

TERMS OF SERVICE

Please read this Agreement carefully and immediately cease using the Services if you do not agree to it.

TopTipper operates a proprietary tipping platform (the “**Platform**”) which enables persons to provide monetary tips to various service providers; and

Partner desires a non-exclusive license to enable its customers (the “**End-Users**”) to utilize the Platform to tip (each tip is hereinafter referred to as a “**Tipping Transaction**”) its employees and independent contractors (each, a “**Partner Service Provider**”) that provide services to such customers;

TopTipper desires to provide such rights to Partner on the terms and conditions of this Agreement.

NOW, THEREFORE, for and in consideration of the respective promises and mutual agreements made by the Parties hereto, and intending to be legally bound hereby, the Parties agree as follows:

1. **Recitals.** The recitals set forth above are herein incorporated hereby.
2. **Definitions:** The following terms shall have the following meanings in this Agreement:

a. “**Confidential Information**” means all non-public information in whatever form that one Party (“**Receiving Party**”) obtains from the other Party (“**Disclosing Party**”) in the course of its performance of this Agreement, regardless of whether or not marked as or stated to be confidential, including the following: the Platform and anything concerning its operation; business and technical information, including pricing and fees, options and models; historical and projected financial information; budgets; services; products; techniques; processes; operations and equipment; software; formulae; know-how; show-how; designs and plans; sketches; drawings; websites, marketing, report, and other formats and look and feel; analyses, strategies, and forecasts; research and development; concepts; ideas; names, addresses, contracts and pricing with, and any other characteristics identifying information or aspects of existing or potential customers, employees, vendors or suppliers; or any information derived, summarized or extracted from any of the foregoing disclosed by Disclosing Party in writing, electronically, mechanically, and/or orally, or observed on the other Party’s premises. Confidential Information shall *not include* any information that Receiving Party can demonstrate is (a) already known to or otherwise in the possession of Receiving Party without an obligation of confidentiality at the time of receipt from Disclosing Party under this Agreement; (b) or becomes a part of the public domain through any means other than a breach by Receiving Party of its obligations under this Agreement; (c) rightfully obtained by Receiving Party on a non-confidential basis from any non-Related Party that is not, to Receiving Party’s actual knowledge, under an obligation of confidentiality to Disclosing Party; or (d) developed independently by Receiving Party without **any** reference to or use of Disclosing Party’s Confidential Information. This Agreement is the Confidential Information of both Parties.

b. “**Intellectual Property**” means any the Platform, documentation, software, marketing and training materials, designs, websites, schematics, landing pages, plans, reports, analyses and other tangible items that TopTipper creates whether in connection herewith or otherwise.

c. “**Related Party**” means any parent, owner, director, officer, partner, affiliate, joint venture, authorized agent or representative, assignee, subsidiary, consultant, contractor, subcontractor or hired or leased employee or worker of the subject entity. End-Users are not Related Parties of either Party.

d. “**Work Product**” means the Intellectual Property, and all other inventions, concepts, ideas, improvements, modifications, processes, methods, designs, analysis, discoveries or other creations provided by TopTipper or Partner hereunder or made or conceived by TopTipper or Partner in connection herewith or otherwise whether solely or jointly with others.

3. **Term.** The term of this Agreement (the “**Term**”) shall commence on the Effective Date and shall continue until the date that is two (2) years after the Effective Date upon which the Term shall automatically renew for successive one (1) year periods unless terminated by either Party by written notice given at least ninety (90) days before the expiration of the then current Term. Notwithstanding the foregoing, each Party shall have a one-time right to terminate this Agreement without penalty by written notice given prior to the expiration of the Beta period (e.g. the time period between the Effective Date and the date that is sixty (60) days after the date hereof). Further, either Party may terminate this Agreement upon five (5) days’ prior written notice to the other party without penalty.

4. **Platform Use.**

a. The parties shall cooperate with each other to integrate the Platform into partners customer communications to enable the End-Users to send tips to partners end customers.

b. TopTipper shall provide the following support to partner with respect to the foregoing at TopTipper’s discretion (i) onboarding and training; (ii) management dashboard and support with respect to use of the Platform; and (iii) a custom-branded website for Tipping Transactions.

c. TopTipper shall provide direct support to Partner’s End-Users related to the Platform.

d. TopTipper will notify Partner when an End-User reports an issue via Slack with Customer Name, ticket details and confirmation of the resolution thereof.

5. **Marketing.** In consideration of TopTipper providing partner and its end-users with access to the platform, Partner agrees to use commercially reasonable and diligent efforts to market the Platform to its end-users by including links to the platform and other communication about the platform’s availability to its end-users.

6. **Transaction Fees.** TopTipper shall charge only the End-Users (and **not** Partner) for fees associated with each Transaction as determined by TopTipper from time to time in its sole and absolute discretion. TopTipper currently charges the following fees to End-Users per Transaction (with such fees subject to change at any time provided that TopTipper agrees to notify Partner of any such change):

- a. \$0.30 per each Transaction representing a direct reimbursement for TopTipper's payment processing; plus
- b. 2.90% of the applicable tip amount representing a direct reimbursement for TopTipper's payment processing; plus
- c. \$0.49 transaction fee for all tips.

7. **Confidentiality.**

a. Receiving Party shall hold and maintain all Confidential Information in the strictest confidence and in trust using the same safeguards that it uses to protect its own commercially confidential information of a similar character, which in all cases shall be no less than reasonable safeguards and accepted industry practices. Receiving Party shall not disclose or allow the disclosure of (including by a security breach) any Confidential Information to any other person or entity or use any such Confidential Information for its own benefit or for the benefit of another. The Parties shall not disclose any of the terms of this Agreement without the other Party's prior written consent.

b. Receiving Party immediately shall notify Disclosing Party of any actual, potential or threatened unauthorized access to, use and/or disclosure of any Confidential Information in the possession or control of Receiving Party and immediately and at its own expense investigate and take reasonable steps to identify, prevent and mitigate the effects of any such unauthorized disclosure. Receiving Party promptly shall provide Disclosing Party with a reasonably detailed description of the incident, the Confidential Information accessed or disclosed, the identity of unauthorized recipient, and such other information as Disclosing Party reasonably may request concerning the unauthorized disclosure.

c. Each Party acknowledges that the breach of this Section will likely result in irreparable injury to the other Party for which money damages alone would be an inadequate remedy and that, in addition to its other remedies, the non-breaching Party shall be entitled to equitable relief, including specific performance and an injunction to restrain any threatened or continued breach of this Agreement in any court of competent jurisdiction. No bond or other security shall be required in obtaining any equitable relief.

d. Promptly upon the expiration or earlier termination of this Agreement or each Statement of Work for any reason, or promptly upon Disclosing Party's request made at any time, Receiving Party shall return all Confidential Information to Disclosing Party, or, at Disclosing Party's request, certify that Receiving Party has destroyed all Confidential Information together with any copies thereof.

e. The provisions of this Section shall survive the termination or earlier expiration of the Term.

8. **Ownership of the Platform.** TopTipper shall solely and exclusively own the Confidential Information that it discloses under this Agreement (including, without limitation, the Work Product). Partner shall only use Confidential Information disclosed by TopTipper as is reasonably necessary in connection with performing its obligations under this Agreement and subject to the direction of

TopTipper at all times. TopTipper shall at all times solely own all right, title, and interest in and to all Work Product. Partner shall permanently cease all use of the Platform upon the expiration or earlier termination of this Agreement. Nothing herein shall preclude TopTipper from entering into one or more similar arrangements to this Agreement with other parties. The provisions of this Section shall survive the termination or earlier expiration of the Term.

9. **Independent Contractor Status and Obligations.** It is the express intention of the Parties that each shall be an independent contractor. This Agreement does not create an agency, partnership, joint venture, or similar business relationship. Without limiting the generality of the foregoing, neither Party is authorized to bind the other to any liability or obligation or to represent that it has any agency or other authority on behalf of the other. During the Term and for a period of two (2) years thereafter, Partner shall not, without TopTipper's prior written consent, to be given or withheld in TopTipper's sole discretion, solicit for employment or hire any of TopTipper's employees or independent contractors. The provisions of this Section shall survive the termination or earlier expiration of the Term.

10. **DISCLAIMER AND WAIVER OF WARRANTIES; LIMITATIONS ON DAMAGES AND LIABILITY.** ALL WORK PRODUCT ARE PROVIDED AS-IS AND WHERE IS, AND THE PARTIES HEREBY DISCLAIM AND WAIVE ANY AND ALL OTHER REPRESENTATIONS, WARRANTIES AND COVENANTS, WHETHER EXPRESS OR IMPLIED, REGARDING THE WORK PRODUCT, INCLUDING ANY REPRESENTATIONS, WARRANTIES OR COVENANTS OF MERCHANTABILITY, FITNESS OR SUITABILITY FOR A PARTICULAR PURPOSE, ARISING FROM A COURSE OF DEALING, TRADE USAGE OR TRADE PRACTICE, NON-INFRINGEMENT, TITLE, OR IN ANY WAY RELATING TO THE TERMS OR PERFORMANCE OF SERVICE PROVIDER CONTRACTS. TOPTIPPER DOES NOT WARRANT THAT THE WORK PRODUCT WILL OPERATE UNINTERRUPTED OR BE FREE FROM DEFECTS. NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY AMOUNTS REPRESENTING THEIR RESPECTIVE LOSS OF PROFITS, LOSS OF BUSINESS, REVENUES OR GOODWILL, LOSS OF INFORMATION OR DATA, CONSEQUENTIAL, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR INDIRECT DAMAGES OF ANY KIND, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, ARISING FROM THE PERFORMANCE OR NONPERFORMANCE OF THIS AGREEMENT OR ANY ACTS OR OMISSIONS ASSOCIATED HERewith, REGARDLESS OF WHETHER THE BASIS OF THE LIABILITY IS BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), STATUTES, OR ANY OTHER LEGAL THEORY. IN NO EVENT WILL PARTNER'S LIABILITY UNDER THIS AGREEMENT EXCEED THE AMOUNT PAID TO PARTNER FROM THE END-USERS DURING THE PRIOR 12-MONTH PERIOD.

11. **Indemnification.** Each of the Parties respectively shall indemnify, protect, and defend the other Parties and each of their respective successors, and assigns from and against any and all liabilities, injuries, damages, expense, and reasonable attorney's fees and costs incurred with respect thereto resulting, in whole or in part, from any violation or default by such Party(s) hereunder.

12. **Assignment.** Neither Party may assign this Agreement without the prior written consent of the other Party, which consent such Party may grant or withhold in its sole and absolute discretion

provided that no consent shall be acquired for assignments in connection with the merger by, or sale of all or substantially all of the assets of TopTipper or any similar transaction.

13. **Notices.** All notices and communications under this Agreement must be in writing, may be given by any commercially reasonable means including electronic mail and will be deemed effective upon receipt, upon refusal to accept delivery, or such other date as the sender of the notice can demonstrate. A Party may change its address at any time by giving written notice to the other Parties as specified herein.

To TopTipper: TopTipper, LLC

Email: hello@toptipper.co

14. **Waivers.** Failure, neglect, or delay by a Party to enforce the provisions of this Agreement or its rights or remedies at any time, will not be construed as a waiver of the Party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice the Party's right to take subsequent action. Exercise or enforcement by either Party of any right or remedy under this Agreement will not preclude the enforcement by the Party of any other right or remedy under this Agreement or to which the Party is entitled by applicable to enforce.

15. **Publicity.** Any publicity must be agreed upon by both parties in writing.

16. **Indemnification.** TopTipper agrees to indemnify, protect, and defend Partner from and against any and all costs, expenses, damages, and liabilities resulting solely from either any End-User's use of the Platform or any dispute brought by an End-User concerning the services provided by TopTipper except to the extent that the same results from the actions or omissions of Partner.

17. **Severability.** If any provision of this Agreement is held by any governmental authority to be unenforceable, unreasonable or overbroad, then (a) the Parties desire that this Agreement be enforced to the maximum extent it is deemed to be reasonable and not overbroad; (b) the Parties desire that this Agreement be modified so that it is enforceable as nearly as possible to the intent of the original provision; (c) thereafter the Parties shall cooperate in good faith to amend such provision so that it is enforceable and meets the intent of the original provision as nearly as possible; and (d) the remainder of this Agreement shall be unaffected and shall continue in full force.

18. **Governing Law.** This Agreement and each Statement of Work shall be interpreted, construed, and governed by the laws of the Commonwealth of Pennsylvania, other than such laws that would result in the application of the laws of a jurisdiction other than the Commonwealth of Pennsylvania. Any legal action brought under or in connection with the subject matter of this Agreement shall be brought only in the state or federal courts residing in Montgomery County, Pennsylvania. Each Party (a) submits to the exclusive jurisdiction of these courts; (b) agrees not to commence any legal action under or in connection with the subject matter of this Agreement in any other court or forum; (c) waives any objection to the laying of the venue in such courts; and (d) agrees not to plead or claim in such courts that any such action has been brought in an inconvenient forum. **TO THE EXTENT NOT PROHIBITED BY LAWS, EACH PARTY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO, AND SHALL NOT REQUEST, A TRIAL BY JURY**

IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY ANY OF THEM AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT. If either Party brings any type of enforcement action in connection with this Agreement, then the prevailing Party shall be entitled to recover its reasonable attorneys' fees and other costs of enforcement.

19. **Force Majeure.** Except for payment obligations, neither Party shall be responsible for any delay or failure in performance to the extent such delay or failure is caused by any event, situation or occurrence beyond its reasonable control, and such Party's time for performance automatically shall be extended commensurate with the amount of delay caused thereby.

20. **Entire Agreement; Modifications.** This Agreement and all Statements of Work executed hereunder set forth the entire understanding of the Parties and supersede all prior agreements, arrangements, and communications, whether oral or written, pertaining to the subject matter hereof; provided that nothing in this Agreement or a Statement of Work supersedes or otherwise affects any separate confidentiality or non-disclosure agreement entered into between the Parties and/or their Related Parties either before, during or after the Term. This Agreement cannot be modified or amended except by written agreement signed by both Parties. This Agreement constitutes an agreement solely among the Parties, and is not intended to and will not confer any rights, remedies, obligations or liabilities, legal or equitable, on any other person or entity, or otherwise constitute any person or entity a third party beneficiary under or by reason of this Agreement.