

The following terms and conditions (the “**Plus Terms of Service**”) govern your account and use of the services and features (the “**Plus Services**”) as specified in the document you execute with Thinkific specifying the Plus Services you subscribe for (an “**Order Form**”). Your contract and account are with Thinkific Labs Inc. (if you register from within Canada and the rest of the world), or with its subsidiary, Thinkific.com Inc. (if you register from within the United States). The applicable Thinkific entity is referred to as “**Thinkific**”, “**we**” or “**our**”.

By subscribing for the Plus Services offered by Thinkific, you or the entity you represent (“**you**”, or “**your**”) agree to these Plus Terms of Service, and all terms in your applicable Order Form, including any amendments. These Plus Terms of Service, together with all Order Forms and amendments, including our [Data Processing Addendum](#) and [Support and Service Level Agreement](#), form the complete agreement between you and Thinkific (collectively, this “**Agreement**”). Our [Privacy Policy](#), [Cookie Policy](#), and [Guidelines for Content Management](#) describe how we handle data and are available on our website, but are not incorporated into this Agreement.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, YOU MUST NOT SUBSCRIBE FOR AND ARE NOT PERMITTED TO USE THE PLUS SERVICES. IF THE INDIVIDUAL AGREEING TO THIS AGREEMENT IS DOING SO ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, THAT INDIVIDUAL REPRESENTS THAT THEY HAVE ALL NECESSARY AUTHORITY TO BIND SUCH COMPANY OR OTHER LEGAL ENTITY TO THIS AGREEMENT.

1. **Entire Agreement and Order of Precedence**

This Agreement constitutes the entire agreement between Thinkific and you and supersedes all prior and contemporaneous agreements, proposals, or representations, written or oral, concerning its subject matter. In the event of any conflict or inconsistency among the following documents, the order of precedence will be: (1) the applicable Order Form and any amendments or add-on Order Forms, but only to the extent it expressly refers to and prevails over the specific provisions of this Agreement; (2) the Data Processing Addendum with respect to the processing of personal data; (3) these Plus Terms of Service; and (4) the Support and Service Level Agreement. For clarity, the Privacy Policy, Cookie Policy, and Guidelines for Content Management are not incorporated into this Agreement and are provided for informational purposes only.

2. **Subscription and Order Form**

To subscribe for the Plus Services, receive an account and access such an account, you must first execute an Order Form for the Plus Services and pay the Fees (as defined in Section 17.1) required upon signing the Order Form. Subject to your compliance with this Agreement, on the effective date specified in your Order Form (the “**Effective Date**”), you are granted a revocable, limited, non-exclusive, non-transferable, non-sublicensable license to access and use the Plus Services provided by Thinkific.

3. **Plus Services**

3.1. Subject to your compliance with this Agreement, we will make the Plus Services accessible to you and your Authorized Users (as defined in Section 4.1) to use in accordance with the applicable Order Form and any amendments thereto, our documentation, and our Support and Service Level Agreement (“**SLA**”), as modified from time to time. For the purposes of this Agreement, “**Documentation**” means Thinkific's user guides, and help and training materials, as updated from time to time, accessible via <https://support.thinkific.com/> or other websites made available by Thinkific. Thinkific will provide notice of material changes to the Documentation that affect your obligations or use of the Plus Services by email or by posting a

notice within the Plus Services.

- 3.2. The version of these Plus Terms of Service in effect at the time of execution of an Order Form will apply for the duration of the Term (as defined in Section 19.1) specified in such Order Form. Thinkific may update these Plus Terms of Service by posting the amended terms on its website. Such amended terms will become effective and binding upon you only at the start of your next renewal Term or upon the execution of a new Order Form, whichever occurs first. The then-current terms will govern the renewed Term or new Plus Services, as applicable.
- 3.3. *Changes to Services.* Thinkific reserves the right to modify, enhance, or discontinue features of the Plus Services from time to time. Modifications by Thinkific will not: (a) result in a material degradation or material loss of functionality of the Plus Services; or (b) materially change the service levels provided in the SLA during your then-current Term.
- 3.4. From time to time, Thinkific may offer implementation, custom support, or other professional services ("**Professional Services**"). Any Professional Services are separate from the Plus Services and are not provided under this Agreement. If you choose to purchase Professional Services, such services will be specified in an applicable amendment and will be governed by a separate Professional Services Agreement between you and Thinkific.
- 3.5. Subject to this Agreement, we may provide you with access to mobile apps and related services that can be rebranded with your name, logo and other custom branding of your choosing ("**Branded Mobile Apps**") as further described in Section 10. Such Branded Mobile Apps are optional for use as part of your Sites.
- 3.6. The Plus Services utilize artificial intelligence ("**AI**") tools and technology, including AI-generated content. You acknowledge that AI-generated content may be inaccurate, incomplete, or inappropriate. As with all of your content used with the Plus Services, you are solely responsible for reviewing, verifying, and approving any AI-generated content before using or publishing it. AI-generated content that resembles advice is for general informational purposes only and should not be relied upon as professional advice. You must consult with appropriate professionals for specific advice tailored to your situation. Thinkific is not responsible for any consequences resulting from your use of AI-generated content. Thinkific reserves the right to monitor, modify, or remove any AI-generated content and, if we determine that such content violates these Plus Terms of Service or could potentially harm Thinkific's reputation or other users, we may, after providing you with notice and reasonable opportunity to remove or modify such content: (i) modify or remove the AI-generated content; or (ii) if the violation is severe or repeated, suspend or terminate your access to your account and the Plus Services in accordance with Section 5.5.
- 3.7. From time to time, we may invite you to try, at no charge, pre-release services, functionalities, or features that are not yet generally available to our customers ("**Beta Services**"). You may accept or decline any such trial at your sole discretion. Beta Services are for evaluation purposes only, are not considered "Plus Services" under this Agreement, are not supported, and may be subject to additional terms. We may discontinue Beta Services at any time in our sole discretion and may never make them generally available. If a Beta Service is made generally available, we may charge a fee for such service. We provide Beta Services "AS-IS" without express or implied warranty of any kind, and we will have no liability to you for any harm or damage arising out of or in connection with a Beta Service. Without limiting the foregoing, you acknowledge that Beta Services may generate inaccurate or incomplete results and that your use of any information or content generated by Beta Services is at your sole risk.
- 3.8. You acknowledge that Site Content (as defined in Section 4.2) may include videos or other content uploaded by your "Customers", "End Users", or other "Authorized Users" (each as

defined in Section 4.1), for example, within Communities (as defined in Section 4.1). You agree that Thinkific may, in accordance with its internal data retention and archiving policies, archive such content. While Thinkific may provide certain export or download features for Site Content from time to time, not all content (including videos uploaded by your Authorized Users, Customers, or End Users) may be available for download or export by you. You acknowledge and agree that you are responsible for maintaining separate backups of any Site Content you require, to the extent such content is made available to you for download or export through the Plus Services. Thinkific reserves the right to monitor usage of video upload features and, if we observe excessive or abusive usage, we may take any action. Prior to taking any restrictive action, we will: (i) notify you of the concerning usage pattern; (ii) provide you with reasonable opportunity to explain or remedy the usage; and (iii) work collaboratively with you to identify an appropriate solution, which may include upgrading your subscription tier. If excessive usage continues after such notice and consultation, we may temporarily or permanently disable the Site Content upload features, or as a last resort, suspend or terminate your account in accordance with Section 5.5

4. **Authorized Users**

- 4.1. Subject to this Agreement, you may, and you may authorize your end users (your "**End Users**") to, access and use the Plus Services detailed in your Order Form solely for the purpose of: (a) creating, marketing, and selling your online courses and operating your online learning business; (b) providing online courses (your "**Courses**") or communities (your "**Communities**") to your customers (your "**Customers**") authorized by you or your End Users through the site(s) provided to you through the Plus Services (each, a "**Site**"); and (c) administering and managing your Customers' posting, access and use of your Courses and/or Communities, in each case in the manner in which we make the Plus Services available to you, your affiliates, and your respective officers, directors, employees, End Users and Customers (collectively, your "**Authorized Users**").
- 4.2. You are solely responsible for: (a) all of your Authorized Users' access and use of the Plus Services and all activities and transactions with users of the Sites, regardless of your or our knowledge or consent, including without limitation compliance with Section 5; (b) the security of your Authorized Users' accounts and all credentials required to access the Plus Services, including the Sites, and any access or use by any third-party that is not an Authorized User utilizing the accounts or credentials of an Authorized User, (except to the extent that a breach of security is caused by a breach of Thinkific's obligations under Section 7.1); (c) all content, including AI-generated content, all information, data, files, graphics, videos, photos, links and other materials, that is uploaded, stored, or otherwise transmitted by or for your Authorized Users through the Plus Services or generated by Thinkific for the Sites (the "**Site Content**"); (d) maintaining separate backups of the Site Content at a primary storage location, including your End Users sales, orders and payment information and data and reports, to the extent such Site Content is made available to you for download or export through the Plus Services; (e) compliance with all applicable laws and regulations applicable to your (and any Authorized Users) access and use of the Plus Services, including, without limitation, data protection and privacy laws; and (f) the completeness and accuracy of the account information your Authorized Users provide to us.
- 4.3. You are solely responsible for providing and complying with the terms and privacy policies (the "**Site Terms**") applicable to your Authorized Users' use of the Sites and you will post such Site Terms in a prominent manner on the Sites. Failure to comply with this Section 4.3 may be deemed a material breach of this Agreement. If Thinkific notifies you of non-compliance with this Section 4.3, you will have 10 business days to cure such non-compliance before Thinkific may exercise any remedies for material breach, including termination under Section 20.

- 4.4. You will promptly notify us upon becoming aware of any unauthorized access to or use of any of your Authorized Users' accounts or credentials for the Plus Services.
- 4.5. You may remove from the Plus Services any Site, Site Content (including the Site Terms), or any of your Authorized Users at any time, subject to your continuing obligation to pay all Fees for the remainder of the then-current Term. Following the deletion of all of your Sites and Site Content, your account will remain operational for the remainder of the Term and following the Term until it is deleted by Thinkific in accordance with Section 21. For clarity, deletion of Sites and Site Content does not constitute termination of this Agreement and does not relieve you of any payment obligations under any Order Form.

5. **Restrictions**

- 5.1. You will not, directly or indirectly, and you will not permit or encourage your Authorized Users or any third-parties to:
 - (a) use the Plus Services for or in connection with any illegal or unauthorized purpose or in a manner that: (i) infringes, violates or misappropriates any rights of any person, including intellectual property, confidentiality or privacy rights; (ii) is harmful, hateful, dangerous, fraudulent, deceptive, misleading, threatening, harassing, defamatory, offensive, biased, obscene, vulgar, indecent, menacing, tortious or otherwise objectionable, as determined by Thinkific in its reasonable discretion; (iii) attempts, in any manner, to obtain the credentials, password, account, or other security information from any other user; (iv) submits false or misleading information or (v) breaches any laws, rules, or regulations applicable to your access or use of the Plus Services;
 - (b) reverse engineer, decompile, disassemble, decrypt or otherwise attempt to discover the code or underlying structure, ideas, know-how or algorithms relevant to the Plus Services or access the Plus Services, or write or develop any program based on the Plus Services or any portion thereof in order to build a similar or competitive product or service or copy any ideas, features, functions, or graphics of the Plus Services;
 - (c) circumvent or attempt to circumvent any limitations imposed on your account including any license, timing or use restrictions that are built into the Plus Services;
 - (d) manipulate or attempt to manipulate Plus Services for any reason, including to receive lower pricing, for example, by signing up for free trials with different usernames, impersonating others, sharing passwords or encouraging others to share theirs;
 - (e) lend, sell, resell, lease, sublicense, transfer, assign, distribute, grant a security interest in, or otherwise use the Plus Services for the benefit of a third-party except as expressly permitted by you to do so for Authorized Users;
 - (f) use the Plus Services other than in accordance with our Documentation;
 - (g) permit the Plus Services to be used by anyone other than Authorized Users;
 - (h) use the Plus Services to advertise, promote or market platforms that compete with Thinkific or for any third-party's interests or benefit, without our consent;
 - (i) violate, circumvent, or otherwise interfere with any security or authentication measures of the Plus Services; upload or transmit any malicious code, including viruses or Trojan horses; or interfere with or disrupt the integrity or performance of the Plus Services, including by overloading, flooding, spamming, or mail-bombing;
 - (j) use any robot, spider, device, technology or process to monitor, download or copy any data or pages within the Plus Services or to use any deep-link, scraper, robot, bot, spider, data mining, computer code, manual process or any other device, program, tool, algorithm, process or methodology to systematically access, acquire, copy, slow, or monitor any portion of any content, image, copyrightable material, data or information on any site of any person using the Plus Services;
 - (k) circumvent or deceive or attempt to circumvent Thinkific's systems for determining applicable charges for use of the Plus Services, including in respect of the number of

your Authorized Users (including Active Customers), or transactions on the Sites. You acknowledge that exceeding Usage Caps (as defined in your Order Form) will result in automatic upgrades and billing adjustments as described in Section 17.7. For the purposes of this Agreement, "**Active Customer(s)**" means a Customer who has a full, unexpired enrollment in a Course, provided that: (i) a Customer enrolled in a free Course or in a free trial on a subscription pricing option counts as an Active Customer (except that a Customer enrolled only in a free preview does not count as an Active Customer until the Customer converts to a paid Customer); and (ii) a Customer who is enrolled in one or more Courses under your account will count as one Active Customer irrespective of the number of Courses they are enrolled in; or

- (l) purchase search engine or other pay per click keywords (such as Google AdWords), or domain names that use Thinkific or Thinkific trademarks and/or variations and misspellings thereof, or alter or remove any trademarks or proprietary notices contained in or on the Plus Services without our consent.

5.2. *Fair Use.* Your use of the bandwidth, video storage, and Plus Services must be reasonable and proportionate to the limits set for your subscription plan tier, as detailed in your Order Form. The following usage limits apply to your subscription tier: (a) Plus Lite: 7,500 GB bandwidth and 12,500 videos stored; (b) Plus Silver: 10,000 GB bandwidth and 20,000 videos stored; (c) Plus Gold: 15,000 GB bandwidth and 25,000 videos stored; (d) Plus Platinum: 20,000 GB bandwidth and 30,000 videos stored. Usage is considered excessive if, on a sustained basis (measured over any 30-day period), it exceeds these published limits for your subscription plan tier. We monitor usage to ensure fair distribution of resources among all Thinkific customers. In the event that your resource consumption exceeds the published limits for your subscription plan tier, we will: (i) first, notify you of the excessive usage and provide you with usage data and comparison to your tier; (ii) second, work with you to identify solutions, which may include optimizing your usage, upgrading to a higher tier, or implementing temporary measures; and (iii) third, only if excessive usage continues for 30 days after notice and consultation, implement appropriate measures such as bandwidth throttling or imposing storage limits. Suspension or termination of access will only occur in accordance with Section 5.5 for continued excessive usage that materially impacts platform performance for other customers despite the foregoing progressive measures.

5.3. Your use of direct messaging features within the Plus Services must not exceed 140,000 direct messages per tenant annually. In the event that your usage of direct messaging features or other Usage Caps is exceeded, your subscription will be automatically and immediately upgraded to the appropriate higher tier that corresponds with such usage for the remainder of the then-current Term, and you will be billed the difference in Fees for the upgraded tier, prorated for the remainder of the billing cycle. Where automatic upgrade to a higher tier is not available for the specific feature or usage limit exceeded, Thinkific reserves the right to restrict or suspend access to the applicable features.

5.4. Upon becoming aware of any violation of this Agreement by any of your Authorized Users, including the restrictions above, you will promptly notify us of the violation and suspend or terminate that Authorized User's access until we advise you otherwise.

5.5. We reserve the right, but are under no obligation to immediately suspend, remove or delete any Site Content or immediately suspend or terminate any of your Authorized Users that violate this Agreement, including the restrictions above. In addition, and notwithstanding anything to the contrary in this Agreement (including Section 20), we may immediately suspend or terminate your access to the Plus Services in the event that you violate the restrictions in Section 5.1 above, without prior notice to you.

5.6. We reserve the right to suspend the Plus Services to avoid material harm to Thinkific or its other customers or we reasonably anticipate material harm, including if the Plus Services are

experiencing denial of service attacks, viruses, security issues, mail flooding, or other attacks or disruptions outside of our control, or as required by law or at the request of governmental entities.

6. **Personal Data**

- 6.1. To provide the Plus Services and administer your account, we process personal data you provide to us. This data includes information about your employees and representatives, your Authorized Users, and any personal data within your Site Content (collectively, "**Personal Data**").
- 6.2. Our practices regarding the collection and use of personal data are described in our Privacy Policy, which is available at <https://www.thinkific.com/privacy-policy/>. We will process Personal Data in accordance with our Data Processing Addendum, which is available at <https://www.thinkific.com/dpa/> (the "**DPA**"), and applicable data protection laws. We will not sell Personal Data.
- 6.3. You acknowledge and agree that: (a) we will process Personal Data on your behalf as your service provider and, as between you and us, you remain the owner and controller of the Personal Data; (b) you are responsible for Personal Data as its owner and controller; and (c) you and your Authorized Users (and not Thinkific) are responsible for using the Plus Services in compliance with: (i) all applicable laws, including privacy and data protection laws, (ii) the corresponding Site Terms; and (iii) this Agreement.
- 6.4. *Use by Minors.* We do not knowingly provide services or sell products to children. We do not knowingly collect personal information from children under the age of 16 or the applicable age of digital consent in any relevant jurisdiction. If you or any of your Authorized Users are below the age of 16 or such applicable age of digital consent, you or they may use our website or the Plus Services only with the permission and active involvement of a parent or legal guardian. You represent and warrant that you will not provide us or other website visitors with any personal information and do not use the Plus Services. If any of your Authorized Users are minors, do not, and ensure that such Authorized Users do not, provide us or other website visitors with any personal information about such Authorized Users, and do not permit minors to use the Plus Services, unless you have first obtained all necessary, legally valid consents from a parent or legal guardian. If we learn we have collected or received personal information from a child under the age of 13 (or such younger age as may be required under applicable law, including the *Children's Online Privacy Protection Act*) without verification of parental consent, we will delete that information. If you believe we might have any information from or about a child under 13, please contact us at info@thinkific.com. If Thinkific becomes aware that your Sites or Authorized Users are collecting personal information from minors without appropriate consents, we will notify you and provide you with 30 days to obtain the necessary parental consents or remove the affected minors' data. Failure to remediate within such period may result in suspension or termination of the affected Site or your account in accordance with Section 5.5.
- 6.5. *Sensitive Information.* You agree not to use the Plus Services to collect, store, or otherwise process any Sensitive Information. You acknowledge that the Plus Services are not designed for the management of such information. For the purposes of this Agreement, "**Sensitive Information**" includes, but is not limited to, government-issued identification numbers, biometric data, and other categories of data defined as "sensitive" or "special" under applicable data protection laws. If you use the Plus Services to process any Sensitive Information, you do so at your own risk. Thinkific will have no liability for such use, and you are solely responsible for ensuring compliance with all applicable laws.

7. **Security**

- 7.1. We will implement and maintain commercially reasonable physical, organizational and technological security measures that are appropriate having regard to the sensitivity of the Personal Data, which are designed to protect Personal Data against loss, theft and unauthorized access, disclosure, use, modification or disposal.
- 7.2. We will inform you without undue delay after becoming aware of any unauthorized access, disclosure, use or modification of Personal Data or Site Content ("**Data Incident**"), provide you with information about the nature and scope of the Data Incident, and take commercially reasonable steps to contain, mitigate and remediate the Data Incident.

8. **Compliance**

- 8.1. We will comply with all applicable laws and regulations in providing the Plus Services and performing our obligations under this Agreement, and you will comply with all applicable laws and regulations in accessing or using the Plus Services and performing your obligations under this Agreement.
- 8.2. You represent and warrant to Thinkific that: (a) all Site Content complies with all applicable laws and regulations in all relevant jurisdictions and does not infringe, violate or misappropriate any rights of any person; (b) the Site Terms (as may be amended by you from time to time) comply with: (i) applicable laws and regulations in all relevant jurisdictions, including privacy and data protection laws, and (ii) this Agreement; and (c) you have, provided all required notices to and obtained all necessary consents from, Authorized Users to allow Thinkific to process the Personal Data as contemplated by this Agreement.

9. **Thinkific Payments**

- 9.1. *Payments Platform.* Thinkific may offer access to a payment platform through which we will process payment transactions which may include Taxes with your End Users, Customers or other Authorized Users ("**Thinkific Payments**"). We use a third-party payments processor and platform provider ("**Payment Provider**") to facilitate Thinkific Payments. We reserve the right to change the Payment Provider at any time, in which case you agree to take whatever steps as we may advise in order to migrate the Thinkific Payments service to another Payment Provider. You acknowledge that Thinkific Payments is subject to the terms and conditions of the Payment Provider, and we may update this Section 9 from time to time.
- 9.2. *Fees.* We charge you a fee for every transaction you process through Thinkific Payments, including purchase/payment transactions and credit/refund/return transactions. Fees for Thinkific Payments are payable by you to Thinkific in accordance with the Pricing Schedule posted on our website.
- 9.3. *Settlement of Transactions.*
 - (a) We will deposit the amounts actually received by us for transactions submitted through Thinkific Payments (less any applicable fees and Chargebacks, as defined in Section 9.4) into your designated bank account or by any other means that we may make available and you may select (such as push card payments). Payouts for your initial transactions may be delayed while we verify your account.
 - (b) You are responsible for monitoring your transactions and ensuring that our payments to you are correct. You must notify us of any errors in payments made to you within 60 days of the error first appearing on your electronic transaction history. Failure to notify us of such an error in accordance with this paragraph will be deemed a waiver of any right to amounts owed to you.

- (c) We may delay settlement if we determine, in our reasonable discretion, the need to conduct an investigation or resolve any suspicious activity or pending dispute related to any transaction or your account. We will use commercially reasonable efforts to complete any such investigation promptly and will provide you with periodic updates regarding the status of any investigation that extends beyond 30 days. We also may defer settlement or restrict access to your funds as required by law or court order, or if otherwise requested by law enforcement or governmental entity, in which case we will notify you promptly unless prohibited by applicable law.

9.4. *Chargebacks.*

- (a) The amount of a transaction may be reversed or charged back to your bank account (a "**Chargeback**") if the transaction: (a) is disputed by any End Users or Customers; (b) is reversed for any reason by a payment card network (as further detailed in Section 9.6), our Payment Provider, or a payer's or our financial institution; (c) was not authorized or we have any reason to believe that the transaction was not authorized; or (d) is allegedly unlawful, suspicious, or in violation of the terms of this Agreement. We reserve the right to charge you a fee of \$/€/£ 20 for each Chargeback. For any transaction that results in a Chargeback, we may withhold the Chargeback amount in a Reserve (as defined in Section 9.5). We may deduct the amount of any Chargeback and any associated fees, fines, or penalties assessed by the card-issuing bank or organization or our Payment Provider from your bank account (including without limitation any Reserve), any proceeds due to you, your bank account, or other payment instrument registered with us. If you have pending Chargebacks, we may delay settlement of future transactions. Further, if we reasonably believe that a Chargeback is likely with respect to any transaction, we may withhold the amount of the potential Chargeback from payments otherwise due to you under this Agreement until such time that: (i) a Chargeback is assessed due to an End User's or Customer's complaint, in which case we will retain the funds; (ii) the period of time under applicable law or regulation by which the End User or Customer may dispute that the transaction has expired; or (iii) we determine that a Chargeback on the transaction will not occur. If we are unable to recover funds related to a Chargeback for which you are liable, you will pay us the full amount of the Chargeback immediately upon demand. You agree to pay all costs and expenses, including without limitation attorneys' fees and other legal expenses, incurred by or on behalf of us in connection with the collection of any amounts due to Thinkific under this Agreement that are unpaid by you.
- (b) If we determine that you are incurring an excessive amount of Chargebacks (including where your Chargeback rate exceeds industry standard thresholds established by payment card networks), we will notify you and provide you with 15 days to respond with an explanation or remediation plan. Following such notice period, we may establish controls or conditions governing your account, including without limitation, by: (i) establishing new processing fees that are commercially reasonable and commensurate with the increased risk; (ii) creating a Reserve in an amount reasonably determined by us to cover anticipated Chargebacks and related fees; (iii) delaying settlement; and (iv) as a last resort, terminating or suspending your access to Thinkific Payments or other Plus Services in accordance with Section 5.5.
- (c) Any bank account or payment card information may be held by Thinkific to satisfy any account balances, disputes, refunds, Chargebacks or other liabilities or obligations after leaving or terminating Thinkific Payments or any other Plus Services offered under this Agreement.

- 9.5. *Reserve.* We may at any time in our discretion designate an amount of funds that you must maintain in a separate reserve account (a "**Reserve**") to secure the performance of your payment obligations under this Agreement. We may require a Reserve for any reason, including if you have a high rate of Chargebacks or refunds, or other indications of performance

problems related to your use of Thinkific Payments or other Plus Services. The Reserve will be in an amount as reasonably determined by us to cover anticipated Chargebacks, returns, unfulfilled services or credit risk based on your processing history or such amount designated by our Payment Provider. The Reserve may be raised, reduced or removed at any time by us, in our sole discretion, based on your payment history, a credit review, the amount of any arbitration award or court judgment against you in our favor, or otherwise as we or our Payment Provider may determine or require. If you do not have sufficient funds in your Reserve, we may fund the Reserve from any funding source associated with your account, including any funds: (a) due to you under this Agreement; or (b) available in your bank account, or other payment instrument registered with us. You also authorize us to make any withdrawals or debits from the Reserve, without prior notice to you, to collect amounts that you owe us under this Agreement, including without limitation for any reversals of deposits or transfers made to your bank account.

9.6. *Refunds and Returns.*

- (a) You agree to process returns, and provide refunds and adjustments, for your goods or services through Thinkific Payments in accordance with this Agreement and any applicable payment card network rules or our Payment Provider's terms. Payment card network rules may require that you will: (i) maintain a fair return, cancellation or adjustment policy; (ii) disclose your return or cancellation policy to customers at the time of purchase; (iii) not give cash refunds to a customer in connection with a card sale, unless required by law; and (iv) not accept cash or any other item of value for preparing a card sale refund. You are responsible for knowing and adhering to the payment card network rules applicable to you, and Thinkific will not be liable for any violation by you of the payment card network rules.
- (b) The amount of the refund/adjustment must include any associated taxes required to be refunded and cannot exceed the amount shown as the total on the original sales data except by the exact amount required to reimburse the user for postage that the user paid to return merchandise, if applicable. Please be aware, if your refund policy prohibits returns or is unsatisfactory to the Authorized User, you may still receive a Chargeback relating to such sales. You can process a refund through your account up to 60 days from the day you accepted the payment. If the balance in your account is insufficient to cover the refund, we will withdraw up to the requested refund amount from your bank account and credit it back to your Authorized User's card. Transaction fees are also refunded, so the full purchase amount is always returned to your Authorized User.

9.7. *Customer Service.* Even if Thinkific handles disputes, Chargebacks or refunds on your behalf through Thinkific Payments, you are solely responsible for all customer service issues relating to your services, including pricing, fulfillment, cancellation by you or your End Users or Customers, returns, refunds and adjustments, rebates, functionality and warranty, technical support, and feedback, reviews, or ratings concerning experiences with your personnel, policies or processes. In performing customer service, you will always present yourself as a separate entity from Thinkific. As between you and Thinkific, you are solely responsible for customer service issues relating to your account.

9.8. *Stripe Connected Accounts.* Where Stripe is the Payment Provider, the following provisions will apply:

- (a) To connect to our platform and process payments through Stripe we will create a Stripe account (a "**Stripe Connect Account**") for you that is connected to the Thinkific Payment platform. You will be required to accept the terms of the Stripe Connect Account Agreement and Stripe Services Agreement as well as any other documentation that Stripe may require (the "**Stripe Documentation**"). You agree to

comply with the Stripe Documentation and not to engage in any activity that is expressly prohibited by the Stripe Documentation. Stripe processes your personal information in accordance with its own privacy policy, available here: <http://stripe.com/privacy>. Stripe may deny the creation of a Stripe Connect Account or may suspend or terminate a Stripe Connect Account, in its discretion in accordance with the Stripe Documentation.

- (b) You agree that we can directly access your Stripe Connect Account dashboard, including information about your transactions (including purchases and refunds) and Stripe account balance (your "**Connected Account Data**"), in order to collect fees, process payments and refunds, handle disputes, process Chargebacks, and any other activity necessary to provide Thinkific Payments or other services in accordance with this Agreement and our Privacy Policy, and you give us express authorization to conduct any of the above activities on your behalf through your Stripe Connect Account.
- (c) We may exchange Connected Account Data with Stripe as necessary to detect and prevent fraud, misuse, unlawful, abusive or deceptive activity, and otherwise to allow Thinkific and Stripe to each comply with our legal and regulatory obligations.
- (d) You represent and warrant that all information provided to Thinkific or Stripe in connection with the creation or maintenance of a Stripe Connected Account is true and accurate in all material respects. You will be responsible for any loss or liability incurred by Thinkific due to activity conducted through a Stripe Connect Account initiated by you or on your behalf, or using your credentials even if not authorized by you, and Thinkific may deduct such losses from your Stripe Connect Account or your Thinkific Account, or require you to pay such losses to Thinkific.
- (e) You agree to indemnify, defend and hold harmless Thinkific and Stripe and their respective affiliates from any claims brought by a third-party arising out of any activity conducted through a Stripe Connect Account or arising out of your breach of this Agreement or the Stripe Documentation.

10. **BRANDED MOBILE APPS**

With respect to any Branded Mobile Apps which Thinkific may provide you with access to in connection with your Sites or otherwise under this Agreement, you acknowledge and agree as follows:

- (a) Thinkific is not a party to any terms or agreements that may be entered into between you and your chosen app store vendor ("**ASV**") such as Apple and/or Google, and you are solely responsible for your own dealings with your chosen ASV, and for compliance with such terms or agreements.
- (b) Your decision to make available your Branded Mobile App through an ASV is at your own risk and discretion.
- (c) Thinkific does not guarantee that your Branded Mobile App will be approved by any ASV, and any approval by an ASV will be subject to your compliance with the ASV's guidelines and policies.
- (d) All mobile apps including your Branded Mobile App may be subject to ongoing reviews by ASVs, and failure to comply with your ASV's guidelines and policies or your other terms or agreements with the ASV may result in your Branded Mobile App listing being revoked or suspended by the ASV without advance warning and/or control by Thinkific.
- (e) In the event that Thinkific incurs any fees or charges from an ASV as a result of or in connection with in-app purchases made through the Branded Mobile Apps provided to you, Thinkific will pass through to you the actual fees or charges imposed by the AVS (a "**Pass-Through Fee**") on such in-app purchases, without markup. The Pass-Through Fee will be calculated as a percentage of each in-app purchase transaction equal to the percentage charged by the AVS to Thinkific (for example, if the AVS charges Thinkific 30% of the transaction value, you will be charged 30% of the transaction value). Pass-Through Fees will apply only to in-app purchases made on or after the effective

date specified in Thinkific's notice to you and will not apply retroactively to prior transactions. Thinkific will provide you with at least 30 days' advance written notice before implementing any Pass-Through Fees, which notice will include: (i) the specific percentage or amount of the Pass-Through Fee; (ii) the basis for such fee (i.e., the ASV's fee structure); (iii) the effective date; and (iv) detailed calculation examples. You may opt out of ASV distribution features at any time to avoid incurring Pass-Through Fees by discontinuing use of the Branded Mobile Apps through the applicable ASV, in which case no Pass-Through Fees will apply to your account.

- (f) Thinkific will not refund fees in the event that you are unable to make available or use, or continue to make available or use, your Branded Mobile App through your ASV.
- (g) Any content accessible on your Branded Mobile App, including content generated by your Authorized Users, will be subject to the terms and conditions set out by your ASV, for which you will be solely responsible.
- (h) Thinkific does not guarantee and is not responsible for the availability of, content provided on, or functionality of, the ASV's platform or any third-party sites relating to the ASV's platform.
- (i) Even if Thinkific supports you in resolving disputes with your chosen ASV, you are solely responsible for all content, technical support, and customer service issues relating to your Branded Mobile App, including in-app purchases, fulfillment, cancellation by you, your Authorized Users, returns, refunds, adjustments, rebates, functionality, warranty, and feedback, reviews, or ratings.
- (j) When providing technical support and customer services to your Authorized Users in connection with your Branded Mobile App, you must always present yourself as a separate entity from Thinkific and not as an agent or representative of Thinkific. As between you and Thinkific, you are solely responsible for all technical support and customer service issues relating to your Branded Mobile App.
- (k) Thinkific will provide support services to facilitate your use of Branded Mobile Apps, including: (i) submission and review support for the Apple App Store and Google Play Store; (ii) ready-made templates and resources to assist you in customizing your app store listings; and (iii) automatic app updates that may include new features, functionality, and performance improvements. Notwithstanding the foregoing, you remain solely responsible for your Branded Mobile App, including compliance with all ASV requirements, and Thinkific makes no guarantee regarding approval, timing, or continued availability of your Branded Mobile App on any ASV platform.

11. **LIMITED WARRANTY AND DISCLAIMER**

- 11.1. Thinkific warrants to you that the Plus Services will perform substantially in accordance with its Documentation. Your sole and exclusive remedy, and Thinkific's sole responsibility and liability for the failure to meet the foregoing warranty will be to provide support and maintenance in accordance with the then-current SLA. Any breaches of the SLA are governed by the remedies specified therein. Thinkific provides support services only to you and is not obligated to provide support to your Authorized Users. The foregoing warranty does not apply to any bug, defect or error caused by or attributable to software or hardware not supplied by Thinkific, including any third-party provider or Payment Provider, and does not apply if the Plus Services have not been used or operated by you in accordance with this Agreement or the applicable Documentation.
- 11.2. **DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE PROVISION OF THE PLUS SERVICES BY THINKIFIC AND YOUR USE OF THE PLUS SERVICES IS AT YOUR SOLE RISK, AND THINKIFIC OFFERS ITS PLUS SERVICES ON AN "AS-IS" AND "AS AVAILABLE" BASIS.**
- 11.3. **EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THINKIFIC DISCLAIMS ALL REPRESENTATIONS, CONDITIONS AND WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS**

FOR A PARTICULAR PURPOSE, OR NON INFRINGEMENT, AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING THINKIFIC DOES NOT WARRANT THAT (A) THE PLUS SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, ERROR-FREE, OR FREE OF HARMFUL COMPONENTS, (B) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE PLUS SERVICES WILL BE ACCURATE OR RELIABLE OR MEET YOUR NEEDS, (C) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE PLUS SERVICES WILL MEET YOUR EXPECTATIONS OR BUSINESS REQUIREMENTS, OR THAT ANY ERRORS IN THE PLUS SERVICES WILL BE CORRECTED, (D) ANY SITE CONTENT WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED, (E) ANY THIRD-PARTY PRODUCTS OR SERVICES INCLUDED IN OR MADE AVAILABLE THROUGH THE PLUS SERVICES WILL BE AVAILABLE OR CONTINUE TO BE AVAILABLE OR WILL MEET YOUR EXPECTATIONS OR BUSINESS REQUIREMENTS, OR (F) YOU WILL BE ABLE TO USE OR MAKE AVAILABLE, OR CONTINUE TO USE OR MAKE AVAILABLE, ANY BRANDED MOBILE APP THROUGH AN ASV. FOR GREATER CERTAINTY, NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM US OR ELSEWHERE, WILL CREATE ANY WARRANTY, REPRESENTATION OR CONDITION NOT EXPRESSLY STATED IN THIS AGREEMENT.

11.4. **DISCLAIMER OF LIABILITY FOR ARTIFICIAL INTELLIGENCE (AI) SYSTEMS.** AI SYSTEMS ARE NOT FLAWLESS AND ARE KNOWN TO GENERATE INACCURATE RESULTS, MAY INFRINGE OR MISAPPROPRIATE INTELLECTUAL PROPERTY RIGHTS, MAY DISCLOSE CONFIDENTIAL INFORMATION, MAY COMMIT PLAGIARISM, OR MAY CREATE OUTPUTS, OR RELY UPON INPUTS, THAT ARE CONTRARY TO LAW OR THAT ARE OTHERWISE UNDESIRABLE. YOU SHOULD NOT INPUT OR USE ANY DATA OR OTHER INFORMATION THAT YOU WISH TO PROTECT, ARE REQUIRED TO PROTECT, OR THAT SHOULD NOT BE DISCLOSED OR MISUSED, WHETHER FOR PRIVACY, CONFIDENTIALITY OR OTHER REASONS. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, THINKIFIC CANNOT AND WILL NOT BE HELD LIABLE TO YOU OR ANY THIRD-PARTY, FOR ANY FORM OF DAMAGES, INCLUDING WITHOUT LIMITATION ANY DAMAGES DESCRIBED IN SECTION 12.1 OR DAMAGES IN RESPECT OF ANY PERSON, PROPERTY OR OTHERWISE, ARISING FROM OR RELATED TO THINKIFIC'S PROVISION OF AI OR RESULTS THEREFROM, YOUR DIRECT OR INDIRECT USE OF AI OR FROM YOUR DIRECT OR INDIRECT USE OF THE PLUS SERVICES THAT INCORPORATE OR RELY UPON AI. THIS DISCLAIMER OF LIABILITY INCLUDES, BUT IS NOT LIMITED TO ANY LIABILITY FOR INACCURATE RESULTS, UNINTENDED OR UNFORESEEABLE CONSEQUENCES, OR ACTIONS OR DECISIONS TAKEN BY YOU OR OTHERS IN RELIANCE UPON SUCH RESULTS. ANY AI-GENERATED CONTENT OR RESPONSES PROVIDED THROUGH THE PLUS SERVICES ARE FOR INFORMATIONAL PURPOSES ONLY AND DO NOT CONSTITUTE BINDING OFFERS, PROMISES, OR GUARANTEES BY THINKIFIC. THINKIFIC EXPRESSLY DISCLAIMS ANY LIABILITY FOR MISREPRESENTATIONS, ERRORS, OR INACCURACIES IN CONTENT GENERATED BY AI TECHNOLOGIES.

12. **DAMAGES EXCLUSIONS; LIABILITY LIMITATIONS**

12.1. **EXCLUSION OF DAMAGES.** EXCEPT FOR EACH PARTY'S LIABILITY AND OBLIGATIONS UNDER SECTIONS 13, 14, AND 16 OR A PARTY'S LIABILITY FOR ANY INFRINGEMENT, MISAPPROPRIATION OR VIOLATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, AGGRAVATED, EXEMPLARY OR OTHER DAMAGES, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, STATUTE, OR OTHERWISE, OR FOR ANY DAMAGES FOR LOSS OF BUSINESS, PROFITS, REVENUES, OPPORTUNITIES, ANTICIPATED SAVINGS, GOODWILL, USE, DATA OR OTHER INTANGIBLE OR ECONOMIC LOSSES OF ANY KIND, ARISING OUT OF OR IN CONNECTION WITH THE PLUS SERVICES, THE SITES OR THIS AGREEMENT, EVEN IF SUCH DAMAGES ARE

REASONABLY FORESEEABLE OR THE PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

- 12.2. LIMITATION OF LIABILITY. EXCEPT FOR ITS LIABILITY AND OBLIGATIONS UNDER SECTIONS 13 AND 14, IN NO EVENT WILL THINKIFIC'S (OR ITS AFFILIATES', LICENSORS' OR SUPPLIERS') AGGREGATE LIABILITY, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, STATUTE, OR OTHERWISE, ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE FEES ACTUALLY PAID OR PAYABLE BY YOU UNDER THIS AGREEMENT DURING THE IMMEDIATELY PRECEDING 12 MONTH PERIOD; EXCEPT THAT THINKIFIC'S AGGREGATE LIABILITY FOR A DATA INCIDENT (AS DEFINED IN SECTION 7.2) ARISING FROM OR RELATING TO A BREACH OF THINKIFIC'S OBLIGATIONS UNDER SECTION 7.1 OR THE DPA WILL NOT EXCEED AN AMOUNT EQUAL TO THREE (3) TIMES THE FEES ACTUALLY PAID OR PAYABLE BY YOU UNDER THIS AGREEMENT DURING THE IMMEDIATELY PRECEDING 12 MONTH PERIOD. THE LIMITATIONS SET FORTH IN SECTIONS 12.1 AND 12.2 WILL APPLY NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED OR EXCLUSIVE REMEDY.
- 12.3. YOU ACKNOWLEDGE AND AGREE THAT THE EXCLUSIONS AND LIMITATIONS IN THIS SECTION 12 PROVIDE YOU WITH ADEQUATE REMEDIES FOR BREACHES OF THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THE PROVISIONS OF THIS SECTION FAIRLY ALLOCATE THE RISKS UNDER THIS AGREEMENT AS BETWEEN THEM. THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS SET FORTH IN THIS SECTION ARE INTEGRAL TO THE AMOUNT OF FEES CHARGED IN CONNECTION WITH MAKING THE PLUS SERVICES AVAILABLE TO YOU. EACH PARTY ACKNOWLEDGES THAT IT HAS HAD FULL OPPORTUNITY TO REVIEW THESE LIMITATIONS WITH THEIR RESPECTIVE LEGAL COUNSEL BEFORE ENTERING INTO THIS AGREEMENT.

13. **Indemnity**

- 13.1. You will defend, indemnify, and hold harmless Thinkific and its affiliates, licensors and suppliers, from and against all third-party claims, losses, damages, penalties, liability, and costs, including reasonable legal fees, of any kind or nature that are incurred in connection with or arising out of (a) any Authorized Users' use of the Plus Services, except to the extent arising from Thinkific's gross negligence or willful misconduct or arising from an infringement claim pursuant to which Thinkific is obligated to indemnify you pursuant to Section 14; (b) your or any Authorized Users' breach of this Agreement, including your and their non-compliance with the restrictions in Section 5; (c) any Taxes assessed against Thinkific that are your responsibility; (d) any Site Content; (e) any deficiency in or breach of the Site Terms; and (f) any disputes between Authorized Users or between you and any ASV.
- 13.2. Thinkific will defend, indemnify, and hold you harmless from and against all claims, losses, damages, penalties, liability, and costs, including reasonable legal fees, of any kind or nature that are incurred as a result of a third-party claim in connection with or arising out of Thinkific's gross negligence or willful misconduct, except to the extent such claim arises from your breach of this Agreement.

14. **Infringement Claims**

- 14.1. Subject to your compliance with this Section 14, we will indemnify you for the amount of any adverse final judgement or settlement against you, at our expense, in respect of any legal action brought against you by a third-party based upon a claim that the Plus Services infringes upon their intellectual property. At our discretion, we will defend such claims as we deem appropriate.
- 14.2. Thinkific will have no obligations or liability under Section 14.1 to the extent: (a) such claims are

in connection with or arise out of: (i) any of your or your Authorized User's access or use of the Plus Services in violation of this Agreement or applicable laws or regulations, (ii) your or your Authorized User's modification or combination of the Plus Services not authorized or provided by Thinkific or use of the Plus Services in a manner not intended by Thinkific, or (iii) any Site Content, your intellectual property rights or services from third-party providers; (b) you fail to promptly notify Thinkific of the allegation or determination of infringement and the failure prejudices Thinkific's ability to defend or the defenses available to it; or (c) Thinkific is not given the right to solely control and conduct the defense and any settlement of the legal claim. You will not agree to the settlement or compromise of any such claim without the prior written consent of Thinkific, which consent will not be unreasonably withheld, conditioned or delayed. You will have the right to participate in the defense of such claim with counsel of your own choosing and at your own expense.

- 14.3. If all or any part of any Plus Services is likely, in our opinion, to become the subject of a claim of infringement described in Section 14.1, Thinkific may: (a) at its own expense: (i) procure for you the right to use the affected Plus Services, or (ii) modify or replace the affected Plus Services or remove content so that it is non-infringing; or (b) terminate the affected Plus Services and refund to you the amounts pre-paid, but unused by you for the affected Plus Services for the then-current Term.

15. **Intellectual Property Rights**

- 15.1. You will own and retain all rights, title and interest in the Site Content, including all intellectual property rights related thereto. Notwithstanding the foregoing, Thinkific will have the right to: (a) access, use, copy, support, maintain, store, modify, sublicense, distribute and display the Site Content as necessary to deliver the Plus Services to you; (b) use only aggregated, anonymized, and de-identified Site Content to improve and enhance the Plus Services and for other development, diagnostic and corrective purposes in connection with the Plus Services; and (c) without limiting this Section 15.1, use the Site Content in connection with the operational use of AI Technologies, subject to the limitations set forth below. "**AI Technologies**" means systems and components of systems comprising software that is developed with machine learning, artificial intelligence, statistical or other mathematical techniques or approaches, for a given set of human-defined objectives, and which may generate outputs such as content, predictions, recommendations, or decisions influencing the environments they interact with; and including associated algorithms, models, parameters, weights, code, data, processes, hardware and tools of any kind. "**Operational use**" means using Site Content solely to: (i) provide AI-powered features and functionality within your account and Sites (such as content recommendations, search improvements, or automated workflows); (ii) improve the performance, security, and reliability of AI features available to you; and (iii) generate analytics and insights for your use. Notwithstanding the foregoing, Thinkific will not: (i) use any identifiable or proprietary Site Content for the purposes of training or developing AI models; or (ii) use Site Content for any purposes other than operational tasks associated with delivering the Plus Services to you.
- 15.2. You hereby grant Thinkific a non-exclusive right to use your trade-names, trademarks, service marks, trade dress and logos to promote the Thinkific service, in accordance with your trademark usage guidelines (if any) that is provided to us.
- 15.3. Thinkific will own and retain all rights, title and interest in (a) all technology, software, algorithms, user interfaces, trade secrets, techniques, designs, inventions and other tangible and intangible information relating to the Plus Services, any related services provided by Thinkific and associated deliverables, and all derivative works, improvements, enhancements or modifications to any of the foregoing; (b) any anonymized usage data (including metadata) arising or derived from or based on the provision, use and performance of various aspects of the Plus Services (excluding Site Content as provided), provided that such data does not

identify you or any individual; (c) any aggregated, anonymized, and de-identified Site Content generated in connection with Thinkific exercising its rights under Section 15.1, for operational purposes only, excluding use for training AI models; and (d) all intellectual property rights related to any of the foregoing. No rights or licenses are granted by Thinkific except as expressly set out in this Agreement, and all such rights not granted are expressly reserved to Thinkific.

- 15.4. Thinkific responds to allegations of copyright in accordance with our [Digital Millennium Copyright Act Policy](#), which may be amended in accordance with its terms.
- 15.5. If you choose, but are under no obligation, to provide feedback including any ideas, suggestions, concepts, processes, techniques, questions, answers, codes/scripts, and other comments related to our services, site, proposed services, Documentation or business ("**Feedback**"), Thinkific will own and use such Feedback without any restrictions and without obligations to you and you hereby grant, transfer and assign all rights therein, and waive any claim you have to ownership, compensation, monetary or otherwise.
- 15.6. You acknowledge that, in order to ensure compliance with legal obligations, Thinkific may (but is not obligated to) review any Site Content to determine whether it is illegal or whether it violates this Agreement. We may also prevent access to, refuse to display, or remove any content that we reasonably believe violates the law or this Agreement. If we remove or restrict access to any Site Content, we will provide you with notice of such removal and the reason therefore, except where prohibited by law or where the content involves illegal activity. You may appeal any content removal decision by contacting us within 10 days of receiving notice, and we will review your appeal in good faith. Notwithstanding the foregoing, Thinkific has no obligation to monitor or review any content submitted to the Plus Services by you or any other person, and you remain solely responsible for your Site Content.
- 15.7. If you remove any Site Content, delete your account or if this Agreement is terminated, you agree that Thinkific may use and retain a copy, including archives, of your Site Content, your Confidential Information (as defined in Section 16.1) or any information related to your account for business purposes related to the Agreement and to the extent necessary to meet our legal compliance obligations (including, for audit and anti-fraud purposes).

16. **Confidentiality**

- 16.1. Each party (the "**Receiving Party**") acknowledges that the other party (the "**Disclosing Party**") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business that is marked as confidential or that a reasonable person would conclude is confidential in light of the circumstances surrounding which the information was disclosed ("**Confidential Information**"), excluding any information that the Receiving Party can document: (a) is or becomes generally available to the public through no fault of the Receiving Party; or (b) was in its possession or known by it prior to receipt from the Disclosing Party, without any obligation of confidentiality; or (c) was rightfully disclosed to it without restriction by a third-party; or (d) was independently developed without use of any Confidential Information of the Disclosing Party; or (e) was instructed or permitted by the Disclosing Party to disclose. Confidential Information of Thinkific includes, without limitation, non-public information regarding pricing, personnel, or partnerships, features, functionality, security and performance of the Plus Services.
- 16.2. The Receiving Party will (a) take reasonable industry standard precautions to protect such Confidential Information from unauthorized use and disclosure, and (b) not use (except in performance of the Plus Services or as otherwise permitted herein) or divulge to any third-party any such Confidential Information, except to the Receiving Party's and its affiliates' employees, consultants, officers, directors or advisors with a bona fide need to know the

Confidential Information and in each case subject to written obligations of confidentiality no less onerous than those set out in this Agreement. The Receiving Party does not acquire any rights, express or implied, in the Disclosing Party's Confidential Information, except for the limited use specified in this Agreement.

- 16.3. If the Receiving Party is required by law, regulation, court order or any governmental or regulatory body or authority to disclose all or any part of the Confidential Information of the Disclosing Party, the Receiving Party will, to the extent legally permissible: (a) immediately notify the Disclosing Party of the requirement; and (b) use commercially reasonable efforts to provide the Disclosing Party with an opportunity to take the steps as it desires to challenge or contest the disclosure or seek a protective order or other remedy. Thereafter, the Receiving Party may disclose the Confidential Information, but only to the extent so required and subject to any protective order or other remedy that applies to the disclosure.
- 16.4. The Receiving Party acknowledges that a breach of this Section 16 could cause irreparable harm to the Disclosing Party for which monetary damages may not be ascertainable or an adequate remedy, and the Receiving Party agrees that the Disclosing Party will have the right, in addition to all other rights and remedies available to it, to seek injunction or other equitable relief in any court of competent jurisdiction, for any violation of this Section 16, and the Receiving Party waives any requirement for the posting of a bond in connection therewith.

17. **Fees**

- 17.1. All fees for the Plus Services included in your Order Form, fees for going over any of your Usage Caps (as defined in the Order Form), and any amendments thereof ("**Fees**") are either in US Dollars or in your local currency supported by Thinkific. You will pay all Fees as and when specified in the applicable Order Form. In the event that your usage exceeds the Usage Caps, your subscription will be automatically and immediately upgraded to the appropriate higher tier that corresponds with such usage for the remainder of the then-current Term, and you will be billed the difference in Fees for the upgraded tier, prorated for the remainder of the billing cycle.
- 17.2. If the Order Form specifies that Fees are based on usage tiers, then except where the Order Form states otherwise, this Section 17.2 will apply to determine the usage tier that applies to a particular billing period. When Usage Caps are exceeded during a billing period, your subscription will be automatically and immediately upgraded to the appropriate higher tier in accordance with Section 17.7. Any such upgrade will be permanent and will apply to all subsequent billing periods, with the upgraded tier becoming your new baseline tier. Thinkific will determine which higher usage tier will apply based on your usage of the Plus Services. Thinkific will not automatically downgrade your subscription tier if your usage falls below certain levels, and you will not be downgraded to a tier lower than the tier specified in your Order Form. If the Order Form provides that usage tiers are based on more than one type of usage limit (for example, number of Active Customers and number of Sites), the highest pricing tier applicable to your usage will apply.
- 17.3. Unless otherwise agreed to in an Order Form, all Fees for monthly subscriptions must be paid by credit card monthly in advance of the billing period to which they apply (without deduction or set-off), which amounts may also be pre-paid in advance for longer periods as specified in the Order Form (e.g. lump sum for annual period). If the monthly subscription invoice amount is greater than \$/€/£ 5,000, we can accept other payment methods (wire, EFT), however a \$/€/£ 25 administration fee will be charged on your monthly invoice in addition to any fees that your chosen payment method may pass on to Thinkific.
- 17.4. Unless otherwise agreed to in an Order Form, we will be entitled to charge all amounts you owe Thinkific to the credit card authorized by you. All other forms of payment are due 30 days after

the invoice date.

- 17.5. If any amounts owed to Thinkific are not received by Thinkific by the applicable due date, then, at our discretion and in addition to any other rights Thinkific has under this Agreement or at law, Thinkific will provide you with written notice of late payment and, if payment is not received within 30 days of such notice: (a) such amounts may accrue late interest at the lower of: (i) the rate of 12% per year, or (ii) the maximum rate permitted by law from the date such payment was due until the date paid; and (b) Thinkific may, in our sole discretion, immediately suspend your and Authorized Users' access to the Plus Services and Sites until all overdue amounts are received by Thinkific. Upon receipt of all overdue amounts and applicable late interest, Thinkific will reinstate your access within two (2) business days.
- 17.6. Thinkific will not refund Fees except where expressly provided in this Agreement, including: (a) termination by you for Thinkific's material breach as provided in Section 21; (b) warranty remedy as provided in Section 11.1; (c) infringement remediation as provided in Section 14.3; or (d) material feature discontinuation as provided in Section 3.3.
- 17.7. *Automatic Upgrades.* In the event that your usage exceeds the Usage Caps, your subscription will be automatically and immediately upgraded to the appropriate higher tier that corresponds with such usage, and you will be billed the difference in Fees for the upgraded tier, prorated for the remainder of the billing cycle. Any such upgrade will be permanent and will apply to all subsequent billing periods, with the upgraded tier becoming your new baseline tier. Thinkific will not automatically downgrade your subscription tier based on decreased usage. You will receive notice of such automatic upgrade and the associated fee adjustment.
18. **Taxes**
- 18.1. All Fees payable to Thinkific under this Agreement are exclusive of applicable federal, provincial, state, local or other governmental sales, goods and services, harmonized, value-added or other taxes, fees or charges now in force or enacted in the future ("**Taxes**"). For greater certainty, "Taxes" does not include taxes based on Thinkific's net income.
- 18.2. If you are not charged taxes by Thinkific, you are still responsible to determine, collect, report and remit Taxes to the appropriate tax authorities in your jurisdiction and in the jurisdictions of your End Users and Customer all Taxes applicable to the Plus Services and for paying those Taxes in a timely manner when due and payable. Thinkific may from time to time make available to you certain tax calculation services offered by third-party providers, without liability to Thinkific, which are Third-Party Tools (as defined in Section 23).
- 18.3. To the extent that Thinkific charges these Taxes, they are calculated using the applicable tax rates based on the jurisdiction that you provide to us for you and for your End Users and Customers. Such amounts are in addition to the Fees for such products and services and will be billed to your authorized payment method. If you are exempt from payment of such Taxes, you must provide us with evidence of your exemption which may include, but is not limited to a valid value added tax number, and in some jurisdictions may include an original certificate that satisfies applicable legal requirements attesting to tax-exempt status. Similarly, if your End Users and Customers are exempt from payment of such taxes, we require either you or your End Users and Customers to provide the same information to us. Tax exemption will only apply from and after the date we receive evidence satisfactory to Thinkific of your exemption.
- 18.4. *End User Taxes.* You acknowledge and agree that: (a) you are solely responsible for providing complete and accurate information to Thinkific regarding: (i) the nature and classification of goods and services sold; (ii) the jurisdiction in which you, your End Users, Customers, and other Authorized Users are located; (iii) your Tax registration status in any jurisdiction; and (iv) any

applicable Tax exemptions; (b) you should consult with your own tax advisor regarding your Tax obligations and the accuracy of information you provide to Thinkific; and (c) Thinkific is not providing tax advice and makes no representations or warranties regarding the accuracy or completeness of any Tax determinations. For payments facilitated by Thinkific Payments, Thinkific will, acting in its capacity as an online marketplace facilitator and based solely on information that you provide to us: (i) determine the Taxes that Thinkific believes apply to transactions occurring between you, your End Users and Customers and other Authorized Users; and (ii) collect, report and remit such Taxes to the appropriate Tax authorities in a timely manner when due and payable. Thinkific will rely on the information that you provide to us in good faith. You will be solely responsible for, and will defend, indemnify and hold Thinkific harmless from and against, any and all Tax liability, penalties, interest, and related costs arising from or related to incomplete or inaccurate information that you provide to us. Thinkific will notify you if we identify information that appears incomplete or inconsistent, and you agree to promptly provide any additional information or corrections requested by Thinkific for Tax determination purposes. To the extent required by law, you agree to execute any additional authorization, election or similar documentation to support our remittance of the Taxes in the manner described above. In the event that you become registered for a Tax following registration with us, you must promptly update your account information. We will not be responsible for any Taxes arising from any omission or incorrect information that you provide to us or where we were not informed on a timely basis. Thinkific will use reasonable efforts to provide to you any documentation or information that you require to comply with your Tax reporting obligations upon your request.

19. **Term**

19.1. This Agreement will commence on the Effective Date of the initial term set out in your first Order Form for Plus Services, and will continue in effect until the earlier of: (a) the expiration of all Order Forms for Plus Services applicable to you including any renewal periods; and (b) the termination of this Agreement in accordance with these Plus Terms of Service (the "**Term**").

19.2. Except as expressly stated otherwise in an Order Form, an Order Form will automatically renew for subsequent one-year renewal periods unless a party gives the other party written notice of non-renewal at least 60 days prior to the end of the then-current Term. Thinkific reserves the right to increase Fees for Plus Services on any renewal Term by providing you written notice thereof (which notice may be provided by email in accordance with Section 25) at least 90 days prior to the end of the then-current Term.

20. **Termination**

Either party may terminate this Agreement by notice to the other party if: (a) the other party breaches an obligation under Section 4, 5, 15 or 16 or any other material obligation set out in this Agreement and, if the breach is capable of being cured, fails to cure the breach within 30 days of receipt of notice of the breach; or (b) the other party ceases to do business as a going concern, admits in writing its inability to pay debts as they become due, files or becomes the subject of a petition in bankruptcy, appoints a receiver, acquiesces in the appointment of a receiver or trustee, becomes insolvent, makes an assignment for the benefit of creditors, goes into liquidation or receivership or otherwise loses legal control of its business.

21. **Effect of Termination**

Upon termination of this Agreement for any reason: (a) all Order Forms will automatically terminate; (b) your access to your Thinkific account and the Plus Services will terminate and you will immediately cease all use thereof; and (c) you will pay all unpaid amounts you owe to Thinkific. If you terminate this Agreement in accordance with Section 20 due to a material breach by Thinkific, Thinkific will refund to you any Fees paid in advance for the Plus Services applicable to the period following the effective date

of termination on a pro-rata basis. If Thinkific terminates this Agreement in accordance with Section 20 or as provided elsewhere in this Agreement (including for non-payment), then you will pay any unpaid Fees for the remainder of the Term of each Order Form. In no event will termination of this Agreement relieve you of your obligation to pay any amounts payable to Thinkific under this Agreement, including for the period up to the date of termination. On termination of this Agreement, you will have 90 days to request an export of your Site Content, which we will make available to you in a standard format. After such 90-day period, Thinkific is entitled to delete all of your Site Content and account. If your account is cancelled or downgraded to a free plan or a lower-tier subscription plan, we reserve the right to delete any chat content associated with your account after 30 days from the date of cancellation or downgrade. Prior to any such deletion, Thinkific will make available to you export functionality for such chat content, and you are responsible for exporting any chat content you wish to retain during the 30-day period. If technical limitations prevent export of certain chat content formats, Thinkific will notify you of such limitations and work with you to provide the content in an alternative accessible format.

22. **Survival**

Any provision of this Agreement that, either by its terms or to give effect to its meaning, must survive and such other provisions that expressly or by their nature are intended to survive termination will survive the expiration or termination of this Agreement. Without limiting the foregoing, Sections 6, 8, 11, 12, 13, 14, 15, 16, 17, 20, 21, 24, 28, 29 and this Section 22 will survive the expiration or termination of this Agreement.

23. **Third Party Tools and Experts**

We may provide you with: (a) access to, or integration with, tools or services provided by third parties ("**Third-Party Tools**") that are optional for your Sites; or (b) an online directory of independent third parties ("**Third-Party Experts**") that can help you build and operate your Sites. You acknowledge and agree that (i) Thinkific is not a party to any terms or agreements that may be entered into between you and the providers of such Third-Party Tools or such Third-Party Experts, (ii) Thinkific does not guarantee and is not responsible for the availability of, content provided on, or functionality of, third party sites or Third-Party Tools or the services provided by Third-Party Experts, and Thinkific does not represent, warrant or guarantee that Third-Party Tools or Third-Party Experts will be adequate for your needs, (iii) you are responsible for your own dealings with the providers of Third-Party Tools and Third-Party Experts, (iv) your use of the Third-Party Tools and engagement of Third-Party Experts are at your own risk and discretion, and (v) Thinkific will have no responsibility or liability whatsoever to you or any other person arising from or relating to such use or engagement. In particular, tax calculators should be used for reference only and not as a substitute for independent tax advice when assessing the correct tax rates Authorized Users should charge Customers.

24. **Amendment**

Notwithstanding Section 3.2, except as otherwise expressly permitted or specified herein, the Order Form will not be amended except by a written agreement that: (a) is signed by each party; and (b) expressly states that it is intended to amend this Agreement. No terms of any purchase order or other form provided by you will modify this Agreement, regardless of any failure by Thinkific to object to such terms. No waiver of any obligation or any breach of any provision of this Agreement will be effective or binding unless made in writing and signed by the party purporting to give the same and will be limited to the specific obligation or breach waived.

25. **Notices**

- 25.1. Any notice contemplated by this Agreement, to be effective, must be in writing and delivered as follows: (a) by email to the addressee's email specified on the Order Form, in which case it will be deemed to be received on the day sent unless a bounceback or other automated reply is

received; (b) by nationally recognized overnight courier to the addressee's address specified on the Order Form, in which case it will be deemed to be received on the next business day after its couriering; or (c) by prepaid post to the addressee's address specified on the Order Form, in which case it will be deemed to be received on the fifth business day after its mailing.

- 25.2. Either party may from time to time give notice to the other party of a substitute address or email address, which from the date such notice is given will supersede for purposes of this Section 25 any previous address or email address, as applicable, specified for the party giving the notice.

26. **Commercial Communications**

You agree that we may send email communications to you and your Authorized Users to convey information about Thinkific's products and services, including promotional information about new or updated products and services, and Thinkific events. You and your Authorized Users may opt-out of such communications on an individual basis by managing your communication preferences within the Plus Service.

27. **Force Majeure**

Neither party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) for causes beyond that party's reasonable control and occurring without that party's fault or negligence, including acts of God, acts of government, flood, fire, civil unrest, acts of terror, strikes or other labor problems (other than those involving such party's employees), or denial-of-service attacks (each a "**Force Majeure Event**"), provided that the delayed party: (a) gives the other party prompt written notice of such cause; and (b) uses its reasonable efforts to mitigate the effects of the Force Majeure Event and to recommence performance. If a Force Majeure Event continues for more than 30 days, the party not affected by the Force Majeure Event may terminate this Agreement upon written notice.

28. **Export Control**

You will not knowingly export or re-export, directly or indirectly, any product or software received from Thinkific under this Agreement to any destination, entity or person to which such export or re-export is restricted or prohibited by applicable laws. You represent and warrant that you are not on any such restricted or prohibited lists. Thinkific makes no representation or warranty that the Plus Services are appropriate or available for use in any specific country or jurisdiction. You will not use the Plus Services for military or quasi-military projects, unless specifically authorized by the appropriate governmental authority for such purpose.

29. **General**

The failure of either party to exercise or enforce any right or provision of this Agreement will not constitute a waiver of such right or provision. This Agreement constitutes the entire agreement between you and Thinkific and governs your use of the Plus Services, superseding and replacing any prior or contemporaneous agreements between you and Thinkific (including any prior versions of this Agreement). If any provision of this Agreement is held void, invalid, illegal or unenforceable by a court of competent jurisdiction, such invalidity, illegality or unenforceability will not affect the validity, legality or enforceability of any other provisions contained in this Agreement or the validity, legality or enforceability of that provision or part thereof in any other jurisdiction, and the remaining portions of this Agreement will continue in full force and effect. This Agreement, the rights granted hereunder, and any orders made hereunder will not be assigned by either party without the prior written consent of the other party, which consent will not be unreasonably withheld, with the exception that either party may unilaterally assign this Agreement to: (i) any other entity or person controlling, controlled by, or under

common control with, such entity (where "control" means possessing, directly or indirectly, the power to direct or cause the direction of the management, policies, or operations of an entity, whether through ownership of voting securities, by contract or otherwise); or (ii) an entity that acquires all or substantially all of the business assets of such party to which this Agreement pertains. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. In this Agreement, the term "including" means "including without limitation". Any ambiguity in this Agreement will be interpreted without regard to which party drafted it. The relationship between the parties is that of independent contractors. There are no third-party beneficiaries to this Agreement, and you acknowledge that Thinkific will have no obligation or liability whatsoever to any third parties with which you may do business, including your Authorized Users.

30. Applicable Law

This Agreement is governed by and construed in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein, without giving effect to principles of conflict of laws of any jurisdiction and notwithstanding your domicile, residency or physical location. The International Sale of Goods Act of British Columbia and the United Nations Convention on Contracts for the International Sale of Goods will not apply in any way to these Plus Terms of Service or to the transactions contemplated by these Plus Terms of Service. The parties irrevocably attorn to the exclusive jurisdiction of the courts of British Columbia.

31. Languages

The parties have agreed that this arrangement will be established and all related documents be written in English. Les parties ont convenu que cette entente sera conclue et que tous les documents connexes soient rédigés en anglais.