

## ***FamePick Terms of Service and Software Terms & Conditions***

# **FamePick Inc. Terms of Service**

**Effective Date:** Sept 1st, 2018

These Terms of Service (“**Terms**”) apply to your access to, and use of, any services provided by FamePick, Inc. (“**FamePick**”, “**we**”, “**us**”, or “**our**”), including but not limited to our website and online services (collectively, the “**Services**”). These Terms do not alter in any way the terms or conditions of any other agreement you may have with FamePick for products, services or otherwise. If you are using the Services on behalf of any entity, you represent and warrant that you are authorized to accept these Terms on such entity’s behalf and that such entity agrees to be responsible to us if you violate these Terms.

FamePick reserves the right to change or modify these Terms at any time and in our sole discretion. If FamePick makes changes to these Terms, we will provide notice of such changes by sending an email notification to the address you provided, providing notice through the Services and/or updating the “Last Updated” date at the top of these Terms. Your continued use of the Services will confirm your acceptance of the revised Terms. If you do not agree to the revised Terms, you must stop using the Services.

If you have any questions or concerns regarding these Terms or our Services, please contact us at [support@famepick.com](mailto:support@famepick.com).

### **1. Eligibility**

The Services are not intended to be accessed or used by anyone under the age of 13, and anyone under the age of 13 is strictly prohibited from accessing and using the Services. You represent and warrant that you (a) are at least 13 years of age, (b) have not previously been suspended or removed from using the Services; (c) have full power and authority to enter into this agreement and in doing so will not violate any other agreement to which you are a party; (d) are not located in, under the control of, or a national or resident of any country to which the United States has embargoed goods or services; (e) are not identified as a “Specially Designated National;” (f) are not placed on the Commerce Department’s Denied Persons List; and (g) will not use the Services if the laws of your country prohibit you from doing so in accordance with these Terms. If you are between the ages of 13 and 18, you represent and warrant that your parent or legal guardian agrees to be bound by these Terms and to be responsible for your use of the Services.

### **2. Registration and Account**

To access and use the Services, you will be required to register for an account (“**Account**”). By creating an Account, you agree to: (a) provide accurate, current and complete Account information; (b) maintain the security of your password, not share your password with any other person and accept all risks of unauthorized access to your Account; and (c) promptly notify us at [support@famepick.com](mailto:support@famepick.com) if you discover or otherwise suspect any security breaches related to your Account or the Services.

### **3. Privacy Policy**

Please refer to our Privacy Policy (available at <https://www.famepick.com/privacy>) for information about how we collect, use and disclose information about you.

### **4. Campaign Initiators and Influencers**

Our Services are available to users of our Services (“**Campaign Initiators**”) that may pay other users of our Services (“**Influencers**”) to promote the Campaign Initiators’ products and services via any third-party website or online service (“**External Sites**”), including any Campaign Initiator website or any third-party social media service. To facilitate Influencers’ promotional efforts and to track the success of each Influencer, the Services generate a Web address for each Campaign that is unique to each Influencer (“**Custom URL**”). Influencers may post Custom URLs via External Sites and receive compensation from Campaign Initiators based upon an applicable cost-per-click rate multiplied by the total number of valid Custom URL clicks. Section 4.1 provides additional terms applicable to Campaign Initiators and Section 4.2 provides additional terms applicable to Influencers. All other sections of these Terms apply to both Campaign Initiators and Influencers.

#### **4.1. Additional Terms for Campaign Initiators**

a. Creation of Campaigns. Campaign Initiators may create one or more advertising campaigns via the Services (each, a “**Campaign**”) to be promoted by Influencers. FamePick reserves the right to reject any Campaign or terminate an existing Campaign, in whole or in part, at our complete discretion. FamePick is under no obligation to assign your Campaign to Influencers and provides no guarantees as to whether or not any Campaign will be promoted by Influencers. You are solely responsible for all Campaigns, including, without limitation, any products or services advertised via the Campaigns and any public disclosures that Influencers must provide when promoting Campaigns to ensure that Campaigns are not false or misleading. You must have an active FamePick Account in order to initiate and/or run a campaign.

b. Campaign Initiator Content. You are solely responsible for all content which you provide or otherwise make available to FamePick and/or Influencers via the Services, including but not limited to any text, graphics or images, video, URLs, or any other material (“**Campaign Initiator Content**”). You grant FamePick a non-exclusive, royalty-free, perpetual, irrevocable and fully sub licensable right to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, perform and display such Campaign Initiator Content on the Services. You grant each Influencer assigned to your Campaigns a non-exclusive, royalty-free, perpetual, irrevocable and fully sub licensable right to reproduce, publish, distribute, and publicly perform such Campaign Initiator Content on External Sites. You represent and warrant that (i) you have all rights, approvals, licenses, consents and permissions as are necessary to grant the licenses granted by you under these Terms, and (ii) the Campaign Initiator Content does not, and shall not, infringe, violate or misappropriate any copyright, trademark, patent or any other right of any third party.

c. Fees. FamePick reserves the right to charge fees payable to FamePick in connection with any of your Campaigns, which will be disclosed via the Services at the time of any Campaign creation (“**FamePick Fees**”). You are solely responsible for, and must pay all applicable FamePick Fees identified via the Services. You are responsible for any type of use or sales tax, duty or other governmental tax or fee due with respect to your use of the Services, including any payments you make to Influencers. All payments of Fees shall be made without deduction for withholding taxes.

d. Payment of Fees. Only valid credit cards or other payment methods acceptable to us may be used to pay Fees. You represent and warrant that you are authorized to use any payment method designated by you via the Services (“**Payment Method**”) and authorize us, or our designated payment processor, to charge or debit such Payment Method for any applicable Fees. If the Payment Method cannot be verified, is invalid or is otherwise not acceptable to us, or our designated payment processor, your ability to use the Services may be suspended immediately. You must resolve any problem FamePick, or our designated payment processor, encounters to continue using the Services. You

authorize FamePick, or our designated payment processor, to charge applicable Fees to your designated Payment Method and to process and store your Payment Method information. Late payments may be subject to fees at the rate of 1.5% per month or, if lower, the maximum rate allowed by law. If FamePick pursues collection efforts against you due to your failure to pay Fees, you shall pay FamePick's reasonable costs of collection, including any attorneys' fees related thereto.

e. Platform Access. Access to the FamePick platform is attained by remittance of a monthly access fee (hereafter "Access Fee") after Account creation. This access fee is billed month to month unless otherwise noted. This access fee's amount is subject to change at any time, and FamePick will communicate any impending changes via email to all existing customers. While running any Campaign with FamePick, clients must have an active FamePick account.

f. Cancellation. If you cancel a Campaign (including if your Account is terminated by FamePick), you will remain liable for any applicable Fees accrued until such Campaign is deactivated via the Services.

g. Influencer Content. You may have the right to use any content or material posted by Influencers on External Sites provided such use is in accordance with any terms and conditions applicable to such External Sites. FamePick does not represent or warrant that you will have the right or authority to use such content or material.

#### **4.2. Additional Terms for Influencers**

a. Assignment of Campaigns. FamePick will seek to place Campaigns with potential Influencers based on any interests you have identified via the Services. FamePick is under no obligation to assign any Campaigns. You also have discretion as to whether or not to accept each Campaign.

b. Campaign Promotion. Subject to your compliance with these Terms (including Section 5.2 below), FamePick hereby grants you a limited, revocable, nonexclusive, non-transferable, and non-sublicensable license to distribute any URL via External Sites solely for the purpose of promoting the applicable Campaign Initiator product and service. When posting any URL or otherwise promoting any Campaign, you will: (i) always include promotional and/or explanatory content relevant to the Campaign as provided via the Services; (ii) comply with any additional terms and conditions, and/or promotional and branding guidelines provided by the Campaign Initiator; (iii) comply with all terms and conditions applicable to External Sites; and (iv) provide all disclosures required by applicable law, including, without limitation any disclosures required under the Federal Trade Commission's Guides Concerning the Use of Endorsements and Testimonials in Advertising. Without limiting the generality of the foregoing, you will not post any URL or otherwise promote any Campaign more than two times in any twenty-four hour period on any a single External Site.

c. Valid Clicks. Without limiting the generality of the foregoing, you are prohibited from:

- i. compensating any other person or party in exchange for their click on any of your Custom URLs, including, without limitation, by providing monetary compensation or agreeing to perform certain actions in exchange for a click on your URL(s);
- ii. engaging in any Click Fraud (defined below);
- iii. purchasing or otherwise obtaining any Campaign Initiator product or service with the intent to return such product or service; and
- iv. encouraging, incentivizing or authorizing any third party to engage in, any of the foregoing activities.

*“Click Fraud” occurs when a person, automated script or computer program imitates a legitimate internet user by clicking on an advertising link for malicious and/or fraudulent purposes (including, but not limited to, by way of repeated manual clicks, the use of robots or other automated query tools, or computer generated search requests). FamePick reserves the right to immediately suspend or terminate your Account in the event that you violate this Section.*

d. Influencer Content. You are solely responsible for all content or other material that you post via any External Sites in conjunction with any Campaign (“**Influencer Content**”). You will not post Influencer Content which:

- i. is libelous, defamatory, profane, obscene, pornographic, sexually explicit, vulgar, harassing, offensive, discriminatory, fraudulent, deceptive or otherwise objectionable;
- ii. is illegal or unlawful, that would constitute, encourage or provide instructions for a criminal offense, violate the rights of any party, or otherwise create liability or violate any local, state, national or international law;
- iii. may infringe or violate any patent, trademark, trade secret, copyright, or other intellectual or other right of any party;
- iv. impersonates any person or entity or otherwise misrepresents your affiliation with a person or entity;
- v. reflects poorly on FamePick and/or a Campaign Initiator, or otherwise disadvantages, disparages or devalues FamePick and/or an Campaign Initiator; or
- vi. is objectionable, in the sole judgment of FamePick.

In the event that FamePick, in its sole discretion, determines that you have violated any of the provisions in this Section and/or any other provision of these Terms, it may suspend and/or terminate your Account. In the event that your Account is terminated under this Section, you will forfeit all claims to any outstanding payments under these Terms. You hereby grant the applicable Campaign Initiator a non-exclusive, worldwide, royalty-free license to use, publicly perform, create derivative works from, modify, and distribute any Influencer Content relating to such Campaign Initiator’s Campaign. You represent and warrant that (i) you have all rights, approvals, licenses, consents and permissions as are necessary to grant the licenses granted by you under these Terms, and (ii) the Influencer Content does not, and shall not, infringe, violate or misappropriate any copyright, trademark, patent or any other right of any third party

e. Campaign Initiator Content. Your use of Campaign Initiator Content (defined in Section 4.1(b) above) may be subject to additional terms and conditions provided by the Campaign Initiators. In the event that such terms and conditions conflict with the provisions of these Terms, these Terms will govern. FamePick has no responsibility or liability with respect to your access to or use of the Campaign Initiator Content or any content or functionality contained in such Campaign Initiator Content. FamePick shall not be responsible or liable for any Campaign Initiator Content and makes not representations or warranties of any kind with respect to the Campaign Initiator Content.

f. Payment. Subject to your compliance with these Terms, you will receive payment from FamePick. You acknowledge and agree that any payment you are eligible to receive via the Services is subject to our receipt of applicable funds from the relevant Campaign Initiator. You will receive payment via a payment method that is acceptable to us and designated by you via the Services. You will be responsible for: (i) any fees charged by your designated payment method in connection with your receipt of payment via the Services; and (ii) any type of use or sales tax, duty or other governmental tax or fee due. You acknowledge and agree that we may withhold payment of any compensation to you

if we believe, in our sole discretion, that any such compensation was obtained in violation of these Terms.

g. **Samples.** As part of the Services, from time to time, we may provide you with complimentary samples of products or services relating to Campaign Initiators (“**Samples**”). In the case of digital content, this may include software licenses or access codes. You agree to comply with all additional terms and conditions applicable to such Samples. You hereby acknowledge that FamePick will have no liability in relation to Samples. If you receive any Samples but decide not to promote the applicable Campaign, you must return such Samples to us, or, if you received digital Samples, immediately destroy and discontinue using such Samples.

## **5. License; License Restrictions**

**5.1 License .** Other than Campaign Initiator Content, the Services and all content and other materials made available therein including, without limitation, the FamePick logo, and all other designs, text, graphics, pictures, information, data, software, sound files, other files made available via the Services and the selection and arrangement thereof (collectively, “**FamePick Materials**”) are the proprietary property of FamePick or our licensors and suppliers and are protected by U.S. and international copyright laws. Subject to your compliance with these Terms, FamePick hereby grants you a limited, nonexclusive, revocable, non-transferable, and non-sublicensable license to access and use the FamePick Materials via the Services.

**5.2 License Restrictions.** Except as otherwise expressly permitted in these Terms or via the Services, you will not: (a) sell, rent, lease, lend, redistribute, or sublicense any FamePick Materials; (b) copy, reverse engineer, decompile, disassemble or attempt to discover the source code of any FamePick Materials; (c) modify, alter or otherwise make any derivative uses of any of the FamePick Materials; (d) remove, alter or obscure any copyright, trademark or other proprietary rights notice included in the FamePick Materials; (e) use any data mining, robots or similar data gathering or extraction methods; (f) download (other than the page caching) any portion of the FamePick Materials; and (g) use the FamePick Materials other than for their intended purposes. Any use of the FamePick Materials other than as specifically authorized herein, without the prior written permission of FamePick, is strictly prohibited and will terminate the license granted in this section. Such unauthorized use may also violate applicable laws, including without limitation, copyright and trademark laws and applicable communications regulations and statutes. Unless explicitly stated by FamePick, nothing in these Terms shall be construed as conferring any license to intellectual property rights, whether by estoppel, implication or otherwise. Campaign Initiators are also restricted from using any of the Campaign information, likeness, posts, or other related information of the Influencers or the Campaign outside of FamePick.

## **6. Acceptable Use**

You will comply with all applicable laws, regulations, guidance and codes of practice in relation to your use of the Services. You will not: (a) access or use the Services in any manner that could interfere with, disrupt, negatively affect or inhibit anyone from fully enjoying the Services; (b) damage, disable, overburden or impair the functionality of the Services in any manner; (c) access or use the Services for any illegal or unauthorized purpose or engage in, encourage, or promote any illegal activity, or any activity that violates these Terms or any other terms or policies provided in connection with the Services; (d) use or attempt to use another user’s account without authorization from such user; (e) modify, adapt, hack or emulate the Services; (f) use any robot, spider, crawler, scraper or other automated means or interface not provided or authorized by us to access the Services or to extract data; (g) circumvent or attempt to circumvent any filtering, security measures or other features designed to protect the Services or third-parties; and/or (h) infringe upon or violate the rights of FamePick, our users or any third party.

## **7. Trademarks**

“FamePick” and any other trademarks, service marks, logos, trade names or other proprietary designations of FamePick are trademarks or registered trademarks of FamePick and may not be copied, imitated or used, in whole or in part, without the prior written permission of FamePick. All other trademarks, service marks, logos, trade names and any other proprietary designations are the trademarks or registered trademarks of their respective owners and may not be used without permission of the applicable trademark holder.

## **8. Termination or Modification of Services**

FamePick reserves the right to change, suspend, remove, discontinue or disable access to all or part of the Services at any time and without notice. In no event will FamePick be liable for the removal of or disabling of access to any portion or feature of the Services.

## **9. Feedback**

You may submit questions, comments, suggestions, ideas, plans, notes, drawings, original or creative materials or other information about FamePick and our Services (collectively, “**Feedback**”). FamePick shall own, and you hereby assign to FamePick, all right, title and interest, including all intellectual property rights, in and to such Feedback. FamePick shall be entitled to the unrestricted use and dissemination of these materials for any purpose, commercial or otherwise, without acknowledgment or compensation to you.

## **10. Copyright Complaints**

In accordance with the Digital Millennium Copyright Act (“**DMCA**”) and other applicable laws, we have adopted a policy of terminating, in appropriate circumstances and in our sole discretion, users who are deemed to be repeat infringers. We may also, in our sole discretion, limit access to the Services and/or terminate the Accounts of any users who infringe any intellectual property rights of others, whether or not there is any repeat infringement.

If you believe that anything on the Services infringes upon any copyright which you own or control, you may file a notification of such infringement with our Designated Agent as set forth below:

**Name of Designated Agent** : Henry Oh

**Address** : 800 Sea Spray Ln. #213, Foster City, CA 94404

**Email**: [info@famepick.com](mailto:info@famepick.com)

Please see [17 U.S.C. §512\(c\)\(3\)](#) for the requirements of a proper notification. If you knowingly misrepresent in your notification that the material or activity is infringing, you will be liable for any damages, including costs and attorneys’ fees, incurred by us or the alleged infringer as the result of our relying upon such misrepresentation in removing or disabling access to the material or activity claimed to be infringing.

## **11. Third-Party Content**

The Services may contain links to third-party websites, applications or other third-party services, and you understand and agree that we are not responsible or liable for the availability or accuracy of such third-party properties or the content, products or services made available through such properties. We do not endorse or control such third-party properties and we make no representations or warranties of any kind regarding such properties. If you access or use any third-party properties, you should also be aware that such third parties’ terms and policies will govern.

## **12. Disclaimers**

YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT YOUR ACCESS TO AND USE OF THE SERVICES IS AT YOUR SOLE RISK. AS BETWEEN YOU AND FAMEPICK, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS AND FAMEPICK EXPRESSLY DISCLAIMS ALL

REPRESENTATIONS, WARRANTIES AND CONDITIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN), INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, FAMEPICK DOES NOT REPRESENT OR WARRANT THAT: (A) THE FUNCTIONS CONTAINED IN THE SERVICES WILL BE ACCURATE OR MEET YOUR REQUIREMENTS; (B) THE OPERATION OF THE SERVICES WILL BE SECURE, UNINTERRUPTED, ERROR-FREE OR VIRUS-FREE, OR (C) ANY DEFECTS IN THE SERVICES WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION, GUIDELINES OR ADVICE GIVEN BY FAMEPICK WILL CREATE A WARRANTY. THE FOREGOING DISCLAIMER OF WARRANTIES WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. THE LAWS OF SOME STATES OR JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OF IMPLIED WARRANTIES, SO SOME OR ALL OF THE DISCLAIMERS IN THIS SECTION MAY NOT APPLY TO YOU.

### **13. Indemnification**

You agree to defend, indemnify and hold harmless FamePick and its independent contractors and service providers, and each of their respective directors, officers, employees and agents (collectively, “**FamePick Parties**”) from and against all third party claims, damages, costs, liabilities and expenses (including, but not limited to, reasonable attorneys’ fees) caused by, arising out of or related to (a) your use of, or inability to use, the Services; (b) your violation of these Terms or any applicable law or any rights of any third party; or (c) any User Content or Feedback you provide.

### **14. Limitation of Liability**

A. IN NO EVENT WILL FAMEPICK PARTIES BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, ECONOMIC, SPECIAL OR PUNITIVE DAMAGES,, INCLUDING, WITHOUT LIMITATION, FOR LOSS OF PROFITS, LOSS OF OPPORTUNITY, BUSINESS INTERRUPTION OR LOSS OF DATA, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

B. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF THE FAMEPICK PARTIES, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE, WHETHER ACTIVE, PASSIVE OR IMPUTED), PRODUCT LIABILITY, STRICT LIABILITY OR OTHER THEORY, ARISING OUT OF OR RELATING TO THE USE OF OR INABILITY TO USE THE SERVICES EXCEED (I) IF YOU ARE AN CAMPAIGN INITIATOR, THE TOTAL FEES YOU PAID VIA THE SERVICES DURING THE 6 MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM FOR LIABILITY; OR (II) IF YOU ARE AN INFLUENCER, THE TOTAL PAYMENTS YOU RECEIVED VIA THE SERVICES DURING THE 6 MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM FOR LIABILITY.

C. THE FOREGOING DISCLAIMER OF CERTAIN DAMAGES AND LIMITATION OF LIABILITY WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. THE LAWS OF SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES, SO SOME OR ALL OF THE EXCLUSIONS AND LIMITATIONS SET FORTH ABOVE MAY NOT APPLY TO YOU.

### **15. Release**

In the event that you have a dispute with any other users of our Services (whether Campaign Initiators or Influencers) or any other third party, you release the FamePick Parties from claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with such disputes or any interactions you may have with such users. If you are a California resident, you waive California Civil Code § 1542, which states: “A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

## **16. Arbitration**

PLEASE READ THE FOLLOWING PARAGRAPH CAREFULLY BECAUSE IT REQUIRES YOU TO ARBITRATE DISPUTES WITH COMPANY AND LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF FROM US.

You and FamePick agree to arbitrate any dispute arising from these Terms or your use of the Services, except that you and FamePick are not required to arbitrate any dispute in which either party seeks equitable and other relief for the alleged unlawful use of copyrights, trademarks, trade names, logos, trade secrets, or patents. ARBITRATION PREVENTS YOU FROM SUING IN COURT OR FROM HAVING A JURY TRIAL. You and FamePick agree: (a) that any arbitration will occur in Millbrae, California; and (b) that arbitration will be conducted confidentially by a single arbitrator in accordance with the rules of JAMS. Other than class procedures and remedies discussed below, the arbitrator has the authority to grant any remedy that would otherwise be available in court. WHETHER THE DISPUTE IS HEARD IN ARBITRATION OR IN COURT, YOU AND FAMEPICK WILL NOT COMMENCE AGAINST THE OTHER A CLASS ACTION, CLASS ARBITRATION OR REPRESENTATIVE ACTION OR PROCEEDING.

## **17. Governing Law; Venue**

FamePick is based in the United States and our Services are subject to U.S. law. We make no representations or warranties that the Services are appropriate or available for use in other locations.

The laws of the State of California, excluding its conflicts of law rules, govern your access to and use of the Services. To the extent the arbitration provision in Section 16 does not apply, you further agree that all disputes arising under these Terms will be resolved exclusively in the state and federal courts in San Mateo County, California, and you agree to submit to the personal jurisdiction of such courts for the purposes of litigating all such claims.

## **18. Termination**

We reserve the right to terminate your right to access and use the Services if you violate these Terms or any other terms or policies referenced herein, or if you otherwise create risk or possible legal exposure for us. You may terminate your Account with us at any time by contacting us at [business@FamePick.com](mailto:business@FamePick.com). If you are an Campaign Initiator, upon termination for whatever reason, any outstanding Fees in relation to your Campaign(s) will be immediately due and payable.

## **19. Non-Solicitation**

As part of accepting the services of FamePick, you agree not to directly or indirectly solicit any Campaign Initiator or any of its affiliates outside of the use of Our Services. You also agree not to directly or indirectly solicit any Campaign Initiator for up to six months after the termination of this agreement.

## **20. Right to Injunction**

You acknowledge that your services are of a special, unique, unusual, and extraordinary character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated by damages in any action at law. Any breach by you of any of the provisions of this Agreement will cause us irreparable injury and damage. You expressly agree that we shall be entitled to injunctive and other equitable relief in the event of, or to prevent, a breach of any provision of this Agreement without a bond. Any injunctions shall not be construed to be a waiver of any other rights or remedies for damages or otherwise.

## **21. Independent Relationship**



Your use of the Services, and any payments you make or receive via the Services, does not create any agency, partnership, joint venture, or employment relationship between you and FamePick.

## **22. Severability**

If any provision of these Terms shall be deemed unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from these Terms and shall not affect the validity and enforceability of any remaining provisions.

## **23. Assignment**

You may not assign these Terms or any of the rights granted hereunder without the prior written consent of FamePick, and any attempted assignment without such consent shall be void. Subject to the foregoing restriction, these Terms will be fully binding upon, inure to the benefit of, and be enforceable by us and our respective successors and assigns.

## **24. Nonwaiver**

Any failure by FamePick to insist upon or enforce performance by you of any of the provisions of these Terms or to exercise any rights or remedies under these Terms or otherwise by law will not be construed as a waiver or relinquishment of any right to assert or rely upon the provision, right or remedy in that or any other instance; rather, the provision, right or remedy will be and remain in full force and effect.

## **24. Survival**

Sections 4.1(a) and (b), 4.2(d) and (e), 9 and 12-25 shall survive termination of these Terms for whatever reason.

# **Master Software as a Service Terms and Conditions**

Subscriber has entered into one or more written Exhibit A(s) with FamePick, Inc. ("**Service Provider**") referencing these Master Software as a Service Terms and Conditions (these "**Terms and Conditions**").

These Terms and Conditions together with each Exhibit A entered into by Subscriber and Service Provider form a separate legally binding agreement between Subscriber and Service Provider. All references to the "Agreement" include these Terms and Conditions and each Exhibit A entered into by Subscriber and Service Provider. All references to the "Exhibit A" will mean the applicable Exhibit A forming a part of each Agreement including these Terms and Conditions. Unless otherwise stated in an applicable Exhibit A, each Exhibit A referencing these Terms and Conditions forms a separate Agreement between Subscriber and Service Provider.

By entering into an Exhibit A referencing these Terms and Conditions, Subscriber agrees that all services set forth in that Exhibit A ("**Services**"), and all access to and use of the Platform (as

defined below) in connection with those Services, will be governed by the Agreement formed by these Terms and Conditions and that Exhibit A.

Subscriber acknowledges and agrees that Subscriber has the full power and authority to enter into each Agreement including these Terms and Conditions and to bind Subscriber to that Agreement. Any Exhibit A forming part of an Agreement with these Terms and Conditions may be amended and executed in multiple counterparts, each of which will be deemed an original, but all of which together will constitute a part of the Agreement. No Exhibit A will be effective until mutually agreed to by Service Provider and Subscriber. Each Agreement, including these Terms and Conditions, supersedes any and all oral or written agreements or understandings between Service Provider and Subscriber as to the subject matter of that Agreement.

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**1. DEFINITIONS.** All capitalized terms used in this Agreement will have the meanings given to them here or in each Exhibit A forming a part of this Agreement. All other terms used in this Agreement will have their plain English meaning as commonly interpreted in the United States.

**2. TERM.** The term of this Agreement will begin on the Subscription Start Date of the applicable Exhibit A forming a part of the Agreement. Unless earlier terminated as set forth herein, the term of this Agreement will continue until the Subscription End Date stated in that Exhibit A. Unless

otherwise specified in the applicable Exhibit A, the term of this Agreement will thereafter automatically renew for successive additional renewal periods each equal to either 1 month (in the case of a month-to-month subscription plan) or 12 months (in the case of an annual subscription plan), unless either party notifies the other party of its intent not to renew the Agreement at least 30 days prior to the end of the then-current renewal period.

**3. FEES.** The fees in connection with this Agreement (“Fees”) are as stated in the applicable Exhibit A and are due and payable by Subscriber as specified in this Agreement. Additional Fees may be specified in connection with the Services obtained by Subscriber through the Platform, and such additional Fees are due and payable as specified in an Exhibit A.

**4. SERVICES.** All Services and other obligations of Service Provider under this Agreement will be as set forth in each applicable Exhibit A entered into between Subscriber and Service Provider referencing this Agreement. In addition, if the applicable Exhibit A includes service levels applicable to any Services, then those Services will be provided in accordance with the applicable service levels set forth in the Exhibit A (“Service Levels”). All Service Levels are subject to the terms and conditions of this Agreement. All Service Levels are solely between Service Provider and Subscriber. In the event of any failure by Service Provider to meet any applicable Service Level, Service Provider’s sole obligation, and the sole remedy of Subscriber, will be as expressly stated in the applicable Exhibit A. Service Provider will not have any obligation to provide Services or perform other obligations unless specified herein or in that Exhibit A. Upon Subscriber’s request and Service Provider’s agreement, Subscriber and Service Provider may enter into additional Orders under this Agreement.

## **5. PLATFORM.**

### **5.1 Access and Use.**

**(a) Direct.** The Services may include hosted software, provided as a “service” delivered through Service Provider’s web-based content creation and distribution platform (the “**Platform**”). The Platform enables engagement with online influencers (“**Influencers**”) and the generation and distribution of content created by those Influencers (“**Posts**”) through social media and other online channels. If an applicable Exhibit A includes Services to be provided through the Platform for direct use by Subscriber, then subject to compliance with the terms of this Agreement, during the term of this Agreement, Service Provider will provide Subscriber with a subscription to access the Services through the Platform solely for Subscriber’s internal business use.

**(b) Agency.** If an applicable Exhibit A includes Services to be provided through the Platform for use by Subscriber in providing services to clients or customers represented by Subscriber (each a “**Subscriber Customer**”), then subject to compliance with the terms of this Agreement, during the term of this Agreement, Service Provider will provide Subscriber with a subscription to access those Services through the Platform solely for the benefit of those Subscriber Customers.

**5.2 Account.** All Subscriber access to the Platform will be provided through a Subscriber account (an “**Account**”). Subscriber may enable authorized employees and contractors of Subscriber and any other named individuals set forth in the applicable Exhibit A (“**Users**”) to access the Platform through its Account. Each User will be required to establish his/her own user identification and password (“**User ID**”) through which the User may access the Platform. Each User ID is personal in nature and may be used only by that User. Subscriber is responsible for all access to and use of the Platform by each User and for compliance by each User with the terms of this Agreement (and any other agreement to which the User agrees in connection with the Platform). Subscriber will not allow any access to or use of the Platform by anyone other than Subscriber’s Users. Subscriber commits that all use of the Platform will be consistent with the terms, conditions and restrictions set forth in this Agreement. Subscriber will notify Service Provider immediately of any unauthorized access to or use of the Platform or if any User ID is lost, stolen, or otherwise compromised. Subscriber will remain fully responsible for all access to or use of the Platform or any Services through Subscriber’s Account.

## **6. RESTRICTIONS.**

**6.1 General.** Subscriber acknowledges that the Platform and all software, hardware, databases, and other technology used by or on behalf of Service Provider to provide the Platform and Services (collectively, the “**Technology**”) and their structure and organization constitute valuable trade secrets of Service Provider and its providers. Subscriber will not, and will not permit any User, Subscriber Customer, or other third party to: (a) access or use the Technology except as expressly provided in this Agreement; (b) use the Technology in a manner that violates any applicable law or regulation or causes Service Provider to violate any applicable law or regulation; (c) damage, disable, overburden, or impair the Technology; (d) use automated scripts to collect information from or interact with the Technology; (e) alter, modify, reproduce, create derivative works of the Technology; (f) provide any third party access to the Technology (including by distributing, selling, loaning, leasing, licensing, or transferring rights), except for permitted Subscriber Customers as specified here; (g) reverse engineer, disassemble, decompile, or otherwise attempt to derive the source code or method of operation of the Technology; (h) attempt to circumvent or overcome any protection measures intended to restrict or prevent unauthorized access to the Technology; (i) monitor availability, performance or functionality of the Technology or perform any benchmarking, business intelligence, data mining, or competitive analysis of the Technology; or (j) interfere with the operation or hosting of the Technology.

**6.2 Third Party Functionality.** Platform may contain or include functionality and software provided or licensed by third-parties (“**Third-Party Functionality**”). For any Third-Party Functionality clearly indicated to be subject to the terms of a separate agreement (a “**Third-Party Agreement**”), the terms of the applicable Third-Party Agreement will apply to the Third-Party Functionality independent of the terms of this Agreement. All other Third-Party Functionality provided to Subscriber through the Platform may be used only under the terms of this Agreement. Nothing in this Agreement limits Subscriber’s rights under the terms of any such

applicable Third-Party Agreement.

**6.3 Performance Limits.** All access to and use of the Services and Platform by Subscriber is subject to the performance tiers and other limitations and restrictions specified in the Exhibit A (“**Performance Limits**”). Subscriber agrees to access and use the Platform solely within the Performance Limits applicable to Subscriber. Subscriber acknowledges that the Platform may contain functionality limiting access and use of the Platform and Services to within applicable Performance Limits. Subscriber will take such precautions necessary to avoid any interruption or loss that may occur due to any attempt to operate the Platform outside of applicable Performance Limits.

## **7. TECHNICAL SUPPORT AND MAINTENANCE.**

**7.1 Technical Support.** Service Provider shall provide the technical support as described in the Exhibit A (“**Technical Support**”). The Services Fees shall be inclusive of the fees for the performance of all Technical Support.

**7.2 Maintenance.** Service Provider shall use commercially reasonable efforts to provide maintenance for the Services (including, bug fixes, corrections, modifications, enhancements, upgrades, and new releases of the Services) to ensure the Services function in accordance with: (a) each Exhibit A; (b) the documentation applicable to the Services provided by Service Provider; (c) the representations and warranties set forth here; and (d) any applicable Service Level Standards (as defined below). The Services Fees shall be inclusive of the fees for such maintenance.

## **8. DATA.**

**8.1 Subscriber Data.** Subscriber retains all rights, including all IPR (as defined below), in and to all data, information, and other content, including any text, files, images, graphics, illustrations, information, data, audio, video, photographs, completed program performance and analytics (“**Data**”) provided by Subscriber or any Subscriber Customer or User (“**Subscriber Data**”).

**8.2 Influencer Data.** Service Provider agrees to assign to Subscriber all rights, including all IPR, obtained or held by Service Provider in or to all Data provided or authored by any Influencer on behalf of Subscriber through the Services (“**Influencer Data**”). As a condition to such assignment, Subscriber agrees to provide each applicable Influencer with attribution as the author of such Influencer Data whenever such influencer Data is Used by Subscriber, whether through the Platform or otherwise.

**8.3 Additional Responsibility.** Subscriber grants Service Provider all rights and licenses in and to the Subscriber Data and Influencer Data necessary for Service Provider to provide the Services and perform its other obligations under this Agreement. Subscriber has all rights in and to all Subscriber Data necessary to permit Service Provider to provide the Services and perform its other obligations under this Agreement. Subscriber is liable for all costs, fees, liabilities, or

damages related to any Subscriber Data and Influencer Data including any fees payable to Users, Influencers or other third parties or any liabilities arising from the copying, reproduction, publication, distribution, display, performance, modification, or other use (“Use”) of any Subscriber Data and Influencer Data. Except as expressly stated in this Agreement, Service Provider has no responsibility or liability for any Subscriber Data or Influencer Data, including any deletion, destruction, or loss of any Subscriber Data or Influencer Data, and Subscriber is otherwise solely responsible and liable for all Subscriber Data and Influencer Data. Subscriber agrees that the Subscriber Data and Influencer Data will not: (a) violate this Agreement, the Privacy Policy (as defined herein), or any other applicable Service Provider policy; (b) violate any applicable laws or regulations or cause Service Provider to violate any applicable laws or regulations; (c) be libelous, defamatory, obscene, abusive, pornographic, threatening, or an invasion of privacy; (d) constitute an infringement, misappropriation or violation of the IPR or other rights of any third party; (e) be illegal in any way or advocate illegal activity; (f) be false, misleading, or inaccurate; or (g) be considered, in the sole discretion of Service Provider, junk mail, spam, a part of a pyramid scheme, a disruptive commercial message or disruptive advertisement. Service Provider may, but is not required, unless otherwise stated by the applicable Exhibit A, to review Subscriber Data and Influencer Data. No such review will expand the responsibility or liability of Service Provider for any Subscriber Data or Influencer Data, unless expressly agreed to in writing by Service Provider.

**8.4 Submissions.** Service Provider has no responsibility or liability for any submission, response, comment, or other feedback provided or obtained from any third party in response to any Post (“**Submissions**”) or any Use of any Submissions.

**8.5 Platform Data.** Except for any Subscriber Data, Influencer Data, and Submissions, all other Data made available or provided through the Platform (“**Platform Data**”) is owned by Service Provider and its providers. Except as expressly set forth in this Agreement, Subscriber is granted no licenses or other rights in or to any Platform Data or any Use thereof.

**9. BRANDING.** Subscriber will identify and approve of all trademarks, service marks, trade names and other identifiers of Subscriber and applicable Subscriber Customers (“**Subscriber Marks**”) to be used by Service Provider and applicable Influencers in connection with providing the Services. Subscriber grants Service Provider a license, with a limited right of sublicense to Influencers generating and distributing Posts on behalf of Subscriber, to use the Subscriber Marks in connection with providing the Services under this Agreement. Subscriber has (or has obtained from each Subscriber Customer) all rights in and to all Subscriber marks necessary to permit Service Provider and each applicable Influencer to provide the Services and perform the other obligations under this Agreement. Service Provider agrees that the Subscriber Marks are and will remain the sole property of Subscriber and each applicable Subscriber Customer and that all use of any of the Subscriber Marks and all goodwill

developed therein will inure solely to the benefit of Subscriber or the applicable Subscriber Customer. All use of the Subscriber Marks by Service Provider will comply with the terms of this Agreement and any reasonable trademark usage requirements provided by Subscriber to Service Provider in connection with this Agreement, provided that those limitations do not restrict Service Provider from performing the Services or its other obligations under this Agreement.

**10. PAYMENT.** Upon submission of your payment information, your credit card will be charged the amount indicated for whichever of the three FamePick pricing packages you choose. If you selected a monthly payment option, you will be billed the corresponding dollar amount on a monthly basis (approximately every 30 calendar days). If you selected an annual payment option, you will be billed the corresponding dollar amount once, within 1-2 business days. Once you are billed, for either a monthly or annual installment, you will not be eligible for refunds of your remittance. This aforementioned no-refund policy applies only to the subscription costs of the FamePick Platform. For Celebrity Campaign refund policies and conditions, please reference the IO and Advertiser Agreement signed by all parties for any campaign in question.

All Fees contained in the applicable Exhibit A are payable within 30 days of the date such Exhibit A is entered into by Service Provider and Subscriber. Any Fees specified on the Platform are payable upon receipt of invoice. Service Provider will invoice all Fees to Subscriber. All Service Provider invoices are due in immediately available U.S. funds. Any discount for early payment specified in the applicable Exhibit A is applicable only to the Fees contained in that Exhibit A and is strictly limited to the terms stated in connection with such discount. If Subscriber has specified direct withdrawal from a bank account as an applicable payment mechanism under this Agreement, Subscriber grants Service Provider the right to debit the bank account provided to Service Provider for all Fees incurred under this Agreement. Subscriber is responsible for payment of all costs or fees associated with payment by wire transfer, or through third party invoicing or accounts payable service providers. Until paid in full, all past due amounts will bear an additional charge of the lesser of 1½% per month or the maximum amount permitted under applicable law. Unless otherwise specified, Service Provider may change any portion of any Fee by notifying Subscriber of the change in writing at least 30 days prior to the expiration of the then-current subscription period of this Agreement (or if the period is shorter than 30 days, at the start of the current period). All changes will take effect at the beginning of the next subscription period of this Agreement. If Service Provider requires use of collection agencies, attorneys, or courts of law for collection of any Fees, Subscriber will be responsible for those expenses. Subscriber will be responsible for all sales and use taxes, if any imposed on the Services provided under this Agreement (other than taxes resulting from Service Provider's income or property).

Upon submission of your payment information, your credit card will be charged the amount indicated for whichever of the three FamePick pricing packages you choose. If you selected a monthly payment option, you will be billed the corresponding dollar amount on a monthly basis (approximately every 30 calendar days). If you selected an annual payment option, you will be

billed the corresponding dollar amount once, within 1-2 business days. Once you are billed, for either a monthly or annual installment, you will not be eligible for refunds of your remittance. This aforementioned no-refund policy applies only to the subscription costs of the FamePick Platform. For Celebrity Campaign refund policies and conditions, please reference the IO and Advertiser Agreement signed by all parties for the campaign in question.

**11. TERMINATION OR SUSPENSION.** This Agreement may be terminated by either party if the other party materially breaches any term of this Agreement and fails to cure the material breach within a period of 30 days following notice of such breach from the non-breaching party, and such notice shall describe the breach in reasonable detail. In addition, Service Provider may also temporarily suspend access to and use of the Platform and Services upon notice to Subscriber following any actual or suspected breach of this Agreement or applicable law or to prevent any other conduct deemed by Service Provider to be harmful, inappropriate, or detrimental to the Platform or to Service Provider. Service Provider will reinstate access to the Platform or Services, as applicable, following resolution of any such breach or conduct. Upon any termination or expiration of this Agreement: (1) all rights and license granted to Subscriber under this Agreement will terminate unless otherwise negotiated with the Service Provider and the respective Influencer; (2) Subscriber will immediately cease all use of and access to the Platform and Services; (3) all Fees then owed by Subscriber will become immediately due and payable; (4) Subscriber will immediately either return to Service Provider or, at Service Provider's discretion, destroy all Service Provider Confidential Information (as defined below) in Subscriber's possession or control. Following any termination or expiration of this Agreement (other than resulting from a failure to pay any Fees when due), Service Provider will use commercially reasonable efforts to store Subscriber Data and provide Subscriber with limited access to the Services to download copies of the Subscriber Data for 30 days (or any longer post-termination retention period specified in an applicable Exhibit A). After the foregoing retention period, Service Provider may delete any Subscriber Data held by Service Provider at any time. The following Sections will survive termination or expiration of this Agreement for any reason: 10 (Payment) 11 (Termination), 12 (Ownership), 14 (Indemnification), 15 (Limitation of Liability), 16 (Data Privacy), 17 (Confidentiality), 18 (Force Majeure), 19 (Advertising and Publicity), 20 (Governing Law), 21 (Notice), and 22 (General).

**12. OWNERSHIP.** Service Provider retains all right, title, and interest, including all IPR (as defined below), in and to the Platform, Services, Technology, Platform Data and any additions, improvements, updates, and modifications thereto. Subscriber acknowledges that Subscriber is not receiving any ownership interest in or to any of the foregoing, and no right or license is granted to Subscriber to use it apart from Subscriber's right to access the Services under this Agreement. The Service Provider name, logo, and the product and service names associated with the Services are trademarks of Service Provider (or its third party providers), and no right or license is granted to Subscriber to use them. Unless otherwise provided in the applicable Exhibit



A, any instructions, methods, techniques, inventions, conceptions, developments, discoveries, works of authorship, or other deliverables or work product that have been previously developed by Service Provider or arise from or relate to any Services provided under any Exhibit A (“**Deliverables**”), and all IPR therein or relating thereto, shall be solely owned by Service Provider. To the extent such Deliverables relate to the Services, such Deliverables will be included in the definition of “Services” for the purposes of this Agreement and provided to Subscriber under the terms of this Agreement as part of the Services. Any additional licenses or other rights of Subscriber in or to any Deliverables will be as set forth in the applicable Exhibit A. For purposes of this Agreement, “**IPR**” means any and all intellectual property and proprietary rights, rights of publicity, rights of privacy, and any and all other legal rights protecting data, information or intangible property throughout the world, including all copyrights, trademarks, service marks, trade secrets, patent rights, moral rights, rights in data or databases, and contract rights.

**13. PERFORMANCE AND DISCLAIMER.** Service Provider will provide Subscriber with access to and use of the Services and Platform in accordance with this Agreement. EXCEPT AS STATED IN THIS AGREEMENT, SERVICE PROVIDER MAKES NO REPRESENTATION OR WARRANTY REGARDING THE SERVICES, PLATFORM, SOFTWARE, OR PLATFORM DATA AND DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, REGARDING THE SERVICES, PLATFORM, OR PLATFORM DATA, INCLUDING ALL WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

#### **14. INDEMNIFICATION.**

**14.1 By Service Provider.** Service Provider shall indemnify, defend, and hold harmless Subscriber and its officers, directors, employees, representatives, and agents (collectively, “**Subscriber Indemnitees**”) from and against all claims, actions, liabilities, losses, expenses, damages and costs (including reasonable attorney’s fees) that may be incurred in whole or in part by reason of any third party claim or action to the extent such claim or action alleges that the use or operation of the Platform by Subscriber in accordance with this Agreement infringes or misappropriates any third party copyright, trademark, or trade secret or that Service Provider knowingly infringed any third party U.S. patent in the development or operation of the Platform. If the Platform becomes, or if Service Provider believes that the Platform is likely to become, the subject of a claim of infringement or misappropriation, Service Provider may, in its sole discretion, replace or modify the Platform, procure for Subscriber the right to continue using the Platform, or terminate this Agreement and require Subscriber to immediately cease access to and use of the Platform. In the case of any such termination, Service Provider will refund to Subscriber any pre-paid portion of any Fees. Service Provider shall not be liable for any costs or expenses incurred by Subscriber in connection with any claim of infringement or misappropriation without Service Provider’s prior written authorization. Service Provider shall have no obligation under this Section 14.1 as to any claim or action arising out of or related to: (a) Subscriber’s failure to use the Platform in accordance with this Agreement, any documentation applicable to the Platform, or Service Provider’s instructions; (b) Subscriber’s modification of the Platform not specifically authorized in writing by Service Provider; (c) the

combination of any portion of the Platform with any third party software, equipment, service, or data; and (d) any breach by Subscriber of this Agreement. THIS SECTION 14.1 STATES SERVICE PROVIDER'S ENTIRE LIABILITY AND SUBSCRIBER'S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT OR MISAPPROPRIATION CLAIMS OR ACTIONS RELATING TO OR ARISING OUT OF THE PLATFORM OR SERVICES.

**14.2 By Subscriber.** Subscriber will indemnify, defend, and hold harmless Service Provider and its officers, directors, employees, representatives, and agents from and against all claims, actions, liabilities, losses, expenses, damages and costs (including reasonable attorney's fees) that may be incurred in whole or in part by reason of any claim or action to the extent such claim or action directly or indirectly from: (a) any use by Service Provider or any Influencer of any Subscriber Marks; (b) any Use by Subscriber or any third party of any Subscriber Data or Influencer Data; or (c) any breach by Subscriber or any Subscriber Customer or User of this Agreement.

**14.3 Mutual Indemnification.** Each party will indemnify, defend, and hold harmless the other party and its officers, directors, employees, representatives, and agents from and against all claims, actions, liabilities, losses, expenses, damages and costs (including reasonable attorney's fees) that may be incurred in whole or in part by reason of any claim or action to the extent such claim or action directly or indirectly from such party's gross negligence or willful misconduct.

**14.4 Procedure.** Each party seeking indemnification from the other party under this Section will give the indemnifying party prompt notice of any claim subject to this Section, grant the indemnifying party sole control of the defense or settlement of any claim or action subject to indemnification, and provide the indemnifying party with reasonable cooperation and assistance, at the request and expense of the indemnifying party, in the defense or settlement of any claim or action subject to indemnification under this Section.

**15. LIMITATION OF LIABILITY.** Except in the case of (1) the obligations of each party under Section 14 (Indemnification), (2) a party's breach of Section 17 (Confidentiality), or (3) a party's breach of its obligations regarding the IPR of the other party: (a) neither party will be liable to the other party (or, in the case of Service Provider, to any Subscriber Customer or User) for any consequential, incidental, indirect, special, exemplary, or punitive damages of any kind, including any loss of use or access, loss of business or loss of revenue or profit, arising out of or in connection with this Agreement or the Platform or Services, whether in contract, tort, or otherwise, even if such party is aware (or should have been aware) of the possibility of such damages; and (b) the total cumulative liability of each party in connection with this Agreement, whether in contract, tort, or otherwise, will not exceed any amounts actually paid to Service Provider by Subscriber under the applicable Exhibit A under which such liability arose during the 3 month period immediately preceding the events giving rise to such liability.

**16. DATA PRIVACY AND SECURITY.** Service Provider shall establish and maintain a data

privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (1) ensure the security and confidentiality of the Subscriber Data; (2) protect against anticipated threats or hazards to the security or integrity of the Subscriber Data; (3) protect against unauthorized disclosure, access to, or use of the Subscriber Data; (4) ensure the proper disposal of Subscriber Data. All access to and use of the Services and use Platform is subject to Service Provider's Privacy Policy ("**Privacy Policy**"), a current copy of which is available at <https://www.famepick.com/privacy/>. Service Provider and Subscriber agree to comply with the current terms of the Privacy Policy.

**17. CONFIDENTIALITY.** For purposes of this Agreement, the "**Confidential Information**" of each party means all nonpublic information disclosed or made available under this Agreement by that party to the other party, including regarding the business, finances, services or technology of that party. Any information about Influencers (including contact information) is the Confidential Information of the Service Provider. Confidential Information shall not include any information that the party receiving any information can demonstrate: (1) was already lawfully known to that party at the time of disclosure by the other party; (2) is disclosed to that party by a third party who had the right to make such disclosure without any confidentiality restrictions or other obligations as to the information disclosed; or (3) is, or through no fault of that party has become, generally available to the public. Each party agrees to protect the other party's Confidential Information with the degree of care that such party uses to protect its own confidential information of like nature, but in no case less than reasonable care. Each party agrees that, except as expressly directed by the other party, it will not at any time during or after the term of this Agreement: (a) disclose any Confidential Information to any third party; (b) permit any third party to examine and/or make copies of any reports, documents or electronic data containing Confidential Information; or (c) use any of the Confidential Information for any reason other than for the purposes of this Agreement. Notwithstanding the foregoing, each party will be allowed to disclose Confidential Information of the other party solely to the extent that such disclosure is required by law or by the order of a court or similar judicial or administrative body of competent jurisdiction, provided that the party notifies the other party of such required disclosure promptly and in writing and cooperates with the other party in any lawful action to contest or limit the scope of such required disclosure.

**18. FORCE MAJEURE.** Neither party shall be liable for delays or any failure to perform the Services in this Agreement due to causes beyond its reasonable control. Such delays include, but are not limited to, fire, explosion, flood or other natural catastrophe, governmental legislation, acts, orders, or regulation, strikes or labor difficulties, to the extent not occasioned by the fault or negligence of the delayed party. Any such excuse for delay shall last only as long as the event remains beyond the reasonable control of the delayed party. However, the delayed party shall use its best efforts to minimize the delays caused by any such event beyond its reasonable control. Where Service Provider fails to use its best efforts to minimize such delays, the delays shall be included in the determination of any Service Level achievement. The delayed party must notify the other party promptly upon the occurrence of any such event, or performance by the delayed party will not be considered excused pursuant to this Section, and

inform the other party of its plans to resume performance.

**19. ADVERTISING AND PUBLICITY.** Without limiting the obligations of Sections 9 and 12 above, any publicity concerning a party directly or indirectly in any advertisement, news release, or publication shall require the other party's prior written approval.

**20. GOVERNING LAW.** The interpretation of the rights and obligations of the parties under this Agreement, including, to the extent applicable, any proceedings relating to this Agreement, will be governed in all respects exclusively by the laws of the State of Colorado, U.S.A. as such laws apply to contracts between Colorado residents performed entirely within Colorado. Each party agrees that it will bring any action or proceeding arising from or relating to this Agreement exclusively in a federal court in the District of Colorado, U.S.A. or in state court in Denver, Colorado U.S.A., and Subscriber irrevocably submits to the personal jurisdiction and venue of any such court in any such action or proceeding or in any action or proceeding brought in such courts by Service Provider.

**21. NOTICE.** All notices permitted or required under this Agreement will be in writing, delivered by personal delivery, electronic mail, facsimile transmission or by certified or registered mail, return receipt requested, and will be deemed given upon personal delivery, 5 business days after deposit in the mail, first class postage prepaid, or upon acknowledgment of receipt of electronic transmission. Notices from Service Provider to Subscriber may be sent to the electronic mail address associated with Subscriber's Account or to the attention of an officer of Subscriber at the addresses set forth at the beginning of this Agreement (or such other physical address as Subscriber may specify in writing). Notices from Subscriber to Service Provider may be sent through the Services, or to an officer of Service Provider at Service Provider's mailing address provided on the Platform (or such other address as Service Provider may specify in writing).

**22. GENERAL.** The parties are independent contractors and nothing in this Agreement will create an employer-employee relationship, a partnership, or a joint venture between the parties. Neither party is an agent of the other and neither party is authorized to make any representation or commitment on behalf of the other party. No modification or amendment of this Agreement will be effective unless made in writing and signed by both parties. The waiver of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions of this Agreement will continue in full force and effect. No term of this Agreement will be construed to confer any rights upon any third party or to create any third-party beneficiary rights. All remedies under this Agreement are cumulative with all other rights and remedies herein or in any other agreement between the parties or under applicable law. Nothing in this Agreement will limit either party's right to seek immediate injunctive or other equitable relief in any court of competent jurisdiction. The parties acknowledge and agree that monetary damages may be inadequate to compensate for a breach of this Agreement. The prevailing party

in any lawsuit or proceeding arising from or related to this Agreement will be entitled to receive its costs, expert witness fees and reasonable attorneys' fees, including costs and fees on appeal. Neither this Agreement nor any rights or obligations hereunder may be assigned, transferred, or delegated by either party in whole or in part, by operation of law or otherwise, without the prior written approval of the other party, except that either party may assign this Agreement without consent (1) to any of its affiliates or (2) to any third party pursuant to any merger, consolidation, sale of the stock, sale of all or substantially all of the business, or reorganization involving the assigning or transferring party, provided that prior to such assignment or transfer all such assignees and transferees agree in writing to be bound by the terms and conditions of this Agreement. Any attempt to assign or otherwise transfer this Agreement or the rights or obligations under this Agreement will be void. This Agreement will be binding upon, inure to the benefit of, and will be enforceable by and against, the successors, heirs, beneficiaries, personal representatives, and permitted assigns of each party. Any failure of Service Provider to perform or delay in the performance of Service Provider's obligations under this Agreement due to any cause or event not reasonably within Service Provider's control, including but not limited to casualty, labor dispute, failure of equipment or carriers or utilities, compliance with governmental authority or Act of God, shall not constitute a breach of this Agreement, and Service Provider's performance shall be excused during such period of delay.