

# SOUL MACHINES, INC SOFTWARE AS A SERVICE AGREEMENT

## GENERAL TERMS AND CONDITIONS

This Software as a Service Agreement - General Terms and Conditions (the “**Terms & Conditions**”) is a contract between the Soul Machines entity named on the Registration Form (defined below) (“**Soul Machines**”) and the individual or entity (“**Customer**”) completing the Registration Form and who enters into these Terms & Conditions and uses the Services described below in these Terms & Conditions and the Registration Form Soul Machines has provided an electronic registration system that will collect Customer’s information, identify the license package Customer elects to access, the applicable fees (whether free services or fee based), if any, for the selected license package, the term of the license, and other terms and conditions specific to the selected license package (“**Registration Form**”). The Registration Form, together with these Terms & Conditions constitute the complete agreement between Customer and Soul Machines (the “**Agreement**”). The Terms & Conditions and Registration Form are intended to be read consistently and in harmony giving effect to all provisions. However, if there is found to be a conflict between the Terms & Conditions and the Registration Form, the conflicting terms contained in the Registration Form shall control.

If the applicable Registration Form identifies Customer is entering into this Agreement with:

- Soul Machines Inc, then Sections 1 through 8 below shall apply;
- Soul Machines Limited, then Sections 1 through 8 below shall apply, subject to the jurisdictional variation clauses set out in Section 9 and clause 9.1; and
- Soul Machines Pty Limited, then Sections 1 through 8 below shall apply, subject to the jurisdictional variation clauses set out in Section 9 at clause 9.2.

**SOUL MACHINES IS OFFERING THE LICENSE PACKAGE AND ALL SERVICES (DEFINED BELOW) TO CUSTOMER CONDITIONED ON CUSTOMER'S ACCEPTANCE OF THE TERMS AND CONDITIONS IN THIS AGREEMENT WITHOUT MODIFICATION EXCEPT AS AUTHORIZED BY THIS AGREEMENT. BY ACCESSING OR USING THE SOUL MACHINES' WEBSITE AND USING THE SERVICES, THE CUSTOMER AGREES TO COMPLY WITH AND BE BOUND BY THIS AGREEMENT. IF THE CUSTOMER DOES NOT AGREE WITH ANY TERM, CONDITION OR NOTICE CONTAINED IN THIS AGREEMENT, IT MUST NOT CONTINUE TO ACCESS THE WEBSITE OR USE THE SERVICES.**

### **1. SECTION 1 – PROVISION OF SERVICES AND PERMITTED USERS**

1. **Soul Machines' Software as a Service.** The “**Services**” means the products and services: (a) consisting of a graphical user interface resembling an animated, human character (“**Digital People**”); and (b) that enable Customers to blend combinations of geometries and textures to create custom avatars (“**Custom Avatars**”), that, when interconnected with the HumanOS Platform, is capable of processing and responding to audio, visual and textual information provided to or from the Customer (or its Permitted Users (as defined below)) when such users

access, and interact with, the Digital People and Custom Avatars. Services includes the provision of technical support and maintenance services as provided in this Agreement or any applicable Registration Form. The Services are described more fully in the then-current version of any supporting technical documentation or other materials Soul Machines provides to Customer either directly, or which is made available on the Soul Machines' website that, among other things, sets out a more detailed description of the Services including any aspect of the features, functionality or requirements of the Services or the user instructions for the Services (“**Documentation**”). The Services are provided for use only in strict compliance with this Agreement including the terms contained in the applicable Registration Form.

2. **Access to the Service.** Subject to the terms and conditions of the Agreement, Soul Machines will, during the Subscription Term (as defined below), and on a non-exclusive basis, ensure the provision of the Services identified in the Registration Form for use by Customer pursuant to the Documentation solely for Customer's internal business purposes and, including any rights or restrictions designated in this Agreement and/or on the Registration Form.
  3. **Permitted Users.** Customer may provide users with user IDs and passwords to use the Services (“Permitted Users”). Customer will ensure that all Permitted Users keep these credentials strictly confidential. Customer is responsible for: (a) approving access by such Permitted Users to the Services; (b) controlling against unauthorized access of the Services by Permitted Users; (c) maintaining the confidentiality of user IDs, passwords and account information; and (d) all activities that occur under Customer's and its Permitted Users' user IDs, passwords or accounts as a result of Customer's or Permitted Users' access to the Services. Soul Machines is not responsible for any harm caused by Permitted Users. Customer is solely responsible for ensuring compliance with this Agreement by its Permitted Users and any breach of this Agreement by a Permitted User will be deemed a breach by Customer. No Customer Affiliate shall have the right to take any legal action against Soul Machines under this Agreement or any Registration Form hereunder unless such Customer Affiliate has entered into an Registration Form directly with Soul Machines. For the purposes of this Agreement, “**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. For purposes of this definition, “**control**” means the possession, directly or indirectly, of the power to direct the management and policies of a person whether through the ownership of voting securities, by contract or otherwise.
2. **SECTION 2 - ACCEPTABLE USE AND RESTRICTIONS**
1. **Acceptable Use.** Customer and Permitted Users can only use the Services for the Customer's internal business purposes and otherwise in accordance with the terms of this Agreement and any applicable Registration Form, it being expressly understood, that any breach of this Agreement, including the Registration Form, shall revoke all rights of Customer and any Permitted Users to access or use the Services. Customer has no right or authority to sell, on-provide, transfer, assign, lease, rent, distribute, or grant a security interest in the Services other than in accordance with the terms of this Agreement or any applicable Registration Form,

or as expressly authorized in writing by Soul Machines. Additionally, Customer shall not copy, reproduce, reverse engineer, or use the Services to develop a competing product.

2. **Restrictions.** Soul Machines does not authorize and Customer must not, and shall ensure that each of the Permitted Users do not, use the Services for any illegal or non-standard business applications. By way of example, the following prohibited uses and activities include, without limitation, any use of the Services in a manner that, in Soul Machines' reasonable judgment, involve, facilitate, or attempt any of the following by Customer or Permitted Users:

- violating any law of, or committing conduct that is tortious or unlawful in, any applicable jurisdiction or using the Services in furtherance of illegal activities, or any activities that may be harmful to any third party, or Soul Machines' or any Soul Machines' Affiliate's operations or reputation, including offering or disseminating fraudulent goods, services, schemes, or promotions (e.g., make-money-fast schemes, Ponzi and pyramid schemes, phishing, or pharming), impersonating another person or entity, or engaging in other deceptive practices;
- decompiling, disassembling, or otherwise reverse engineering or attempting to reconstruct or discover any source code, object code or underlying ideas, structure, know-how, algorithms, file formats or programming or interoperability interfaces relevant to the Services or any software, Documentation or data related to the Services by any means whatsoever;
- using the Services for benchmarking or for developing a product which is competitive with any Soul Machines or Soul Machines' Affiliate product offering;
- circumventing or otherwise interfering with any authentication or security measures of the Services, or otherwise interfering with or disrupting the integrity or performance thereof;
- using the Services in a manner that violates this Agreement, any third party rights or any applicable laws, rules or regulations;
- writing or developing any program based upon the Services, or any portion thereof, or otherwise using the Services in a manner for the purpose of developing products or services that compete with the Services;
- displaying, performing, sending, receiving or storing any content that is obscene, pornographic, lewd, lascivious, or excessively violent, or otherwise objectionable in any way, regardless of whether the material or its dissemination is unlawful;
- transmitting to or through the Services, content that incites or threatens violence, contains harassing content or hate speech, creates a risk to a person's safety or health, or public safety or health, compromises national security or interferes with an investigation by law enforcement, or that advocates or encourages violence against any government, organization,

group, individual or property, or providing instruction, information, or assistance in causing or carrying out such violence, regardless of whether such activity is unlawful;

- accessing, sending, receiving, displaying, performing, disclosing, storing, or executing any content (a) to modify, remove or amend Soul Machines' or any Soul Machines' Affiliate's name or logo; (b) to update, reproduce, duplicate, copy all or any part of the Services; (c) in violation of any copyright, right of publicity, patent, trademark, service mark, trade name, trade secret or other intellectual property right; (d) in violation of any applicable agreement; or (f) without authorization from Soul Machines;
- deleting or altering author attributions, copyright notices, or trademark notices, unless expressly permitted in writing by Soul Machines;
- transmitting highly sensitive personal information of an individual in a manner that can be associated with the individual, such as Social Security number, revenue, tax or national health identifier, and government-issued identification numbers (if applicable in Customer's jurisdiction), health or medical information, credit card or debit card numbers, financial account information, access codes and PINS, or date of birth;
- obtaining unauthorized access to any system, network, service, or account;
- interfering with service to any user, site, account, system, or network by use of any program, script, command, or otherwise;
- transmitting unlawful, infringing or harmful data or code to or from the Services or introducing or activating any viruses, worms, harmful code and/or Trojan horses;
- sending or posting unsolicited messages or e-mail, whether commercial or not, (a) to any recipients who have requested that messages not be sent to them, or (b) to a large number of recipients, including users, newsgroups, or bulletin boards, at one time;
- evading spam filters, or sending or posting a message or e-mail with deceptive, absent, or forged header or sender identification information;
- holding Soul Machines or any of its Affiliates up to public scorn or ridicule;
- reselling Soul Machines' Services, in whole or in part, to any entity or individual, without Soul Machines' prior written consent, or misrepresenting its relationship with Soul Machines;
- using the Services in connection with selling or distributing controlled substances, including but not limited to any illegal or prescription drugs; or
- otherwise using the Services or any Soul Machines IP (as defined below) except as expressly permitted under this Agreement or in an applicable Registration Form.

### 3. SECTION 3 - PROPRIETARY RIGHTS; OWNERSHIP AND FEEDBACK

1. **Soul Machines' Ownership and Reservation of Rights.** Soul Machines and/or its Affiliates and/or their licensors own and retain all rights, title and interest, including all intellectual property rights, in and to the Soul Machines Work. Other than as expressly set forth in this Agreement or an applicable Registration Form, no license or any other rights, title or interest (including intellectual property rights) in or to the Soul Machines Work are granted to Customer, and all such rights are expressly reserved by Soul Machines and/or its Affiliates and/or their licensors. If any rights, title or interest in or to the Soul Machines Work vest in the Customer, its Permitted Users, or End Users (as defined below), the Customer hereby assigns, and shall ensure and procure the assignment of, all such Soul Machines Work to Soul Machines, including by way of present assignment of present and future copyright upon creation. During and after the term of this Agreement, Customer will take such actions as requested by Soul Machines from time to time (including the execution, acknowledgment and delivery of documents and giving of testimony, and causing its Permitted Users and End Users to do the same) to effect, perfect or evidence the assignment of such Soul Machines Work and Soul Machine's ownership of such rights. To the extent that Soul Machines is unable to obtain such rights in or to the Soul Machines Work that are vested in Customer, its Permitted Users, or End Users, Customer hereby grants to Soul Machines an irrevocable, exclusive, royalty-free, paid-up, sub-licensable, perpetual, worldwide license to use in any way those rights for any purpose, and will procure the same from its Permitted Users and End Users as necessary to comply with this clause. For the purposes of this Agreement:

- **“Confidential Information”** means all information disclosed by a party to the other party, whether orally or in writing, that is designated as confidential or that would ordinarily be understood to be confidential given the nature of the information and the circumstances of disclosure including, without limitation, business and marketing plans, the terms of this Agreement, technical information, product plans, software code, know-how and designs, and business processes;
- **“Customer Applications”** means the Customer's website, mobile or other application, computer kiosk, or other physical device, owned and operated by Customer, on which Customer will make the Services available to End Users (as defined below) under this Agreement;
- **“Customer Content”** means any content or materials, including without limitation, Customer's name, logos, trademarks and other identifying marks, provided by Customer to Soul Machines for use in connection with the Services;
- **“Social Media Content”** means any audiovisual recording or still image in which any Digital People or Custom Avatars are copied and published on a Social Media Platform by Customer, Permitted Users, End Users, or any of their sublicensees.

- **“Social Media Platform”** means any website, program or application that enables its users to create and share content over the Internet, including without limitation, Facebook, YouTube, WhatsApp, Instagram, TikTok, Snapchat, Pinterest, Reddit, LinkedIn, and Twitter.
  - **“Soul Machines IP”** means any work product or deliverables developed by Soul Machines, its Affiliates or licensors and all software, code, and technical information owned by Soul Machines, its Affiliates or licensors, including without limitation, those comprising the technology used to provide and support the Services; and
  - **“Soul Machines Work”** means any or all of (a) the Services, and all technology (excluding the Customer Content and Customer Applications, which are owned by or provided by the Customer) used to provide the Services, including Digital People, Custom Avatars and the HumanOS Platform; and (b) Soul Machines' Confidential Information; and (c) the Usage Data (as defined below); and (d) the Soul Machines IP; and (e) the Social Media Content.
2. **Feedback.** If Customer or any of its personnel including any Permitted User, provides comments, suggestions, ideas, or other information or materials regarding the Services (**“Feedback”**) to Soul Machines, Soul Machines may use, modify, and incorporate such Feedback to improve or enhance the Services or its other products and services, and Customer hereby grants to Soul Machines a non-exclusive, perpetual, irrevocable, transferable, sublicensable, worldwide and royalty-free license to use, reproduce, disclose, sublicense, distribute, modify, and otherwise exploit such Feedback without restriction and without any obligation to provide attribution or compensation to Customer.
  3. **Customer Ownership.** Subject to the provisions of Section 3.4, as between Customer and Soul Machines, any data that the Customer, its Permitted Users or Customer's end users who access and use the Services through a Customer Application (**“End Users”**) provide or make available to Soul Machines for use in or as part of the Services (**“Customer Data”**) is and will remain owned by Customer. Customer grants Soul Machines the right to collect, transmit, store, use, disclose, and otherwise process Customer Data to provide the Services and as otherwise set forth in this Agreement.
  4. **Usage Data.** Customer acknowledges and agrees that Soul Machines may collect, transmit, store, use, disclose, and otherwise process aggregated and/or de-identified data derived from Customer Data or use of the Services (**“Usage Data”**) for Soul Machines' business purposes, including (without limitation) for industry analysis, benchmarking, product and Services improvement and analytics. For clarity Usage Data will be in an aggregated and/or de-identified form only and will not identify Customer or its Permitted Users.
  5. **Customer Content.** By providing Customer Content to Soul Machines, Customer grants Soul Machines a worldwide, non-exclusive, royalty-free, fully paid up right and license (with the right to sublicense) to host, store, transfer, display, perform, reproduce, modify for the purpose of formatting for display, and distribute the Customer Content, in whole or in part, to Permitted Users and End Users of the

Services (including via the Customer Applications). Customer acknowledges that Soul Machines may, in its discretion, remove any Customer Content or Customer Data from the Services. In the event Soul Machines determines that certain Customer Content or Customer Data should be removed from the Services, Customer will (and will require that its Permitted Users) take all steps necessary, including providing assistance to Soul Machines, to remove or disable access to such Customer Content or Customer Data.

6. **Social Media Use.** Soul Machines hereby grants Customer a limited, worldwide, non-exclusive and license (with the right to sublicense) subject to the terms of this Agreement, to copy, store, modify for the purpose of formatting for display, and reproduce Social Media Content for the purposes of showing, issuing copies to the public, or publishing Social Media Content, in whole or in part, on Social Media Platforms only during the Subscription Term. The license is revocable at any time by Soul Machines and is subject to all restrictions designated in this Agreement or any applicable Registration Form, and Soul Machines may, in its discretion, require the removal of any Social Media Content from any Social Media Platform at any time. In the event Soul Machines determines that any Social Media Content should be removed from any Social Media Platform, Customer will (and will require that its Permitted Users, End Users and sublicensees will) take all steps necessary to remove or disable access to such Social Media Content. Neither Customer nor Permitted Users may sublicense this license on terms less onerous than those provided under this Agreement. Use of the Social Media Content must not breach the user agreement of any Social Media Platforms used, or infringe any third party rights or breach any obligations of confidence, privacy or any other laws. Customer agrees and acknowledges that Soul Machines and/or its Affiliates and/or their licensors own and retain all rights, title and interest, including all intellectual property rights, in and to the Social Media Content.

#### 4. **SECTION 4 - LIMITED WARRANTY**

1. **Soul Machines' Limited Warranty.** Soul Machines shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner that minimizes errors and interruptions in the Services and shall provide the Services in a commercially reasonable manner. The Customer acknowledges that the Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance (undertaken either by Soul Machines, its Affiliates its licensors or by third-party providers) or because of other causes beyond Soul Machines' reasonable control), but Soul Machines shall use reasonable efforts to require that any scheduled service disruption will occur out of business hours (PST) and to provide advance notice by e-mail of any scheduled service disruption. Soul Machines warrants that the Services, when used in accordance with this Agreement, will perform in substantial conformity with the applicable Documentation. Customer's sole and exclusive remedy for any breach by Soul Machines under such warranty shall be that Soul Machines will use commercially reasonable efforts at no charge to Customer, to correct the reported non-conformity, or if Soul Machines determines such remedy to be impracticable, allow Customer to terminate the applicable Subscription Term (as defined below)

and Customer shall be entitled to receive a refund of any Fees (as defined below) that Customer has pre-paid for use of the Services that it has not received as of the date of the claim of breach of such warranty. The limited warranty set forth in this Section 4.1 shall not apply and the remedies shall not be available: (a) unless Customer makes a claim within 90 days of the date on which the event giving rise to the claim first appeared and support it with documented evidence, (b) if the error was caused by misuse, unauthorized modifications or third-party hardware, software or services or (c) to use provided on a no-charge or evaluation basis. In addition, this warranty shall not apply to any portion of the Service that (x) has been subject to abuse or misuse; (y) is used in combination with any other products, process, equipment or software not approved by Soul Machines; or (z) is related to code, files, scripts, agents or programs intended to do harm, including viruses, worms, time bombs and Trojan horses (“**Malicious Code**”).

2. **Warranty Disclaimer.** EXCEPT FOR THE LIMITED WARRANTY IN SECTION 4.1, THE SERVICES ARE PROVIDED “AS IS”. NEITHER SOUL MACHINES NOR ANY OF ITS AFFILIATES, LICENSORS OR SUPPLIERS MAKE ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT. CUSTOMER MAY HAVE OTHER STATUTORY RIGHTS. HOWEVER, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY STATUTORILY REQUIRED WARRANTIES SHALL BE LIMITED AS PROVIDED HEREIN. SOUL MACHINES, ITS AFFILIATES AND LICENSORS SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES AND OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF SOUL MACHINES.
3. **Customer Warranties.** Customer represents, warrants and covenants to Soul Machines and its Affiliates that (a) Customer owns or otherwise has and will have the necessary rights, authorizations, and consents in and relating to the Customer Data and Customer Content so that, as received by Soul Machines and used by it and/or its Affiliates in accordance with this Agreement, it does not and will not infringe, misappropriate, or otherwise violate any intellectual property rights or privacy rights of any third party or violate any applicable laws or regulations; (b) Customer will provide all required notices and obtain all required consents from End Users to allow Soul Machines to provide such End Users with the Services, including with respect to electronic communication regulations; (c) without limiting the obligations under 4.3(b) above, Customer will provide and obtain affirmative binding consent from each Permitted User prior to such Permitted Users' first interaction with the Services. If Customer (or any Permitted User) becomes aware of or suspects any actual or threatened breach of this Agreement or the terms and conditions that govern End Users use of the Services, as provided by Soul Machines and as may be updated from time to time (an “**End User Agreement**”), or of any malfunction or misuse of the Services, including where any Digital People and Custom Avatars develop negative, offensive or otherwise



inappropriate behaviors (“**Negative Cognitive Context**”), Customer represents, warrants and covenants that it will and will require all Permitted Users to immediately: (a) notify Soul Machines of such actual or threatened breach, misuse, or malfunction and assist, at its own cost, Soul Machines with investigating such actual or threatened breach, misuse, or malfunction; and (b) take all reasonable steps to stop, and if requested by Soul Machines to remedy, such actual or threatened breach, misuse, or malfunction.

5. **SECTION 5 - LIMITATION OF REMEDIES AND DAMAGES**

1. **Liability.** AS USED IN THIS AGREEMENT, “**LIABILITY**” MEANS ANY LIABILITY, WHETHER UNDER CONTRACT, TORT, STATUTE, OR OTHERWISE.

2. **Limitations.** SUBJECT TO SECTION 5.3 (EXCEPTIONS TO LIMITATIONS):

0. NEITHER PARTY WILL HAVE ANY LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT FOR: (1) THE OTHER PARTY'S LOST REVENUES; (2) INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSSES (WHETHER OR NOT FORESEEABLE OR CONTEMPLATED BY THE PARTIES AT THE EFFECTIVE DATE (AS DEFINED BELOW)); OR (3) EXEMPLARY OR PUNITIVE DAMAGES; AND

1. EACH PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT WILL NOT EXCEED THE AMOUNT OF FEES ACTUALLY PAID BY CUSTOMER TO SOUL MACHINES FOR THE SERVICES UNDER THE APPLICABLE ORDER FORM IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY OF THE FOREGOING TYPES OF LOSSES OR DAMAGE.

2. **Exceptions to Limitations.** NOTHING IN THIS AGREEMENT EXCLUDES OR LIMITS: (i) EITHER PARTY'S LIABILITY FOR: (A) DEATH OR PERSONAL INJURY RESULTING FROM ITS GROSS NEGLIGENCE OR THE GROSS NEGLIGENCE OF ITS PERSONNEL; (B) FRAUD OR FRAUDULENT MISREPRESENTATION; (C) MATTERS FOR WHICH LIABILITY CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAWS; OR (ii) CUSTOMER'S LIABILITY FOR (D) FEES AND OTHER CHARGES ACCRUED AND OWING BY CUSTOMER UNDER THIS AGREEMENT OR ANY APPLICABLE ORDER FORM; OR (E) ANY MISUSE OR INFRINGEMENT OF SOUL MACHINES' IP BY THE CUSTOMER OR ITS PERMITTED USERS.

3. **Failure of Essential Purpose.** The parties agree that the limitations specified in this Section 5 will survive and apply even if any limited remedy specified in this Agreement is found to have failed its essential purpose.

2. **SECTION 6 - FEES; PAYMENT**

1. **Fees.** For each Subscription Term (as defined below), Customer will pay Soul Machines all applicable fees of the type and amount set forth on the applicable

Registration Form, which may include, without limitation, subscription fees, and services/support fees (“**Fees**”). Unless otherwise agreed to and set forth in the Registration Form, the Fees for each Subscription Term renewal will be in accordance with Soul Machines' rates posted at the time of such renewal. All Fees are non-refundable and are exclusive of applicable sales tax, value add tax, and any other applicable taxes which shall be paid by Customer.

2. **Withholding.** If the Customer is required to deduct or withhold any tax from any Fees or other payment made under or in connection with this Agreement, then the Customer shall make the deduction or withholding on account of tax and pay the sum to the appropriate tax authority, and the Fees or other payment made by the Customer shall be increased so that Soul Machines receives the same amount (net of any deduction or withholding) as it would have received but for the imposition of the deduction or withholding. Soul Machines will not be required to make a payment to, or otherwise compensate or indemnify, the Customer in respect of any such deduction or withholding.
  3. **Authorization.** If applicable, Customer authorizes Soul Machines or its third party payment processors to charge all sums for Services, including all applicable taxes, to the payment method specified in Customer's account. Soul Machines or its third party payment processors may seek pre-authorization of Customer's credit card account prior to Customer's purchase to verify that the credit card is valid and has the necessary funds or credit available to cover Customer's purchase.
  4. **Payment Terms.** Fees are due in advance according to the payment schedule set forth in the Registration Form. If applicable, Customer authorizes Soul Machines or its third party payment processor to periodically charge, on a going-forward basis and until cancellation of either the recurring payments or Customer's account, all Fees on or before the payment due date for those Fees. If Soul Machines has not received payment by the due date, and without prejudice to any other rights and remedies it may have, Soul Machines may charge Customer interest at the greater of, the rate of 1 percent (1%) per month and the maximum amount permitted under applicable law (if relevant), until such time as payment in full is made to Soul Machines.
3. **SECTION 7 - TERM AND TERMINATION**
1. **Term.** This Agreement will begin on the date the parties sign or otherwise enter into Customer's Registration Form (“**Effective Date**”) and, unless otherwise stated in the Registration Form, will continue for the initial subscription term of twelve (12) months, (the “**Subscription Term**”).
  2. **Termination for Cause.** Soul Machines may terminate this Agreement by written notice (a) if Customer is in breach of this Agreement or the applicable Registration Form, provided that, for breaches capable of cure, Customer will have 10 days after receipt of such written notice to cure such breach, failing which this Agreement will terminate immediately; or (b) access to the Services is suspended in accordance with Section 7.3 for a period exceeding five (5) days.
  3. **Suspension of Services.** Without prejudice to any other rights or remedies available to Soul Machines, Soul Machines may suspend Customer, and/or any

Permitted User's access to the Services in the event Soul Machines, in its discretion, determines that:

0. Customer or any of its Permitted Users has breached any term of this Agreement or the applicable Registration Form;
1. The Services are being or have been accessed or used (including unauthorized access by any third party) in breach of this Agreement, applicable Registration Form, applicable law, or in a manner that threatens the security, integrity or availability of the Services;
2. Suspension is necessary to protect Soul Machines' or its Affiliates' other customers or users of the Services or the reputation of Soul Machines or its Affiliates or the Services (including, without limitation, if any Digital People and Custom Avatars develop a Negative Cognitive Context);
3. Suspension is required by applicable law or an order from a court of competent jurisdiction.

2. **Effect of Termination.** Upon the effective date of expiration or termination of this Agreement for any reason: (a) the Customer's right to use the Services will automatically cease; (b) Customer must, and shall ensure that all Permitted Users, immediately cease use of the Services and delete any copies of the Digital People and Custom Avatars from the Customer Applications and certify in writing the same has been completed; (c) all outstanding payment obligations of Customer shall immediately become due and payable; (d) each party will promptly return or destroy, as requested by the other party at its sole discretion, any Confidential Information of the other party then in its possession or control. Sections 2 through 6 (and this Section 7) and Section 8 shall survive the expiration or termination of this Agreement for any reason. Soul Machines is under no obligation to retain any Customer Data and may destroy or otherwise dispose of all Customer Data in its possession after termination or expiration of this Agreement. Customer may within thirty (30) days of such termination or expiration, request the most recent back-up of Customer Data and, unless it has already deleted the Customer Data, Soul Machines will use reasonable efforts to provide Customer with such back-up provided that the Customer has paid all outstanding amounts due to Soul Machines (including any fees applicable to such delivery of data). Soul Machines may continue to use Usage Data collected, provided or transmitted prior to the date of termination, provided that Soul Machines continues to comply with this Agreement in relation to such continued use.

## 2. **SECTION 8 - GENERAL TERMS AND CONDITIONS**

1. **Registration Forms and Interpretation.** Section 1 concerning the scope of Services; Section 6 (Fees; Payment), and other terms that do not alter or affect Soul Machines' or its Affiliates or licensor's ownership of the Services or its liability under this Agreement, may be modified in the Registration Form, which Registration Form shall be applicable only to the scope of Services identified in each such Registration Form.
2. **Assignment.** This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party may assign this Agreement except

upon the prior written consent of the other party, except that either party may assign this Agreement in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of such party's assets or voting securities.

3. **Severability.** If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in effect.
4. **Governing Law; Jurisdiction and Venue.** Excluding conflict of laws rules, this Agreement shall be governed by and construed under the laws of the State of California, U.S.A. The exclusive jurisdiction and venue for actions related to the subject matter hereof shall be the competent federal and state courts in San Francisco, California. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act, as currently enacted by any jurisdiction or as may be codified or amended from time to time by any jurisdiction, do not apply to this Agreement.
5. **Attorneys' Fees and Costs.** The prevailing party in any action to enforce this Agreement shall be awarded its attorneys' fees and costs in connection with such action.
6. **Soul Machines' Customer List.** Soul Machines and its Affiliates may disclose Customer as a customer of Soul Machines and use Customer's name and logo on Soul Machines' website and in Soul Machines' promotional materials.
7. **Soul Machines' Customer List.** Soul Machines and its Affiliates may disclose Customer as a customer of Soul Machines and use Customer's name and logo on Soul Machines' website and in Soul Machines' promotional materials.
8. **Notice.** All notices to Soul Machines shall be valid only if sent by email to Soul Machines at [commercial@soulmachines.com](mailto:commercial@soulmachines.com), or through email address or portal to a designated person approved in writing by Soul Machines in an Registration Form. Soul Machines may give notice to Customer that are applicable to the Services by means of a general notice on Soul Machines portal for the Service, and notices specific to Customer by electronic mail to Customer e-mail address on record in Soul Machines' account information or by written communication sent by pre-paid post to the most recent Customer address provided by Customer to Soul Machines. Customer's current address shall be the address provided on the Registration Form.
9. **Amendments; Waivers.** Soul Machines may change the terms of this Agreement from time to time. Soul Machines will provide reasonable prior notice of the changes to Customer via email. Any change will become effective five (5) days after the date the change is notified by Soul Machines via email or such other date as may be specified by Soul Machines in the email notice to the Customer (the "**Amendment Effective Date**"). Customer's use of Soul Machines' Services after the Amendment Effective Date shall constitute Customer's acceptance of, and agreement to, all such changes on and after the Amendment Effective Date, unless Customer expressly rejects such changes, in which case Customer may terminate this Agreement by giving notice in accordance with clause 8.7, subject to completion of and payment for all work or Services under any active Registration Form (such work and Services to be governed by the terms of the Agreement

without the changes to the terms of the Agreement that Customer is relying on to terminate the Agreement), and provided the Customer complies with Section 7.4 of this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in writing signed by a duly authorized representative on behalf of the party claimed to have waived. No provision of any purchase order or other business form employed by Customer, including any electronic invoicing portals and vendor registration processes, will supersede the terms and conditions of this Agreement, and any such document relating to this Agreement shall be for administrative purposes only and shall have no legal effect.

10. **Entire Agreement.** This Agreement (including mutually agreed Registration Forms, documents expressly referred to from this Agreement, exhibits or attachments) is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement.
11. **Force Majeure.** Neither party shall be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay Fees in accordance with Section 6) if the delay or failure is due to unforeseen events which occur after the signing of this Agreement and which are beyond the reasonable control of such party, such as a strike, blockade, war, act of terrorism, riot, pandemic, epidemic, natural disaster, failure or diminishment of power or telecommunications or data networks or services, or refusal of a license by a government agency.
12. **Subcontractors.** Soul Machines may use its Affiliates or the services of subcontractors for performance of Services under this Agreement, provided that Soul Machines remains responsible for (a) compliance of any such Affiliate or subcontractor with the terms of this Agreement, all applicable laws; and (b) the overall performance of the Services as required under this Agreement.
13. **Third Party Beneficiaries.** The parties understand and agree that Soul Machines' Affiliates are intended third party beneficiaries of Soul Machines' rights and remedies under this Agreement and accordingly this Agreement is enforceable by Soul Machines' Affiliates. Except where the Customer has entered into a written agreement directly with a Soul Machines' Affiliate, the Customer has no contract or agreement with any Soul Machines' Affiliate in respect of the supply or use of the Services. Any variation to this Agreement can be made between the Customer and Soul Machines, without any consent required from any Soul Machines' Affiliate.
14. **Covenant Not to Sue.** Customer hereby agrees that it shall not bring any suit, action, proceeding or claim, against any Soul Machines' Affiliate arising from, concerned with, or otherwise relating to, in whole or in part, the Services or this Agreement.
15. **Independent Contractors.** The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.

16. **Export Control.** In its use of the Services, Customer agrees to comply with all export and import laws and regulations of the United States and other applicable jurisdictions. Without limiting the foregoing, (a) Customer represents and warrants that it is not listed on any U.S. government list of prohibited or restricted parties or located in (or a national of) a country that is subject to a U.S. government embargo or that has been designated by the U.S. government as a “terrorist supporting” country; and (b) Customer shall not (and shall not permit any of its Permitted Users or others to) access or use the Service in violation of any U.S. export embargo, prohibition or restriction.

3. **SECTION 9 - JURISDICTIONAL CLAUSES**

1. **Soul Machines Limited.** If the applicable Registration Form identifies that Customer is entering into this Agreement with Soul Machines Limited, then:

0. Clause 4.1 is deleted in its entirety and replaced with the following clause:

**4.1 Soul Machines' Limited Warranty.** Soul Machines shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner that minimises errors and interruptions in the Services and shall provide the Services in a commercially reasonable manner. The Customer acknowledges that the Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance (undertaken either by Soul Machines or by third-party providers) or because of other causes beyond Soul Machines' reasonable control, but Soul Machines shall use reasonable efforts to require that any scheduled service disruption will occur out of business hours (NZST) and to provide advance notice by e-mail of any scheduled service disruption. Soul Machines warrants that the Services, when used in accordance with this Agreement, will perform in substantial conformity with the applicable Documentation. Customer's sole and exclusive remedy for any breach by Soul Machines under such warranty shall be that Soul Machines will use commercially reasonable efforts at no charge to Customer, to correct the reported non-conformity, or if Soul Machines determines such remedy to be impracticable, to itself, or allow Customer to, terminate the applicable Subscription Term and Customer shall be entitled to receive a refund of any Fees Customer has pre-paid for use of the Services that it has not received as of the date of the claim of breach of such warranty. The limited warranty set forth in this clause 4.1 shall not apply and the remedies shall not be available: (a) unless Customer makes a claim within 90 days of the date on which the event giving rise to the claim first appeared and support it with documented evidence, (b) if the error was caused by misuse, unauthorised modifications or third-party hardware, software or services or (c) to use provided on a no-charge or evaluation basis. In addition, this warranty shall not apply to any portion of the Service that (x) has been subject to abuse or misuse; (y) is used in

combination with any other products, process, equipment or software not approved by Soul Machines; or (z) is related to code, files, scripts, agents or programs intended to do harm, including viruses, worms, time bombs and Trojan horses (“**Malicious Code**”). This clause 4.1 shall survive the expiration or termination of this Agreement for any reason.

1. Clause 4.4 below is inserted after clause 4.3:

**4.3 Consumer Guarantees Act.** The parties confirm they are each “in trade”, that the Services are supplied and acquired “in trade” and that, as between them, the terms of the Consumer Guarantees Act 1993 shall not apply to the Services supplied by Soul Machines and acquired by the Customer under this Agreement.

2. Clause 8.4 is deleted in its entirety and replaced with the following clause:

**8.4 Governing Law; Jurisdiction and Venue.** Excluding conflict of laws rules, this Agreement shall be governed by and construed under the laws of New Zealand and each party irrevocably submits to the non-exclusive jurisdiction of the New Zealand courts for the purpose of hearing and determining any dispute under, or in connection with, this Agreement. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act, as currently enacted by any jurisdiction or as may be codified or amended from time to time by any jurisdiction, do not apply to this Agreement.

3. Clause 8.15 is deleted in its entirety and replaced with the following clause:

**8.15 Privacy.** To the extent Soul Machines collects personal information (as that term is defined in the Privacy Act 2020 (“**Privacy Act**”)) from the Customer, Permitted Users or End Users in the course of providing the Services or otherwise in connection with this Agreement, such personal information will be collected, held, and used by Soul Machines in accordance with the Privacy Act. If Soul Machines needs to disclose such personal information to third parties outside of New Zealand, Soul Machines will comply with its obligations under the Privacy Act in relation to offshore disclosures of personal information including, if necessary, ensuring that those third parties are subject to privacy

obligations that overall provide comparable safeguards to those in the Privacy Act.

4. The following clause 6.5 is inserted after clause 6.4:

**6.5 GST.** In this clause 6.5: "**GST**" has the meaning given in the Goods and Services Tax Act 1985; and "**GST Law**" has the meaning given to the term "GST law" in the Goods and Services Tax Act 1985. Unless otherwise stated, all fees are exclusive of GST. If GST is payable on a supply that Soul Machines makes under or in connection with this Agreement, the Customer must pay to Soul Machines an additional amount equal to the GST payable on that supply ("**GST Amount**") and Soul Machines will issue a tax invoice when required to do by the GST Law, and the tax invoice shall be issued at a time as agreed with the Customer. The GST Amount must be paid to Soul Machines without set off, deduction or requirement for demand, at the same time as the GST-exclusive consideration is payable.

2. **Soul Machines Pty Limited.** If the applicable Registration Form identifies that Customer is entering into this Agreement with Soul Machines Pty Limited, then:

0. Clause 4.2 is deleted in its entirety and replaced with the following clause:

**4.2 Warranty Disclaimer.** Subject to clause 4.4 and except for the limited warranty in section 4.1:

1. the services are provided "as is"; and
    2. neither Soul Machines nor any of its Affiliates, licensors or suppliers make any other warranties, express or implied, statutory or otherwise, including but not limited to warranties of merchantability, fitness for a particular purpose, title or non-infringement (in each case other than as provided for in the Consumer Guarantees referred to in clause 4.4).

Customer may have other statutory rights. However, to the fullest extent permitted by law, any statutorily required warranties (other than under the Consumer Guarantees) shall be limited as provided herein. Soul Machines, its Affiliates and licensors shall not be liable for delays, interruptions, service failures and other problems inherent in use of the internet and



electronic communications or other systems outside the reasonable control of Soul Machines (other than under the Consumer Guarantees).

1. Clause 4.4 below is inserted after clause 4.3:

**4.4Consumer Guarantees** Under the Australian Consumer Law (and other similar legislation of Australian states and territories), certain statutory guarantees are conferred in relation to the supply of goods or services to a Consumer (**Consumer Guarantees**). Where the Customer, as a Consumer, acquires goods or services under this Agreement and those goods or services:

1. are of a kind ordinarily acquired for personal, domestic or household use or consumption (**PDH Goods or Services**), the operation of the Consumer Guarantees cannot be, and are not in this Agreement, excluded, restricted or modified; or
2. are not PDH Goods or Services, Soul Machines' Liability for a failure to comply with any Consumer Guarantee (other than where to do so would otherwise cause all or part of this clause to be void) is limited to, at its option:

(i)in the case of goods, repairing or replacing the goods or paying the cost of having those goods repaired or replaced; and

(ii)in the case of services, re-supplying the services or paying the cost of having the services re-supplied,

and Soul Machines does not exclude or limit the operation of the Consumer Guarantees under any other provision of this Agreement or in any other manner and the Customer agrees it is fair and reasonable in all the circumstances for Soul Machines' Liability to be so limited. For the purposes of this Agreement:

- '**Australian Consumer Law**' has the meaning given to that term in section 4 of the Competition and Consumer Act 2010 (Commonwealth of Australia), as amended, replaced or superseded from time to time; and
- '**Consumer**' has the meaning given to that term in section 3 of the Australian Consumer Law.

2. Clause 5.1 is deleted in its entirety and replaced with the following clause:

**5.1 Liability.** AS USED IN THIS AGREEMENT, “LIABILITY” MEANS ANY LIABILITY, WHETHER UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE, OR OTHERWISE.

3. The following clause 6.5 is inserted after clause 6.4:

**6.5 GST.** In this clause 6.5: "**GST**" has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth of Australia); and "**GST Law**" has the meaning given to the term "**GST law**" in the A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth of Australia). Unless otherwise stated, all fees are exclusive of GST. If GST is payable on a supply that Soul Machines makes under or in connection with this Agreement, the Customer must pay to Soul Machines an additional amount equal to the GST payable on that supply ("GST Amount") and Soul Machines will issue a tax invoice if required to do so by the relevant GST Law. The GST Amount must be paid to Soul Machines without set off, deduction or requirement for demand, at the same time as the GST-exclusive consideration is payable.