each Collab Brief. The Influencer Standard Terms provide basic contractual assurances to you in respect of an agreed Collab between you and an Influencer. By using our Platform and Services you are agreeing to incorporate the Influencer Standard Terms into each Collab so please read them carefully. If there are any additional obligations or requirements that you require in connection with a Collab which are not covered by our Influencer Standard Terms, we strongly recommend that you include such additional obligations or requirements in your drafted Collab Brief or agree them directly with your chosen Influencer(s).
- 4.20. A Collab will be deemed completed for the purposes of this Agreement on the earlier date being (i) when you approve on the Platform all applicable Content created by an Influencer for publication; (ii) when the Content was posted by such Influencer, or by any person on the Influencer's behalf, on any media.
- 4.21. If there are any issues with a Collab, for example, an Influencer has not delivered agreed Content due to circumstances outside of their reasonable control or if an Influencer has not delivered Content according to an agreed Collab Brief or has breached any other obligations required of them pursuant to Collab (including infringing the rights of a third party), you must report such issues to us immediately by contacting us here: <https://gifted.social/contact> and provide reasonably detailed particulars relating to the issue affecting you.
- 4.22. You also agree, in good faith, to work with the Influencer to remedy any issues where remediable, for example, fulfilling your obligations pursuant to Collab at a later date as mutually agreed between you and an Influencer. If no remedy can be agreed between you and an Influencer having made all reasonable attempts to remedy such issue, and with the exception of an Influencer breach of their obligations pursuant to a Collab, you acknowledge and agree that neither you nor the Influencer shall have any further obligation or liability in relation to that affected Collab.
- 4.23. You acknowledge and accept that our Platform and Services are provided to you as mere conduit for the self-service and the facilitation, organization, management, and execution of a Collab between you and an Influencer. We do not, at any time, commit to the management of any Collab Requests, Collab Offers, Collab Invitations, Collab Opportunities, Collab Briefs and/or Collabs (whether live or historic) for or on your behalf under this Agreement and we shall not be responsible, nor liable, for the execution of your Collab Opportunities and Collabs with Influencers that you choose to engage. We make no representation or warranty in relation to the suitability of an Influencer and/or or non-

infringement of any Content delivered by them connection with a Collab. You are solely responsible for reviewing and approving the compliance of Influencer Content in accordance with your Collab Brief, as well as any applicable laws, regulations and guidelines applying to such Content such as, but not limited to, those relating to any advertising regulations and marketing disclosures.

4.24. You are solely responsible for resolving any disputes between you and an Influencer (“**Influencer Dispute**”). We will not be responsible, nor shall we be involved in or have any liability, for any dispute resolution or mediation process in connection with an Influencer Dispute. We may, in our sole discretion and on a non-precedential basis, offer suggestions and/or support to the relevant parties to assist with remediation efforts, where you may have suffered as a result of an Influencer Dispute and where you were not at fault (determined by us, at our sole reasonable discretion, having made all reasonable enquiries).

4.25. We may from time to time, and at our sole discretion, provide you with assistance and guidance in using our Platform or Services, including, including but not limited to, optimizing Collab Opportunity listings and Collab Briefs or by providing a rating or review system for trusted Influencers. Any information or guidance that we provide you in this regard is supplied on an “as-is” basis and it is your responsibility to ensure that all your requirements are satisfactorily met within your Collab Opportunity listing and Collab Brief before going live with them on our Platform.

## **5. Payment and Charges**

5.1. You agree to pay the applicable subscription fee based on your chosen subscription tier as set out in clause 4.3 (“**Subscription Fee**”).

5.2. The Subscription Fee will be charged to you on a recurring basis at the applicable intervals depending on your chosen billing plan and until your subscription to our Platform is cancelled, by either you or us, by giving 30 days advance written notice in accordance with clause 12.2 or as otherwise set out in accordance with this Agreement.

5.3. The first due payment date of the Subscription Fee shall be the earlier of a) the date on which you accept your first Collab with an Influencer; or b) the date which you subscribe to our Platform during or following the expiry of your Trial Period (“**Effective Date**”). If you still maintain an Account and have paused your subscription and wish to resume it, then the Effective Date for the purpose of this clause 5 shall be, as the context implies with respect to clauses 5.3(a) and (b), deemed the earlier date being when you have re-subscribed to the Platform or when you have completed your first Collab with an Influencer since resuming your subscription. Payment for any additional purchases made available on the

Platform from time to time, such as but not limited to additional Collab Opportunities subject to your subscription plan, will be due at the point of purchase.

5.4. You shall, on creation of your Account, provide to us with valid, up-to-date and complete credit card details or approved purchase order information acceptable to us and any other relevant valid, up-to-date and complete contact and billing details and, if you provide:

5.4.1. your credit card details to us, you hereby authorise us to bill such credit card:

- (i) on the Effective Date for the Subscription Fee payable; and
- (ii) subject to clauses 12.2 and 12.3, each applicable renewal period following the Effective Date for the Subscription Fee payable in respect of each renewal period you are using our Platform and Services;

5.4.2. upon our receipt of a termination notice to end your subscription, any outstanding charges, other amounts due, and/ or Subscription Fees for Services rendered including during any applicable notice period, if and to the extent not already billed, shall become due and payable and such amounts shall be billed to your credit at such time that we receive your written notice

5.4.3. your approved purchase order information to us, we shall invoice you:

- (i) on the Effective Date for the Subscription Fees payable; and
- (ii) subject to clauses 12.2 and 12.3, each applicable renewal period following the Effective Date for the Subscription Fees payable in respect in respect of each renewal period you are using our Platform and Services
- (iii) upon our receipt of a termination notice to end your subscription, any outstanding charges, other amounts due, and/ or Subscription Fees for Services rendered including during any applicable notice period, if and to the extent not already billed, shall become due and payable and such amounts shall be invoiced to you at such time that we receive your written notice.

and you shall pay each invoice within 30 days after the date of such invoice.

5.5. If we have not received payment within 7 days after the due date or received notification from you within 3 months of your registration with the Platform that you do not wish to continue to access the Platform Services, and without prejudice to any other rights and remedies available to us under this Agreement or at law:

5.5.1. we may, on no less than 5 business days' notice to you and without liability you, disable your Account and access to all or part of our Platform and/or Services and we shall be under no obligation to provide any access to the Platform and/or all or any part of the Services while the invoice(s) concerned remain unpaid; and

- 5.5.2. interest shall accrue on a daily basis on such due amounts at an annual rate equal to 5% over the Bank of England's base rate from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 5.6. All amounts and fees stated or referred to in this agreement:
- 5.6.1. shall be payable in pounds sterling;
  - 5.6.2. are, subject to clause 9, non-cancellable and non-refundable;
  - 5.6.3. are exclusive of value added tax, which shall be added to our invoice(s) at the appropriate rate.
- 5.7. Subject to clause 5.8, we shall be entitled to increase our Subscription Fees from time to time. Before we do, we will give you 30 days' prior notice of increases to our subscription pricing tiers detailed at clause 4.3 be deemed to have been amended accordingly. Unless you cancel your subscription and/or Account prior to expiry of the notice period set out in this clause 5.7, you shall be charged such increased Subscription Fee rates as notified to you and you agree that we are authorised to charge such increased amounts in accordance with the provisions of clauses 5.1 to 5.6 (inclusive).
- 5.8. Any notification you may receive in relation to increased Subscription Fees pursuant to clause 5.7 during the first month of your subscription shall not apply until after the end of the second month of your subscription following the Effective Date.

## **6. Your obligations and warranties**

- 6.1. You agree to provide us with all necessary and reasonable co-operation in relation to this Agreement.
- 6.2. By using our Platform and Services, you warrant, represent and undertake that:
- 6.2.1. you have legal capacity to enter into this Agreement and have the power and authority to do so;
  - 6.2.2. in using our Platform and Services you will comply with our Platform Terms and Acceptable Use Policy <https://gifted.social/gifted-acceptable-use-policy.pdf> ;
  - 6.2.3. the Collab Materials supplied by you to us, or to an Influencer, in connection with: (i) the use of our Platform and Services; or (ii) a Collab Opportunity and/or Collab will not infringe the rights, including Intellectual Property Rights, of any third party;
  - 6.2.4. should any third party rights be incorporated in any Collab Materials or any other materials provided or supplied to us for the purposes of your use of the Platform and/or Services, you have obtained and shall maintain all necessary licences, consents, and permissions necessary for us, our contractors and agents to perform our or their

obligations under this Agreement, including without limitation the Platform and/or Services;

6.2.5. your Collab(s) and Collab Brief(s) will at all times comply with the obligations set out in clauses 4.15, 4.16 and sub clauses 4.16(1)-(6) (inclusive);

6.2.6. you shall comply with all applicable laws, regulations and guidelines relating your activities on our Platform, including without limitation any guidelines in place from time to time issued by any government or regulatory body that regulates advertising and marketing within your local country and/or industry, such as, but not limited to, those by issued by the FTC (if you are located in the US) or by the Advertising Standards Authority (ASA) and/or the Competition and Markets Authority (CMA) (if you are located in the UK) in connection with marketing communications and related commercial disclosures; or applicable data protection, privacy or similar laws or regulations;

6.2.7. you will not use our Platform and Services in a manner that brings or will likely bring us into disrepute, scandal or embarrassment, including without limitation any connection with any criminal activity (decided at our sole reasonable discretion);

6.2.8. shall not reverse engineer, decompile or disassemble the Platform and/or our Services (or any part thereof) or otherwise attempt to obtain any source code relating to our Platform.

## **7. Our obligations**

7.1. Depending on your permitted access to our Platform, we shall make our Platform available to you and, subject to the subscription tier you are subscribed to, supply our Services to you in in all material respects.

7.2. We may, but are not obliged to, offer Incentives to Influencers from time to time to encourage participation to Collab Opportunities.

7.3. We shall use all reasonable endeavours to meet any performance dates or requirements specified by you, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

7.4. We accept no responsibility for any lack of functionality that is due to your equipment including, but not limited to, your device, internet connection, operating system or settings and/or software. Access to parts or all of the Platform or Services may be restricted from time to time to allow for repairs, maintenance or updating.

7.5. Your use of the Platform and our Services and enjoyment of its features and content developed, hosted or made available through the Platform and/or Services may vary in

functionality, availability and quality depending on the type of device and operating system you use.

## **8. Intellectual Property**

- 8.1. We own and will retain all title, ownership rights and Intellectual Property Rights in and to our Platform and Services. No use by you of our Platform and/or Services shall confer, grant or otherwise transfer you any rights in or to our Platform or related Services save as permitted in clause 8.2.
- 8.2. For as long as you have an Account on our Platform, or, as applicable, for the duration of your subscription to our Platform, we grant you a worldwide, non-exclusive, non-transferable licence to use our Platform and the products of our Services (subject to your subscription package terms).
- 8.3. You must not use any of our Intellectual Property Rights for any purposes other than set out in this Agreement. 'Gifted.Social' is our trade name and is used by us in a trade mark sense to denote our commercial goods and services. You must not use our trade mark for any purposes (unless in a descriptive way) without our prior written consent or apply to register or register it or anything similar to it in any part of the world.
- 8.4. Whenever you make use of a feature that allows you to create or upload content, including any Collab Materials, directly on our Platform, upload or share content to our website, or to make contact with other users of our website, such as Influencers, you must comply with the standards set out in our Acceptable Use Policy <https://gifted.social/gifted-acceptable-use-policy.pdf> . You warrant that any such contribution complies with those standards, and you are liable to us and indemnify us for any breach of that warranty. This means you will be responsible for any loss or damage we suffer as a result of your breach of warranty.
- 8.5. When you upload or post content to our Platform, including any Collab Materials, you grant the following rights to use that content:
  - 8.5.1. **To us:** A worldwide, non-exclusive, royalty-free, transferable licence to use, reproduce, distribute, prepare derivative works of, display, and perform that content in connection with the Platform and/or Services as provided to us and across different media including to promote our Platform and/or Services on a perpetual basis.
  - 8.5.2. **To an Influencer:** A worldwide, non-exclusive, royalty-free, non-transferable licence to use such content as necessary to fulfill any obligations pursuant to a Collab and for the duration of the Collab, as set out in a Collab Brief or as you have otherwise agreed directly with an Influencer.

8.6. Our website may include information and materials uploaded by other users. This information and these materials have not been verified or approved by us. The views expressed by other users on our website do not represent our views or values.

## **9. Liability**

**9.1.** Except as expressly and specifically provided in this Agreement:

9.1.1. you accept and assume sole responsibility for results obtained from the use of the Platform and/or Services. You acknowledge that we are not obliged to vet Influencers nor clear any Content produced by them and you accept that we shall have no liability for any damage caused by errors or omissions in any Influencer supplied, information, instructions or scripts and/or Content provided to you via our Platform in connection with the Services, or from any actions taken by us at your direction;

9.1.2. to the fullest extent permissible by law, we exclude all implied conditions, warranties, representations or other terms that may apply to our Services and/or Platform or any content on it; and

9.1.3. the Platform and our Services are provided to you on an "as is" basis. We do not guarantee that our Platform will be secure or free from bugs or Viruses.

9.2. We will not be liable to you for any loss or damage, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, even if foreseeable, arising under or in connection with:

9.2.1. use of, or inability to use, our Platform; or

9.2.2. use of or reliance on any content displayed on our Platform.

9.3. In particular, we will not be liable for:

9.3.1. loss of profits, sales, business, or revenue;

9.3.2. business interruption;

9.3.3. loss of anticipated savings;

9.3.4. loss of business opportunity, goodwill or reputation; or

9.3.5. any indirect or consequential loss or damage.

9.4. Nothing in this Agreement excludes liability for:

9.4.1. death or personal injury caused by our negligence; or

9.4.2. fraud or fraudulent misrepresentation.

- 9.5. Our total aggregate liability to you, in respect of all breaches of duty occurring, shall not exceed a sum equal to the total Subscription Fees paid to us in the 12 months prior to the liability arising.
- 9.6. Unless you notify us within 12 months that you intend to make a claim against us for actual or alleged breach by us of this Agreement, you agree that we shall have no liability for that event, and you waive such claim (or claims) against us in connection with that event. The 12-month notice period for such event shall start on the day on which you became, or ought reasonably to have become, aware of the applicable event giving rise to the liability claimed.
- 9.7. References to liability in this clause 9 include every kind of liability arising under or in connection with this agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

## **10. Indemnity**

- 10.1. You agree to compensate, defend and keep us and our affiliates and each of our respective officers, directors, employees, successors, assigns and licensees harmless and fully indemnified against any liabilities, costs, expenses (including other reasonable professional costs and expenses), losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties (calculated on a full indemnity basis), and/or damages suffered or incurred by us arising out of or in connection with any claims, actions or legal proceedings (“**Claims**”) brought against us by any person as a result of: (i) any breach or alleged breach of any term of this Agreement by you or on your behalf; and (ii) any use or exploitation of the Platform and/or Services (or part thereof) by you or on your behalf in contravention of this Agreement, any laws, regulations or related guidance.
- 10.2. We shall have full control of all Claims to which we are a named party and you shall cooperate with us in the defense or settlement of such claim. Upon prior written notice to us, you may have the opportunity to participate (at your own cost and expense) in any defense or settlement of any Claim subject to clause 10.1, provided that you shall not make any admission (whether orally or in writing) to any third party in respect of such Claims and you shall not undertake any act, omission or forbearance which may prejudice us in relation to such Claims, including without limitation, the settlement of any such Claim, without our prior written consent.

## **11. Confidentiality**

- 11.1. Each party undertakes that it shall not at any time during this Agreement, and for a period of two years after termination or expiry of this Agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of

the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 11.2.1.

11.2. Each party may disclose the other party's confidential information:

11.2.1. to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11; and

11.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.3. No party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

11.4. If any part of your Collab Opportunity and/or Collab Brief is deemed to contain any confidential information, it is your sole responsibility to notify an Influencer which you engage of the duty of confidentiality imparted in relation to such information related to that Collab Opportunity by labelling it as such. We accept no responsibility or liability for any breach of confidentiality by an Influencer with respect of your confidential information.

## **12. Duration of the Agreement and Termination**

12.1. The terms of this Agreement shall apply for as long as you are using our Platform and Services, including during any applicable Trial Period or subscription period.

12.2. You may delete your Account at any time by contacting us here: <https://gifted.social/contact>. If you are a free user of our Platform during your Trial Period, your access to our Platform and any associated privileges will cease immediately upon deletion of your Account. If you are a subscriber to our Platform, you may terminate your subscription at any time, in writing on 30 days' notice by contacting us here: <https://gifted.social/contact>. Where you have given written notice to terminate, your subscription will expire at the end of your 30-day termination notice period following the expiry of your then existing subscription period. Any outstanding sums, charges, and/or Subscription Fees incurred during such notice period shall become due and payable in full upon our receipt of your written notice in accordance with clause 5. Such sums shall not be pro-rated and/or apportioned for any non-use of the Platform and/or Services during such notice period. Following that, we shall not charge you any Subscription Fees and you will lose access to subscription features on our Platform and Services unless you subscribe again. If you wish to cancel your subscription but maintain your Account on our Platform, you may do so in

accordance with the terms of this Agreement but certain access and privileges to our Platform and Services may become limited upon the termination or expiry of your then existing subscription.

12.3. In addition to our right to remove any materials you or we may upload to the Platform, we may immediately suspend, restrict or terminate your access to the Platform and Services or terminate our Agreement with you if we reasonably believe you failed to comply with this Agreement or our Acceptable Use Policy.

### **13. General matters**

13.1. We may update and change our Platform from time to time to reflect changes to our products, Services, our users' needs, user experience and our business priorities. We will try to give you reasonable notice of any major changes that may affect you.

13.2. We amend these terms from time to time. Every time you wish to use our Platform, please check these terms to ensure you understand the terms that apply at that time.

13.3. We may transfer our rights and obligations under these terms to another organization. If this happens and we will ensure that the transfer will not affect your rights under this Agreement.

13.4. Where our Platform contains links to other sites and resources provided by third parties (such as third party social media sites and platforms), these links are provided for your information only. Such links should not be interpreted as approval by us of those linked websites or information you may obtain from them. We have no control over the contents of those sites or resources.

13.5. We respect your privacy and protect your personal data in accordance with the UK GDPR. Our Privacy Policy explains who we are, what personal data we Process, why we do so, how we keep it secure, and what your rights and choices are. You should read our Privacy Policy carefully before using our Platform and/or Services.

13.6. Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture of any kind between you, us and/or an Influencer or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way.

13.7. If you fail to comply with this Agreement and we take no action against you, or if we delay in doing so, that will not mean that we have given up our rights against you and (subject to statutory limitation periods) we will still be entitled to enforce our rights and remedies against you in relation to that failure to comply.

- 13.8. This Agreement is between you and us. No person or entity that is not party to this Agreement may enforce it, or directly or indirectly benefit from any of its terms, save for an Influencer with respect to the rights granted to them at clause 8.5.2.
- 13.9. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, such provision or part-provision will be deemed deleted from this Agreement but such deletion shall not affect the validity and enforceability of the rest of this Agreement which shall remain in effect.
- 13.10. Any provision in this Agreement which is intended to survive this Agreement shall continue to apply on or after such expiry or ending of the Agreement, including without limitation clauses 2, 3, 5, 6, 8, 9, 10, 11 and 13.
- 13.11. This Agreement forms the entire agreement between you and us relating to your use of the Platform and our Services and supersedes instead of any previous agreements, arrangements, undertakings or proposals between you and us relating to the use of the Platform and our Services.
- 13.12. This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 13.13. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.