

Superside Master Service Agreement MSA Version 10

1. Interpretation and Definitions

In this Agreement, unless the context clearly indicates otherwise:

- a) The capitalized terms used in this Agreement shall have the respective meanings set out in “Appendix 1: Definitions” to this MSA;
- b) If a word or phrase is defined in this Agreement, its other grammatical forms, as used in this Agreement, shall have a corresponding meaning;
- c) Words used in the singular include the plural and words used in the plural include the singular;
- d) The words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation"; and
- e) The headings in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

2. Hierarchy

This Agreement is made up of: (1) any SOW; (2) this MSA (including any appendices thereto); (3) the DPA (including any Schedules thereto); (4) any Client’s purchase order or Work Order; and (5) any additional contractual documents agreed to between the Parties. If there is a conflict between any of these documents, it will be resolved by applying the documents in that order (prevailing document first). Should you require an additional SOW related to opening an additional Plan, this MSA shall apply to any and all SOW’s executed by You and Superside.

3. General description of the Services

Superside provides premium on-demand and fully managed creative subscription services including design support, project management and the capabilities applicable to Your Plan and Level described at any time on the Pricing Schedule (collectively “Services”). Each Plan and Level includes a number of Total Hours available to use toward the Services. For each Project, Superside will provide a creative team consisting of the following: two (2) Project Manager(s), one (1) Creative Director, one (1) Creative Lead, one (1) Customer Success Manager, and one (1) Account Executive as further specified per Plan. The Client shall only provide access to the Services to authorized representatives who will be deemed acting on behalf of the Client.

4. Change of Plan, Upgrades and Downgrades

The Client is entitled to upgrade the Level during the Agreement Term, but only for future remaining calendar months. Upgrades will carry an additional cost. Downgrades and changes from one Plan to another Plan are only permitted from the beginning of the next Agreement Term provided a minimum thirty (30) days prior written notice has been provided. You are not allowed to pause a Plan. Notice to pause the Plan may be treated as notice of termination of such Plan. All changes to a Plan that come into effect will continue to remain in effect for the following Agreement Terms unless the notice and/or SOW, explicitly states otherwise.

5. Term and Termination

(a) The Term of this Agreement begins on the earliest Start Date and will end on the termination of all SOWs forming part of this Agreement, unless terminated earlier in accordance with this MSA.

(b) The term of each SOW will begin on the Start Date stated therein and run for the Agreement Term. At the end of each Agreement Term, the term of the SOW will automatically renew, on the same terms, for an additional Agreement Term, unless a written termination notice is delivered to the other Party at least thirty (30) days before the start of the next Agreement Term.

(c) Either Party may terminate the Agreement in writing with immediate effect where:

(i) one Party is in material breach of the Agreement, the other Party has given written notice requesting that the breach be cured, and the material breach remains at least thirty (30) calendar days after the aforementioned written notice of the breach was received;

(ii) the party not seeking termination is insolvent or undergoing liquidation proceedings; or

(iii) in accordance with section 34 (Force Majeure) of this MSA

(d) All Monthly Amounts shall be paid up to and including the last month of the last Agreement Term. Any unused Monthly Amount or Plan hours will be forfeited upon termination without cause by Client.

6. Multiple Client Plan accounts

The Client is not permitted to have multiple Plans for the same Users. Users may only be included on one Plan at any point in time. Should You decide to open an additional Plan, You will be required to sign a new SOW in connection with the additional Plan. The terms of the MSA will remain the same and are hereby incorporated by reference in new SOW entered into by the Parties.

7. Project Quotes

Project hour estimates are provided upfront. A summary of the logged hours by Project is available in real-time on the Client dashboard. Upfront project quotes or estimates are provided only as a guide and are subject to change as the work progresses. Any subsequent instructions or requests by you may increase the quote. You are responsible for requesting an updated quote in such cases. Superside cannot guarantee that work will be delivered within the project estimate or deadline.

8. Responsibility for Incurring Overage Charges

Plans run according to calendar months. The monthly usage will be calculated as the sum of hours worked and tracked by Superside during the calendar month. Any Overages, will be invoiced separately at the List Price (as listed in the SOW) at the beginning of the next month. The Client is responsible for managing Project hours requested and used under the Plan and avoiding any Overage should the Client so wish. The Client shall be liable for any Overage use despite any request to be notified of Overage or request to avoid Overage.

9. Closure of Projects

Superside reserves the right to close Projects where feedback or confirmation of completion has not been received within fourteen (14) calendar days from delivery of any Service, related to that Project either complete or incomplete. Furthermore, Superside reserves the right to close a Project if it is still ongoing thirty (30) days after the Client has received notice that the Project has commenced and has offered no feedback whatsoever to Superside. Subject to the terms of this Agreement, Superside will provide reasonable support to start a new Project for any remaining work.

10. Project Quality

It is your responsibility to terminate a Project if progress is not deemed satisfactory. The Client is liable in full for all hours worked regardless of satisfaction with the end product. It is the Client's responsibility to request progress reports sufficiently frequently to evaluate progress. In the event that the work is deemed unsatisfactory, it is your responsibility to report to Superside as soon as possible. Superside will assess the work in accordance with the expected standard of work and credit the hours worked where Superside believes the work is not satisfactory.

11. Pricing and Price Changes

(a) All Projects are subject to a minimum allotment of 3 hours of work.

(b) Superside reserves the right to change the Services (including capabilities and hours), Monthly Amount and/or Agreement Term Amount in effect starting at the beginning of the next Agreement Term, by providing written notice thereof to You at least sixty (60) calendar days before the end of the current Agreement Term.

(c) Superside reserves the right to change List Prices with effect from the beginning of the next calendar month, by providing written notice therefore to You.

12. Transferring or Rolling over of Plan Hours and offsetting Overage with Future Months Hours worked performing Services for Client are logged to the day in which they were worked. You are not allowed to transfer hours between months (except for rollovers expressly permitted as described below) nor can You transfer hours between separate Plans. Overage invoices are not allowed to be offset with future months or prepaid amounts. Remaining unused Total Hours will be made available in the following month, for up to three months, and must be used on a first-in-first-out basis, as long as the SOW is effective. Where a Plan is upgraded or downgraded to a new Plan, the balance of any unused hours on the Start Date of the new Plan will be transferred to the new Plan in an amount corresponding to the ratio of the In-Plan Hourly Rates between the Plans, with such ratio never being greater than 1:1. If the allocated Fast Turnaround hours are unused during the month, they will roll forward as non-Fast Turnaround hours.

13. Refunds

(a) Except for Terminations for Cause by the Client, as specified in Section 5(c), or where the Client exercises the right to opt out when applicable, the Client is not entitled to a refund for remaining Monthly Amounts on termination

(b) Any refund in connection with a Termination for Cause by the Client shall be prorated based on the remaining portion of the then-current Agreement Term Amount, less any Overage.

14. Billing Mistakes

If you believe that Superside has billed you incorrectly, you must contact Superside no later than thirty (30) days after receiving the Project closed notification or invoice, in which the error or problem first appeared, in order to receive an adjustment or credit. Inquiries should be directed to payment@superside.com.

15. Payment

The Agreement Term Amount for each SOW will be invoiced in advance of each Agreement Term, in accordance with the Billing Frequency. The first invoice will be sent immediately after signing each SOW. Invoices must be paid in full, within the Payment Terms set out in the SOW.

Payment can be made with credit card, check or bank transfer. Invoicing and payment currency is USD. If any outstanding amount is more than thirty (30) days overdue from Payment Terms, Superside reserves the right to charge 1.5% interest per month on the outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection. Such outstanding amounts may be sent to a Debt Collection agency. You shall be responsible for all taxes associated with Services other than U.S. taxes based on Superside's net income or taxes associated with Superside's employees.

Superside reserves the right to put Services on hold or terminate the Agreement with immediate effect should any outstanding amount be more than thirty (30) days overdue. Where Services are put on hold due to overdue outstanding amounts, Superside shall be considered to be fulfilling the Service obligations in accordance with this Agreement and the Client will not be entitled to any relief for such action. Where the Agreement is terminated in accordance with this paragraph, the Client shall remain liable for all fees up until date of termination, plus any Overage fees incurred.

Any payments made via Bank Transfer shall be made to the following account:

Account Name: KONSUS INC

Account Number: 931766569

Business Address: 1201 N Market St Ste 111, Wilmington, DE 19801

Bank Name: JPMorgan Chase

Bank Address: 383 Madison Ave, New York, NY 10017, United States

Routing & Transit: 021000021

Account Type: Business Checking

Swift Code: CHASUS33

Reference: [the invoice number]

Physical checks addressed to Konsus, Inc. can be mailed to the below lockbox address:

KONSUS INC.

P.O. Box 737396

DALLAS, TX 75373-7396

All payment and invoicing related questions can be directed to payment@superside.com.

16. Credit Card Payment Method

The following applies to Clients who choose to use a Credit card as their payment method. Superside has integrated with Stripe, a validated Level 1 PCI DSS Compliant Service Provider, for PCI Compliant storing of credit card information and processing of payments. Stripe may make a temporary charge to credit cards added to your Superside account. Any such charges are refunded after your credit card has been verified. The refund may take up to several business days depending on your bank or credit card service. Should you wish to use a Credit Card as a payment method, you hereby authorize Superside to run, or have run, credit card authorizations on all credit cards provided by you, to store credit card details as your method of payment for Services, and to charge your credit card (or any other form of payment authorized by Superside or mutually agreed to between you and Superside).

17. Purchase Orders

Should the Client request a purchase order number to be included on the invoice, the client shall be responsible for providing the Purchase Order number to Superside in advance, at least seven (7) calendar days prior to the following invoice in accordance with the Billing Frequency. The Client's ability to furnish a purchase order in no way affects the validity or enforceability of this Agreement. Superside reserves the right to invoice without a Purchase Order where a valid purchase order has not been provided by the time of invoicing.

18. Restrictions of Use

You will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the Services ("Software"); modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by Superside or authorized within the Services); use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third party; or remove any proprietary notices or labels.

19. Availability of Service and Support

Superside will use commercially reasonable efforts to provide the agreed upon Services. Superside does not guarantee that any Work Product provided will remain functional or compatible after delivery. Superside does not provide or guarantee for any online hosting or support service on

www.superside.com, or any other third-party service, website or domain. It is your responsibility that any electronic or online delivery or Service provided by Superside, as well as any account data, registration data, access data or any other data are copied and saved to your own location by yourself. Superside will use commercially reasonable efforts to assist You with technical issues during Superside's business hours. If You require technical support, you should reach out to your Project Manager.

20. Confidentiality

(a) You and Superside (each a "Receiving Party") understand that the other Party (the "Disclosing Party") has disclosed or may disclose confidential business, technical or financial information relating to the Disclosing Party's business that is clearly labeled, marked or identified as proprietary or confidential (hereinafter referred to as "Proprietary Information" of the Disclosing Party). Proprietary Information of Superside includes non-public information regarding features, functionality and performance of the Service.

(b) The Receiving Party agrees:

- (i) to take reasonable precautions to protect such Proprietary Information, and
- (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third-party any such Proprietary Information.

(c) The Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document:

- (i) is or becomes generally available to the public, or
- (ii) was in its possession or known by it prior to receipt from the Disclosing Party, or
- (iii) was rightfully disclosed to it without restriction by a third-party, or
- (iv) was independently developed without use of any Proprietary Information of the Disclosing Party.

(d) The Receiving Party may make disclosures required by law, court order by a court of competent jurisdiction, or by any regulatory authority to which the Receiving Party is subject, provided the Receiving Party (to the extent permitted by law and reasonably practicable):

- (i) provides the Disclosing Party with reasonably prompt notice of such required disclosure prior to the Proprietary Information being disclosed;
- (ii) uses reasonable best efforts to limit the disclosure of the Proprietary Information as much as practicably possible;
- (iii) requests confidential treatment or a protective order related to the disclosure of the Proprietary Information; and
- (iv) allows the Disclosing Party, subject to instructions from the Receiving Party, to participate in any proceeding related to any such involuntary disclosure.

(e) In connection with review of obligations hereunder, or other legal or contractual matters, Superside may retain one (1) archival copy of Client Data, which copy shall be used only by Superside and third-parties, where an attorney-client relationship exists between Superside and any such third-party. At Client's request, Superside's Head of Legal will provide a certificate attesting to compliance with the foregoing.

(f) Notwithstanding anything to the contrary, Superside shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Client Data and data derived therefrom), and Superside will be free (during and after the term hereof) to:

(i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Superside offerings, and

(ii) disclose such data solely in aggregate or other de-identified form in connection with its business. No rights or licenses are granted except as expressly set forth herein.

21. Intellectual Proprietary Rights

(a) You may instruct that Superside incorporate any specifically identified intellectual property ("Your Intellectual Property") into the Work Product. When You do this,

(i) You grant to Superside, and its affiliates, directors, officers, employees, representatives, agents, and contractors, a non-exclusive, non-transferable, royalty-free, fully paid-up, worldwide license, lasting for the Agreement Term, to use Your Intellectual Property in the provision of the Service; and

(ii) You warrant and represent that you have all of the necessary right, title, and interest in Your Intellectual Property to be able to grant the abovementioned license.

(b) To the extent that the Work Product, or any portion therefore, is protectable by intellectual property law, and subject to section 23, You shall own all right, title and interest in and to the Work Product by virtue of:

(i) Superside assigns to you all rights of paternity, integrity, disclosure, and withdrawal and any other rights that may be known as "moral rights" (collectively, "Moral Rights") in and to the Work Product, and any and all intellectual property rights arising therefrom, to the extent permitted by law;

(ii) all Work Product shall constitute a "work made for hire" as such term is defined in 17 U.S.C. § 101, made solely for your benefit.

(iii) Superside hereby represents and warrants that as of the date the applicable Work Product is delivered to the Client, and provided the Work Product is marked as "final" and accepted by You in writing within a reasonable time, to Superside's Knowledge, such Work Product does not infringe or misappropriate the intellectual property rights of any third-party (the "IP

Infringement Warranty”). As used herein, “Knowledge” means that Superside actually knew or ought reasonably to have known of such infringement or misappropriation;

(iv) where Work Product (or any portion thereof) does not fall within the specifically enumerated works that constitute works made for hire under applicable copyright laws, Superside hereby irrevocably assigns, transfers, and conveys, free and clear of all liens and encumbrances, the entire right, title, and interest in and to all such proprietary rights it holds in the Work Product to You.

(c) You agree to comply with all applicable import and export control laws and third-party Proprietary Rights.

(d) Superside has the right to a, limited, fully paid-up, royalty-free, non-transferable, non-assignable and non-sub-licensable, world-wide and non-exclusive license to use any of the Work Product in furtherance of its marketing efforts (the “License Back”). The License Back shall be limited to Work Product which has already been published or made public and shall endure for a period equal to your rights, ownership, or license held in the underlying intellectual property in the Work Product.

(e) Superside shall own and retain all right, title and interest in and to the following (excluding Your Intellectual Property included therein):

(i) the Services (other than the Work Product), Software and all improvements, enhancements or modifications thereto;

(ii) any software, applications, type fonts, know-how, processes, methodologies, inventions or other technology developed or used in connection with Services or support; and

(iii) all intellectual property rights related to the foregoing (i) and (ii).

22. Data Privacy and Security

(a) Intentionally Omitted.

(b) Transfer of Personal Data. To the extent that Personal Data within the Client Data originates from a User in the EEA, as further described in the Data Protection Agreement (“DPA”), Superside will ensure that, pursuant to applicable data protection laws, if personal data within Client Data is transferred to a country or territory outside of the EEA (a “non-EEA country”), then such transfer will only take place if:

(i) the non-EEA country in question ensures an adequate level of data protection based on a decision by the European Commission; or (ii) one of the conditions listed in Article 46 or 49 GDPR (or its equivalent under any successor legislation) is satisfied; or (iii) the personal data is transferred on the basis of binding corporate rules.

(c) Data Processing Agreements. To the extent that the Parties are required to enter into a Data Processing Agreement (given the nature of the Client Data, location of Users and other aspects of the Services), the DPA entered into by the Parties shall be (i) the Data Protection Agreement separately entered into by the Parties, or (ii) if no such separate Data Processing Agreement was entered into, the Data Protection Agreement located at <https://www.superside.com/dpa>. The DPA,

upon execution by Client, shall be hereby incorporated by reference herein and become a part of this Agreement.

(d) Subprocessors. Client acknowledges and agrees that Superside may use subprocessors, who may access Client Data, to provide, secure, and improve the Services. Superside shall be responsible for the acts and omissions of its subprocessors to the same extent that Superside would be responsible if Superside was performing the services of each subprocessor directly under the terms of this Agreement. A list of all Subprocessors can be found at <https://www.superside.com/subprocessors>.

23. Use of Third-Party Materials

Superside may incorporate literary, pictorial, audio-visual, sound recordings, and any other assets protected by copyright belonging to third parties (“Third-Party Materials”) into any Work Product provided that Superside secures all required rights or licenses for the use of such Third-Party Materials in the Work Product. Depending on what license(s) and/or usage(s) You may require, there may be an additional cost which will require your prior approval and payment. It is your responsibility to inform your project manager at the outset of any Project on what license(s) and or usage(s) you will require. Superside shall bear no responsibility whatsoever should your initial intended use for any Work Product change and should the license(s) and/or usage(s) secured for you by Superside be inadequate for your altered intended use of any Work Product. You warrant and represent that you own the intellectual property right(s), or possess the appropriate license(s) and/or usage(s), for any and all Third-Party Materials provided by you to Superside.

24. Indemnification

(a) Each Party agrees to indemnify, defend, and hold harmless the other Party’s affiliates, directors, officers, employees, representatives, agents, and contractors from any direct losses, damages, or expenses (including reasonable attorneys’ fees) (collectively “Losses”) arising from or relating to any successful claim, suit, proceeding, demand, or action brought by a third-party (a “Third-Party Claim”) against either party for actions by it or its agents relating to:

- (i) failure to comply with any applicable law;
- (ii) gross negligence;
- (iii) willful misconduct;
- (iv) fraud or fraudulent misrepresentation; or
- (v) defamation.

(b) You will further indemnify, defend, and hold harmless Superside, its affiliates, directors, officers, employees, representatives, agents, and contractors from any Losses arising from or relating to any Third-Party Claim against a Superside Indemnified Party relating to actions by you or your affiliates, directors, officers, employees, representatives, agents, or contractors relating to:

- (i) use of the Services in violation of this Agreement;

(ii) any of Your Intellectual Property as laid out in Section 21, any Third-Party Materials provided by You to Superside as laid out in Section 23, or any other materials provided to Superside by Client; and

(iii) your violation of privacy rights, unfair competition, or infringement or allegations thereof of a registered patent, registered trademark, or copyright of a third-party. If the Third-Party Material was provided by Superside, Superside shall notify Client of any restrictions or third party Proprietary Rights.

(c) Superside will further indemnify, defend, and hold harmless the Client, its affiliates, directors, officers, employees, representatives, agents, and contractors from any Losses arising from or relating to any Third-Party Claim against a Client Indemnified Party relating to actions by Superside or its affiliates, directors, officers, employees, representatives, agents, or contractors relating to:

(i) any breach of the IP Infringement Warranty (an "Infringement Claim"); and

(ii) any Infringement Claim related to your use of the Software or Work Product.

(iii) Notwithstanding the foregoing, Superside will have no obligation under this Section, or otherwise, with respect to any Infringement Claim to the extent it is based on:

(1) any use of the Work Product not in accordance with this Agreement,

(2) any use of the Work Product in combination with other materials, content or images not supplied by Superside, unless the Infringement Claim would have arisen irrespective of such combination,

(3) any modification to the Work Product not made by Superside,

(4) Your Intellectual Property, Client Data or other materials or content provided by Client to Superside, or

(5) any part of the Work Product that was designed in accordance with, or in response to, express and specific instructions, feedback or input from Client that results in a Third-Party Claim that would not have arisen but for such express instruction, provided that should Superside have Knowledge that implementation of such express instructions may result in a Third-Party Claim, Superside will inform Client thereof.

(d) THIS SECTION 24 STATES SUPERSIDE'S ENTIRE LIABILITY AND CLIENT'S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT CLAIMS.

(e) The Party seeking indemnification under this Section 24 (the "Indemnified Party")

(i) will notify the other Party (the "Indemnifying Party") promptly in writing of any Claim for which it is seeking indemnification hereunder,

(ii) will give the Indemnifying Party sole control of the defense thereof and any related settlement negotiations, and

(iii) will cooperate with the Indemnifying Party, at the Indemnifying Party's request and expense, in assisting with such defense.

(iv) may not settle any Claim without the Indemnified Party's consent (which will not be unreasonably withheld, conditioned, or delayed) if such settlement requires the Indemnified Party to admit any liability.

(f) Law permitting, these indemnifications are subject to the limitation of liability contained in this Agreement.

25. Limitation of Liability

(a) SUBJECT ONLY TO THE EXCEPTIONS CONTAINED IN SUBSECTION (D) OF THIS SECTION, NO PARTY OR ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, OR CONTRACTORS, WILL BE LIABLE, UNDER ANY CIRCUMSTANCES, FOR:

(i) ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES -- INCLUDING BUT NOT LIMITED TO ANY LOST BUSINESS OPPORTUNITY, REPUTATION, OR PROFITS -- ARISING OUT OF THIS AGREEMENT (WHETHER BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY) OR ITS TERMINATION, AND IRRESPECTIVE OF WHETHER OR NOT THAT PARTY HAS BEEN ADVISED; OR

(ii) ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS.

(b) THE LIABILITY OF EITHER PARTY FOR DAMAGES, OR ALLEGED DAMAGES, HEREUNDER FOR ANY AND ALL CLAIMS BY EITHER PARTY, WHETHER IN CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, IS LIMITED TO, AND WILL NOT EXCEED, THE AGGREGATE AMOUNTS PAID BY YOU TO SUPERSIDE PURSUANT TO THIS AGREEMENT IN THE 12 MONTHS PRECEDING THE INITIAL CLAIM GIVING RISE TO LIABILITY, GENERALLY, AND THERE SHALL BE NO LIMITATION OF LIABILITY FOR SUPERSIDE FOR ANY CLAIM GIVING RISE TO LIABILITY CONTEMPLATED IN SECTION 24(C) OF THIS AGREEMENT, AS WELL AS ANY UNINTENTIONAL, VICARIOUS OR CONTRIBUTORY INFRINGEMENT CLAIMS.

(c) The Parties shall use commercially reasonable efforts to limit or mitigate damages they may suffer in connection with this Agreement.

(d) There shall be no limitation of liability for either Party where such liability stems from:

(i) bodily injury of a person,

(ii) fraud or fraudulent misrepresentation; or

(iii) where applicable law prevents limitation of such liability.

(e) There shall be no limitation of liability for the Client specifically on its obligation to pay for the Services.

(f) Each provision of this Agreement that provides for a limitation of liability or disclaimer of warranties, represents an agreed allocation of the risks of this Agreement between the Parties. This

allocation is reflected in the pricing offered by Superside to Client and is an essential element of the basis of the bargain between the Parties. Each of these provisions is severable and independent of all other provisions of the Agreement, and each of these provisions will apply even if the warranties in the Agreement have failed of their essential purpose.

26. Non-solicitation

During your use of the Services, and for a period of one (1) year immediately after your last use of a Service, you agree not to solicit or induce any employee, vendor or independent contractor associated with Superside to terminate or breach an employment, contractual or other relationship with Superside, either on your own behalf or on behalf of any other business or organization, unless you have received written approval to do so, signed by a duly authorized representative of Superside, and paid an agreed release fee. Failure to obtain a written approval will be subject to a USD \$50,000 solicitation fee.

The non-solicitation restrictions of this section shall only apply to the creative, design, and project management personnel who have worked directly on the Plan and does not apply to an advertisement placed into the public domain for a position you are hiring for, unless you have solicited, directly or indirectly, the application from that employee, vendor, or independent contractor for that position.

27. Insurance

While this Agreement is in effect, Superside will maintain Cyber Liability and Technology E&O Insurance in the amount of \$2,000,000. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Superside in this Agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses.

28. Delivery of Notices and Consent to Service of Process

(a) The Parties mutually consent to the use of

- (i) electronic means to fulfil this Agreement and to deliver any notices, with the exception of service of process, pursuant to this Agreement; and
- (ii) electronic records to store information related to this Agreement or your use of the Services.
- (iii) Notices hereunder will be invalid unless made in writing and furnished via email (in each case to the email address provided by the other party)
- (iv) The date of receipt will be deemed the date on which such notice is transmitted.

(b) Each Party agrees that its respective submission to jurisdiction and consent to service of process by registered mail is made for the express benefit of the Parties to this Agreement. With

regards to any service of process related to any controversy, dispute, claim, or litigation contemplated in Section 35, the Parties irrevocably consent to service of process by registered mail at the following address:

(i) Superside: CSC Global, Attn: Konsus, Inc., 251 Little Falls Dr., Wilmington, DE, USA, 19808;

(ii) Client: the address provided by Client in Section 2 of the SOW.

29. Modification of this Agreement

No change, modification, amendment, addition or waiver (each a "Modification") of or to this Agreement or any part thereof shall be valid unless in writing and signed by representatives of the Parties. In the case of Superside only its CEO, CFO, Finance Director, and Head of Legal are authorized to consent to Modifications and no other persons have the power to bind Superside to Modifications

30. Survival of Terms

All sections of the Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

31. Enforcing Rights

Either Party's failure or delay to exercise or enforce any right or claim does not constitute a waiver of such right or claim and will in no way affect the Parties right to later enforce or exercise it, unless the Party issues an express written waiver, signed by a duly authorized representative of the Party as set out in Section 29.

32. Assignment

Neither Party may assign this Agreement, or any of the rights or obligations hereunder, without the other Party's prior written consent by a duly authorized representative. Consent shall not be unreasonably withheld. Notwithstanding the foregoing, either Party may assign this Agreement in connection with a bona fide merger, reorganization, acquisition or other transfer of all or substantially all of such Party's assets or voting securities. Any attempted assignment or transfer in violation of this section shall be null and void. Subject to the foregoing restrictions, this Agreement will inure to the benefit of the successors and permitted assigns of the Parties.

33. Enforceability of Agreement

This Agreement will inure to the benefit of the successors and permitted assigns of the Parties. If and to the extent any provision of this Agreement is held illegal, invalid, or unenforceable in whole or in part under applicable law, such provision or such portion thereof will be ineffective as to the jurisdiction in which it is illegal, invalid, or unenforceable to the extent of its illegality, invalidity, or unenforceability, and will be deemed modified to the extent necessary to conform to applicable law so as to give the maximum effect to the intent of the Parties. The illegality, invalidity, or unenforceability of such provision in that jurisdiction will not in any way affect the legality, validity, or enforceability of such provision in any other jurisdiction or of any other provision in any jurisdiction.

34. Force Majeure

Except for your accrued payment obligations for Services already rendered under this Agreement, no Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts beyond the affected Party's reasonable control, including without limitation: strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third-party's), trespassing, sabotage, theft or other criminal acts, cyber-attacks, failure of energy sources or transport network, acts of God, export bans, sanctions and other government actions, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, explosions, collapse of building structures, fires, floods, storms, earthquakes, or similar events, natural disasters or extreme adverse weather conditions (each a "Force Majeure Event"). The Party suffering a Force Majeure Event shall use reasonable efforts to mitigate against the effects of such Force Majeure Event, and the other Party may terminate this Agreement with immediate effect if the Force Majeure Event continues for more than twenty (20) business days.

35. Governing Law, Jurisdiction, and Venue

This Agreement shall be governed by, and construed in accordance with, the laws of the State of California without regard to its rules of conflict of laws and without regard to the United Nations Convention on Contracts for the International Sale of Goods ("CISG"). The Parties hereby irrevocably and unconditionally consent to and submit to the exclusive jurisdiction in the state or federal courts located in Riverside County, California for any controversy, dispute, claim, or litigation arising out of or relating to this Agreement and the transactions contemplated hereby (and agree not to commence any litigation relating thereto except in such courts), waive any objection to the laying of venue of any such litigation in the California Courts and agree not to plead or claim in any California Court that such litigation brought therein has been brought in any inconvenient forum. The parties each waive their right to a jury trial.

36. Notice for California Users

Under California Civil Code Section 1789.3, Users of Superside from California are entitled to the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1625 North Market Blvd., Suite N 112, Sacramento, CA 95834, or by telephone at (916) 445-1254 or (800) 952-5210. To the extent allowed by applicable law, nothing in this Section shall be construed as limiting or affecting, in any way, the provisions of Section 35.

37. Complete Agreement

This Agreement is the complete and exclusive statement of the mutual understanding of the Parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees.

38. Representations and Warranties

Each Party represents and warrants that it (i) is a legal entity duly incorporated, validly existing and in good standing, with all requisite corporate power and authority to execute, deliver and perform its obligations hereunder; (ii) is duly licensed, authorized or qualified to do business and is in good standing in every jurisdiction in which a license, authorization or qualification is required; (iii) shall comply with all laws and regulations applicable to the performance of its obligations hereunder; (iv) is not a party to any agreement with a third party, the performance of which is reasonably likely to affect adversely its ability to perform fully its respective obligations hereunder. EXCEPT FOR THE EXPRESS WARRANTIES MADE OR REFERENCED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE SUBJECT MATTER OF THIS AGREEMENT, AND EACH PARTY HEREBY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE.

39. Disclaimers

(a) Inasmuch as Superside may provide advisory services to you as a component of the Services, Superside hereby disclaims any guarantee that any advice given to you will generate or contribute to your desired result. Any advice given represents Superside's opinions only and you accept and agree that you are solely responsible for achieving your desired result related thereto. Where Superside case studies are included in the communication of such advice, results achieved in those case studies do not guarantee similar outcomes for you.

(b) Superside may, from time to time, receive customer referrals from third parties. If you were referred to Superside through such a referral, please be advised that the third party making such referral is eligible to receive valuable consideration in exchange for your successful retention as a Superside customer.

40. Ethical Guidelines

(c) Superside reserves the right, at its own discretion, to stop offering Services to companies that:

(i) are on the Norwegian Government Pension Fund ("NGPF") ethical exclusion list, in breach of the NGPF ethical guidelines or are actively hindering progress within diversity, equity and inclusion; or

(ii) engage in any action which brings the Client or Superside into public disrepute, contempt, scandal, or ridicule, or tend to shock, insult or offend the majority of the consuming public or any protected class or group thereof which include, but are not limited to, the following of which should be seen as representative and not an exhaustive list:

(1) Counterfeit or unauthorized goods;

(2) Illicit drugs and drug paraphernalia including any pseudo-pharmaceuticals;

(3) Tobacco-related, cigarette, electronic cigarette, or vaping products;

(4) Adult content or services;

(5) Unfair, predatory, or deceptive practices;

(6) Gambling;

(7) Weapons manufacturing services; or

(iii) fail to fully comply with applicable anti-money laundering and terrorism financing laws, including those set out by the US Treasury Dept. Office of Foreign Asset Control.

(d) Superside reserves the right to treat any violation of any of (i),(ii),(iii) of this Section as Termination for Cause as laid out in Section 5 of this Agreement.

41. Execution and Counterparts

This Agreement may be signed in counterparts and will be considered executed when signed by both Parties.

42. Relationship of the Parties

Superside and Client are independent contractors and nothing contained in this Agreement shall be construed to place them in the relationship of partners, principal/agent, employer/employee, or joint venturers. Neither Party, including their respective affiliates, directors, officers, employees, representatives, agents, or contractors, shall have the power or right to bind or obligate the other Party, nor shall it hold itself out as having such authority.

Signed for and on behalf of the Client

Date: _____

By: _____

Shaughn Hull
Chief Communications Officer

Signed for and on behalf of Konsus, Inc.

10/23/2024

Date: _____

By: _____

DocuSigned by:
David Grenville
18B3744AC4A042D...
David Grenville
Director of Legal

Approved As To Form: _____

Dean Derleth
City Attorney/LRM Director

Attested By: _____

Sylvia Edwards
City Clerk

Definitions

1. "Agreement" means the SOW, MSA, DPA, Purchase Order, Work Order and any additional contractual documents agreed to between the Parties and taken as one entire agreement as set out in Section 2 of the MSA;
2. "Agreement Term" means the corresponding number of months set out in the SOW;
3. "Agreement Term Amount" means the corresponding amount of United States Dollars as set out in the SOW;
4. "Billing Frequency" means the corresponding amount of months as set out in the SOW;
5. "CISG" means the United Nations Convention on Contracts for the International Sale of Goods;
6. "Claim" means any controversy, dispute, claim, or litigation arising out of or relating to this Agreement brought by either You or Superside against the other party;
7. "Client" means the person fully described as such in the SOW;
8. "Client Data" means your Proprietary Information, including non-public data provided by you to Superside to enable the provision of the Services, as set out in Section 20(a) of the MSA;
9. "Client Indemnified Party" means the Client, its affiliates, directors, officers, employees, representatives, agents, and contractors, as set out in Section 24(c) of the MSA;
10. "Disclosing Party" has the same meaning as set out in Section 20(a) of the MSA;
11. "Fast Turnaround" means any Project with a deadline that is 48 hours or less from the time at which the Project is requested by You;
12. "Force Majeure Event" has the meaning as set out in Section 34 of the MSA;
13. "In-Plan Hourly Rate" is the rate resulting from dividing the Monthly Amount by the Total Hours;
14. "Indemnified Party" has the meaning as set out in Section 24(e) of the MSA;
15. "Indemnifying Party" has the meaning as set out in Section 24(e)(i) of the MSA;
16. "Infringement Claim" means any breach of the IP Infringement Warranty, as set out in Section 24(c)(i) of the MSA;
17. "IP Infringement Warranty" means Superside' warranty that Work Product does not infringe or misappropriate the intellectual property rights of any third party, as set out in Section 21(a)(ii) of the MSA;
18. "Level" means the subscription service plan level number identified in the SOW, with the corresponding number of Total Hours set out in the Pricing Schedule;
19. "License Back" has the same meaning as set out in Section 21(c) of the MSA;
20. "List Prices" has the same meaning as set out in the SOW;

21. "Losses" means any direct losses, damages, or expenses (including reasonable attorneys' fees), as set out in Section 24(a);
22. "MSA" means the Master Service Agreement;
23. "Monthly Amount" has the same meaning as set out in the SOW;
24. "NGPF" means the Norwegian Government Pension Fund and its ethical exclusion list, located at <https://www.nbim.no/en/the-fund/responsible-investment/exclusion-of-companies/>;
25. "Overage" means any usage by You exceeding the Total Hours or engaging Services not offered in your Plan;
26. "Party" means each of Superside and the Client individually;
27. "Parties" means Superside and the Client collectively;
28. "Payment Terms" means the amount of time in which full payment of each invoice must be made, as set out in the SOW;
29. "Plan" means the subscription service plan identified in the SOW, with the corresponding capabilities set out in the Pricing Schedule ;
30. "Pricing Schedule" means the capabilities and hours, offered for each Plan and Level as set forth at <https://www.superside.com/pricing> ;
31. "Project" means an item comprising part of the Services described by a unique project identification number provided by Superside;
32. "Proprietary Information" means business, technical, or financial information relating to the Disclosing Party's business, as set out in Section 20(a) of the MSA;
33. "Receiving Party" has the same meaning as set out in Section 20(a) of the MSA;
34. "Quarterly" means a period of three(3) consecutive months;
35. "Services" means Superside's provided premium on-demand and fully managed creative subscription services including: design support, project management, and the capabilities applicable to Your Plan and Level described at any time on the Pricing Schedule as set out in Section 3 of the MSA;
36. "SOW" means the Statement of Work Purchase Order, or Work Order entered into between the Parties and forming part of the Agreement;
37. "Software" means the source code, object code or underlying structure, ideas, know-how and/or algorithms relevant to the Services or any software, documentation or data related to the Services, as set out in Section 18 of the MSA;
38. "Start Date" means the corresponding date identified in the SOW;
39. "Superside" means Konsus, Inc. (dba Superside) with its principal place of business as set out in the SOW;

40. "Superside Indemnified Party" means Superside, its affiliates, directors, officers, employees, representatives, agents, and contractors, as set in Section 24(b) of the MSA;
41. "Superside Site" means Superside's online portal accessible via www.superside.com;
42. "Terms" shall mean the terms and conditions contained in the entirety of the MSA;
43. "Termination for Cause" means a termination made in terms of Section 5(c) of the MSA
44. "Third-Party Claim" means any successful claim, suit, proceeding, demand, or action brought by a thirdparty, as set out in Section 24(a) of the MSA;
45. "Third-Party Materials" means any literary, pictorial,, audio-visual sound recording, and any other assets protected by copyright belonging to a third party, as set out in Section 23 of the MSA;
46. "Total Hours" are the allotted monthly hours provided in your selected Plan and Level in the Pricing Schedule;
47. "User" means an individual natural person with access to the Plan being provided to the Client;
48. "Work Product" means any deliverable under this Agreement that is provided by Superside to You as part of the Services and marked as "final", and that you accept in writing within a reasonable time. For avoidance of doubt, Work Product does not include any drafts, preparatory works or work in progress.;
49. "You", "Your", and "Yourself" refers to the Client as fully described in the SOW;
50. "Your Intellectual Property" means any and all specifically identified intellectual property that, as part of the Service, you instruct Superside to incorporate into the Work Product, as set out in section 21(a) of the MSA.