

# YOUTUBE POWER PROGRAM TERMS AND CONDITIONS

Last Update: February 2024

Welcome to the YouTube Power Program offered by **Michelle O'Malley Co. LLC** (the "Company"). Your use of and participation in the YouTube Power Program (the "Program") is subject to the following terms and Conditions ("Terms"). Please read these Terms carefully before using or participating in the Program. Your use of or participation in the Program is conditioned on your acceptance of and compliance with these Terms. These Terms apply to all visitors, users, and others who access or use the Program. By using or participating in the Program, you agree to be bound by these Terms. If you disagree with or do not accept any part of these Terms, please immediately discontinue your use of and participation in the Program.

You represent that you are over the age of 18. Company does not permit those under 18 to use its website or services.

WHEREAS, Company is in the business of creating and providing educational content in the form of its Program, which consists of both **live virtual coaching sessions** and **pre-recorded videos, worksheets, and a private online community** directed to entrepreneurs wanting to monetize their content on YouTube; and

WHEREAS, You desire to use and participate in the Program during the Term set forth herein.

NOW THEREFORE, for and in consideration of the mutual terms, promises, covenants, representations, warranties, and conditions herein and other good and valuable consideration stated herein, the receipt and sufficiency of which is expressly acknowledged, You and Company irrevocably agree, stipulate, and covenant as follows:

## **1. Term and Termination**

1.1 **Term**. The duration of this agreement shall be **six (6) months**, commencing on the Effective Date, unless earlier terminated as provided herein, or unless extended by mutual written agreement signed by both Parties prior to the expiration of the Term.

1.2 **Termination**. Either Party may terminate at any time upon reasonable written notice during the Term if:

1.2.1 the other Party breaches any material provision and does not cure such breach within twenty-one (21) calendar days after receiving notice thereof from the non-breaching Party;

1.2.2 the other Party files a petition for bankruptcy, becomes insolvent, acknowledges its insolvency in any manner, ceases to do business, makes an assignment for the benefit of its creditors, or has a receiver, trustee or similar Party appointed for its property.

1.3 Upon termination:

- 1.3.1 Each Party shall promptly return any tangible materials or intellectual property delivered, transmitted, or received pursuant to these Terms and the Purpose, at each Party's sole expense; and
- 1.3.2 Each Party shall pay, within sixty (60) calendar days, any and all amounts due or payable as of the date of termination; and
- 1.3.3 Immediately cease any and all use of the other Party's intellectual property or other materials in the Party's possession.
- 1.4 **Timeliness.** Both Parties agree and understand that time is important to the execution and completion of Purpose, and both Parties shall devote necessary energy and time to perform such services as necessary in accordance with any requests as may be given from time to time during the term of the Agreement to achieve the Purpose.

## **2 Services**

- 2.1 **Company Services & Responsibilities.** For the Term, Company shall provide to You educational content in the form of **pre-recorded videos, worksheets, and access to Company's private online community** and twelve (12) **live virtual coaching sessions** on the subject of monetizing a YouTube account (the "Services").
- 2.2 **Additional Services.** In the event a situation arises in which additional services are needed, e.g., additional live coaching sessions, You shall notify Company of such request, and You shall pay the rate for such additional services as shall be determined at that time, upon Company's sole discretion or option. Any additional services shall be subject to Company's capacity to provide such additional services and shall be subject to prior written agreement by Company.

## **3 Price and Payment**

- 3.1 **Single Payment Option.** On the Effective Date, You shall pay Company a total sum of **four-hundred-ninety-seven dollars (USD \$497.00)** (the "Fee") for the Services. All payments are non-refundable except if a refund request is submitted in writing to Company within seven (7) calendar days of making payment of the Fee to Company.
- 3.2 **Payment Plan Option.** In some cases, a payment plan may be made available at Company's sole discretion. The payment plan shall consist of You making six (6) monthly payments to Company in the amount of ninety-seven dollars (US \$97.00), with the first payment (the "Initial Payment") due on the date You request the Services and the remaining five (5) payments being due every thirty (30) calendar days after the Initial Payment is made for five (5) months or until the fee of five-hundred-eighty-two dollars (USD \$582.00) is paid to Company. By selecting this Payment Plan Option, You authorize Company to automatically charge the credit card You put on file with Company for any and all fees and balances owed and You agree to keep your payment information current with Company. If any payment

is insufficient or declined for any reason, You will receive an automatic fourteen (14) calendar day grace period ("Grace Period") to pay the outstanding balance owed. If the outstanding balance is not paid before the Grace Period ends, You will be removed from the Program and your access to the Services will be revoked, without liability on the part of the Company, and the matter will be referred to a third-party collection service to recover the outstanding amounts owed by You.

- 3.3 **Failure to Perform.** In the event Company cannot perform the Services or offer the Program outlined in these Terms for any reason, Company shall promptly refund any amount paid by You for Services not yet delivered, including any unearned portion of any payment received. In the event of failure to perform, neither Party shall have any further liability with respect to these Terms.

#### 4 **Intellectual Property**

- 4.1 **License.** Company grants to You a limited, royalty-free, non-exclusive, non-transferable, and non-sublicensable license to use Company's intellectual property in connection with Company providing its Program and Services to You, including access to Company's **pre-recorded videos, worksheets, and access to Company's private online community** and access to **recordings of the live virtual coaching sessions** or other proprietary materials (whether registered or not) provided to You pursuant to these Terms and the provision of the Services in accordance with these Terms. Other than this express license, Company grants no right or license to You by implication, estoppel, or otherwise to any Company intellectual property.

- 4.1.1 You shall not copy, download, record, screen-record, screenshot, or otherwise duplicate in any way Company's videos, content, or sessions.
- 4.1.2 You shall not allow any third-party to view Company videos or written content or to participate in Company's sessions without prior written consent from Company.
- 4.1.3 You shall not share your login credentials or allow any third-party to access Company's online community or Company's videos, written content, or worksheets, without prior written consent from Company.

#### 5 **Release**

- 5.1 You expressly agree and consent that Company may use any images, audio recordings, and/or video recordings of You obtained while You are enrolled in the Program or using the Services. You waive any right to payment, royalties, or any other consideration for the use of such images, audio recordings, or video recordings. You waive the right to inspect or approve the finished product, including written or electronic copy, wherein Your likeness appears. Company is hereby held harmless and released and forever discharged from all claims,

demands, and causes of action which You, your heirs, representatives, executors, administrators, or any other persons acting on Your behalf or on behalf of Your estate have or may have by reason of this authorization.

## **6 Representations and Warranties.**

- 6.1 Each Party hereby represents and warrants that, throughout the Term, it is not and will not be in any way restricted or prohibited, contractually or otherwise, from adhering to these Terms or performing the Services contemplated hereunder.
- 6.2 Each Party hereby represents and warrants to the other that:
  - 6.2.1 Each Party has full power and authority to execute, deliver and perform and is not subject to any contractual restrictions that would prevent performance hereunder;
  - 6.2.2 All Services will be performed in accordance with the generally accepted standards of care, skill, diligence and professional competence applicable to those engaged in providing similar services at the time when, and the place where, the Services are rendered; and
- 6.3 You expressly acknowledge and agree that the Program and the Services are not a guarantee that You will be able to monetize your YouTube channel or account and that results may vary from participant to participant. Further, Company cannot and will not guarantee that its Services will work with new algorithms or rules used by YouTube or its parent company, which are known to change from time to time. Company makes no warranties with respect to any aspect of the Services or the Program or any materials related thereto or offered in connection therewith and, to the fullest extent possible under the laws governing these Terms, disclaims all implied warranties, including but not limited to warranties of fitness for a particular purpose, accuracy, timeliness, and merchantability. You accept and agree that You are fully responsible for Your progress and results and that Company offers no representations, warranties or guarantees, verbally or in writing, regarding Your future earnings, business profit, marketing performance, customer growth, or results of any kind. Company does not guarantee that You will achieve any results using any of the ideas, tools, strategies or recommendations presented at the Program or in connection with the Services, and nothing at the Program or Services is a promise or guarantee to You of such results.
- 6.4 Company represents that it is a duly and validly existing entity, in good standing to do business within the state, is in compliance with all laws and regulations relating to business, is fully authorized and empowered to enter into this Agreement, and that the performance of the obligations under this Agreement will not violate or infringe upon the rights of any third party or violate any

agreement between the Parties and any other person, firm or organization or any law or governmental regulation.

7 **Limitation of Liability.**

7.1 **Precautions.** You shall take all precautions necessary for the safety of and prevention of loss or damage to Company property (including intellectual property).

7.2 **Damages.** Except with respect to each Parties' indemnification obligations, neither Party shall be liable to the other for any special, indirect, incidental, punitive, or consequential damages arising from or related to these Terms. The foregoing limitation applies to all causes of action in the aggregate, including without limitation to breach of contract, breach of warranty, negligence, strict liability, and other torts.

8 **Notice.** Any notice to Company required by or permitted pursuant to these Terms must be made in writing to michelle@michelleomalleyco.com. Any notice to You will be sent to the email address You used when You signed up for the Program and/or the Services. Any notice required pursuant to these Terms will be deemed to be delivered when actually received.

9 **Cooperation.** You acknowledge and agree that successful provision of the Services to be provided hereunder shall require Your full, good faith cooperation with Company and any third parties who may be independent contractors, employees, agents, or representatives of Company.

10 **Force Majeure.**

10.1 **Force Majeure.** Company shall not be liable for any delay or failure to perform the obligations imposed by this Agreement to the extent that such delay or failure is due to an event beyond Company's reasonable control and which, by the exercise of reasonable diligence, Company is unable to prevent. Such events include, but are not limited to, fire, explosion, flood or other declared natural disaster or catastrophe, epidemic or pandemic, governmental acts, orders, or regulations, strikes or labor difficulties, to the extent not caused, in whole or in part, by the fault or negligence of Company.

10.2 **Delay.** Any such excuse for delay shall last only as long as the event remains beyond the reasonable control of Company. However, Company shall use its best efforts to minimize the delays caused by any such event beyond its reasonable control; provided, however, that nothing herein shall require Company to settle any demands of or disputes with laborers. Company must notify You promptly upon the occurrence of any such event which may cause delayed performance.

11 **Miscellaneous.**

11.1 **Entire Agreement.** These Terms contain the entire agreement between the Parties with respect to the subject matter hereof and supersede and replace any oral or written agreements heretofore entered into between the Parties. These

Terms cannot be modified, or any performance or condition waived, in whole or in part, except by mutually agreed upon written amendment.

- 11.2 **Waiver**. No failure to exercise, and no delay in exercising, on the part of either Party, any privilege, any power, or any rights hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right or power hereunder preclude further exercise of any other right hereunder.
- 11.3 **Interpretation, Severability, and Reformation**. These Terms shall be interpreted in such a manner as to be valid and effective under applicable law. If any provision of these Terms is deemed unenforceable or unlawful for any reason, it shall be deemed severable from, and shall in no way affect the validity or enforceability of any remaining provisions, and the rights and obligations of the Parties shall be enforced to the fullest extent possible.
- 11.4 **Survival**. To the extent consistent with these Terms, all representations, warranties, and post-termination obligations contained in these Terms shall survive the expiration of the Term or Termination of the agreement set forth herein.
- 11.5 **Compliance**. Failure of Company to insist upon strict compliance with any of the terms, covenants or conditions of these Terms shall not be deemed a waiver of such terms, covenants or conditions.
- 11.6 **Binding Effect**. These Terms shall be binding upon and inure to the benefit of Company and to any of its successors. These Terms are not assignable by You, but shall be binding upon and, to the extent provided for in these Terms, inure to the benefit of Your heirs, executors, administrators and legal representatives.
- 11.7 **Advertising and Publicity**. Neither Party shall refer to the other directly or indirectly in a defamatory, disparaging, or negative manner via any advertisement, news release, online review, or publication without prior written approval from such other Party, including but not limited to email, podcasts, television or radio, computer networks or Internet bulletin boards, blogs, social media, or any other form of communication.
- 11.8 **Execution in Counterparts**. These Terms may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
- 11.9 **Disputes**. For any claim, dispute, or controversy (each a "Dispute") which may arise from Your engagement pursuant to these Terms, either Party may request such Dispute be submitted to binding arbitration before a mutually agreed-upon arbitrator in accordance with the arbitration legislation of the governing jurisdiction. The arbitrator's decision or award will be final.
- 11.10 **Governing Law**. These Terms shall be governed and interpreted in accordance with the laws of the State of Texas, without regard to the conflicts of laws principal. Any and all matters arising out of or relating to these Terms

shall be brought before a court of competent jurisdiction in Harris County or Fort Bent County, Texas. The Parties hereby consent to the personal and exclusive jurisdiction and venue of these courts.

BY EXECUTING THIS AGREEMENT, EACH OF THE PARTIES UNDERSTANDS AND IRREVOCABLY WAIVES ITS RIGHT TO A JURY TRIAL AND FURTHER ACCEPTS AND SUBJECTS ITSELF TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE STATE AND FEDERAL COURTS LOCATED IN HARRIS AND/OR FORT BEND COUNTIES, TEXAS, WITHOUT RECOURSE TO ARBITRATION.

11.11 **Assignment**. Neither Party may assign these Terms or the rights and obligations under any Exhibit attached hereto or delegate its performance under these Terms to any third party without obtaining the other Party's prior written consent, except that Company may assign these Terms in its entirety to: (i) its affiliate; or (ii) any successor entity in the event of such transfer of all or substantially all of its assets or stock, merger, spin-off, consolidation, reorganization, or other business combination or change in control, so long as the assigning Party provides notice thereof to the other Party.

Any purported assignment of rights in violation of this Section is void. Subject to the foregoing, these Terms will be binding upon and inure to the benefit of the Parties, their successors, and their permitted assigns.