



CLIENT TERMS OF USE ("TERMS")

PLEASE READ THESE TERMS CAREFULLY. THEY SET OUT THE CONTRACT BETWEEN YOU AND US FOR YOUR USE OF OUR SERVICES, INCLUDING MARKETPLACE.

Date of last amendment: 14 December 2017

1. HELLO AND WELCOME!

- A. We are Tailify Software Limited (Company number 10127861), C/O The Office Group, White Collar Factory, 1 Old Street Yard, EC1Y 8AF, London United Kingdom ("**Tailify**"; "**us**"; "**our**"; "**we**").
- B. You may choose to engage with us by using **Marketplace**, which is an online and mobile application technology platform which allows brands, advertisers and media agencies ("**you**", "**your**") to explore our community of content creators (called "**Influencers**") and engage with them to contribute to and participate in your advertising campaigns ("**Campaigns**") by posting endorsement content on the Influencer's own website blog or personal social media account. In addition, Tailify also offer managed services, where our team of experts can provide the bespoke service that's set out in your Managed Service Terms.
- C. When you sign up to Marketplace; we undertake Managed Services for you; or you otherwise engage Tailify, you confirm your acceptance of these Terms. By using the Marketplace, you're bound by these Terms, all applicable Campaign fee, and our Terms of Website Use, Privacy Policy and Cookie Policy (together the "**Agreement**") between us and you. We will also agree Managed Service Terms for any managed services we provide, which will also be part of the Agreement.
- D. We recommend you print and retain a copy of the Agreement for your future reference, but remember that we may amend the Terms, Terms of Website Use, Privacy Policy and Cookie Policy from time to time. For your reference, we'll add the date each time we change them.
- E. Definitions used in our Managed Service Agreement, Terms of Website Use, Privacy Policy and/ or Cookie Policy shall have the same meaning when used in these Terms.
- F. In the case of any inconsistency, the following order of preference shall apply:
 - (i) Managed Service Terms
 - (ii) These Terms
 - (iii) Privacy Policy & Cookies Policy
 - (iv) Terms of Website Use.

2. CONTRACT FORMATION

In order to use the Marketplace, you will need to complete the Marketplace account application process. We may decide whether to accept your account application in our sole discretion. Once we have accepted your account application, you may upload your Campaign details into Marketplace. When you accept our Terms, by ticking the box when you apply for a Marketplace account, or through engaging us to provide Managed Services, a contract is formed between you and us, subject to the terms of the Agreement.

3. FEES, PUBLISHING YOUR CAMPAIGN ON MARKETPLACE AND CONTRACTING WITH INFLUENCERS

- A. Once you have registered for, and had your account application accepted, the Marketplace enables you to upload Campaign details, search for and select Influencers. When you select Influencers, you will see details of their fees and the Marketplace fees (unless otherwise agreed in your Managed Service Terms). You may negotiate the Influencer fees via the Marketplace. You can send your Proposal to your selected Influencers and invite them to respond. Once you have contacted the Influencers, you are then obligated to pay Tailify both the Marketplace fees and the Influencer fees following the date the Influencer posts Campaign content and you have verified the campaign as complete. The Influencer will only post Content once you have approved it via Marketplace.
- B. A "**Proposal**" is an offer by you to an Influencer setting out the Campaign contract terms between you and the Influencer. Whilst it is solely your obligation to agree your own Proposal with the Influencers, we suggest the Proposal includes full details of the Campaign brief; targets; budget and fees; timeframe and applicable deadlines; content approval process; fees; payment dates; exclusivity requirements; and intellectual property ownership. The Proposal may not override the fee payment process via the Marketplace, and if it seeks to do so, those terms of the Proposal will be void *ab initio* (from the outset).
- C. The Marketplace enables you and the Influencer to agree Proposal terms directly. Tailify has no involvement in, and is not a party to, the contractual relationship between you and the Influencer. The agreed Proposal forms the contractual relationship between you and the Influencer regarding the Influencer's participation in your Campaign.
- D. You may upload your Proposal terms for each Campaign. It's your responsibility to make sure those terms are appropriate and suitable for the Campaign and that they are properly agreed and binding on the Influencer. We have no liability in relation to anything you upload into the Marketplace or for any relationship between you and the Influencer(s).
- E. Once you have approved Content, it has been posted by the Influencer and verified by you, Tailify will either issue an invoice or debit your credit card for the Influencer Fees and the Marketplace fees. Invoices are payable on 30 days from the date of the invoice. Your Marketplace account contains full billing summary details. Tailify retains the Marketplace fees and pays the Influencer fees on your behalf.
- F. If you are a media agency acting on behalf of your client, you agree that payment of the Marketplace fees and Influencer fees is not contingent on payment to you from your client.

4. YOUR RESPONSIBILITIES AND PROMISES, A.K.A. WARRANTIES AND UNDERTAKINGS

- A. You warrant and undertake (or if you are a media agency, procure such warranties and undertakings from your client) on an ongoing basis that:

- (i) You are authorised to enter into contractual relationships on behalf of the contracting entity or brand owner and to grant the consents and assign and grant the rights herein expressed to be granted and assigned, free from encumbrances and third-party rights;
- (ii) all the information and content you upload to the Marketplace or otherwise provide to us or Influencers is accurate, complete and not misleading, and that you will tell us straight away in writing if any of that information or content changes;
- (iii) you have and will maintain all the necessary licences, consents and permissions necessary and you are entitled to give all assurances, confirmations, waivers and agreements herein to enable us to publish your uploaded Campaign content on the Marketplace without us making any further payment other than as expressly set out herein; (iii) you will not at any time make any disparaging, defamatory or derogatory statement about or do anything detrimental to the reputation or business of us, any Campaign, the Influencers or our group companies, partners, affiliates, contractors and/ or agents; (iii) Nothing that you upload onto the Marketplace will incorporate any material that:
 - is unlawful or illegal;
 - causes damage or injury to any person or property;
 - infringes the copyright or any other rights of any third party, including any right of confidentiality or privacy;
 - contains any obscene, profane, blasphemous, libellous, defamatory, threatening, pornographic, bullying, harassing, hateful, racially or ethically offensive or defamatory matter;
 - incites or encourages criminal or illegal activity;
 - is discriminatory based on race, gender, colour, religious belief, sexual orientation, or disability; and/ or
 - depicts sexually explicit images.
- (iv) your use of the Marketplace will be compliant with all applicable laws, regulations, codes and standards, including without limitation all applicable advertising standards and regulations;
- (v) publication of your uploaded content by us, our Influencers (including but not limited to in any Campaign), group companies, partners, affiliates, contractors and/ or agents will not infringe the rights of any third party (and you agree that you shall immediately inform us if you become aware of any such claim);
- (vi) you will ensure your contracted Influencers use the applicable hashtag advertisement or sponsorship identifiers on all Influencer Content in order to disclose brand co-operation.

B. Whilst we have no obligation whatsoever to monitor the content or materials you upload to Marketplace, including any Campaigns, Proposals or Influencer created content, we may, in our sole discretion without prior notice to you, remove any Campaign or content which in our reasonable opinion breaches any of the warranties or undertakings above and/ or suspend your account. If we do this, acting reasonably, no compensation will be payable to you.

C. Unless you have our prior written consent, you agree that you will not, either yourself or with others: (i) reproduce or copy information or material, creative derivative works, or in any way modify or exploit material from the Marketplace; (ii) distribute, transmit or publish any of the material; (iii) create a database in electronic or structured form by downloading and/ or storing any of the Marketplace material for any purpose whatsoever; or (iv) use or in any way exploit material from the Marketplace to compete with the Marketplace or Tailify's services.

5. OUR RESPONSIBILITIES

Whilst we take care to only allow Influencers who can fulfil certain criteria to be accepted onto the Marketplace, you agree that we have no responsibility for any acts or omissions of the Influencers as

they are fully independent from us. The Marketplace acts merely as a technology platform facilitator for your interaction and agreement with Influencers.

6. PAYMENT

- A. When you register for the Marketplace or agree Managed Service Terms, you will be asked to either provide us with your credit card details or select to pay via invoice. In relation to each Marketplace Campaign, unless otherwise agreed in the Managed Service Terms, we will invoice you or charge your credit card with the Campaign fees and/ or Managed Service fees no later than ten days after you verify the Influencer's posts as complete.
- B. If we provide Managed Services and you terminate a Campaign after the Proposal is posted on Marketplace but before the Campaign go live date, we reserve the right to charge you up to 50% of the Managed Service fees, such amount being commensurate with the amount of time we will have spent, up to the date you terminate, on providing the Managed Services.
- C. All invoicing will be subject to UK VAT (if applicable) and is to be paid in GBP. If you don't pay us in accordance with the Agreement, we reserve the right to charge you interest at 4% above Barclays Bank's base lending rate in force from time to time. Such interest shall accrue on a daily basis.

7. INTELLECTUAL PROPERTY RIGHTS

- A. You acknowledge and agree that we (or our licensees) own, solely and exclusively, all the intellectual property rights in the Marketplace, the Site, the App and the Tailify trade mark and that your use of the same does not grant to you any rights of ownership of our Marketplace, the Site, the App and/ or the Tailify trade mark.
- B. In relation to each Campaign, you will agree the intellectual property rights ownership position as between you (or if you are a media agency, your client) and the Influencer in the Proposal, including your rights to use the name and image of the Influencer in association with the Campaign and the treatment of any goodwill generated as a result of the Campaign.
- C. You grant us or procure the right to grant us the use of any content, material or branding uploaded onto the Marketplace or otherwise provided to us, including content created for the Campaign, your brand trademarks, logos and other branding as we require in order to provide the Marketplace and any other services and promote the Marketplace and Tailify globally on any media in perpetuity on a royalty-free basis. You warrant or procure the warranty that our use of your or your client's IPR shall not infringe any intellectual property rights or other right of any third party.
- D. You agree to execute or procure the execution of all such documents and take all such action as we may reasonably request to give effect to the terms of this clause.

8. CONFIDENTIALITY

- A. You undertake to keep confidential your log – in and password, and any confidential information of which you become aware by virtue of this Agreement or any Proposal or Campaign, from us, our Influencers, our group companies, partners, affiliates, contractors and/ or agents (or the clients, customers, business, business plans or affairs of us or any of our Influencers, group companies, partners, affiliates, contractors and/ or agents) which is proprietary and confidential to us or our Influencers, group companies, partners, affiliates, contractors and/ or agents ("**Confidential Information**").
- B. Confidential Information shall exclude information which: i) at the time of receipt by you is in the public domain; ii) subsequently comes into the public domain through no fault of yours; iii) is lawfully received by you from a third party on an unrestricted basis; iv) is already known to you before receipt from us; or v) is required to be disclosed by law, regulation or order of competent

authority, provided that you give to us (to the extent you are legally able) reasonable advance notice of the intended disclosure.

9. STATUS

- A. Nothing in this Agreement is intended to, or should be construed to, create a partnership, agency, joint venture or agency relationship between us and you.
- B. You are not authorised to make any representation, contract or commitment on our behalf (or on behalf of any of our Influencers, group companies, partners, affiliates, contractors and/ or agents) unless expressly requested in writing to do so by us.

10. INDEMNITY

You agree to indemnify us, our group companies, partners, affiliates, contractors (excluding you) and/ or agents (together the "**Indemnified Parties**") and agree to keep the Indemnified Parties indemnified against all actions, losses, demands, proceedings, losses, charges, costs (including reasonable legal costs), claims and damages whatsoever incurred by or awarded against the Indemnified Parties and compensation agreed by the Indemnified Parties in consequence of any breach or non-performance by you of any provision of this Agreement, including but not limited to any warranties or undertakings set out in these Terms and any claim made by an Influencer concerning your interaction or contract with them.

11. LIMITATION OF LIABILITY

- A. We do not exclude or limit in any way our liability to you where it would be unlawful to do so. This includes liability for death or personal injury caused by our negligence or the negligence of our employees, agents or subcontractors and for fraud or fraudulent misrepresentation.
- B. We provide the Marketplace and the Managed Services to you on an "as is" basis and, to the fullest extent permitted by law, we exclude all implied conditions, warranties, representations or other terms that may apply to this Agreement, our Managed Services, the Marketplace, the Site, the App (or any content on them) or any Campaign.
- C. We provide no warranty that your Campaign will be successful or your selected Influencers will accept your Proposal.
- D. 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:
 - use of, or inability to use the Marketplace, the Site and/ or the App;
 - any errors or omissions on the Site, the Marketplace, the App or in the Proposal or the Campaign instruction or the providing of any of the foregoing to you or by you;
 - the unavailability or interruption of the Marketplace, the Site, the App or any Campaign; or
 - use of or reliance on any content displayed on our Site, the Marketplace, the App, any Assignment and/or any Campaign Instruction.
- E. In particular, we will not be liable for:
 - loss of profits, sales, business, or revenue;
 - business interruption or loss of data;
 - loss of anticipated savings;
 - loss of business opportunity, goodwill or reputation; or
 - any indirect or consequential loss or damage.
- F. To the extent we are in breach of the Agreement, the only liability we may have to you in relation to a Campaign or an Influencer shall be:

- if we provide inaccurate information concerning an Influencer, provided the error or inaccuracy was entirely our mistake and not due to incorrect information provided to us by the Influencer; or
- if we make any error in relation to the Campaign itself again provided such error was our mistake and not the mistake of the Influencer.

G. Tailify's Marketplace, Site and Apps are technology platforms for our clients. As such, even if we are providing Managed Services, we do not represent or contract on behalf of any users of our technology. By entering into a Proposal with an Influencer, you agree that Tailify's only responsibility is as set out in clause 11 (F) above and that we are not responsible for and shall not be liable to you, or to any third party, in relation to a Campaign or for any acts or omissions of an Influencer. We are in no way responsible or liable for Influencer's acts or omissions or for any damage or issues they cause you. You must conduct your own diligent enquiry before entering into any Proposal for a Campaign. Our only obligation to you in relation to this shall be to provide you with the assistance set out at clause 11 (H) below. You accept all risks in relation to the Influencers and their contributions to the Campaign.

H. Where there is any dispute between you and an Influencer regarding a Proposal, we shall provide reasonable assistance where it is prudent to do so, but we will not have any responsibility for resolving or mediating such dispute. Any Campaign, Marketplace or Managed Service fees are non-refundable.

I. In the event of a breach by us of this Agreement, you confirm that the recovery of damages (if any) would be an appropriate remedy and you shall not try to injunct or stop the release or distribution of the Influencer content in any Campaign or otherwise.

12. TERM AND TERMINATION

- A. Your Marketplace Account will continue from the date we accept your application (the "**Commencement Date**") unless terminated by either you or us on 30 day's written notice. However, unless we are providing Managed Services, you may not terminate this Agreement for convenience whilst there is a Campaign listed in the Marketplace or in progress. If we are providing Managed Services, you may terminate a Campaign, subject to the provisions of clause 6(B) above.
- B. On termination of this Agreement, all rights granted to you under this Agreement (including your right to use our Service, the Marketplace, the Site or the App) shall immediately cease and you must immediately remove or delete the App from all devices then in your possession, custody or control.
- C. Subject to clause 6(B) above, any unpaid fees shall become immediately payable at the date of termination.
- D. Termination of this Agreement shall be without prejudice to our rights and remedies accrued in connection with this Agreement prior to the date of termination.
- E. You acknowledge that those provisions that are intended to remain in force shall remain in force notwithstanding the termination of this Agreement.

13. YOUR PERSONAL INFORMATION

Our Privacy Policy [<https://tailify.com/privacy-policy>] sets out the terms on which we process any personal data we collect from you, or that you provide to us. By using our Managed Service, the Marketplace, the Site and/ or the App you consent to such processing and warrant that all data provided by you is accurate and true.

By using our Managed Service, the Marketplace, the Site and/ or the App, you agree to us listing and presenting information to Influencers about your brand, Campaign and Proposal.

14. RESTRICTIONS ON CONTACTING INFLUENCERS OUTSIDE MARKETPLACE

- A. For the duration of our Agreement and for one year following its termination (for whatever reason) you shall not attempt to contact and/ or engage an Influencer (whether directly or indirectly) that you have had contact with via the Managed Services, Marketplace, App, Site or otherwise via Tailify unless you have our prior written consent (to be given in our complete discretion).
- B. You may choose to impose a non- compete clause into your Proposal with an Influencer which will prevent the Influencer from working with specific competitors for a period of 30 days following the Completion Date of the Campaign, however, we shall not be in any way responsible for enforcing the provisions or restricting the Influencer's activity within the Marketplace.

15. ASSIGNMENT

You acknowledge and agree that we shall have the right to assign our rights or obligations hereunder and/ or to grant sub-licences of our rights. You shall not assign or sub-contract any of your rights or obligations under the Agreement or in any Assignment without our prior written consent.

16. ENTIRE AGREEMENT

The Agreement incorporating these terms constitutes the entire agreement between us and you in relation to its subject matter and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between us, whether written or oral, relating to its subject matter.

17. WAIVER

Any waiver, amendment or modification of any provision of this Agreement or any right, power or remedy hereunder shall not be effective unless in writing. No failure or delay by us in exercising any right, power or remedy with respect to any of our rights under this Agreement shall operate as a waiver thereof.

18. SEVERABILITY

If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or part the validity of the other provisions of this Agreement and the remainder of the provisions in question shall not be affected.

19. NOTICES

Notices required to be given under this Agreement may be delivered by hand, prepaid first- class post or email to the recipient at its registered address or email as notified from time to time to the sender by the recipient. Notices shall be deemed to have been given and served: i) if by hand, at the time of delivery; ii) if by prepaid first class post, 48 hours from the time of posting; or iii) if by email, at the time of sending if sent on a business day before 5:00pm or at 10:00am on the next business day in all other cases.

20. THIRD PARTY RIGHTS

This Agreement is between you and us only. No third party (including Influencers or your clients, if you are a media agency) shall have any right to enforce its terms, and for the avoidance of doubt, the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

20. APPLICABLE LAW

You agree that this Agreement shall be construed in accordance with English law and shall be subject to the exclusive jurisdiction of the courts of England & Wales.