

## Upshot Terms of Service

Last Updated: 03/22/2022

### Welcome

Upshot Technologies, Inc. (“Upshot,” “we,” “us,” “our”) provides its protocol and platform (described below) to you (“you” or “User”), including through its website located at <https://app.upshot.xyz/> (collectively, the “Platform”), subject to the following Terms of Service (as amended from time to time, the “Terms”). By signing up for an account on the Platform or otherwise using or accessing the Platform, you acknowledge that you have read and agree to these Terms. The Privacy Policy, found at <https://app.upshot.xyz/privacy.pdf>, and all such additional terms, guidelines, and rules as set forth on the Platform are hereby incorporated by reference into these Terms and expressly agreed to and acknowledged by the User.

***PLEASE READ THESE TERMS OF SERVICE CAREFULLY, AS THEY CONTAIN AN AGREEMENT TO ARBITRATE AND OTHER IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS, REMEDIES, AND OBLIGATIONS. THE AGREEMENT TO ARBITRATE REQUIRES (WITH LIMITED EXCEPTION) THAT YOU SUBMIT CLAIMS YOU HAVE AGAINST US TO BINDING AND FINAL ARBITRATION, AND FURTHER (1) YOU WILL ONLY BE PERMITTED TO PURSUE CLAIMS AGAINST UPSHOT ON AN INDIVIDUAL BASIS, NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION OR PROCEEDING, (2) YOU WILL ONLY BE PERMITTED TO SEEK RELIEF (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) ON AN INDIVIDUAL BASIS, AND (3) YOU MAY NOT BE ABLE TO HAVE ANY CLAIMS YOU HAVE AGAINST US RESOLVED BY A JURY OR IN A COURT OF LAW.***

**Your Privacy:** At Upshot, we respect the privacy of our Users. For details please see our Privacy Policy. By using the Platform, you consent to our collection and use of personal data as outlined therein.

**Additional Terms:** We reserve the right, at our sole discretion, to change or modify portions of these Terms at any time. If we do this, we will post the changes on this page and will indicate at the top of this page the date these terms were last revised. We will also notify you, either through the Platform user interface, an email notification or other reasonable means. Any such changes will become effective no earlier than fourteen (14) days after they are posted, except that changes addressing new functions of the Platform will be effective immediately. Your continued use of the Platform and after the date any such changes become effective constitutes your acceptance of the new Terms.

### What is the Upshot Platform?

The Upshot Platform aims to provide close to real-time price feeds for NFTs. More information about the mechanisms used on the Platform can be found at <https://mirror.xyz/0x82FE4757D134a56BFC7968A0f0d1635345053104>.

**Smart-Contract Enabled:** The Digital Assets on the Platform are represented on smart contracts on the Ethereum blockchain that provide an immutable ledger of all transactions that occur on the Platform (“Smart Contracts”). This means that all Digital Assets, including the Protocol, are outside of the control of any one party, including Upshot, and are subject to many risks and uncertainties. We neither own nor control your wallet, including MetaMask and WalletConnect, the Protocol or any blockchain network, your browser, or any other third party site, product, or service that you might access, visit, or use for the purpose of enabling you to use the various features of the Platform. We will neither be liable for the acts or omissions of any such third parties, nor will we be liable for any damage that you may suffer as a result of your transactions or any other interaction with any such third parties. You understand that your Ethereum public address will be made publicly visible whenever you engage in a transaction on the Platform.

**Non-Custodial:** While Upshot offers the Platform, it does not buy, sell, or ever take custody or possession of the User’s Digital Assets. The Platform facilitates Users who post or link to their Digital Assets, but neither Upshot nor the Platform are custodians of the User’s Digital Assets. The User understands and acknowledges that the Smart Contracts do not give Upshot custody, possession, or control of the User’s Digital Asset at any time for the purpose of facilitating transactions on the Platform. You affirm that you are aware and acknowledge that Upshot is a non-custodial service provider and has designed this Platform to be directly accessible by the Users without any involvement or actions taken by Upshot. You are solely responsible for the custody of your Digital Assets (including the cryptographic private keys to the Digital Assets) you hold. Upshot accepts no responsibility for or liability to you, in connection with your use of a Digital Asset and makes no representations or warranties regarding any particular outcome of using your Digital Assets on the Platform. For the avoidance of doubt, Upshot may own or possess its own Digital Assets independent of and separate from the User’s Digital Assets.

## **How do I use the Platform?**

**Your Registration Obligations:** Registration data and certain other information about you are governed by our Privacy Policy. You must be at least 16 years old to register for an account as a User. If you are between 16 and 18 years old, you must have the express permission of a parent or legal guardian who can accept these Terms on your behalf. You are responsible for anything that occurs when anyone is signed into your account, as well as the security of the account.

**Connecting your Wallet:** In order for a User to access certain features and functionalities within the Platform, a User may be required to connect to a wallet via a browser extension through third party providers, such as MetaMask or WalletConnect. Wallets allow you to purchase, store, and engage in transactions using various Digital Assets. By using a wallet in connection with the Platform, you agree that you are using the wallet under the terms and

conditions of the applicable provider of such wallet. Wallets are not operated by, maintained by, or affiliated with Upshot, and Upshot does not have custody or control over the contents of your wallet and has no ability to retrieve or transfer its contents. Upshots accepts no responsibility for or liability to you, in connection with your use of a wallet and makes no representations or warranties regarding how the Platform will operate with any specific wallet. You are solely responsible for keeping your wallet secure and should never share your wallet's cryptographic private keys ("seed phrase") with anyone. If you discover an issue related to your wallet, please contact your wallet provider.

**Modifications to the Platform:** Upshot reserves the right to modify or discontinue, temporarily or permanently, the Platform (or any part thereof) with or without notice. You agree that Upshot will not be liable to you or to any third party for any modification, suspension, or discontinuance of the Platform.

### **What are the rules for using the Platform?**

When using the Platform, no User is allowed to:

- email or otherwise upload any content that (i) infringes any intellectual property or other proprietary rights of any party; (ii) you do not have a right to upload under any law or under contractual or fiduciary relationships; (iii) contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment; (iv) poses or creates a privacy or security risk to any person; (v) constitutes unsolicited or unauthorized advertising, promotional materials, commercial activities and/or sales, "junk mail," "spam," "chain letters," "pyramid schemes," "contests," "sweepstakes," or any other form of solicitation; (vi) is unlawful, harmful, threatening, abusive, harassing, tortious, excessively violent, defamatory, vulgar, obscene, pornographic, libelous, invasive of another's privacy, hateful racially, ethnically or otherwise objectionable; or (vii) in the sole judgment of Upshot, is objectionable or which restricts or inhibits any other person from using or enjoying the Platform, or which may expose Upshot or its users to any harm or liability of any type;
- interfere with or disrupt the Platform or servers or networks connected to the Platform, or disobey any requirements, procedures, policies or regulations of networks connected to the Platform ; or
- violate any applicable local, state, national or international law, or any regulations having the force of law, including but not limited to the U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC"), or which would involve proceeds of any unlawful activity;
- impersonate any person or entity, or falsely state or otherwise misrepresent your affiliation with a person or entity;

- solicit personal information from anyone under the age of 18;
- harvest or collect email addresses, or other contact information of other Users from the Platform by electronic or other means for any purpose;
- advertise or offer to sell or buy any goods or services for any business purpose that is not specifically authorized;
- further or promote any criminal activity or enterprise or provide instructional information about illegal activities, including for the purpose of concealing economic activity, laundering money, or financing terrorism;
- obtain or attempt to access or otherwise obtain any materials or information through any means not intentionally made available or provided for through the Platform;
- use any robot, spider, site search/retrieval application, or other device to retrieve or index any portion of the Platform or the content posted on the Platform, or to collect information about its Users for any unauthorized purpose;
- create user accounts by automated means or under false or fraudulent pretenses; and
- access or use the Platform for the purpose of creating a product or service that is competitive with any of our products or services.

### **How are intellectual property rights associated with the Platform handled?**

**Platform Content, Software and Trademarks:** You acknowledge and agree that the Platform may contain content or features (“Platform Content”) that are protected by copyright, patent, trademark, trade secret or other proprietary rights and laws. Except as expressly authorized by Upshot, you agree not to modify, copy, frame, scrape, rent, lease, loan, sell, distribute or create derivative works based on the Platform or the Platform Content, in whole or in part. In connection with your use of the Platform you will not engage in or use any data mining, robots, scraping or similar data gathering or extraction methods. If you are blocked by Upshot from accessing the Platform (including by blocking your IP address), you agree not to implement any measures to circumvent such blocking (e.g., by masking your IP address or using a proxy IP address). Any use of the Platform or the Platform Content other than as specifically authorized herein is strictly prohibited. The technology and software underlying the Platform or distributed in connection therewith are the property of Upshot, our affiliates and/or our partners (the “Software”). You agree not to copy, modify, create a derivative work of, reverse engineer, reverse assemble or otherwise attempt to discover the source code of or sell, assign, sublicense, or otherwise transfer any right in the Software. Any rights not expressly granted herein are reserved by Upshot.

The Upshot name and logos are trademarks and service marks of Upshot (collectively the “Upshot Trademarks”). Other company, product, and service names and logos used and displayed via the Platform may be trademarks or service marks of their respective owners who may or may not endorse or be affiliated with or connected to Upshot. Nothing in these Terms or

the Platform should be construed as granting, by implication, estoppel, or otherwise, any license or right to use any of Upshot Trademarks displayed on the Platform, without our prior written permission in each instance. All goodwill generated from the use of Upshot Trademarks will inure to our exclusive benefit.

**Third Party Material:** Under no circumstances will Upshot be liable in any way for any content or materials of any third parties (including Users), including, but not limited to, for any errors or omissions in any content, or for any loss or damage of any kind incurred as a result of the use of any such content. You acknowledge that Upshot does not pre-screen content, but that Upshot and its designees will have the right (but not the obligation) in their sole discretion to refuse or remove any content that is available via the Platform. Without limiting the foregoing, Upshot and its designees will have the right to remove any content that violates these Terms or is deemed by Upshot, in its sole discretion, to be otherwise objectionable. You agree that you must evaluate, and bear all risks associated with, the use of any content, including any reliance on the accuracy, completeness, or usefulness of such content.

**User Content Transmitted Through the Platform:** With respect to the content or other materials you upload through the Platform or share with other users or recipients (collectively, “User Content”), you represent and warrant that you own all right, title and interest in and to such User Content, and all Digital Assets, including, without limitation, all copyrights and rights of publicity contained therein. By uploading any User Content you hereby grant and will grant Upshot and its affiliated companies a nonexclusive, worldwide, royalty free, fully paid up, transferable, sublicensable, perpetual, irrevocable license to copy, display, upload, perform, distribute, store, modify and otherwise use your User Content in connection with the operation of the Platform.

You hereby authorize Upshot to collect usage data relating to your use of the Platform (“Usage Data”). We may use Usage Data for any purpose in accordance with applicable law and our Privacy Policy.

Any questions, comments, suggestions, ideas, feedback or other information about the Platform (“Submissions”), provided by you to Upshot are non-confidential and Upshot will be entitled to the unrestricted use and dissemination of these Submissions for any purpose, commercial or otherwise, without acknowledgment or compensation to you.

Upshot may preserve User Content and may also disclose User Content if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to: (a) comply with legal process, applicable laws or government requests; (b) enforce these Terms; (c) respond to claims that any User Content violates the rights of third parties; or (d) protect the rights, property, or personal safety of Upshot, its Users and the public.

**Copyright Complaints:** Upshot respects the intellectual property of others, and we ask our Users to do the same. If you believe that your work has been copied in a way that constitutes copyright infringement, or that your intellectual property rights have been otherwise violated,

you should notify Upshot of your infringement claim in accordance with the procedure set forth below.

Upshot will process and investigate notices of alleged infringement and will take appropriate actions under the Digital Millennium Copyright Act (“DMCA”) and other applicable intellectual property laws with respect to any alleged or actual infringement. A notification of claimed copyright infringement should be emailed to Upshot’s Copyright Agent at [request@upshot.io](mailto:request@upshot.io) (Subject line: “DMCA Takedown Request”).

To be effective, the notification must be in writing and contain the following information:

- an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other intellectual property interest;
- a description of the copyrighted work or other intellectual property that you claim has been infringed;
- a description of where the material that you claim is infringing is located on the Platform, with enough detail that we may find it on the Platform;
- your address, telephone number, and email address;
- a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright or intellectual property owner, its agent, or the law; and
- a statement by you, made under penalty of perjury, that the above information in your Notice is accurate and that you are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner’s behalf.

**Counter-Notice:** If you believe your User Content that was removed (or to which access was disabled) is not infringing, or that you have the authorization from the copyright owner, the copyright owner’s agent, or pursuant to the law, to upload and use the content in your User Content, you may send a written counter-notice containing the following information to the Copyright Agent:

- your physical or electronic signature;
- identification of the User Content that has been removed or to which access has been disabled and the location at which the User Content appeared before it was removed or disabled;
- a statement that you have a good faith belief that the User Content was removed or disabled as a result of mistake or a misidentification of the User Content; and
- your name, address, telephone number, and email address, a statement that you consent to the jurisdiction of the federal court located within the Northern District of California and

a statement that you will accept service of process from the person who provided notification of the alleged infringement.

If a counter-notice is received by the Copyright Agent, Upshot will send a copy of the counter-notice to the original complaining party informing that person that it may replace the removed content or cease disabling it in 10 business days. Unless the copyright owner files an action seeking a court order against the content provider, member or user, the removed User Content may be replaced, or access to it restored, in 10 to 14 business days or more after receipt of the counter-notice, at our sole discretion.

**Repeat Infringer Policy:** In accordance with the DMCA and other applicable law, Upshot has adopted a policy of terminating, in appropriate circumstances and at Upshot's sole discretion, Users who are deemed to be repeat infringers. Upshot may also at its sole discretion limit access to the Platform and/or terminate the memberships of any users who infringe any intellectual property rights of others, whether or not there is any repeat infringement.

**Users Agree to Cooperate with Upshot:** Users expressly agree to cooperate and timely respond to Upshot's investigations, requests, and inquiries related to DMCA disputes or allegations of infringement.

### **What are the risks with using the Platform?**

The value, price and liquidity of Digital Assets are extremely volatile, may increase or decrease drastically and there may be a substantial risk in using, buying, selling, holding or investing in Digital Assets. You should consult your financial advisor, legal or tax professional regarding your specific situation and financial condition and carefully consider whether trading or holding Digital Assets is suitable for you.

Upshot does not provide investment, tax, or legal advice, and you are solely responsible for determining whether any investment, investment strategy or related transaction is appropriate for you based on your personal investment objectives, financial circumstances and risk tolerance. The information provided on the Platform or any of its content or resources does not constitute investment advice, financial advice, trading advice or any other sort of advice and you should not treat any of the Platform, content or resources as such. Upshot does not recommend that any Digital Asset should be bought, earned, sold, or held by you. UPSHOT IS NEITHER RESPONSIBLE NOR LIABLE FOR ANY INFORMATION THAT IS OBTAINED OR ACCESSED THROUGH THE PLATFORM OR ANY DECISION MADE OR ACTION TAKEN IN RELIANCE THEREON.

### **What other information should Users keep in mind?**

**Fees:** Upshot does not generally collect any fees, commissions, or royalties for transactions occurring outside of the Platform. Users irrevocably release, acquit, and forever discharge Upshot and its subsidiaries, affiliates, officers, and successors of any liability for royalties, fines, or fees not received from any off-market transaction.

**Taxes:** Users are responsible to pay any and all sales, use, transfer, value-added and other taxes, duties, and assessments now or hereafter claimed or imposed by any governmental authority, associated with your use of the Platform (including, without limitation, any taxes that may become payable as the result of your ownership, transfer, purchase, sale, or creation of any Digital Asset).

**Beta Platforms:** Certain features on the Platform may be offered while still in “beta” form (“Beta Platforms”). Upshot will utilize best efforts to identify the Beta Platforms by labeling it as such on its Platform. By accepting these Terms or using the Beta Platforms, you understand and acknowledge that the Beta Platforms are being provided as a “Beta” version and made available on an “As Is” or “As Available” basis. The Beta Platforms may contain bugs, errors, and other problems. YOU ASSUME ALL RISKS AND ALL COSTS ASSOCIATED WITH YOUR USE OF THE BETA PLATFORMS, INCLUDING, WITHOUT LIMITATION, ANY INTERNET ACCESS FEES, BACKUP EXPENSES, COSTS INCURRED FOR THE USE OF YOUR DEVICE AND PERIPHERALS, AND ANY DAMAGE TO ANY DIGITAL ASSET, EQUIPMENT, SOFTWARE, INFORMATION OR DATA. In addition, we are not obligated to provide any maintenance, technical, or other support for the Beta Platforms.

### **What is Upshot’s privacy policy?**

Our privacy policy is a part of these Terms. Please review the Upshot Privacy Policy <https://app.upshot.xyz/privacy.pdf>, which also governs the Platform and informs Users of our data collection practices.

### **Any other legal terms?**

**Third-Party Services and Websites:** The Platform may provide links or other access to services, sites, technology, content and resources that are provided or otherwise made available by third parties (the “Third-Party Services”). Your access and use of the Third-Party Services may also be subject to additional terms and conditions, privacy policies, or other agreements with such third party, and you may be required to authenticate to or create separate accounts to use Third-Party Services on the websites or via the technology platforms of their respective providers. Some Third-Party Services will provide us with access to certain information that you have provided to third parties, including through such Third-Party Services, and we will use, store and disclose such information in accordance with our Privacy Policy. For more information about the implications of activating Third-Party Services and our use, storage and disclosure of information related to you and your use of such Third-Party Services within the Service, please see our Privacy Policy. Upshot has no control over and is not responsible for such Third-Party Services, including for the accuracy, availability, reliability, or completeness of information shared by or available through Third-Party Services, or on the privacy practices of Third-Party Services. We encourage you to review the privacy policies of the third parties providing Third-Party Services prior to using such services. You, and not Upshot, will be responsible for any and all costs and charges associated with your use of any Third-Party Services. Upshot enables these Third-Party Services merely as a convenience and the integration or inclusion of such Third-Party Services does not imply an endorsement or recommendation. Any dealings you have with third parties while using the Platform are between you and the third party. Upshot will



not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any Third-Party Services.

**Indemnity and Release:** You agree to release, indemnify and hold Upshot and its affiliates and their officers, employees, directors and agents (collectively, “Indemnitees”) harmless from any from any and all losses, damages, expenses, including reasonable attorneys’ fees, rights, claims, actions of any kind and injury (including death) arising out of or relating to your use of the Platform, Digital Assets, User Content, your connection to the Platform, your violation of these Terms of Service or your violation of any rights of another. Notwithstanding the foregoing, you will have no obligation to indemnify or hold harmless any Indemnitee from or against any liability, losses, damages or expenses incurred as a result of any action or inaction of such Indemnitee. If you are a California resident, you waive California Civil Code Section 1542, which says: “A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.” If you are a resident of another jurisdiction, you waive any comparable statute or doctrine.

**Disclaimer of Warranties:** Upshot does not represent, warrant, or guarantee any of the pricing information set by, or provided to, Users on the Platform or that the actual pricing for any NFT will reflect what is determined by such Users using the Platform. Digital Asset pricing and transactions including but not limited to primary sales, secondary market sales, listings, offers, bids, acceptances, and other operations utilize experimental Smart Contract and blockchain technology, including Digital Assets, consensus algorithms, and decentralized or peer-to-peer networks and systems. Users acknowledge and agree that such technologies are experimental, speculative, and inherently risky and may be subject to bugs, malfunctions, timing errors, hacking and theft, or changes to the protocol rules of the Ethereum blockchain (i.e., "forks"), which can adversely affect the Smart Contracts and may expose you to a risk of total loss, forfeiture of your Digital Assets, or lost opportunities to buy or sell Digital Assets. Upshot is not responsible for any losses due to the vulnerability or any kind of failure or abnormal behavior of such Smart Contracts and blockchain technologies or any other features of the Platform. You further acknowledge that: (i) the information that results from the Platform is provided for information purposes only and is not intended for any trading purposes; and (ii) Upshot does not guarantee the sequence, accuracy, completeness, or timeliness of the Platform or any information, facts, views, opinions, statements or recommendations contained on the Platform. YOUR USE OF THE PLATFORM IS AT YOUR SOLE RISK. THE PLATFORM IS PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. UPSHOT EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

UPSHOT MAKES NO WARRANTY THAT (I) THE PLATFORM WILL MEET YOUR REQUIREMENTS, (II) THE PLATFORM WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (III) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF

THE PLATFORM WILL BE ACCURATE OR RELIABLE, OR (IV) THE QUALITY PLATFORM, INFORMATION, DATA OR OTHER PRODUCTS OR MATERIALS PURCHASED OR OBTAINED BY YOU THROUGH THE PLATFORM WILL MEET YOUR EXPECTATIONS.

**Limitation of Liability:** YOU EXPRESSLY UNDERSTAND AND AGREE THAT UPSHOT WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY DAMAGES, OR DAMAGES FOR LOSS OF PROFITS INCLUDING BUT NOT LIMITED TO, LOSS IN VALUE OF ANY DIGITAL ASSET, DAMAGES FOR LOSS OF GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF UPSHOT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, RESULTING FROM: (I) THE USE OR THE INABILITY TO USE THE PLATFORM; (II) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND PLATFORMS RESULTING FROM ANY DIGITAL ASSET, GOODS, DATA, INFORMATION OR MATERIALS PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE PLATFORM; (III) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (IV) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE PLATFORM; OR (V) ANY OTHER MATTER RELATING TO THE PLATFORM. IN NO EVENT WILL UPSHOT'S TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES OR CAUSES OF ACTION EXCEED THE AMOUNT YOU HAVE PAID UPSHOT IN THE LAST SIX (6) MONTHS, OR, IF GREATER, ONE HUNDRED DOLLARS (\$100).

SOME JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OR EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS SET FORTH ABOVE MAY NOT APPLY TO YOU OR BE ENFORCEABLE WITH RESPECT TO YOU. IF YOU ARE DISSATISFIED WITH ANY PORTION OF THE PLATFORM OR WITH THESE TERMS, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USE OF THE PLATFORM.

IF YOU ARE A USER FROM NEW JERSEY, THE FOREGOING SECTIONS TITLED "DISCLAIMER OF WARRANTIES" AND "LIMITATION OF LIABILITY" ARE INTENDED TO BE ONLY AS BROAD AS IS PERMITTED UNDER THE LAWS OF THE STATE OF NEW JERSEY. IF ANY PORTION OF THESE SECTIONS IS HELD TO BE INVALID UNDER THE LAWS OF THE STATE OF NEW JERSEY, THE INVALIDITY OF SUCH PORTION SHALL NOT AFFECT THE VALIDITY OF THE REMAINING PORTIONS OF THE APPLICABLE SECTIONS.

**Termination Rights:** You agree that Upshot, in its sole discretion, may suspend or terminate your account (or any part thereof) or use of the Platform and remove and discard any content, including User Content, within the Platform, for any reason, including, without limitation, for lack of use or if Upshot believes that you have violated or acted inconsistently with the letter or spirit of these Terms. Any suspected fraudulent, abusive or illegal activity that may be grounds for termination of your use of Platform, may be referred to appropriate law

enforcement authorities. Upshot may also in its sole discretion and at any time discontinue providing the Platform, or any part thereof, with or without notice. You agree that any termination of your access to the Platform under any provision of these Terms may be effected without prior notice, and acknowledge and agree that Upshot may immediately deactivate or delete your account and all related information and files in your account and/or bar any further access to such files or the Platform. Further, you agree that Upshot will not be liable to you or any third party for any termination of your access to the Platform.

**User disputes:** You agree that you are solely responsible for your interactions, if any, with other Users in connection with the Platform and Upshot will have no liability or responsibility with respect thereto. Upshot reserves the right, but has no obligation, to become involved in any way with disputes between you and any other User of the Platform.

**Entire Agreement:** These Terms constitute the entire agreement between you and Upshot and govern your use of the Platform, superseding any prior agreements between you and Upshot with respect to the Platform. You also may be subject to additional terms and conditions that may apply when you use affiliate or Third Party Services. These Terms will be governed by the laws of the State of California without regard to its conflict of law provisions. With respect to any disputes or claims not subject to arbitration, as set forth below, you and Upshot agree to submit to the personal and exclusive jurisdiction of the state and federal courts located within San Francisco County, California. The failure of Upshot to exercise or enforce any right or provision of these Terms will not constitute a waiver of such right or provision. If any provision of these Terms is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of these Terms remain in full force and effect. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Platform or these Terms must be filed within one (1) year after such claim or cause of action arose or be forever barred. A printed version of these Terms and of any notice given in electronic form will be admissible in judicial or administrative proceedings based upon or relating to this agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. You may not assign these Terms without the prior written consent of Upshot, but Upshot may assign or transfer these Terms, in whole or in part, without restriction. The section titles in these Terms are for convenience only and have no legal or contractual effect. Notices to you may be made via either email or regular mail. The Platform may also provide notices to you of changes to these Terms or other matters by displaying notices or links to notices generally on the Platform.

**Notice for California Users:** Under California Civil Code Section 1789.3, users of the Platform from California are entitled to the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer Platforms 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. You may contact Upshot Technologies, Inc. at 10 Williams St #41, Boston MA, 02119 or by phone at (978) 707-5076.

## **Dispute Resolution By Binding Arbitration:**

**PLEASE READ THIS SECTION CAREFULLY AS IT AFFECTS YOUR RIGHTS.**

a. **Agreement to Arbitrate:** This Dispute Resolution by Binding Arbitration section is referred to in Terms as the “Arbitration Agreement.” You agree that any and all disputes or claims that have arisen or may arise between you and Upshot, whether arising out of or relating to these Terms (including any alleged breach thereof), the Platform, and any aspect of the relationship or transactions between us (including the use of Digital Assets), shall be resolved exclusively through final and binding arbitration, rather than a court, in accordance with the terms of this Arbitration Agreement, except that you may assert individual claims in small claims court, if your claims qualify. Further, this Arbitration Agreement does not preclude you from bringing issues to the attention of federal, state, or local agencies, and such agencies can, if the law allows, seek relief against us on your behalf. You agree that, by entering into these Terms, you and Upshot are each waiving the right to a trial by jury or to participate in a class action. Your rights will be determined by a neutral arbitrator, not a judge or jury. The Federal Arbitration Act governs the interpretation and enforcement of this Arbitration Agreement.

**b. Prohibition of Class and Representative Actions and Non-Individualized Relief: YOU AND UPSHOT AGREE THAT EACH OF US MAY BRING CLAIMS AGAINST THE OTHER ONLY ON AN INDIVIDUAL BASIS AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE ACTION OR PROCEEDING. UNLESS BOTH YOU AND UPSHOT AGREE OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE OR JOIN MORE THAN ONE PERSON’S OR PARTY’S CLAIMS AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A CONSOLIDATED, REPRESENTATIVE, OR CLASS PROCEEDING. ALSO, THE ARBITRATOR MAY AWARD RELIEF (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF NECESSITATED BY THAT PARTY’S INDIVIDUAL CLAIM(S), EXCEPT THAT YOU MAY PURSUE A CLAIM FOR AND THE ARBITRATOR MAY AWARD PUBLIC INJUNCTIVE RELIEF UNDER APPLICABLE LAW TO THE EXTENT REQUIRED FOR THE ENFORCEABILITY OF THIS PROVISION.**

c. **Pre-Arbitration Dispute Resolution:** Upshot is always interested in resolving disputes amicably and efficiently, and most User concerns can be resolved quickly and to the User’s satisfaction by emailing support at [contact@upshot.io](mailto:contact@upshot.io). If such efforts prove unsuccessful, a party who intends to seek arbitration must first send to the other, by certified mail, a written Notice of Dispute (“Notice”). The Notice to Upshot should be sent to 10 Williams St #41, Boston MA, 02119 (“Notice Address”). The Notice must (i) describe the nature and basis of the claim or dispute and (ii) set forth the specific relief sought. If Upshot and you do not resolve the claim within sixty (60) calendar days after the Notice is received, you or Upshot may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by Upshot or you shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which you or Upshot is entitled.

**d. Arbitration Procedures:** Arbitration will be conducted by a neutral arbitrator in accordance with the American Arbitration Association's ("AAA") rules and procedures, including the AAA's Consumer Arbitration Rules (collectively, the "AAA Rules"), as modified by this Arbitration Agreement. For information on the AAA, please visit its website, <http://www.adr.org>. Information about the AAA Rules and fees for consumer disputes can be found at the AAA's consumer arbitration page, <http://www.adr.org/consumer>, as may be updated from time to time. If there is any inconsistency between any term of the AAA Rules and any term of this Arbitration Agreement, the applicable terms of this Arbitration Agreement will control unless the arbitrator determines that the application of the inconsistent Arbitration Agreement terms would not result in a fundamentally fair arbitration. The arbitrator must also follow the provisions of these Terms as a court would. All issues are for the arbitrator to decide, including, but not limited to, issues relating to the scope, enforceability, and arbitrability of this Arbitration Agreement. Although arbitration proceedings are usually simpler and more streamlined than trials and other judicial proceedings, the arbitrator can award the same damages and relief on an individual basis that a court can award to an individual under the Terms and applicable law. Decisions by the arbitrator are enforceable in court and may be overturned by a court only for very limited reasons.

Unless Upshot and you agree otherwise, any arbitration hearings will take place in a reasonably convenient location for both parties with due consideration of their ability to travel and other pertinent circumstances. If the parties are unable to agree on a location, the determination shall be made by AAA. If your claim is for \$10,000 or less, Upshot agrees that you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the AAA Rules. If your claim exceeds \$10,000, the right to a hearing will be determined by the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based.

**e. Costs of Arbitration:** Payment of all filing, administration, and arbitrator fees (collectively, the "Arbitration Fees") will be governed by the AAA Rules, unless otherwise provided in this Arbitration Agreement. If the value of the relief sought is \$75,000 or less, at your request, Upshot will pay all Arbitration Fees. If the value of relief sought is more than \$75,000 and you are able to demonstrate to the arbitrator that you are economically unable to pay your portion of the Arbitration Fees or if the arbitrator otherwise determines for any reason that you should not be required to pay your portion of the Arbitration Fees, Upshot will pay your portion of such fees. In addition, if you demonstrate to the arbitrator that the costs of arbitration will be prohibitive as compared to the costs of litigation, Upshot will pay as much of the Arbitration Fees as the arbitrator deems necessary to prevent the arbitration from being cost-prohibitive. Any payment of attorneys' fees will be governed by the AAA Rules.

**f. Confidentiality:** All aspects of the arbitration proceeding, and any ruling, decision, or award by the arbitrator, will be strictly confidential for the benefit of all parties. **g. Severability** If a court or the arbitrator decides that any term or provision of this Arbitration Agreement (other than the subsection (b) titled "Prohibition of Class and Representative Actions and Non-Individualized Relief" above) is invalid or unenforceable, the parties agree to replace such

term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Arbitration Agreement shall be enforceable as so modified. If a court or the arbitrator decides that any of the provisions of subsection (b) above titled “Prohibition of Class and Representative Actions and Non-Individualized Relief” are invalid or unenforceable, then the entirety of this Arbitration Agreement shall be null and void, unless such provisions are deemed to be invalid or unenforceable solely with respect to claims for public injunctive relief. The remainder of the Terms will continue to apply.

**h. Future Changes to Arbitration Agreement:** Notwithstanding any provision in these Terms to the contrary, Upshot agrees that if it makes any future change to this Arbitration Agreement (other than a change to the Notice Address) while you are a User of the Platforms, you may reject any such change by sending Upshot written notice within thirty (30) calendar days of the change to the Notice Address provided above. By rejecting any future change, you are agreeing that you will arbitrate any dispute between us in accordance with the language of this Arbitration Agreement as of the date you first accepted these Terms (or accepted any subsequent changes to these Terms).