

(version 2018.08v01)

## **A. INTRODUCTION**

### **1. General**

1.1. Picstars Ltd, a Swiss corporation with registered offices in Zurich, Switzerland and domicile at Bellariastrasse 7, 8002 Zurich, Switzerland (“Picstars” or “we”) provides services and products (the “Services”) through its platforms, such as but not limited to its smartphone apps and its web apps (the “Platform”), that enables influencers / micro-/ nano-influencers / talents / ambassadors (the “Ambassador”) to turn their social media content into marketing instruments for brands (the “Brand”) (together the “Users” or “you”).

1.2. By opening an account on the Platform and/or using the Services, you agree to be bound by these General Terms and Conditions (the “GTC”) and by the policies (the “Policies”) available on [www.picstars.com/legal](http://www.picstars.com/legal).

1.3. Picstars reserves the right to make unilateral modifications to these GTC and will provide notice of these changes as described below.

### **2. Accounts and Use of Services**

2.1 In order to open an account on the Platform you have to be either an Ambassador or a Brand. When you open an account with Picstars, you must provide us with accurate and complete information. Additional terms may apply and Picstars may refuse accounts without mentioning any reasons.

2.2. Subject to these GTC, you are hereby granted a non-exclusive, limited, non-transferable, freely revocable license to use the Service as permitted by the features of the Service. Picstars reserves all rights not expressly granted herein.

2.3 The Services may include:

- a. the provision of Services through the Platform (including the apps (the “Apps”) for the Ambassadors and the cockpit (the “Cockpit”) for the Brands) to the Brands and to the Ambassadors, that enable the Ambassadors to provide advertising and/or sponsoring services to the Brands;
- b. the promotion of Ambassadors on the Platform, the introduction of Ambassadors to Brands and the introduction of Brands to Ambassadors;
- c. other Services as agreed upon between the Parties.

## **B. USE OF THE PLATFORM**

### **3. Use of the Platform**

3.1. Subject to these GTC, we grant you a limited, non-exclusive, non-transferable, and revocable license to use the Platform.

3.2. The Users acknowledge that the use of the Platform requires compatible devices. Further, some Services may requires various social media accounts to be connected to the Platform.

## **4. Content on the Platform**

4.1. Some areas of the Service allow Users to post or provide content such as profile information, videos, images, music, comments, questions, and other content or information (any such images, videos and other material a User submits, posts, displays, or otherwise makes available on the Service is referred to as “User Content”). Picstars claims no ownership rights over User Content created by you.

4.2. You agree not to post User Content that: (i) may create a risk of harm, loss, physical or mental injury, emotional distress, death, disability, disfigurement, or physical or mental illness to you, to any other person, or to any animal; (ii) may create a risk of any other loss or damage to any person or property; (iii) seeks to harm or exploit children by exposing them to inappropriate content, asking for personally identifiable details or otherwise; (iv) may constitute or contribute to a crime or tort; (v) contains any information or content that we deem to be unlawful, harmful, abusive, racially or ethnically offensive, defamatory, infringing, invasive of personal privacy or publicity rights, harassing, humiliating to other people (publicly or otherwise), libelous, threatening, profane, obscene, or otherwise objectionable; (vi) contains any information or content that is illegal (including, without limitation, the disclosure of insider information under securities law or of another party’s trade secrets); (vii) contains any information or content that you do not have a right to make available under any law or under contractual or fiduciary relationships; or (viii) contains any information or content that you know is not correct and current.

4.3. You agree that any User Content that you post does not and will not violate third-party rights of any kind, including without limitation any Intellectual Property Rights (as defined below) or rights of privacy.

4.4. Picstars reserves the right, but is not obligated, to reject and/or remove any User Content that Picstars believes, in its sole discretion, violates any of the provision of these GTC.

4.5. You grant Picstars a non-exclusive, royalty-free, transferable, sublicensable, worldwide license to use, store, display, reproduce, share, modify, create derivative works, perform, and distribute the User Content (including the Joint User Content as defined below) on through your social media channels, the Platform and partner platforms (partner apps, Brands apps, partner websites, Brand websites, integration in other media with widgets, etc.) for the purposes of operating, developing, providing, and using the Services.

4.6. You further grant a limited license to use the User Content (including the Joint User Content) for the use as references (such as but not limited to on its Platform and its websites), promotion of Ambassadors and marketing.

4.7. Nothing in these GTC shall restrict other legal rights Picstars may have to User Content, for example under other licenses.

## **C. ADVERTISING / SPONSORING**

### **5. General**

5.1. Picstars undertakes to provide the Advertising / Sponsoring Services as agreed between Picstars, the Brand and the Ambassador(s).

5.2. The Brand allows the embedding of its User Content into the Ambassador's User Content in accordance with the Services agreed upon between the Parties (the "Joint User Content").

5.3. The Brand, the Ambassador and Picstars may use the Joint User Content during the agreed campaign(s) and 30 days thereafter. Any further use requires the express consent of Picstars.

5.4. The Brand and the Ambassador acknowledge and agree that some analytical data of the reach of the campaigns may be based on assumptions and comparative data. This is due to the fact that depending on the social media channels (Facebook / Instagram / Twitter) and the type of account of the User (private vs. professional) the data is not made available to Picstars. Therefore, the accuracy cannot be guaranteed fully. Picstars' reports are however binding for the calculation of the fees (if the fees are based thereon).

## **6. Ambassador's Obligations**

6.1. As an Ambassador you acknowledge and agree that by publishing User Content for a Brand you act as an ambassador of such Brand. As such, you undertake

- a. to represent the best interests of the Brand;
- b. to publish only such content that represents such interests in the best manner;
- c. to follow the instructions provided by the Brand;
- d. to tag your User Content in such a manner that it is compliant with the law and the terms of the social media platforms that you use;
- e. not to use means to promote the User Content that you publish on behalf of a Brand by manipulating or incentivizing others in bad faith and/or in a harassing manner;
- f. not to use any measures to solicit fake followers, likes or comments to increase the reach of your user content.

6.2. As an Ambassador, you agree

- a. to give Picstars access to your social media accounts, profiles, pictures, posts, etc. in order for Picstars to provide the Services;
- b. to publish your User Content in accordance with the Services, to publish it on social media platforms and to remove it upon Picstar's request;
- c. that Picstars places its own brand, Brand material, comments, tags and, campaigns and other information on and to the User Content, in accordance with the Services.

6.3. As an Ambassador you agree and acknowledge that by publishing your User Content to your social media channels, you further accept the terms of such social media channels and undertake to comply with such terms.

6.4. As an Ambassador you agree and acknowledge that Picstars analyses the reach of your User Content on the various social media channels, including sharing (including re-tweets), interests (likes) or comments, etc.

## **7. Relationship between the Ambassador and the Brand**

7.1. The Ambassadors and the Brands acknowledge and agree that sponsoring and advertising services provided by an Ambassador to a Brand create a direct contractual relationship between them.

7.2. Picstars does not warrant that Ambassadors and Brands act in good faith and/or comply with their contractual obligations under these GTC when using the Services. The Brand is therefore responsible for any control and, if necessary, intervention if an Ambassador does not meet the expectations of the Brand. This includes, among other things, posts which do not correspond to the agreed specifications. By means of the Cockpit, however, the Brand has insights into the activities of its Ambassadors and thus also the opportunity to

contact and influence its Ambassadors.

7.3. Picstars undertakes to notify the Brand and the Ambassador in case of knowledge of any breach of the GTC and to remove or block temporarily content that is deemed in or has been claimed to be in breach with the GTC.

7.4. The Ambassador and the Brand have the right to agree upon further rights and obligations applicable to them, provided such terms (i) do not affect the rights and obligations of Picstars under these GTC, and (ii) no further compensation is agreed upon between the Ambassador and the Brand for the Services, unless Picstars provides its explicit and prior consent.

## **D. PAID SERVICES**

### **8. Picstars Fees**

8.1. Certain aspects of the Service may be provided against fees (the “Picstars Fee”). If and when Picstars provides Services requiring payment, and you elect to use paid aspects of the Service, you will be provided with pricing and payment terms.

8.2. Picstars may add new services for additional fees and charges, add or amend fees and charges for existing Services, at any time in its sole discretion.

### **Ambassador Fees**

9.1. Certain Services provided by Ambassadors to Brands may be provided against fees (the “Ambassador Fee”), and are either paid directly from the Brand to the Ambassador, or indirectly paid through Picstars.

9.2. In case that Picstars invoices such Ambassador Fee to the Brand in its own name but on behalf of Ambassador, Picstars shall pay the Ambassador in its own name but on behalf of the Brand. The Ambassador Fee becomes payable to the Ambassador at the earliest when Picstars was paid by the Brand.

9.3. In case an amount for Ambassador Fees remains after the agreed campaign ends, such amount shall remain at the Brand’s disposal for future campaigns, but unless otherwise agreed upon, such amount shall not be reimbursed. In case such amount is not used within 18 months as of the end of the last campaign of the Brand, the amount becomes due to Picstars.

9.4. In case that an Ambassador does not provide the Services as agreed, he shall not be entitled to the payment of the Ambassador Fee. In case the Ambassador was introduced by Picstars, the Brand shall be entitled to a pro rata reimbursement of the Picstars Fee, as well as a reimbursement of the remaining Ambassador Fee, unless Picstars provides an equivalent Ambassador. If the Ambassador was introduced by the Brand, the Picstars Fee remains due, and the remaining Ambassador Fee held by Picstars, in any, may be used for future campaigns as stated above.

9.5. In case that the Services provided by an Ambassador are subject to VAT, the Ambassador Fee shall be considered as including VAT, and the Ambassador undertakes to provide either the Brand or Picstars (whatever the case may be) with the necessary VAT compatible invoice.

9.6. In case that the Services provided by an Ambassador are subject to social security contributions, taxes or other contributions to which usually an employer is subjected, the Brand acknowledges and agrees to bear such costs and to hold Picstars harmless thereof.

## **E. INTELLECTUAL PROPERTY**

### **10. Picstars Proprietary Rights**

10.1. Except for your User Content, the Service and all materials therein or transferred thereby, including, without limitation, software, images, text, graphics, illustrations, logos, patents, trademarks and service marks (including, without limitation, the Picstars mark), copyrights, photographs, audio, videos, music, and User Content belonging to other Users (the “Picstars Content”), and all Intellectual Property Rights related thereto, are the exclusive property of Picstars and its licensors (including other Users who post User Content to the Service). Except as explicitly provided herein, nothing in these GTC shall be deemed to create a license in or under any such Intellectual Property Rights, and you agree not to sell, license, rent, modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit or create derivative works from any Picstars Content. Use of the Picstars Content for any purpose not expressly permitted by these GTC is strictly prohibited.

10.2. Picstars reserve all rights to the Picstars Content not expressly granted in these GTC, and no right or license in the Picstars Content is granted to you, except as expressly set forth in these GTC.

## **F. NON-DISCLOSURE AND DATA PRIVACY**

### **11. Non-disclosure**

11.1. Picstars undertakes not to disclose any confidential transactions, in particular business or trade secrets of Users, that have come to its knowledge in the course of the preparation, execution and fulfilment of this contract and not to disclose this information to third parties without the User's authorisation.

11.2 This applies to any unauthorized third parties if the disclosure of information is not necessary for the proper fulfilment of Picstars' contractual obligations.

### **12. Data privacy**

12.1. Picstars is entitled to pass on all User data to group companies for the purpose of providing the Services through such group companies.

12.2. Picstars is authorized within the scope of legal regulations to store and evaluate User data for operational purposes (in particular market research). Anonymised data may also be used further. The Users expressly agree to this.

## **G. FINAL CLAUSES**

### **13. Duration and Termination**

13.1. The contractual relationship may be terminated by either Party at any given time without notice. In case that Parties agreed to specific Services, the contractual relationship may however be terminated only as per the end of the agreed Services.

13.2. Each Party shall have the right to terminate these GTC with immediate effect by notice given to the other Party, in case (i) of material breach of the agreement by the other Party, and such material breach has not been cured within 10 days after notification of such breach; (ii) of repeated breach of the agreement by the other Party, and such breach was notified to the other Party; (iii) a Party files for bankruptcy or voluntary reorganization, or ceases to do business in the ordinary course, or undergoes a liquidation or dissolution.

#### **14. Limitation of Liability and Indemnification**

14.1. Picstars is only liable for direct damages caused by its gross negligence or willful intent. Any other liability is excluded.

14.2. Picstars has not obligation to check the User Content and assumes no responsibility for it.

14.3. In the event that third parties assert claims against Picstars due to infringement of their rights on the basis of the User Content or due to some other use of Picstars, you shall indemnify Picstars from all claims and damages, including court costs and attorneys' fees.

#### **15. Miscellaneous**

15.1. In the case where any of the provisions of these GTC would be considered or held, at any time whatsoever, by an authority or a court having jurisdiction, as being inapplicable, illegal or unenforceable, the validity, the legality and enforceability of the other provisions of these GTC shall not be affected; the parties, however, agree that in such case, they shall negotiate in good faith in order to agree on terms that shall be applicable and that shall supersede the provision which would be null, illegal or unenforceable; these terms will have to be as consistent as possible with the intent of the parties as initially expressed.

15.2. These GTC constitutes the entire understanding between the Parties with respect to the subject matter of these GTC and supersedes all prior agreements, negotiations and discussions between the Parties relating to it. GTC of the Users do not apply.

15.3. The parties declare that each has the right, power and authority and has taken all necessary action to execute and deliver and to exercise their rights and perform their obligations under these GTC.

15.4. The failure of either party to exercise or enforce any right under these GTC shall not be deemed to be a waiver of that right nor operate to bar the exercise or enforcement of it at any time or times thereafter.

15.5. The contractual relationship, and any rights and obligations granted hereunder, may not be transferred or assigned by you, but may be assigned by Picstars without restriction.

15.6. Picstars may provide notifications, whether such notifications are required by law or are for marketing or other business related purposes, to you via email notice, written or hard copy notice, or through posting of such notice on our website, as determined by Picstars in our sole discretion. Picstars reserves the right to determine the form and means of providing notifications to our Users. Picstars may, in its sole discretion, modify or update these GTC from time to time, and so you should review this page periodically. When we change these GTC in a material manner, we will update the 'last modified' date at the bottom of this page. Your continued use of the Service after any such change constitutes your acceptance of the new GTC. If you do not agree to the GTC or any future GTC, do not use or access (or continue to access) the Service.

## **16. Applicable Law and Jurisdiction**

16.1 These GTC shall exclusively be governed by Swiss substantive law, excluding the conflict of law provisions of the Swiss Federal Act on International Private Law and the Lugano Convention and excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention of 1980).

16.2. The Parties hereto consent to the exclusive jurisdiction of the courts of Zurich, Canton of Zurich, Switzerland, with respect to any dispute, controversy or claim arising out of or in relation to these GTC and all current and future Annexes, including the validity, invalidity, breach or termination thereof.