

This is a legally binding agreement between you and Creamer LLC, including any successor or affiliated company or entity. This agreement contains disclaimers of warranties, limitations on liability, releases, a class-action waiver, and the requirement to arbitrate all claims that may arise under this agreement. This agreement provides Creamer with your absolute and unconditional consent, waiver, and release of liability, allowing Creamer to publicize and commercially exploit your name, likeness, and other personal characteristics. These provisions are an essential basis of this agreement. By clicking on the words "I agree," "submit," or similar syntax or by otherwise typing your name, you are electronically signing this agreement, and thus agree to be bound by and acknowledge your complete acceptance of all the express and incorporated terms of this agreement. If you do not agree to this agreement, you must not use the Creamer platform and must not register.

No Prostitution or Sex Trafficking. The promotion of prostitution, escort services, personal companions, etc. are contrary to the purposes of Creamer and will not be tolerated in any fashion. Creamer strictly prohibits you from using its service or any of its websites in any way to engage in, participate in, assist, support, or facilitate any act of prostitution or sex trafficking. You must not use the service (1) to exchange any personal contact information with any user or have any communication with any user that would in any way result in any type of face-to-face meeting involving you and any user; or (2) to discuss in any way with any user any type of transaction involving the use of any other service or method of interfacing with any user, including any other Internet-based product or service. Any violation of these prohibitions will result in the immediate cancellation of your account and forfeiture of any payments owed under this agreement. Creamer will report any evidence of prostitution or sex trafficking to the appropriate law enforcement agency.

**Creamer.wtf
Content Creator Agreement**

Last Updated: November 20, 2019

This content creator agreement is between **CREAMER LLC**, a Pennsylvania limited liability company (the "**Company**"), and you, the individual or entity signing up to be a content creator (the "**Creator**").

The Company owns and operates www.creamer.wtf (the "**Service**"), which is an adult social video and content sharing platform that provides billing solutions, advertising media, storage and hosting, and virtual webspace through a proprietary web interface for personal communication and entertainment (the "**Platform**").

The Creator wants to use the Platform to monetize content and interact with end users.

The parties therefore agree as follows:

1. Platform Enrollment

- 1.1 Eligibility.** To be eligible to participate in the Platform as a creator, the Creator must be either an individual who is at least 18-years old (or the age of majority if higher) and has the legal capacity to enter into legally binding contracts or an entity that is duly organized in its jurisdiction of organization and has the power and authority to enter into legally binding contracts.
- 1.2 Registration.** To register, the Creator must (a) complete the applicable registration form;

and (b) submit a copy of a valid government-issued picture identification (in color) that contains the Creator's or its authorized agent's full legal name, date of birth, and expiration date for age and identity verification purposes. In addition, if the Creator is located in the United States, the Creator must also submit a completed [W-9 Form](#). By registering, the Creator states that all account registration information is accurate. The Creator authorizes the Company to verify the validity of the Creator's government-issued identification with a third-party verification service and to check the Creator's identity against government-issued identification. The Company will notify the Creator of its acceptance or rejection by email to the email address that the Creator supplied.

2. **Company Proprietary Rights; Limited License**

- 2.1 **Ownership.** The data and materials on the Platform, except the Creator Content (as defined below), including the text, graphics, interactive features, logos, photos, music, videos, software, and all other audible, visual, or downloadable materials, as well as the selection, organization, coordination, compilation, and overall look and feel of the Platform (collectively, the "**Materials**") are the intellectual property of the Company, its licensors, and its suppliers. The Materials are protected by copyright, trade dress, patent, trademark, and other laws, treaties, and international conventions around the world. Proprietary rights and all rights to the Materials remain with the Company, its licensors, or its suppliers, as the case may be. The Creator does not acquire any ownership rights in the Platform. Except as the Company expressly authorizes in writing, the Creator will not reproduce, distribute, modify, create derivative works of, publicly display, publicly perform, republish, download, store, or transmit any of the Materials. If, with authorization, the Creator downloads or prints a copy of the Materials for use, the Creator must retain all copyright, trademark, or other proprietary notices. The Company reserves all rights not expressly granted in and to the Platform and the Materials.
- 2.2 **Trademarks.** The Company's name and logo; the term CREAMER.WTF; and all related names, logos, product and service names, designs, and slogans are the Company's trademarks and service marks. The Creator will not use these marks without the Company's written permission. All other names, logos, product and service names, designs, and slogans on the Platform are the trademarks of their respective owners.
- 2.3 **Limited License.** The Company hereby grants the Creator a nonexclusive, nontransferable, nonsublicensable (except as otherwise provided in this agreement), revocable, limited license to access and use the Platform and the related software solely in accordance with this agreement (including the right to create a profile, upload content, and sell content and other offerings through the Platform). The Company prohibits any use other than permitted by this agreement.
- 2.4 **Availability.** The Company may alter, remove, or discontinue any part of the Platform or the Materials on the Platform, at any time, for any reason, without notice, and the Company will not be liable to the Creator in any way for possible consequences of those changes.

3. **Creator Account**

- 3.1 **Account Creation.** During the registration process, the Creator will create an account by

providing the Company with accurate information as prompted by the registration form, including a valid email address. The Creator also will choose a password and a unique username. The Creator must not choose a username that is offensive or that infringes another person's service mark, trademark, or trade name.

- 3.2 **Responsibility for Account.** The Creator is responsible for maintaining the confidentiality of the Creator's password and account (including any subaccounts). Further, the Creator is responsible for all activities that occur under the Creator's account, including any acts or omissions of any authorized persons that the Creator adds to the Creator's account or any subaccount. The Creator will promptly notify the Company of any unauthorized use of the Creator's account (including any subaccount) or any other security breach.
- 3.3 **Liability for Account Misuse.** The Company will not be liable for any loss that the Creator may incur as a result of someone else using the Creator's password or account, either with or without the Creator's knowledge. The Creator could be held liable for losses incurred by the Company or another person due to someone else using the Creator's account or password.
- 3.4 **Use of Other Accounts.** The Creator will not use anyone else's account at any time unless the Creator is authorized in writing to do so.
- 3.5 **Account Security.** The Company cares about the integrity and security of the Creator's personal information. But the Company cannot guarantee that unauthorized persons will never be able to defeat the Platform's security measures or use any personal data the Creator provides to the Company for improper purposes. The Creator acknowledges that the Creator provides personal data at the Creator's own risk.

4. **Creator Offerings**

4.1 **Creator Content**

- (a) The Platform enables interactive personal communications and entertainment. The Platform provides a system and method for creators to upload audiovisual content (the "**Audiovisual Content**") for viewing by end users. The Platform permits creators to create, upload, transmit, or display content of their own creations, including Audiovisual Content, written works posted on profiles, and any other content, including videos, music, images, and text (collectively, the "**Creator Content**").
- (b) The Company does not and will not control the manner or means by which the Creator creates the Creator Content, including the time and place of the creation of the Creator Content. The Creator will solely determine the schedule and the methods, details, and means of creating the Creator Content. The Creator will supply, at the Creator's own expense, all clothing, make-up, accessories, tools, equipment, and instrumentalities needed to produce the Creator Content.
- (c) The Creator acknowledges the following:
 - (i) The Creator Content does not and will not violate any of the "Platform

Acceptable Use Policy” stated in section 5 of this agreement.

- (ii) Violations of third-party rights may be subject to criminal and civil liability.
- (iii) The Company may discontinue any aspect of the Platform at any time, including the right to discontinue the display of any Creator Content either generally or in specific cases.
- (iv) The Creator Content does not contain any viruses, adware, spyware, worms, or other malicious code or any content or file that provides a method to access potentially infringing content outside of the Platform.
- (v) The Creator is solely responsible for the Creator Content and any other material that the Creator posts on the Platform or otherwise offers, publishes, transmits, or posts on the Creator Profile or the Interactive Services.
- (vi) The Company is merely providing the Creator the means to distribute the Creator Content through the Platform.
- (vii) The Company does not, and will not, control the manner or determine the method of producing the Creator Content and does not have any obligation to monitor the Creator Content for any purpose, except that the Company may, in its sole discretion, view, monitor, terminate, suspend, or remove Creator Content that violates this agreement.
- (viii) The Company will not be liable for the Creator Content or the defamatory, offensive, or illegal conduct of any third party and that the risk of harm or damage from the foregoing rests entirely with the Creator.
- (ix) The Creator has obtained all necessary authorizations, permissions, releases, record-keeping data, and rights that are required for the Creator to lawfully upload the Creator Content.

4.2 **Creator Profile.** The Creator may create a profile (the “**Creator Profile**”) on the Platform to display and offer for sale various Creator Content, including videos and pictures (collectively, the “**Creator Offerings**”). Any photo used as a profile picture or avatar on the Creator Profile must accurately reflect the Creator’s appearance and must not contain: (a) sexually-explicit content; (b) exposed genitals; (c) sex toys, such as dildos to simulate genitals or sexually explicit acts; or (d) special effects added to the photo with editing software and filters or captions, messages, or watermarks. The Creator may allow end users to subscribe to the Creator Profile for a one time or recurring fee. The Creator is solely responsible for setting any subscription fees for the Creator Profile.

4.3 **Interactive Services.** The Platform allows the Creator to use various interactive features designed to foster interactions between the Creator and users (the “**Interactive Services**”). The Creator’s use of the Interactive Services is subject to the Creator’s compliance with the Acceptable Use Policy set out in section 5 of this agreement, the

Content Standards set out in section 9 of the [Terms-of-Service Agreement](#), and the [Community Guidelines](#).

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- 4.4 **Filtering Tools.** The Platform allows the Creator to use various blocking and filtering features to block users based on geographical IP regions from accessing the Creator Profile. The Platform also allows the Creator to block individual users. The Creator remains solely responsible for all acts or omissions associated with the Creator's use of the filtering tools.
- 4.5 **18 U.S.C. § 2257 Compliance.** The Creator will comply with the federal record keeping and labeling requirements codified at 18 U.S.C. §§ 2257–2257A and 28 C.F.R. Part 75. The Creator will obtain and keep all records necessary to demonstrate that the Creator complies with 18 U.S.C. §§ 2257–2257A and 28 C.F.R. Part 75, including legible copies of picture identification cards (as defined by 28 C.F.R. 75.1) for each individual appearing in any Creator Content on the date of the production of that Creator Content. The Creator or a third-party service provider will act as the “Custodian of Records” as required by 28 C.F.R. Part 75 and will keep all required records at the Creator's or that third party's primary address. The Creator will make available to the Company or any government official, and copy at the Company's request, all records required to be kept under 18 U.S.C. §§ 2257–2257A and 28 C.F.R. Part 75.
- 4.6 **Creator Proprietary Rights**
- (a) **Creator Content Ownership.** The Company does not claim any ownership rights in the Creator Content depicted in the Creator Profile or otherwise posted, uploaded, or displayed using the Interactive Services. The Creator continues to retain any ownership rights that the Creator may have in the Creator Content subject to the licenses granted in section 4.6(b) and 4.6(c).
- (b) **Creator License Grant.** The Creator hereby grants the Company, its affiliates, and service providers, and each of their and the Company's respective licensees a perpetual, worldwide, irrevocable, nonexclusive, sublicensable, transferrable license to host, cache, route, transmit, store, copy, modify, distribute, publicly perform and display (through all media now known or later created), reformat, excerpt, analyze, create algorithms based on, prepare derivative works of, sell, exploit, and otherwise use the Creator Content solely in connection with the Platform, and the Company's (and its successor's) business, including for (a) displaying the Creator Content on the Platform; (b) allowing other users to play the Creator Content; and (c) promoting the Platform. The foregoing license includes the right to reproduce, distribute, display, perform, make derivative works from, or otherwise exploit the Creator Content in proximity with or in connection with any third-party content, including advertisements.
- (c) **Use of Creator's Name, Likeness, and Information.** The Creator hereby grants the Company and its affiliates, and each of their respective direct and indirect successors, licensees, and assigns, the right to use the Creator's name and image, likeness, and biographical and professional information, including information the Creator provides to the Company and any other information about the

Creator that is publicly available, in connection with the Platform and the Creator Content and advertising and promotion of the Platform and the Creator Content in perpetuity throughout the world and in any medium or format now existing or later developed on any platform without further consent from or any royalty, payment, or other compensation to the Creator. The Creator acknowledges that the Creator's name and likeness may appear on websites that contain pornographic content, including content that the Creator might consider obscene, indecent, offensive, or otherwise objectionable. The Creator hereby waives any right to inspect or approve the Company's use of the Creator's name and likeness. **The Creator must obtain a signed written appearance release, waiver of rights, and release of claims for each identifiable person in the Creator Content to allow the use of their name and likeness in the Creator Content and to allow the Creator Content to be posted on the Platform.**

- (d) **Moral Rights Waiver.** The Creator hereby waives all claims the Creator may now or later have in any jurisdiction to so-called "moral rights" or rights of droit moral in the Creator Content.

5. Platform Acceptable Use Policy

5.1 The Company offers the Platform as a place where creators can express their creativity and monetize Creator Content. But certain important rules must be respected, or Creators may face termination. While using the Platform, including the Interactive Services, the Creator will not:

- (a) upload to the Platform any Creator Content that violates or infringes any law, regulation, treaty, or third-party right, including any copyright, service mark, trademark, trade name, trade secret, or any other intellectual property, privacy, or publicity rights;
- (b) publish falsehoods or misrepresentations that could damage the Company or any third party;
- (c) post or upload any Creator Content that is unlawful, obscene, defamatory, libelous, threatening, vulgar, harassing, hateful, racially or ethnically offensive, or encourages violent conduct or conduct that would be considered a criminal offense, give rise to civil liability, violate any law, or, in the Company's sole discretion, is otherwise inappropriate;
- (d) post or upload any Creator Content that depicts (real or simulated) (i) sexual activity involving minors; (ii) incest; (iii) bestiality; (iv) violence, rape, sexual assault, torture, sadomasochistic abuse or hardcore bondage, extreme fisting, or genital mutilation; (v) necrophilia; (vi) urine, scatological, or excrement-related content; or (vii) any other illegal behavior or behavior that may be considered obscene under applicable law;
- (e) post or upload any Creator Content that depicts use of illegal drugs (even if those drugs have been legalized in the Creator's jurisdiction);

- (f) film from a public place or from a studio or set that creates the impression that the Creator is in a public place;
- (g) post or upload advertisements or solicitations of prostitution or otherwise discuss or arrange prostitution or escort services;
- (h) post or display telephone numbers, street addresses, last names, email addresses, URLs, or any other personal information about the Creator or any other person;
- (i) impersonate another individual or entity, whether actual or fictitious; falsely claim an affiliation with any individual or entity; access the accounts of others without permission; misrepresent the source, identity, or content of information transmitted via the Platform; or perform any other similar fraudulent activity;
- (j) use the Platform for any purpose other than to access the Platform as offered by the Company;
- (k) circumvent, disable, or otherwise interfere with the Platform's security-related features or features that prevent, limit, or restrict use or copying of any Materials or another creator's content;
- (l) rent, lease, loan, sell, resell, sublicense, distribute, or otherwise transfer the licenses granted in this agreement or any Materials unless otherwise authorized in this agreement or in a separate writing signed by the Company;
- (m) delete indications or notices regarding the copyright or other proprietary rights on the Platform, the Materials, or any third-party content;
- (n) make unsolicited offers, advertisements, proposals, or send junk mail or spam to other users, including unsolicited advertising, promotional materials, or other solicitation material, bulk mailing of commercial advertising, chain mail, information announcements, charity requests, and petitions for signatures;
- (o) use the Platform for any illegal purpose or in violation of any local, state, national, or international law, including 18 U.S.C. § 1591 (sex trafficking of children or by force, fraud, or coercion); 18 U.S.C. § 2421A (promotion or facilitation of prostitution and reckless disregard of sex trafficking); and laws governing intellectual property and other proprietary rights and data protection and privacy;
- (p) defame, harass, abuse, threaten or defraud users, or collect or attempt to collect, personal information about users or third parties without their consent, or, except as expressly authorized in this agreement, use materials, third-party content, or other content on the Platform for any commercial use;
- (q) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code of the Platform or any part of it, except and only if that activity is expressly permitted by applicable law despite this limitation;

- (r) access or use any automated process (such as a robot, spider, scraper, or similar) to access the Platform in violation of the Company's robot exclusion headers or to scrap all or a substantial part of the Platform's content (other than in connection with bona fide search engine indexing or as the Company may otherwise expressly permit);
- (s) modify, adapt, translate, or create derivative works based on the Platform or any part of it, except and only if applicable law expressly permits that activity despite this limitation;
- (t) intentionally interfere with or damage the operation of the Platform or any user's enjoyment of it by any means, including uploading or otherwise disseminating viruses, adware, spyware, works, or other malicious code;
- (u) take any action that may undermine the Company's rating and comment system (such as displaying, importing, or exporting information off the Platform, using information on the Platform for purposes unrelated to the Platform, or improperly manipulating or using the ratings and comment system);
- (v) take any action that imposes or may impose (in the Company's sole discretion) an unreasonable or disproportionately large load on the Platform's infrastructure;
- (w) interfere or attempt to interfere with the proper workings of the Platform or any activities conducted on the Platform;
- (x) bypass robot exclusion headers or other measures the Company may use to prevent unauthorized access to the Platform;
- (y) upload or post any Creator Content that contains advertising or other promotional material, including links to that material unless expressly authorized by the Company; or
- (z) attempt to do any of the acts described in this section 5 or assist or permit any person in engaging in any of the acts described in this section 5.

Section 5.1(a)–5.1(z) are collectively referred to as the “**Prohibited Uses.**”

- 5.2 Engaging in any Prohibited Use will be considered a breach of this agreement and may result in immediate suspension or termination of the Creator's account and access to the Platform without notice, in the Company's sole discretion. The Company may pursue any legal remedies against the Creator if the Creator engages in any of the above Prohibited Uses. The Company will report any Creator Content that could be considered exploitative of children in any way to the National Center for Missing and Exploited Children's CyberTipline and any other applicable legal and regulatory bodies.

6. Relationship of the Parties

- 6.1 The parties intend that their relationship will be that of independent contractors and not

business partners. This agreement does not, and the parties do not intend it to, create a partnership, joint venture, agency, franchise, or employment relationship between the parties and the parties expressly disclaim the existence of any of these relationships between them. Neither party is the agent for the other, and neither party has the right to bind the other on any agreement with another person.

- 6.2 The Creator is not eligible under this agreement to participate in any vacation, group medical or life insurance, disability, profit sharing or retirement benefits, or any other fringe benefits or benefit plans offered by the Company to its employees.
- 6.3 The Company is not responsible for withholding or paying any income, payroll, Social Security, or other federal, state, or local taxes; making any insurance contributions, including unemployment or disability; or obtaining worker's compensation insurance on the Creator's behalf. The Creator is solely responsible for all those taxes or contributions, including penalties and interest. The Creator is also responsible for maintaining adequate worker's compensation coverage or insurance for the Creator and any employee or other personal engaged by the Creator.
- 6.4 Any persons employed or engaged by the Creator in connection with the creation, production, or submission of the Creator Content must be the Creator's employees or contractors and the Creator will be fully responsible for them and indemnify the Company against any claims made by or on behalf of any such employee or contractor. The Creator will require each such employee and contractor to sign written agreements securing for the Company all rights granted to the Company in this agreement before that employee or contractor provides or creates any Creator Content in connection with this agreement.

7. Creator Revenue

- 7.1 **Creator Revenue.** Users must submit payments for the Creator Content through the Platform. Users pay using tokens purchased through the Platform. Users can use tokens to purchase Creator Content; subscribe to the Creator Profile; tip the Creator; and any other content or features that the Creator makes available for purchase. Unless otherwise stated on the Platform, the Creator is solely responsible for setting prices for the Creator Content and any the Creator Offerings. Unless stated otherwise in writing, the Creator will receive 85% of the Net Revenue from the Creator Content and the Creator Offerings during this agreement (the "**Creator Revenue**"); the Company will retain the remaining 15% as a platform lease fee (the "**Platform Lease Fee**"). "**Net Revenue**" means gross revenue actually received from users and any other third parties for the Creator Content and the Creator Offerings during this agreement, including tips, less transactional costs, chargebacks, and refunds and excluding any taxes (including VAT). "**Transactional costs**" are amounts paid by the Company to third parties to facilitate a transaction and may include payment-processing fees, foreign exchange fees, and platform fees (e.g., for transactions occurring through third-party stores or systems).
- 7.2 **Payouts.** The Company will deposit the Creator Revenue in the Creator's online account. The Creator may withdraw the online account balance at any time, on condition that the account balance is greater than the minimum payout requirement. The Company will process withdrawal requests that meet the minimum payout requirement no later than

30 days after the Creator makes the request. The Company will make all payouts using the payment method the Creator selected. All payouts are in U.S. dollars.

7.3 **Taxes.** Income taxes are solely the Creator's responsibility. The Company may withhold from any amounts due to the Creator that the Company determines in good faith must be withheld under U.S. tax law. The Company may file reports concerning income with any taxing authority, including the U.S. Internal Revenue Service.

7.4 **Limitations.** The Company is not required to payout Creator Revenue with respect to any transaction that is subject to a refund or chargeback. The Company may withhold amounts or make adjustments in its sole discretion (a) to satisfy any refunds that it may make (including for technical errors); (b) pending any investigation of fraud or other illegality; (c) due to excessive chargebacks or refunds; (d) due to breach of this agreement (including Prohibited Uses); and (e) as required by U.S. tax law. If after six months the Company is unable to payout the Creator as a result of inaccurate information in the Creator's account and the Company is unable to contact the Creator, that Creator Revenue will be forfeited and become the Company's property.

7.5 **Disputes.** If the Creator disputes the calculation of the Creator Revenue, the Creator will notify the Company in writing no later than 30 days after the disputed calculation. Failure to notify the Company within this period will result in the Creator's waiver of any claims related to the disputed calculation.

8. **Statements of Fact.** The Creator states that the following facts are accurate and will continue to be accurate during this agreement:

8.1 If the Creator is an individual, the Creator is at least 18-years old and has the legal capacity to enter into this agreement. If the Creator is an entity, it is duly organized, validly existing, and in good standing as a legal entity under the laws of its jurisdiction of incorporation, organization, or chartering.

8.2 The Creator has the power to enter into this agreement, to grant the rights granted in it, and to perform fully the Creator's obligations in this agreement.

8.3 The Creator is duly licensed, authorized, and certified by all applicable governmental and regulatory authorities to perform the Creator's duties and obligations under this agreement.

8.4 The Creator has independently evaluated the desirability of participating in the Platform, and the Creator has not relied on any statement other than those set out in this agreement.

8.5 The Creator's signing and performance of this agreement will not conflict with or violate (i) any order, judgment, or decree that applies to the Creator; or (ii) any agreement that applies to the Creator.

8.6 The Creator's performance under this agreement, use of the Platform, and the Creator Content will not:

- (a) invade the right of privacy or publicity of any person (including invasion of rights of celebrity);
- (b) involve any defamatory, libelous, slanderous, obscene, indecent, or otherwise unlawful material;
- (c) violate any applicable law, including 18 U.S.C. § 1591 (sex trafficking of children or by force, fraud, or coercion), and 18 U.S.C. § 2421A (promotion or facilitation of prostitution and reckless disregard of sex trafficking); or
- (d) otherwise infringe on the rights of any third parties, including those of copyright, patent, trademark, service mark, trade name, trade secret, or other intellectual-property rights, or engage in false advertising, unfair competition, violation of antidiscrimination law, or violation of any other right of any person.

8.7 The Creator owns all interest in all Creator Content that is uploaded to the Creator Profile or otherwise used in connection with the Platform.

8.8 The Creator has sufficient rights in the Creator Content to grant the Company rights granted in this agreement (including a signed written appearance release for each identifiable person in the Creator Content to use their name and likeness).

8.9 The Creator Content does not depict any individual under 18-years old.

8.10 The Creator complies with 18 U.S.C. §§ 2257–2257A and 28 C.F.R. Part 75, including inspecting and keeping all required written documents, including written documents sufficient to confirm that all subjects of the Creator Content were at least 18-years old at the time of the production of the Creator Content as required by 18 U.S.C. §§ 2257–2257A and 28 C.F.R. Part 75, and will provide the Company with copies of all required written documents on request.

9. **Privacy.** For information about how the Company collects, uses, and shares the Creator’s personal information, please review the [Privacy Policy](#). The Creator acknowledges that the Company may retain indefinitely information the Creator submits to the Company, including a copy of the Creator’s government-issued identification, in case the information is needed to comply with applicable law, including 18 U.S.C. §§ 2257–2257A and 28 C.F.R. Part 75, or in a good-faith belief that preservation or disclosure of that information is reasonably necessary in the Company’s opinion to (a) comply with legal process, including civil and criminal subpoenas, court orders, or other compulsory disclosure; (b) enforce this agreement; (c) respond to claims of a violation of the rights of third parties, regardless of whether the third party is a user, individual, or government agency; or (d) protect the rights, property, or personal safety of the Company, the Service’s users, other creators, or the public.

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10. **No-Disparaging.** During this agreement and for two years after its termination, the Creator will not say to anyone, in writing or orally, anything critical of the Company, its business, or any of its then-current shareholders, officers, employees, and customers. This section 10 does not prevent the Creator from exercising rights that by law the Creator cannot waive by contract or from disclosing information to the extent required to comply with the law.

11. Termination

- 11.1 **Termination on Notice.** Either party may terminate this agreement at any time for any reason by written notice to the other party.
- 11.2 **Termination by Company.** The Company may suspend, disable, or terminate the Creator's account if the Company determines, in its sole discretion, that the Creator (a) breached or otherwise violated this agreement; (b) engaged in fraudulent, illegal, or suspicious activity; (c) engaged in conduct that would tend to damage the Company's reputation and goodwill; or (d) for any other reason.
- 11.3 **Effect of Termination.** On termination, the Creator's right to access the Platform and all licenses granted by the Company terminates, and the Company will remit to the Creator, no later than 45 days after the date of termination, all outstanding Creator Revenues earned under this agreement less the Platform Lease Fee. In addition, the Creator acknowledges that the Company may set off against any Creator Revenues owed to the Creator any loss incurred under section 16 (Indemnification).
- 11.4 **Survival.** Any part of this agreement that imposes an obligation after termination will survive the termination, including all warranty disclaimers and limitations of liability.

12. Warranty Disclaimers

- 12.1 The Company is not making any guarantee of profitability or about the amount of money the Creator will earn under this agreement. The Creator acknowledges that past earnings does not guarantee or suggest similar future earnings.
- 12.2 The Creator assumes sole responsibility for all risks, consequences, and damages resulting from the Creator's interaction and association with the Platform, including risks associated with the publicity of appearing on the Internet; the risk of recording, piracy, or unauthorized dissemination of the Creator Content; or the risk of publication of the Creator's identity, including publication of the Creator's personal information.
- 12.3 The Company is not making any warranty—express or implied—that
 - (a) the use of the Platform will be timely, uninterrupted, or error-free (whether as a result of technical failure, acts or omissions of third parties, or other causes) or will operate in combination with any other hardware, software, system, or data;
 - (b) the Platform will meet the Creator's requirements or expectations;
 - (c) the Platform will be accurate or reliable;
 - (d) errors or defects in the Platform will be corrected; or
 - (e) the servers that make the Platform available are free of viruses or other harmful components.
- 12.4 The Company offers the Platform "as is." The Company is not making any warranty, either

express or implied, including implied warranty of merchantability, fitness for a particular purpose, title, privacy, and noninfringement for the Platform. No advice or information, whether oral or written, obtained from the Company, the Platform, or elsewhere will create any warranty not expressly stated here.

13. **Limitation of Liability**

13.1 The Company will not be liable for any of the following:

- (a) Errors, mistakes, or inaccuracies of the Platform;
- (b) Personal injury or property damage resulting from the Creator's access to or use of the Platform;
- (c) Content (including Creator Content) or conduct that is infringing, inaccurate, obscene, indecent, offensive, threatening, harassing, defamatory, libelous, abusive, invasive of privacy, or illegal;
- (d) Unauthorized access to or use of the Company's servers and any personal or financial information stored in them, including unauthorized access or changes to the Creator's account, the Creator Content, transmissions, or data;
- (e) Interruption or cessation of transmission to or from the Platform;
- (f) Denial-of-service attack or distributed denial-of-service attack;
- (g) Bugs, viruses, Trojan horses, malware, ransomware, or other disabling code that may be transmitted to or through the Platform by any person or that might infect the Creator's computer or affect the Creator's access to or use of the Platform or the Creator's other services, hardware, or software;
- (h) Incompatibility between the Platform and the Creator's other services, hardware, or software;
- (i) Delays or failures the Creator might experience in starting, conducting, or completing any transmissions to or transactions through or with the Platform; or
- (j) Loss or damage incurred because of the use of any content posted, emailed, sent, or otherwise made available through the Platform.

13.2 The Company will not be liable to the Creator for breach-of-contract damages that the Company could not reasonably have foreseen on entry into this agreement. The Company also will not be liable to the Creator, regardless of theory of liability and even if the Company knew or should have known of the possibility of these damages, for damages for any of the following: (a) personal injury; (b) pain and suffering; (c) emotional distress; (d) loss of use; (e) loss of services; (f) loss of profits; (g) loss of revenue; (h) loss of goodwill; (i) loss of contracts; (j) loss of data; (k) loss of privacy; (l) loss of business or opportunity; or (m) cost of obtaining substitute services related to the Platform.

13.3 Except as stated in section 16, neither party will be liable to the other party for indirect, incidental, special, statutory, exemplary, or punitive damages arising from or relating to this agreement, regardless of theory of liability and even if that party knew or should have known of the possibility of these damages, including loss of revenue or anticipated profits or lost business.

13.4 The Company's total cumulative liability to the Creator will not exceed the greater of (a) total amount owed to the Creator under this agreement and (b) \$500.

14. **Waiver of California Civil Code Section 1542.** If the Creator resides in California, the Creator acknowledges that the Creator understands the consequences of entering into the general release and discharge of all known and unknown claims as stated in this agreement and that the Creator is familiar with the provisions of section 1542 of the California Civil Code, which provides that:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

The Creator hereby waives all rights under section 1542 and under any other federal or state statutes or laws of similar effect.

15. **Scope of Disclaimers and Limitations.** The disclaimers and limits stated in sections 12 and 13 apply to the greatest extent allowed by law, but no more. The Company does not intend to deprive the Creator of any mandatory protections provided to the Creator by law. Because some jurisdictions may prohibit the disclaimer of some warranties, the limitation of some damages, or other matters, one or more of the disclaimers or limitations might not apply to the Creator.

16. **Indemnification**

16.1 **In General.** The Creator will pay the Company for any loss of the Company's that is caused by (a) the Creator's use of the Platform; (b) the Creator Content, the Creator Profile, or the Creator Offerings; (c) the Creator's dispute with any customer or other person; (d) the Creator's breach of this agreement; (e) the Creator's infringement of third-party intellectual property rights or violation of any other third-party rights; (f) the Creator's violation of any applicable law; (h) the Creator's tortious acts or omissions; or (i) the Creator's criminal acts or omissions. But the Creator is not required to pay if the loss was caused by the Company's intentional misconduct.

16.2 **Definitions. "Loss"** means an amount that the Company is legally responsible for or pays in any form. Amounts include, for example, a judgment, a settlement, a fine, damages, injunctive relief, staff compensation, a decrease in property value, and expenses for defending against a claim for a loss (including fees for legal counsel, expert witnesses, and other advisers). A loss can be tangible or intangible; can arise from bodily injury, property damage, or other causes; can be based on tort, breach of contract, or any other theory of recovery; and includes incidental, direct, and consequential damages. A loss is **"caused by"** an event if the loss would not have occurred without the event, even if the event is

not a proximate cause of the loss.

- 16.3 **Company's Duty to Notify.** The Company will notify the Creator before the 15th business day after the Company knows or should reasonably have known of a claim for a loss that the Creator might be obligated to pay. The Company's failure to give the Creator timely notice does not terminate the Creator's obligation, except to the extent that the failure prejudices the Creator's ability to defend the claim or mitigate losses.
- 16.4 **Legal Defense of a Claim.** The Company has control over defending a claim for a loss (including settling it), unless the Company directs the Creator to control the defense. The Company and the Creator will cooperate with each other in good faith on a claim.
- 16.5 **No Exclusivity.** The Company's rights under this section 16 do not affect other rights that the Company might have.

17. **Dispute Resolution**

- 17.1 **Litigation Election.** Either party may elect to litigate the following type of case or controversy: (a) an action seeking injunctive relief, or (b) a suit to compel compliance with this section 17.
- 17.2 **Negotiation.** Each party will give the other a reasonable opportunity to comply before it claims that the other has not met the obligations under this agreement. The parties will first meet and negotiate with each other in good faith to try to resolve all disputes between the parties arising out of this agreement or relating to the subject matter of this agreement. The party raising a dispute will submit to the other party a written notice and supporting material describing all issues and circumstances related to the dispute (a "**Dispute Notice**").
- 17.3 **Arbitration.** If the parties' are unable to resolve the dispute no later than 30 days after receiving a Dispute Notice, the parties will settle any unresolved dispute arising out of or relating to this agreement, or the breach of it, by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. The arbitrator, and not any federal, state, or local court or agency, will have exclusive authority to resolve all disputes arising out of or relating to the interpretation, enforceability, or formation of this agreement, including any claim that all or any part of this agreement is void or voidable. A single arbitrator will preside over the arbitration and issue a final award on all issues submitted to the arbitrator. The arbitrator may grant whatever relief that would be available in a court at law or in equity, except that the arbitrator will not award punitive or exemplary damages, or damages otherwise limited or excluded in this agreement. The arbitrator's award will be binding on the parties and may be entered as a judgment in any court of competent jurisdiction. Arbitration will take place in Pittsburgh, Pennsylvania unless the parties agree otherwise in writing. The parties will bear equally the costs of arbitration, including the fees and expenses of the arbitrator, and each party will bear the costs associated with its case, except the arbitrator will award costs and fees to the Prevailing Party in accordance with section 17.6. Unless required by law, neither a party nor an arbitrator will disclose the existence, content, or results of any arbitration under this agreement without the advance written consent of both parties.

- 17.4 **Injunctive Relief.** The Creator acknowledges that breach by the Creator of this agreement could cause irreparable harm for which damages would be an inadequate remedy. If any breach occurs or is threatened, the Company may seek an injunction, a restraining order, or any other equitable remedy, in each case without posting a bond or other security.
- 17.5 **Jurisdiction and Venue.** If a party brings any proceeding seeking an injunction, a restraining order, or any other equitable remedy to which that party is entitled under this agreement, that party will bring that proceeding only in the United States District Court for the Western District of Pennsylvania or in any state court of competent jurisdiction in Alleghany County, Pennsylvania, and each party hereby submits to the exclusive jurisdiction and venue of those courts for purposes of any proceeding. Each party hereby waives any claim that any proceeding brought under section 17.5 has been brought in an inconvenient forum or that the venue of that proceeding is improper.
- 17.6 **Recovery of Expenses.** In any arbitration or litigation proceedings between the parties arising out of this agreement or relating to the subject matter of this agreement, the Prevailing Party will be entitled to recover from the other party, in addition to any other relief awarded, all expenses that the Prevailing Party incurs in those proceedings, including legal fees and expenses. For purposes of this section 17.6, “**Prevailing Party**” means, for any proceedings, the party in whose favor an award is rendered, except that if in those proceedings the award finds in favor of one party on one or more claims or counterclaims and in favor of the other party on one or more other claims or counterclaims, neither party will be the Prevailing Party. If any proceedings are voluntarily dismissed or are dismissed as part of settlement of that dispute, neither party will be the Prevailing Party in those proceedings.
- 17.7 **Jury Trial Waiver.** Each party hereby waives its right to a trial by jury in any proceedings arising out of or relating to this agreement. Either party may enforce this waiver up to and including the first day of trial.
- 17.8 **Class Action Waiver.** The parties will conduct all proceedings to resolve a dispute in any forum on an individual basis only. Neither the Creator nor the Company will seek to have any dispute heard as a class action or in any other proceeding in which either party acts or proposes to act in a representative capacity. The parties will not combine any proceeding with another without the advanced written consent of all parties to all affected proceedings.
- 17.9 **Limited Time to Bring Claims.** A party will not bring a claim arising out of, or related to the subject matter of, this agreement more than one year after the cause of action arose. Any claim brought after one year is barred.

18. **General**

- 18.1 **Entire Agreement.** This agreement and the [Terms-of-Service Agreement](#) constitutes the entire agreement of the parties with respect to the subject matter and supersedes all earlier written or oral discussions, negotiations, proposals, undertakings, understandings, and agreements between the parties concerning the subject matter. If any conflict or inconsistency exists between this agreement and the [Terms-of-Service Agreement](#), this agreement will govern.

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- 18.2 **Amendment.** The Company may change this agreement on one or more occasions, on condition that changes will not apply to ongoing disputes or to disputes arising out of events occurring before the posted changes. The Company will notify the Creator by email of any changes to this agreement. Changes will become effective when posted on this page. It is the Creator's responsibility to check this page periodically for changes to this agreement. If the Creator continues to use the Platform after any change, the Company will consider the Creator's continued use of the Platform as acceptance of the change unless the Creator notifies the Company in writing of the Creator's disagreement and the reasons for the Creator's disagreement no later than 15 days after the change. The Company will contact the Creator no later than 15 days after receiving the notice to address the notice and try to reach a mutually amicable resolution. If the Company is unable to resolve the Creator's disagreement, the Creator's sole remedy is to terminate this agreement.
- 18.3 **Assignment and Delegation.** The Creator will not assign any of the Creator's rights or delegate any performance under this agreement, except with the Company's advance written consent. The Company may assign any of its rights or delegate any performance under this agreement without the Creator's consent. Any purported assignment of rights or delegation of performance by the Creator in breach of this section 18.3 is void.
- 18.4 **Waivers.** The parties may waive any provision in this agreement only by a writing signed by the party or parties against whom the waiver is sought to be enforced. No failure or delay in exercising any right or remedy, or in requiring the satisfaction of any condition, under this agreement, and no act, omission, or course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition. A waiver made in writing on one occasion is effective only in that instance and only for the purpose stated. A waiver once given is not to be construed as a waiver on any future occasion or against any other person.
- 18.5 **Severability.** The parties intend as follows:
- (a) that if any provision of this agreement is held to be unenforceable, then that provision will be modified to the minimum extent necessary to make it enforceable, unless that modification is not permitted by law, in which case that provision will be disregarded;
 - (b) that if modifying or disregarding the unenforceable provision would result in failure of an essential purpose of this agreement, the entire agreement will be held unenforceable;
 - (c) that if an unenforceable provision is modified or disregarded in accordance with this section 18.5, then the rest of the agreement will remain in effect as written; and
 - (d) that any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable.

18.6 **Notices**

- (a) **Form.** All notices and other communications between the parties will be in writing.
- (b) **Method**
 - (i) **Sending Notice to the Company.** The Creator may send notice to the Company by email to support@creamer.wtf unless a specific email address is listed on the Platform for giving notice. The Company may change its contact information on one or more occasions by posting the change on the Platform. Please check the Platform for the most current information for sending notice to the Company.
 - (ii) **Sending Notice to the Creator.** The Creator consents to receiving any notice from the Company in electronic form either (1) by email to the email address listed in the Creator's account or (2) by posting the notice on a place on the Platform chosen for this purpose. The Creator may change the Creator's contact information on one or more occasions by updating the contact information in the Creator's account.
- (c) **Receipt.** The Company will consider an email notice received by it only when the Company's server sends a return message to the Creator acknowledging receipt. The Company will consider notices sent to the Creator by email received when the Company's email service shows transmission to the Creator's email address. All other notices will be effective on receipt by the party to which notice is given, or on the fifth day after mailing, whichever occurs first.

18.7 **Governing Law.** Pennsylvania law, without giving effect to its conflicts of law principles, governs all matters arising out of or relating to this agreement, including its validity, interpretation, construction, performance, and enforcement.

18.8 **Force Majeure**

- (a) If a Force Majeure Event prevents a party from complying with any one or more obligations under this agreement, that inability will not constitute a breach if (1) that party uses reasonable efforts to perform those obligations, (2) that party's inability to perform those obligations is not due to its failure to (A) take reasonable measures to protect itself against events or circumstances of the same type as that Force Majeure Event or (B) develop and keep a reasonable contingency plan to respond to events or circumstances of the same type as that Force Majeure Event, and (3) that party complies with its obligations under section 18.8(c).
- (b) For purposes of this agreement, "**Force Majeure Event**" means, for any party, any event or circumstance, whether or not foreseeable, that was not caused by that party (other than a strike or other labor unrest that affects only that party, an increase in prices or other change in general economic conditions, a change in law, or an event or circumstances that results in that party's not having sufficient funds to comply with an obligation to pay money) and any consequences of that event or circumstance.

- (c) If a Force Majeure Event occurs, the noncomplying party will promptly notify the other party of occurrence of that Force Majeure Event, its effect on performance, and how long the noncomplying party expects it to last. From then on, the noncomplying party will update that information as reasonably necessary. During a Force Majeure Event, the noncomplying party will use reasonable efforts to limit damages to the other party and to resume its performance under this agreement.
- 18.9 **No Third-Party Beneficiaries.** This agreement does not, and the parties do not intend it to, confer any rights or remedies on any person other than the parties to this agreement.
- 18.10 **Successors and Assigns.** This agreement binds and inures to the benefit of the parties and their respective successors and assigns. This section 18.10 does not address, directly or indirectly, whether a party may assign its rights or delegate its obligations under this agreement. Section 18.3 addresses these matters.
- 18.11 **Electronic Signature.** The Creator acknowledges that any affirmation, assent, or agreement the Creator sends through the Platform in response to a prompt binds the Creator. The Creator further acknowledges that when the Creator clicks on an “I agree,” “I consent,” or other similarly worded “button” or entry field using a mouse, keystroke, or other computer device, this action is the legal equivalent of the Creator’s handwritten signature and binds the Creator in the same way.
- 18.12 **Voluntary Agreement.** The Creator has entered into this agreement voluntarily and for valid reasons. The Creator acknowledges that the Creator (i) has carefully read this agreement, (ii) discussed it with the Creator’s attorneys or other advisors, (iii) understood all the terms, and (iv) will comply with it. The Creator has relied on the advice of the Creator’s attorneys or other advisors about the terms of this agreement and waives any claim that the terms should be construed against the drafter.
- 18.13 **No Reliance.** The Creator acknowledges that in electronically signing this agreement, the Creator does not rely and has not relied on any statement by the Company or its agents, except those statements contained in this agreement.
- 18.14 **Permission to Send Emails to the Creator.** The Creator grants the Company permission to email notices, advertisements, and other communications to the Creator. The Creator’s permission will continue until the Creator asks the Company to remove the Creator from the Company’s email list.
- 18.15 **Feedback.** The Company encourages the Creator to give feedback about the Company or the Platform. But the Company will not treat as confidential any suggestion or idea the Creator gives, and nothing in this agreement will restrict the Company’s right to use, profit from, disclose, publish, or otherwise exploit any feedback, without payment.