

UPPER HAND MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT (together with all attachments, addenda, exhibits and reference terms, the "Agreement") is made and entered into by and between the licensee of the Software ("Customer," "you," or "your") and Upper Hand, Inc., a Delaware corporation ("Upper Hand," "we," "our," or "us"), and is effective as of the sooner of (a) your access to the Services, and (b) your acknowledgment of acceptance of this Agreement ("Effective Date").

PLEASE READ THIS AGREEMENT CAREFULLY TO ENSURE THAT YOU UNDERSTAND EACH PROVISION. BY USING THE UPPER HAND SERVICES OR SOFTWARE YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ACTING ON BEHALF OF AN ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THAT ENTITY. IF YOU DO NOT ACCEPT THE TERMS OF THIS AGREEMENT, THEN YOU MUST NOT PURCHASE OR USE THE SERVICES.

WHEREAS, Upper Hand is in the business of developing and supporting athletic facility support software; and

WHEREAS, Customer desires to purchase access to Upper Hand's software services and applications pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS

"Affiliate" shall mean, with respect to a party, any entity that directly or indirectly controls, is controlled by, or is under common control with such party, where "control" (or variants of it) shall mean the ability (whether directly or indirectly) to direct the affairs of another by means of ownership, contract or otherwise.

"Confidential Information" shall have the meaning set forth in **Section 7.1**.

"Customer Data" shall mean all electronic data or information submitted by Customer, End Users, or Customer's recipients of Upper Hand documents, to the Services.

"End Users" shall mean users who register for, sign up, or otherwise use the Services.

"End User Terms of Use" shall mean the End User Terms of Use Agreement that Customer shall pass through to End Users in writing as set forth within the Services and as amended on the Upper Hand website at <https://www.upperhand.com/terms-of-use/>.

"Malicious Code" shall mean viruses, worms, time bombs, Trojan horses and other harmful or destructive code, files, scripts, agents or programs.

"Non-Public Personal Information" shall mean personally identifiable information, including, without limitation, social security numbers, financial account numbers (i.e. credit card, checking account, savings account, etc.), medical, employment, or insurance numbers, and passport numbers.

"Order Form" shall mean the ordering documents for the Services from Upper Hand that are executed by Upper Hand and you or accepted by you from time to time. Any such approved Order Form shall be incorporated herein by reference.

"Platform" shall mean Upper Hand's proprietary software technology platform.

"Services" shall mean the online, internet-based application and mobile applications provided by Upper Hand and the effort required to deliver the application as further described in this Agreement and any accompanying Order Form.

"Software" shall mean Upper Hand's software-as-a-solution product licensed or as otherwise indicated in any accompanying Order Form.

"Term" shall have the meaning set forth in **Section 10.1**.

2. SERVICES

2.1 Provision of Services. Upper Hand will provide the Services in accordance with this Agreement and our support documentation located at <https://www.upperhand.com/legal>. The features, services and options may be described more fully on web pages describing the Software and the Services, and/or in an applicable Order Form. You agree to cooperate with us and to provide us with certain information relating to your organization as necessary for us to provide the Software and the Services.

2.2 License; Access to the Services. Subject to this Agreement, Upper Hand grants to Customer a non-exclusive, non-transferable, non-sublicensable (except as permitted by this Agreement), limited, and revocable right to (a) use the Services in connection with its own business during the Term, and (b) grant access to the Services to its own End Users. Customer grants to Upper Hand a limited, non-exclusive right to use Customer Data and the End User information generated and/or utilized by any of Customer's licensees or third party partners as, well as any work product, software, code, designs or solutions Customer develops solely for the purpose of carrying out the Services.

2.3 Customer Ability to Provide Access to End Users. Customer may grant access to the Services to its End Users solely in connection with the End Users' use of Customer's services and facilities. Prior to Customer granting any such access, it shall ensure that End Users agree to the End User Terms of Use as set forth within the Services, and as available at <https://www.upperhand.com/terms-of-use/>. Upon the expiration or termination of this Agreement, any rights granted by Customer to End Users shall automatically terminate.

2.4 Notifications. You agree to receive notifications regarding free product, promotional items, and giveaways. End Users who register for, sign up, or otherwise use the Services may opt-in to receive information, items, promotions, or deals from Upper Hand or other third parties, in which case, Upper Hand or such third party will be responsible for fulfillment and for providing customer service for any such offers.

2.5 Promotion; License to Upper Hand Marks.

2.5.1. During the Term, Upper Hand shall be the preferred provider of sports and fitness business management software, video analysis, and other services similar to the Software and the Services.

2.5.2. Upper Hand hereby grants to you a limited, non-exclusive, non-transferable, non-sublicensable license to display, reproduce, distribute, and transmit in digital form Upper Hand's name and logo, solely for the purposes set forth in this Agreement, during the Term. All copies of the Services, whether in altered or unaltered form, must include all trademarks, service marks, and copyright notices (collectively the "Visible Marks")—including size, location, color, and visibility characteristics of the Visible Marks—that appear in the unaltered, original copies of the Services. No right, license, or permission to use any other of Upper Hands' trademarks, service marks, registered trademarks, or registered service e-marks (collectively the "Trade Names") is granted by this Agreement. Customer acknowledges and agrees that it will not use any Visible Marks in any manner not explicitly granted by Upper Hand.

2.5.3. Upper Hand may brand the Services with Customer's marks and designs as Customer may determine if set forth in an Order Form.

3. USE OF THE SERVICES

3.1 Upper Hand Responsibilities. Upper Hand shall use commercially reasonable efforts to: (a) make the Services available to you in a manner that is reasonably consistent with generally accepted industry standards; (b) ensure that the Services perform in material compliance with any documentation or user guides provided to you; (c) provide standard support to you at no additional charge, unless otherwise set forth in the applicable Order Form; and (d) make the Platform available as provided in our standard service level agreement, available at <https://upperhand.com/legal-service-level-agreement/>. Upper Hand reserves the right to amend its standard service level agreement without notice to Customer and Customer's continued use constitutes Customer's acceptance thereof.

3.2 Customer Responsibilities. Customer is responsible for all activities that occur in Customer's account(s). Customer shall: (a) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data; (b) prevent unauthorized access to, or use of, the Services, and notify Upper Hand promptly of any such unauthorized access or use; and (c) comply with all applicable local, state, federal and foreign laws in using the Services. Customer shall not upload to, or store within, the Services (and the Customer Data shall not contain) any Non-Public Personal Information, unless such upload or storage is a permitted purpose to use the Services. Customer understands and acknowledges that: (x) Upper Hand may, in its reasonable discretion, refuse to make available any document that Upper Hand reasonably believes is unlawful; (y) Upper Hand has no obligation to review document content or other Customer Data; and (z) Customer is solely responsible for the creation of documents via the Services, including, but not limited to, the content thereof.

3.3 Use Guidelines and Restrictions. Customer shall use the Services solely for its internal business purposes as contemplated by this Agreement and shall not, directly or indirectly:

- 3.3.1.** license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Services available to any third party (including any affiliates of Customer) except End Users unless expressly agreed in a duly executed written agreement;
- 3.3.2.** make any representations, warranties, guarantees, indemnities, similar claims, or other commitments actually, apparently, or ostensibly on behalf of Upper Hand, which representations, warranties, guarantees, indemnities, similar claims, or other commitments are additional to or inconsistent with any then-existing representations, warranties, guarantees, indemnities, similar claims, or other commitments in this Agreement or any written documentation provided by Upper Hand to Customer;
- 3.3.3.** send via or store within the Services infringing, obscene, threatening, defamatory, fraudulent, abusive, or otherwise unlawful or tortious material, including material that is harmful to children or violates third party intellectual property, proprietary, or privacy rights;
- 3.3.4.** engage in any unfair, competitive, misleading or deceptive practices respecting Upper Hand or the Services, including any disparagement or "bait-and-switch" practices;
- 3.3.5.** send via, upload to, or store within the Services any Malicious Code;
- 3.3.6.** interfere with or disrupt the integrity or performance of the Services or the data contained therein;
- 3.3.7.** attempt to gain unauthorized access to the Services or its related systems or networks;
- 3.3.8.** separate any aspect of the Services or sell, license, or distribute the Services on a standalone basis;
- 3.3.9.** remove, translate, or modify the contents of or related to the Services, including, without limitation, any warranty statements, proprietary notices, or labels;
- 3.3.10.** create derivative works based on the Services;
- 3.3.11.** reverse engineer, attempt to reverse engineer, or disclose, in any manner, directly or indirectly, any portions of the Services, including the source code, object code, or underlying structure, ideas or algorithms of the Services;
- 3.3.12.** sell or offer to sell any of the Services or other Upper Hand-branded software or services other than to End Users;
- 3.3.13.** manufacture, promote, market, sell, or distribute the Services using promotional information and material, unless the promotional information or material was provided by Upper Hand; or
- 3.3.14.** build a competitive product or service.

4. PERSONNEL

4.1 Personnel; Use of Subcontractors. Subject to the provisions below and unless otherwise specified in the applicable Order Form, Upper Hand shall supply all materials, equipment, and qualified personnel necessary to perform the Services. Upper Hand

may use subcontractors to perform the Services.

5. FEES & PAYMENT

5.1 Fees. Customer shall pay all fees, expenses or charges specified in all Order Forms and/or within the Platform ("Fees"). Except as otherwise provided in this Agreement, all payment obligations are non-cancelable, and all amounts paid are non-refundable. Except as otherwise specified, fees are based on the Services purchased and not actual usage; and the Services purchased cannot be decreased during the relevant twelve (12) month Term. Unless otherwise set forth on the applicable Order Form, Upper Hand will charge Services fees and merchants fees for events online, and will process and collect such fees as a merchant of record according to the card networks or ACH. Upper Hand will pay to you any sums due to you based on the total fees collected, net of Upper Hand's service fees as set forth in the Order Form and any other deductions provided herein. The applicable currency will be set forth on the Order Form. If no applicable currency is set forth in the Order Form all prices shall be in United States dollars. Upper Hand may modify the fees once per calendar year. The parties agree that the terms of this Agreement will govern future purchases of additional Services by Customer.

5.2 Overdue Payments. If any undisputed invoiced amount is not received by Upper Hand by the due date, then without limiting Upper Hand's rights or remedies, Upper Hand may (a) cause charges to accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is greater; (b) terminate this Agreement and demand the remaining payments for the term in full; and/or (c) suspend the Services to Customer, until such amounts are paid in full.

5.3 Taxes and Other Fees. You are solely responsible for, and will pay, any and all use, excise, sales or privilege taxes, duties, value added taxes, fees assessments, or similar liabilities, chargeable by a governmental authority (collectively, "Taxes") as a result of any Service provided under this Agreement. Taxes on Upper Hand's net income are excluded.

5.4 Invoicing & Payment. If an applicable Order Form specifies that payment will be by credit card, debit card or Automated Clearing House, you will provide Upper Hand with valid and updated payment information and hereby authorize Upper Hand to process payment for all Services listed in the Order Form for the Term (including any renewal term(s)). Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order Form. You are responsible for providing complete and accurate billing and contact information to Upper Hand and notifying Upper Hand of any changes to such information. Further you acknowledge that payments are processed pursuant to our merchant agreement located at <https://upperhand.com/legal-paysafe-terms-and-conditions/>.

5.5 Merchant Application. You acknowledge that payments are processed pursuant to our merchant agreement located at <https://www.getupperhand.com/legal-paysafe-terms-and-conditions/>. ("Merchant Application"). In the event that Customer's Merchant Application is not approved by Paysafe Merchant Services Corporation (or such other merchant services corporation as Upper Hand may engage, as applicable) this Agreement and Customer's right to access and use the Services pursuant to this Agreement shall immediately terminate. Upon such termination (a) Customer shall immediately cease all access and use of the Services and shall cause all End Users to whom it granted access to the Services to cease such access, (b) Customer shall be relieved of all future payment obligations, and (c) Upper Hand shall refund to Customer any fees paid by Customer to Upper Hand pursuant to this Agreement.

6. PROPRIETARY RIGHTS

6.1 Reservation of Rights. Subject to the limited rights expressly granted hereunder, Upper Hand reserves all rights, title and interest in and to the Services, including all related intellectual property rights, with the exception of all End User or Customer information, which are the exclusive property of Customer. No rights are granted to Customer hereunder other than as expressly set forth herein.

6.2 Protection of IP. Neither Customer nor its employees or agents shall cause or allow the Services or any Upper Hand Confidential Information (defined below) to be disclosed to third parties, duplicated, or used except as expressly permitted in this Agreement. Customer shall take all steps, both during and after the Term, to ensure that no unauthorized parties or persons will have access to the Services and that no unauthorized copy, distribution or disclosure, whether in whole or in part, is made in any form. In the event that Customer learns of any unauthorized access or disclosure of the Services or any credentials,

Customer must promptly notify Upper Hand, but in no event later than three (3) days after said access or disclosure.

6.3 Customer Data.

6.3.1 Information Collection. Upper Hand collects certain information from End Users. As between the parties, Customer owns all rights to End User data and through this Agreement is allowing Upper Hand to utilize the information to develop and deliver the Services. You hereby grant to Upper Hand a non-exclusive, transferable and sublicensable right to process and use Customer Data, including End User data, in connection with the performance, delivery, and improvement of the Services. You may login to our data management system to access End User information. You are responsible for the security of your login information and for the use or misuse of such information. If any End User is using such information without your consent, you will immediately disable that End User's access to the Services and notify Upper Hand in writing that said End User is no longer authorized to access the Services. Upper Hand may rely, without independent verification, on such notice, and Customer, inclusive of Customer's parent, subsidiary and affiliated entities, as applicable, and each of their respective officers, directors, managers, shareholders, owners, agents, employees, contractors, and representatives covenant not to sue and agree to defend, indemnify, and hold harmless Upper Hand from any claims arising from Upper Hand providing, denying, suspending, or modifying access to or use of the Services of any individual as directed by Customer or by someone who Upper Hand reasonably, under the circumstances, believes is authorized to act on behalf of Customer. In the event of any dispute between two or more parties as to account ownership, you agree that Upper Hand will be the sole arbiter of such dispute, in its sole discretion, and that Upper Hand's decision (which may include termination or suspension of any account subject to dispute) will be final and binding on all parties.

6.3.2. Unauthorized Disclosure. Customer will take all reasonable steps, both during and after the Term, to ensure that no unauthorized parties or persons will have access to the Services and that no unauthorized copy, distribution or disclosure whether in whole or in part, is made in any form. In the event that Customer learns that there is unauthorized use or access to data or the Services, Customer must immediately notify Upper Hand of such event.

6.3.3. Prohibited Data. You agree not to use the Services to collect or elicit (a) any special categories of data (as defined in the European Union General Data Protection Regulation (2016/679), as may be amended from time to time), including, but not limited to, data revealing racial or ethnic origin, political opinions, or religious or other beliefs, trade-union membership, as well as personal data concerning health or sexual life or criminal convictions or offences other than as expressly permitted by Upper Hand, and in such event, only in pre-defined fields within the Services that are intended for that purpose; (b) credit card information other than in pre-defined fields within the Services that are intended for that purpose; (c) any social security numbers, drivers licenses numbers, bank account numbers, or email addresses with passwords.

6.3.4. Compliance with Laws. Customer agrees to use the collected information inputted into the Services and the functions of the Services in compliance with (a) all applicable laws, rules and regulations, including, without limitation, those governing privacy (e.g. by including an appropriate CAN-SPAM opt out mechanism in email communications) and the use of credit card data (e.g., using credit card information only for the purposes authorized by the cardholder); (b) applicable credit card network rules and Payment Card Industry Data Security Standards; and (c) Upper Hand's privacy policy, as published on its website or otherwise provided by Upper Hand from time to time, including Upper Hand's GDPR privacy policy if applicable, available at <https://upperhand.com/legal-privacy-and-cookie-policy/>.

6.3.5. EU/GDPR Data Protection Addendum. To the extent to which the provision of the Services under this Agreement involves the processing of Customer Personal Data subject to the European Data Protection Laws by Upper Hand on behalf of Customer (each such capitalized term having the meaning given in the EU/GDPR Data Protection Addendum), the parties agree to abide by the terms of the EU/GDPR Data Protection Addendum, as it may be amended, available at <https://upperhand.com/legal-gdpr/>. Upper Hand reserves the right to amend the EU/GDPR Data Protection Addendum without notice to Customer. Where applicable, in the event of a conflict between the terms of the EU/GDPR Data Protection Addendum and the terms of this **Section 6.3**, the terms of the EU/GDPR Data Protection Addendum shall prevail to the extent of such conflict.

6.4 Feedback. In the event that Customer or End Users provide Upper Hand or its suppliers/licensors with feedback, suggestions or other input (collectively, "Feedback") with respect to the Services, Customer hereby grants to Upper Hand and its Affiliates a perpetual, irrevocable, royalty-free, worldwide right and license, but not the obligation, to use, modify and license such Feedback without restriction or obligation to Customer. As between Upper Hand and the Customer, Upper Hand will exclusively own any and all modifications to the Services or other developments generated by Upper Hand or its licensees utilizing the Feedback.

7. CONFIDENTIALITY

7.1 Definition of Confidential Information. As used herein, "Confidential Information" means all confidential and proprietary information of a party (the "Disclosing Party") disclosed to the other party (the "Receiving Party") that (a) if disclosed orally is designated as confidential at the time of disclosure; (b) if disclosed in writing is marked as "Confidential" and/or "Proprietary"; or (c) that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including, without limitation, the terms and conditions of this Agreement (including pricing and other terms reflected in all proposals hereunder), the Customer Data, provision of the Services, business and marketing plans, technology and technical information, product designs, and business processes. Notwithstanding the foregoing, each party may disclose the existence and terms of this Agreement, in confidence, to a potential purchaser of or successor to any portion of such party's business resulting from the reorganization, spin-off, or sale of all or a portion of all of the assets of any business, division, or group of such party. Confidential Information (except for Customer Data) shall not include any information that: (w) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (x) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (y) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (z) is received from a third party without breach of any obligation owed to the Disclosing Party.

7.2 Confidentiality. The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party's prior written permission. Notwithstanding the foregoing, the Receiving Party may disclose such Confidential Information to those of its employees and contractors who need to know such information for purposes of performing the Services and certifies that such employees and contractors have agreed, either as a condition of employment or in order to obtain the Confidential Information, to be bound by terms and conditions substantially similar to those in this Agreement. The Receiving Party shall use the same degree of care to protect the Confidential Information as it uses to protect its own information of a confidential and proprietary nature, but in no event shall it use less than a reasonable degree of care.

7.3 Compelled Disclosure. If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

7.4 Remedies. If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of confidentiality protections hereunder, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies, including money damages, are inadequate.

7.5 Survival. Notwithstanding the expiration or termination of this Agreement for any reason, the obligations of confidentiality and non-use set forth in this **Section 7** shall extend for a period of two years after such expiration or termination.

8. WARRANTIES, DISCLAIMERS & LIMITATION OF LIABILITY

8.1 Upper Hand Warranties. Upper Hand represents and warrants that: (a) it owns or otherwise has sufficient rights in the Services to grant to you the rights to use the Services granted herein; and (b) the Services will be performed in a workmanlike manner in accordance with generally accepted industry standards. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN THIS SECTION 8.1, UPPER HAND MAKES NO ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. UPPER HAND EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES FOR FITNESS FOR A PARTICULAR

PURPOSE. UPPER HAND DOES NOT WARRANT THAT THE SERVICES ARE OR WILL BE ERROR-FREE, WILL MEET YOUR REQUIREMENTS, OR BE TIMELY OR SECURE. YOU WILL NOT HAVE THE RIGHT TO MAKE OR PASS ON ANY REPRESENTATION OR WARRANTY ON BEHALF OF UPPER HAND TO ANY THIRD PARTY.

8.2 Customer Warranties. Customer represents and warrants to Upper Hand that it is in compliance with all laws and Customer contracts applicable to this Agreement, the Services, and the operation of its business. Customer shall at all times comply with all laws.

8.3 Limitation of Liability.

8.3.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL UPPER HAND, ITS AFFILIATES, AGENTS, SHAREHOLDERS, DIRECTORS, EMPLOYEES, CONTRACTORS, SUPPLIERS OR LICENSORS BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES, RELATED TO THE SERVICES OR THAT RESULT FROM THE USE OF, OR INABILITY TO USE, THE SERVICES. UNDER NO CIRCUMSTANCES WILL UPPER HAND BE RESPONSIBLE FOR ANY DAMAGE, LOSS OR INJURY RESULTING FROM HACKING, TAMPERING OR OTHER UNAUTHORIZED ACCESS OR USE OF THE SERVICES OR THE INFORMATION CONTAINED THEREIN. YOU AGREE THAT NO CLAIM (AS DEFINED BELOW) MAY BE BROUGHT BY YOU AGAINST UPPER HAND MORE THAN ONE (1) YEAR AFTER THE ACCRUAL OF THE CLAIM, WHETHER YOU HAD ACTUAL KNOWLEDGE OF THE CLAIM OR SHOULD HAVE KNOWN OF ITS EXISTENCE.

8.3.2. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, UPPER HAND ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY (A) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT; (B) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO OR USE OF OUR SERVICE OR SERVICES; (C) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION STORED THEREIN; (D) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SERVICE OR SERVICES; (E) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE THAT MAY BE TRANSMITTED TO OR THROUGH OUR SERVICE OR SERVICES BY ANY THIRD PARTY; (F) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR FOR ANY LOSS OR DAMAGE INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE THROUGH THE SERVICE OR SERVICES; (G) LOSS OF DATA ; AND/OR (H) ACCURACY OR COMPLETENESS OF USER CONTENT OR THE DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF ANY THIRD PARTY. IN NO EVENT SHALL UPPER HAND, NOR ITS AFFILIATES, AGENTS, SHAREHOLDERS, DIRECTORS, EMPLOYEES, SUPPLIERS, OR LICENSORS BE LIABLE TO CUSTOMER FOR ANY CLAIMS, PROCEEDINGS, LIABILITIES, OBLIGATIONS, DAMAGES, LOSSES OR COSTS FOR MORE THAN THE AMOUNT PAID BY CUSTOMER TO UPPER HAND DURING THE SIX (6) MONTH PERIOD ENDING ON THE DATE ON WHICH CUSTOMER PROVIDES NOTICE OF THE CLAIM TO UPPER HAND.

8.3.3. THIS LIMITATION OF LIABILITY SECTION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, GROSS NEGLIGENCE OR STRICT LIABILITY, OR ANY OTHER BASIS, EVEN IF UPPER HAND HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.

9. INDEMNIFICATION

9.1 By Upper Hand. Upper Hand shall defend, indemnify and you, your Affiliates, and their respective officers, directors, agents and employees, harmless against any damages, costs, losses, settlements, awards, penalties, injuries and expenses and liability finally awarded, including reasonable attorneys' fees (any "Loss"), incurred in connection with any claim, demand, suit or proceeding (any "Claim") made or brought against you by a third party alleging that your use of the Services in a manner permitted by this Agreement and the End User Terms of Use infringes the intellectual property rights of such third party; provided, however, that Upper Hand shall have no such indemnification obligation to the extent such infringement relates to or arises from: (a) a third-party product made available through the Services; (b) use of the Services in combination with data, software, products, processes, or other materials not provided by Upper Hand where such infringement would not have occurred but for the combination; (c) modifications to the Services not made or authorized by Upper Hand; (d) your continuation

of the activity or use constituting or contributing to the infringement after notification thereof by Upper Hand; (e) Customer Data; and (f) where applicable, the EU/GDPR Data Protection Addendum.

9.2 By You. You shall defend, indemnify, and hold Upper Hand, its Affiliates, and its and their respective officers, directors, shareholders, agents, employees and contractors, harmless against any Loss to which Upper Hand may become subject as a result of a third-party Claim that arises out of or relates to Customer's: (a) violation of any applicable law, rule or regulation; (b) misuse of the Services, including the misappropriation of any proprietary right of Upper Hand (c) infringement or violation of any intellectual property, privacy, or other rights of a third party; (d) breach of your confidentiality obligations pursuant to **Section 7**; (e) negligence or willful misconduct; and/or (f) breach of this Agreement or the End User Terms of Use or, where applicable, the EU/GDPR Data Protection Addendum or any agreement referenced in this Agreement.

9.3 Procedure. As an express condition to the indemnifying party's obligation under this **Section 9**, the party seeking indemnification must: (a) promptly notify the indemnifying party in writing of the applicable Claim for which indemnification is sought, provided that failure to timely provide such notification shall not release the indemnifying party from its indemnification obligations except to the extent such failure has prejudiced the party seeking indemnification; (b) (except where the indemnification relates to the EU/GDPR Data Protection Addendum) grant the indemnifying party sole control over the defense of such claim; and (c) provide the indemnifying party with all non-monetary assistance, information and authority reasonably required for the indemnifying party to defend and settle such Claim.

10. TERM & TERMINATION

10.1 Term of Agreement. The initial term of this Agreement shall be for one year from the Effective Date with automatic renewals for twelve (12) month terms thereafter, unless Customer provides written notice to Upper Hand to terminate this Agreement with no less than one (1) month's notice (the initial term along with any renewals, the "Term").

10.2. Termination. Either party may terminate this Agreement: (a) upon a material breach by the other party, if such breach is not cured within thirty (30) days following written notice to the breaching party; or (b) where the other party becomes unable to fulfill its payment obligations generally or is subject to a filed bankruptcy petition or formal insolvency proceeding that is not dismissed within thirty (30) days. If Customer terminates this Agreement for cause, Upper Hand shall refund to Customer any prepaid Fees, or a pro-rata portion thereof, covering the remainder of the Term after the effective date of termination. Termination for cause by Customer shall not relieve Customer of the obligation to pay any Fees accrued or payable to Upper Hand prior to the effective date of termination. Fees are otherwise non-refundable. If Upper Hand terminates this Agreement for cause, Customer will promptly pay to Upper Hand all due and unpaid Fees due at the time of termination. Additionally, Upper Hand may terminate this Agreement at any time in its sole discretion.

10.3. Suspension for Prohibited Acts. Notwithstanding anything herein to the contrary, we may without notice immediately suspend any End User's access to any or all Services for: (a) use of the Services in a way that violates applicable local, state, federal, or foreign laws or regulations or the terms of this Agreement, (b) use of the Upper Hand email send service that results in bounce-backs, SPAM notices or requests for removal from a mailing list by recipients, or (c) posting or uploading material that infringes or is alleged to infringe on the copyright or trademark rights of any person or entity. Regardless of such a suspension, End User data will remain the property of Customer and may be used by Customer thereafter at its discretion, and independent of the End User who are responsible for the infraction.

10.4. Suspension for Present Harm. If your use of the Services, in Upper Hand's sole discretion: (a) is being subjected to denial of service attacks or other disruptive activity, (b) is being used to engage in denial of service attacks or other disruptive activity, (c) is creating a security vulnerability, (d) is consuming excessive bandwidth; or (e) is causing or potentially causing harm to us or others, then we may, with electronic notice to you, suspend all or any access to Services. In the event suspension is necessary due to consumption of excessive bandwidth, Upper Hand will inform Customer and use commercially reasonable efforts to resolve the issue.

10.5. Effect of Termination or Expiration. Upon the termination or expiration of this Agreement, you will stop all use of the affected subscription to the Services and of Upper Hand content. Upon termination, Upper Hand will cease using Customer's marks and designs.

10.6 Surviving Provisions. Sections 1 and Sections 5 through 11 of this Agreement and any Fees or other fees owed by you shall survive any termination or expiration of this Agreement.

11. GENERAL PROVISIONS

11.1 Relationship of the Parties; Third-Party Beneficiaries. The Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between you and Upper Hand. Unless otherwise provided in the applicable Order Form, there are no third-party beneficiaries to the Agreement.

11.2 Non-Solicitation. During the Term and for a period of two (2) years thereafter, Customer agrees not to solicit or hire any personnel of Upper Hand with whom Customer has had contact in connection with this Agreement; provided that Customer may hire an individual employed by Upper Hand who, without other solicitation, responds to advertisements or solicitations aimed at the general public.

11.3 Force Majeure. Except with respect to the payment of all fees owing under this Agreement, neither party is responsible for delays or failures to perform its responsibilities under the Agreement due to causes beyond its reasonable control, including but not limited to Acts of God, Acts of government, flood, fire, earthquakes, tornadoes, civil unrest, acts of terror, strikes or other labor problems, computer, telecommunications, internet service provider or hosting facility failures or delays involving hardware, software or power systems, Malicious Code, denial of service attacks, and inability to obtain energy (each a "Force Majeure Event"); provided, however, that a party will resume performance as soon as reasonably practicable after a delay or failure to perform its responsibilities due to a Force Majeure Event.

11.4 Notices. Unless otherwise specified in this Agreement, all notices, requests, and approvals of Upper Hand under this Agreement shall be in writing and shall be deemed to have been given to you upon: (a) personal delivery; (b) the second business day after mailing; or (c) the second business day after sending by email. Unless otherwise specified within this Agreement, any notice, request, or approval requirement of you under this Agreement shall be in writing and shall be deemed to have been given to Upper Hand upon: (y) personal delivery; or (z) receipt by Upper Hand when sent via U.S. Certified Mail, return receipt requested and postage pre-paid, to Upper Hand.

11.5 All notices to Upper Hand must be sent to:

Attn: Legal
Upper Hand, Inc.
129 E. Market Street
Suite 400
Indianapolis, IN 46204
Email: support@getupperhand.com

11.6 Headings. All headings contained in this Agreement are inserted for identification and convenience, and will not be deemed part of this Agreement for purposes of interpretation.

11.7 Entire Agreement. This Agreement constitutes the entire agreement between Upper Hand and you with respect to the subject matter set forth herein and therein, and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. If there is a conflict between (a) the terms of this Agreement and the terms of the End User Terms of Use or any document linked herein, this Agreement shall prevail and (b) the terms of this Agreement and the terms of the applicable Order Form, the terms of the applicable Order Form shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in a document other than an Order Form or a page displayed within the Platform shall be incorporated into or form any part of the Agreement, and all such terms or conditions shall be null and void.

11.8 Amendment. Except as expressly set forth herein, this Agreement may not be amended, supplemented or modified except by a written instrument signed by the parties hereto, which instrument makes specific reference to this Agreement. No modification, amendment, or waiver of any provision of any Order Form shall be effective unless in writing and signed by both parties hereto.

11.9 Assignment. This Agreement is binding on the parties to this Agreement, and nothing in this Agreement confers upon any other person or entity any right, benefit or remedy of any nature whatsoever, except for the parties' Affiliates as expressly provided in this Agreement. You may not assign your rights or obligations under this Agreement without Upper Hand's Written consent. Upper Hand may assign its rights or obligations under this Agreement freely without your consent.

11.10 Governing Law. This Agreement shall be governed by the laws of the State of Delaware, without giving effect to the conflict of laws provisions thereof. Neither the United Nations Convention of Contracts for the International Sale of Goods nor the Uniform Computer Information Transactions Act shall apply to this Agreement. The parties irrevocably agree that any legal action or proceeding relating to this Agreement shall be instituted only in any state or federal court in Marion County, Indiana.

11.11 Severability. If any provision of this Agreement is held to be unenforceable by a court of competent jurisdiction for any reason whatsoever, (a) the validity, legality, and enforceability of the remaining provisions of this Agreement (including without limitation, all portions of any provisions containing any such unenforceable provision that are not themselves unenforceable) shall not in any way be affected or impaired thereby, and (b) to the fullest extent possible, the unenforceable provision shall be deemed modified and replaced by a provision that approximates the intent and economic effect of the unenforceable provision and the Agreement shall be deemed amended accordingly.

11.12 No Waiver. No waiver of any provision of this Agreement or any attachment shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.

11.13 Electronic Signature and Disclosure Consent Notice. You agree to the use of electronic documents and records in connection with this Agreement and all future documents and records in connection with the Services—including this electronic signature and disclosure notice—and that this use satisfies any requirement that Upper Hand provides you these documents and their content in writing. If you do not agree, do not enter into this Agreement. You have the right to receive a paper copy of all documents and records if and to the extent required under applicable law. You may (a) obtain a paper copy of any document or record (free of charge), (b) withdraw your consent to the use of electronic documents and records, or (c) update your contact information through your account. To receive or access electronic documents and records, you must have the following equipment and software: (x) a device that is capable of accessing the Internet, (y) a compatible Internet browser, and (z) software that permits you to receive and access Portable Document Format or "PDF" files, such as Adobe Acrobat Reader 8.0 or higher. To retain documents and records, your device must have the ability to download and store PDF files.