SUBSCRIPTION SERVICES AGREEMENT

BACKGROUND INFORMATION

A. Applitools™ provides services utilizing proprietary internal technologies and systems, which are useful in creating, executing, and maintaining automated, intelligent testing to validate the visual aspects of websites, software applications and similar media. These services are designed to enable developers and testers to catch visual bugs before they go into production to prevent costly errors and improve quality.

B. Applitools and the entity identified on a mutually executed Order Form as 'Customer' (the "**Customer**") desire to establish a business relationship, whereby Applitools will provide services to Customer, including access to certain of its proprietary systems for visual validation.

TERMS OF AGREEMENT

This "Subscription Services Agreement" (the "*Agreement*") contains certain terms and conditions of agreement between Applitools Inc., a Delaware corporation having its principal place of business at 155 Bovet Road, Suite 600, San Mateo, CA 94402 ("**Applitools**"), and the Customer. Each of Applitools and Customer may be referenced throughout this Agreement as a "**Party**." Capitalized words and phrases used throughout this Agreement, if not otherwise defined on this Cover Page, shall have the meanings set forth or cross-referenced in Glossary of Defined Words and Phrases in Section 13.

This Agreement shall become effective as of the date when authorized representatives of both Parties have executed an Order Form referencing this Agreement (the "*Effective Date*"). If those authorized representatives execute such Order Form on different dates, the Effective Date shall be the latter date, or the date as of which Applitools first provides services under this Agreement, whichever first occurs. This Agreement shall be interpreted solely in the context of such Order Form and shall not bind either party unless and until an Order Form is executed by the parties, at which time the terms and conditions of this Agreement shall be automatically incorporated by reference into, and made a part of, that Order Form. In no event, however, shall this Agreement be construed as obligating Applitools or Customer to enter into any particular Order Form with the other.

1. ORDER FORMS.

Subject to the terms and conditions of this Agreement, Applitools agrees to sell, and Customer agrees to purchase, the Access Rights for Subscription Services that are identified in each Order Form. Each Order Form shall be binding upon the Parties only after mutual execution, and each mutually executed Order Form shall be considered an integral part of this Agreement. In the event of any conflict between the provisions of this Agreement and the terms of any Order Form or any Statement of Work, the provisions of this Agreement shall supersede and govern, followed in precedence by the Order Form and then the Statement of Work, unless, in each case, the Order Form or Statement of Work, as the case may be, both (i) expressly states that the Parties mutually intend that the Order Form or Statement of Work should govern in that instance and (ii) expressly identifies the provision(s) of this Agreement to be superseded. No pre-printed or "boilerplate" provisions of any purchase order or other document provided by Customer with or as part of any Order Form or Statement of Work shall be binding upon Applitools.

2. USE OF SUBSCRIPTION SERVICES.

2.1 Right to Use Subscription Services.

(a) For so long as this Agreement remains in effect, Applitools agrees to provide access to Subscription Services within the scope of the Access Rights purchased by Customer pursuant to a mutually executed Order Form. Customer acknowledges that the Access Rights purchased under this Agreement may be used only by Customer's Permitted Users solely for Customer's internal business purposes, and only during the Access Term for which the particular Access Rights have been purchased.

(b) Customer acknowledges (i) to use the Subscription Services, Customer will need to maintain a proper internet connection and Customer may be required to install Applitools' SDK software, available at the Website, and (ii) this Agreement allows only for the purchase of certain rights of access to the Subscription Services, and nothing in this Agreement may be interpreted as an implied license or to require Applitools to deliver a copy of any software or other product utilized by Applitools to provide the Subscription Services.

2.2 User Account; Permitted Users. In order to use the Subscription Services, Customer shall be required to create an account by submitting certain details to Applitools, whether through the Website or the Order Form ("*Account*"). Customer must ensure that the details provided by Customer on registration or at any time are correct and complete and must inform Applitools immediately of any changes to the information that Customer provided when registering and creating Customer's Account. Customer shall be fully responsible for compliance with this Agreement by, as well as the acts and omissions of, all users who access the Subscription Services under its Permitted User login credentials, to the full extent as if such end users are Customer's employees or agents acting on Customer's behalf within the scope of their duties. Customer shall not authorize access to or permit use of the Subscription Services or Documentation by persons other than Permitted Users. Applitools will permit Customer to register the number of unique sets of login credentials (each consisting of a username and password) set forth on the applicable Order Form for the Subscription Services and, unless otherwise approved in writing by Applitools in its sole discretion, Customer will ensure that no more than one Permitted User will have access to or will use each set of login credentials. Login credentials must be kept safe, secure and confidential at all times and must not be disclosed or shared with anyone. Customer hereby releases Applitools from any and all liability for any losses and/or damages caused to Customer or to Customer's clients by any unauthorized access and/or use of Account(s) resulting from Customer's failure to protect its login credentials. Applitools reserves the right to monitor Customer's use of the Service in as much as required to ensure that Customer's use of the Service is in accordance with the permitted uses as set forth herein and for providing support services. Applitools may, at any time and without any liability to Customer, suspend any end user's access to the Subscription Services in the event Applitools reasonably believes that such end user has violated any provision of this Agreement.

2.3 Documentation License. Subject to the terms and conditions of the Agreement, Applitools hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable right and license during the Term to reproduce copies of the Documentation solely for use by Customer in connection with the exercise of rights granted in this Agreement. Customer acknowledges that no right is granted to publish, modify, adapt, translate, or create derivative works of the Documentation. Customer acknowledges that the Documentation is Applitools' Confidential Information, and hereby agrees to accurately reproduce all proprietary notices, including any copyright notices, trademark notices or confidentiality notices, that are contained within any copies of the Documentation.

2.4 Feedback. If Customer or any of Customer's employees or contractors sends or transmits any communications or materials to Applitools by mail, email, telephone, or otherwise, suggesting or recommending changes to the Services and/or Subscription Services, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("*Feedback*"), Applitools is free to use such Feedback irrespective of any other obligation or limitation between the parties governing such Feedback. Customer hereby assign to Applitools on Customer's behalf, and on behalf of Customer's employees, contractors and/or agents, all right, title, and interest in, and Applitools is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although Applitools is not required to use any Feedback.

3. RESERVATION OF RIGHTS AND RESTRICTIONS.

3.1 Proprietary Rights; No Implied Licenses. Customer acknowledges that, as between the Parties, Applitools owns all Intellectual Property Rights and other proprietary interests that are embodied in, or practiced by, the Subscription Services, the Deliverables (as defined below) and the Documentation. To be clear, however, the preceding sentence does not constitute a representation or warranty regarding ownership of any intellectual property rights or other proprietary interests. Except to the extent that the same constitutes or embodies Customer's Confidential Information (including, any Customer Content or Reports), ownership of all work product, developments, inventions, technology or materials provided under any Statement of Work (collectively, the "*Deliverables*") shall be solely owned by Applitools. Applitools hereby grants to Customer a non-exclusive, right and license during the term of this Agreement to use the Deliverables solely for its internal business purposes. There are no licenses granted by implication under this Agreement and Applitools reserves all rights that are not expressly granted.

3.2 General Restrictions on Use. Customer agrees not to act outside the scope of the rights that are expressly granted by Applitools in this Agreement nor use the Subscription Services for any purpose other than quality assurance of Customer's business assets. Customer will not (a) make the Services available to anyone other than Customer and its Permitted Users; (b) sell, resell, license, sublicense, rent, lease or distribute any Services or Reports, or include any Services or Reports or any derivative works thereof in a service bureau or outsourcing offering to any third party; (c) copy, modify, adapt, alter, translate or make derivative works based upon the Subscription Services (other than any copies, modifications or derivative works made solely from the Reports which are created solely for Customer's internal business purposes); (d) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any software component underlying the Subscription Services is compiled or interpreted save to the extent that Customer cannot be prohibited from so doing under applicable law, and Customer hereby acknowledges that nothing in this Agreement shall be construed to grant Customer any right to obtain or use such source code; (e) use any high volume automatic, electronic or manual process to access, search or harvest information from the Subscription Services (including without limitation robots, spiders or scripts); (f) use the Service to develop a similar or competing product or software; and (g) publish or disclose to any third party any reviews, testing information or comparisons with respect to the Service without Applitools' prior written consent. Customer agrees to use the Subscription Services only for lawful purposes and in compliance with all applicable laws, rules and regulations issued by governing authorities. Without derogating from any other remedy available to Applitools, Customer will indemnify, defend and hold Applitools harmless from all losses, fees and damages suffered by Applitools and arising from Customer's breach of the terms of this Section. Customer acknowledges and agrees that compliance with this paragraph is an essential basis of this Agreement.

4. TREATMENT OF CONTENT.

4.1 Selection of Customer Content. Customer understands that the Subscription Services are capable of processing Customer Content that is uploaded by Customer to Applitools' servers. As between the Parties, Customer alone is responsible for selection of all Customer Content, and Customer assumes all risks associated with the content, accuracy, completeness, consistency, integrity, legality, reliability and appropriateness of Customer Content and the use of all such Customer Content by Customer and by Applitools in connection with providing the Services contemplated by this Agreement as set forth on any mutually executed Order Form.

4.2 Rights in Customer Content; Data Retention.

(a) Customer hereby grants to Applitools (i) a non-exclusive license to use, store, process, analyze and display in Reports all Customer Content during the Term for the limited purposes of performing Applitools' obligations under this Agreement; and (ii) a non-exclusive, worldwide, royalty-free and fully paid license to collect and use all such data, as well as all data collected during the Term regarding Customer's use of the Subscription Services, in aggregated statistical form for the development, maintenance and provision of Applitools products and services, provided that in no event may such uses permit the attribution of Customer as the source of particular data. Further, without conveying any right, title or interest, the Parties agree that Applitools may make accurate informational references to Customer's trade names, trademarks or service marks (collectively, the "*Marks*") in connection with its performance of the Services, such as by branding Customer's landing page with its Marks, subject to the condition that Applitools shall promptly cease any use of any Mark owned by Customer in connection with the performance of the Services upon (i) termination of this Agreement; or (ii) receipt of notice from the Customer to discontinue such use.

(b) Prior to uploading Customer Content to the Subscription Services or using the Subscription Services to collect or retrieve Customer Content, Customer shall, at its own expense, obtain all licenses, consents and/or other permissions from appropriate third parties as are necessary for Customer's use of such Customer Content and to enable Customer to grant the rights granted by Section 4.2(a) and to comply with the requirements of applicable law.

(c) During an Access Term for Subscription Services, Applitools has a twelve (12) month data retention period for Customers who purchase an "Enterprise" Subscription Services plan, and a six (6) month data retention period for Customers who purchase a "Starter" Subscription Services plan. Accordingly, Customer Content that is loaded to the Subscription Services will be retained until the earlier of: (i) twelve (12) months from the date such Customer Content is loaded in the case of Customers who purchase one of the 'Enterprise' plans, and six (6) months from the date such Customer Content is loaded in the case of Customers who purchase a 'Starter' plan, and (ii) the termination of the Access Term for such Subscription Services, in accordance with Section 11.5 below. Accordingly, during the Access Term, Enterprise plan Customers will have access to their most recent twelve months of Customer Content and Starter plan Customers will have access to their most recent six months of Customer Content within the Subscription Services.

4.3. Content Disclaimers. Applitools does not provide any warranty or support under this Agreement and Customer agrees that Applitools shall not be liable for any non-Applitools products or services, including without limitation, any Customer Content or third-party websites.

4.4 Security; Protection of Customer Content. Applitools will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Content and other Customer Confidential Information, in accordance with Applitools ISO 27001 certification. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification, or disclosure of Customer Content by Applitools personnel except (a) to provide the Services and prevent or address service or technical problems, (b) as compelled by law in accordance with Section 7.3 (Compliance with Legal Duties) below, or (c) as Customer expressly permits in writing. If Customer is subject to the GDPR, please download Applitools DPA at https://applitools.com/downloads/Applitools_DPA_for_customers.pdf ("**DPA**"), sign it and return it to contracts@applitools.com. Customer hereby agrees that any processing of information performed by Applitools on Customer's behalf shall be subject to the terms and conditions of the DPA. Customer will indemnify, defend and hold Applitools harmless from all losses, liabilities, fees and damages of any kind (including attorney fees) related to: (i) Customer's breach of Customer's representations, warranties or obligations under these TOS and/or the DPA; (ii) Customer's failure to comply with the obligations applicable to Customer under the GDPR and/or data protection laws or regulations; and/or (iii) for the processing of personal data without a DPA, in the event Customer fails to return to Applitools the DPA duly signed by Customer.

5. PROFESSIONAL SERVICES; STATEMENTS OF WORK. Subject to the terms and conditions of this Agreement, Customer may request that Applitools provide certain Professional Services related to Customer's use of the Subscription Services, including, by way of example, configuration of the Subscription Services, training of Customer personnel regarding use of the Subscription Services and/or provision of managed services or consulting services that related to the Subscription Services. Upon Customer's request, Applitools shall negotiate in good faith regarding terms and conditions according to which such services would be provided. Any Professional Services to be provided will be included in an Order Form, which shall describe the fees, costs and expenses payable by the Customer in connection with the performance of such Professional Services, and a Statement of Work, which shall describe the scope and proposed timing of such Professional Services. Each Order Form and Statement of Work shall be binding upon the Parties only after mutual execution, and Applitools shall be under no obligation to perform the proposed Professional Services until an Order Form and Statement of Work in relation thereto has been mutually executed. Each mutually executed Order Form and Statement of Work shall be considered an integral part of this Agreement.

6. FEES; PAYMENT.

6.1 Fees Payable. In consideration for the rights granted and the promises made by Applitools under this Agreement, Customer agrees to pay to Applitools the amounts stated in U.S. dollars in each mutually executed Order Form at such times as the applicable Order Form requires. Customer agrees to make all payments, without offsets or other deductions, no later than the date when they are due. Customer agrees to provide Applitools with complete and accurate billing information and contact information and to update this information within thirty (30) days of any change to it. The fee obligations set forth in each Order Form are noncancelable and all fees paid are non-refundable.

6.2 Additional Charges for Late Payments. If Customer fails to make any undisputed payment when due, Applitools will have the right, without prejudice to any other remedies it may have, (i) to charge an additional fee equal to one percent (1%) of the overdue amount for each full or partial month that the amount remains unpaid and (ii) to charge you for all reasonable costs incurred by Applitools in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees. If Applitools elects to charge these additional amounts, Customer agrees to pay the charges in full within thirty (30) days after Applitools issues an invoice.

6.3 Overages. Unless otherwise specified in the Order Form, if Customer exceeds the limitations set forth in the Order Form (e.g., the Maximum Pages, Maximum Checkpoints, Maximum Concurrent Executions, number of Permitted Users, etc.), Applitools may, at its sole discretion, take the following actions without limiting Applitools' other rights and remedies: (i) reduce the functionality or performance of the Subscription Services, including response times of the Subscription Service; (ii) charge Customer for any overages at up to Applitools' then current rates; or (iii) if the breach of Order Form defined limitations occurs, and Customer is notified in each case, more than three (3) times, terminate this Agreement and the Subscription Services with immediate effect. Applitools shall use commercially reasonable efforts to provide written notice to Customer of any overages prior to Applitools taking any such actions. Applitools will have no liability to Customer for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer may incur as a result of Applitools taking any such actions.

6.4 Suspension of Access Rights. In the event that Customer's account is more than thirty (30) days overdue, Applitools shall have the right in its sole discretion, in addition to its remedies under this Agreement or pursuant to applicable law, to suspend Customer's access to all Subscription Services, without further notice to Customer, until Customer has paid the full balance owed. Any such suspension will not reduce Customer's fee obligations with regard to the current Access Term of the Subscription Services, including with regard to any suspended days, and suspended days are forfeit and will not be credited or made up following such suspension.

6.5 Tax Responsibilities. Unless otherwise stated, Applitools' fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, but not limited to, value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "**Taxes**"). Customer is responsible for paying all Taxes associated with its purchases hereunder. If Applitools has the legal obligation to pay or collect Taxes for which Customer is responsible under this paragraph, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides Applitools with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Applitools is solely responsible for taxes assessable against it based on its income, property and employees.

7. CONFIDENTIALITY.

7.1 Basic duties regarding Confidential Information.

(a) With regard to information that one Party discloses to the other, the disclosing Party is the "*Owner*," and with regard to information it receives from the other, the receiving party is the "*Recipient*." The Recipient agrees not to disclose or authorize access to the Owner's Confidential Information, except to the Recipient's employees and agents who are informed of the confidential nature of the Confidential Information and who have agreed in writing or who are otherwise legally bound to treat the Owner's Confidential Information in a manner consistent with Recipient's duties under this Agreement. The Recipient will not use the Owner's Confidential Information except (i) as necessary to perform the Recipient's duties under this Agreement; and (ii) in any other manner that this Agreement expressly authorizes. Even after termination or expiration of this Agreement, the Recipient will continue to treat Confidential Information received from the other Party in accordance with this Agreement, for so long as the information fits the definition of "Confidential Information," or until use and disclosure of the information would no longer be restricted even if this Agreement remained in full force.

(b) The Recipient's duties under this section will apply only to (i) information which is marked to clearly identify it as the Owner's Confidential Information, or, if disclosed orally, that is identified as Confidential Information both at the time of disclosure and again in a writing delivered by the Owner within a reasonable time, and (ii) information which, due to its nature or the circumstances surrounding its disclosure, any reasonable person would be compelled to conclude is intended by the Owner to be considered confidential and proprietary for purposes of this Agreement.

The Documentation and all non-public aspects of the Subscription Services shall in any event be considered Applitools' Confidential Information and the Customer Content and Reports shall in any event be considered Customer's Confidential Information.

7.2 Exceptions to confidentiality obligations. Even if some information would be considered Confidential Information according to the definition stated in this Agreement, the Recipient will have no duties regarding that information if (i) the Recipient develops the same information without any use of information obtained from the Owner; or (ii) the Recipient rightfully obtains the information from some third party, without restrictions on use and disclosure, but only if the Recipient has no knowledge that the third party's provision of that information is wrongful; or (iii) the information is made available to the general public without any direct or indirect fault of the Recipient.

7.3 Compliance with legal duties. The Recipient will not be in breach of this Agreement by delivering some or all of the Owner's Confidential Information to a court, to law enforcement officials, and/or to governmental agencies, but only if it limits the disclosure to the minimum amount that will comply with applicable law (such as in response to a subpoena) or that is necessary to enforce its legal rights against the Owner. Unless prevented by law, the Recipient agrees to notify the Owner as far in advance as reasonably possible before the Recipient delivers the Owner's Confidential Information to any of those third parties. If requested by the Owner, and if permitted by law, the Recipient will cooperate with the Owner, at the Owner's expense, in seeking to limit or eliminate legal requirements that compel disclosure, or in seeking confidential treatment by the applicable court, law enforcement officials and/or governmental agencies.

7.4 Attorneys and accountants. The Recipient may permit its attorneys and accountants to view the Owner's Confidential Information, provided they are under legal and/or professional duties to maintain the information's confidentiality, and only for purposes of advising the Recipient regarding its legal rights and duties.

8. REPRESENTATIONS AND WARRANTIES.

8.1 Mutual Representations. Each Party hereby represents and warrants (i) that it is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization; (ii) that the execution and performance of each Party's respective obligations as set forth in this Agreement will not conflict with or violate any provision of any law having applicability to such Party; and (iii) that this Agreement, when executed and delivered, will constitute a valid and binding obligation of such Party and will be enforceable against such Party in accordance with its terms.

8.2 Service Warranty. During the Term, the Subscription Service offerings conform in all material respects with the Documentation and will meet the Service Levels specified therein. The respective Subscription Service's system logs and other records shall be used for calculating any service level events. Applitools represents and warrants that all Professional Services shall be provided in a professional and workmanlike manner, in accordance with industry standards. The Professional Services shall be performed in a professional and workmanlike manner by personnel with appropriate skill and training.

8.3 Customer Representations and Warranties. Customer represents and warrants that it will not, nor will it permit or authorize anyone else to (i) upload to the Subscription Services any viruses, Trojan horses, worms, time bombs, cancelbots, or other harmful components that are intended to damage, detrimentally interfere with, surreptitiously intercept or misappropriate any system, data or personal information, or (ii) upload, post, store, view, transmit, distribute or otherwise publish any Customer Content to or using the Subscription Services that (A) restricts or inhibits any other person from using and enjoying the Subscription Services, (B) is unlawful, fraudulent, threatening, abusive, libelous, defamatory, invasive of another's privacy or otherwise tortious; (C) constitutes or encourages conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any applicable local, state, national or international law; or (D) violates or infringes the rights of third parties, including, but not limited to, Intellectual Property Rights, rights of privacy or publicity or any other proprietary rights.

8.4 Disclaimers. EXCEPT AS OTHERWISE EXPRESSLY REPRESENTED OR WARRANTED IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SUBSCRIPTION SERVICES, PROFESSIONAL SERVICES, THE DOCUMENTATION, AND ANY OTHER PRODUCTS OR SERVICES PROVIDED BY APPLITOOLS ARE PROVIDED "AS IS," AND APPLITOOLS DISCLAIMS ANY AND ALL OTHER PROMISES, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, NON-INTERFERENCE, SYSTEM INTEGRATION AND/OR DATA ACCURACY. APPLITOOLS DOES NOT WARRANT THAT THE SUBSCRIPTION SERVICES OR ANY OTHER PRODUCTS OR SERVICES PROVIDED BY APPLITOOLS WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OF THE SUBSCRIPTION SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. NO WARRANTY IS MADE ON THE BASIS OF COURSE OF PERFORMANCE, COURSE OF DEALING, OR TRADE USAGE.

9. INDEMNIFICATION.

9.1 Indemnification of Customer.

(a) Applitools agrees to defend or settle any claim brought against Customer by any third party arising from (i) Applitools' gross negligence or willful misconduct, (ii) allegations that Customer's use of the Subscription Services as authorized in this Agreement infringes such third party's U.S. patents issued as of the Effective Date, or alleging that such use infringes or misappropriates, as applicable, such third party's copyrights or trade secret rights under applicable laws, and (iii) claims based upon a breach of Section 8.1. Applitools shall pay all amounts that are finally awarded against Customer based on any such claims by a court of competent jurisdiction or any amounts that Applitools has agreed to pay in settlement of the relevant third-party claim.

(b) If a claim under Section 9.1(a)(ii) above is made or appears possible, Customer agrees to permit Applitools, at Applitools' sole discretion, to: (i) enable Customer to continue to use the Subscription Services, as applicable; (ii) to modify or replace any such infringing material to make it non-infringing; or (iii) require Customer to cease use of, and, if applicable, return, such materials as are the subject of the infringement claim, and in the case of this clause (iii), Applitools shall in connection with such requirement refund the pro rata portion of any unearned fees attributable to the materials or portion of the Subscription Services with regard to which the use is discontinued.

(c) Section 9.1(a)(ii) shall not apply if the alleged infringement, violation or misappropriation arises, in whole or in part, from: (i) modification of any Applitools product or services by any person other than Applitools or its authorized agents; (ii) combination, operation or use of any Applitools products or service with other software, hardware, systems or technologies not provided by Applitools or explicitly authorized by the Documentation; (iii) the Customer Content; and/or (iv) use of the Subscription Services other than in accordance with the Documentation (collectively, "*Customer's Assumed Risks*").

(d) THE PROVISIONS OF THIS SECTION 9 SET FORTH APPLITOOLS' SOLE AND EXCLUSIVE OBLIGATIONS, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.

9.2 Customer's Indemnity Obligations. Customer agrees to defend or settle any claim brought against Applitools by any third party arising from (i) Customer's gross negligence or willful misconduct; (ii) allegations that the Customer Content, or Customer's use of the Subscription Services in breach of this Agreement or pursuant to Customer's Assumed Risks, infringes or misappropriates such third party's Intellectual Property Rights or other proprietary rights including rights of privacy and rights of publicity, or violates applicable laws, (iii) claims based upon a breach of Section 8.1, or (iv) Customer's Assumed Risks. Customer shall pay all amounts that are finally awarded against Applitools based on any such claims by a court of competent jurisdiction or any amounts that Customer has agreed to pay in settlement of the relevant third-party claim.

9.3 Indemnification Procedures. With respect to any claim, demand or action for which an indemnity is provided under this section, the party to be indemnified (the "*Indemnified Party*") shall: (i) give prompt written notice to the indemnifying party (the "*Indemnifying Party*") of the claim, demand or action for which an indemnity is sought (provided, however, that failure of Indemnified Party to provide such notice will not release the Indemnifying Party from any of its indemnity obligations except to the extent that the Indemnifying Party's ability to defend such claim is prejudiced thereby), (ii) reasonably cooperate in the defense or settlement of any such claim, demand or action, at the expense of the Indemnifying Party; and (iii) give the Indemnifying Party sole control over the defense or settlement of any such claim; provided, however, the Indemnifying Party shall not enter into any settlement without the Indemnified Party's express consent that (1) assigns, imparts or imputes fault or responsibility to the Indemnified Party or its affiliates, (2) includes a consent to an injunction or similar relief binding upon the Indemnified Party or its affiliates, (3) fails to contain reasonable confidentiality obligations protecting the confidentiality of the settlement, or (4) provides for relief other than monetary damages that the Indemnifying Party solely bears.

10. EXCLUSIONS AND LIMITATIONS OF LIABILITY.

10.1 Exclusions of Remedies; Limitation of Liability. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS EXCLUSION OF CERTAIN DAMAGES AND CLAIMS IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. EXCLUDING CUSTOMER'S OBLIGATION TO PAY FEES WHEN DUE UNDER ANY ORDER FORM AND EITHER PARTY'S LIABILITY FOR WILFUL MISCONDUCT, THE CUMULATIVE LIABILITY OF EITHER PARTY TO THE OTHER PARTY FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT, OR STRICT LIABILITY, WILL NOT EXCEED THE TOTAL AMOUNT OF ALL FEES PAID TO APPLITOOLS BY THE CUSTOMER DURING THE TWELVE (12)-MONTH PERIOD PRIOR TO THE ACT, OMISSION OR OCCURRENCE GIVING RISE TO SUCH LIABILITY. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

10.2 Essential Basis of the Agreement. Customer acknowledges and understands that the disclaimers, exclusions and limitations of liability set forth in this Section 10 form an essential basis of the agreement between the Parties, that the Parties have relied upon such disclaimers, exclusions and limitations of liability in negotiating the terms and conditions in this Agreement, and that absent such disclaimers, exclusions and limitations of liability, the terms and conditions of this Agreement would be substantially different.

11. TERM AND TERMINATION.

11.1 Duration of Agreement. The Parties intend for this Agreement to become legally enforceable starting on the Effective Date. This Agreement will remain in effect for so long as any Access Term remains in effect and for thirty (30) days thereafter, unless it is terminated by one of the Parties in one of the situations permitting termination as set forth below in this Section 11 (the "*Term*"). This Agreement will expire as of the date that is thirty (30) days following the date when all Access Terms have expired.

11.2 Termination for Breach. Either Party may terminate this Agreement immediately by providing a notice to the other Party if the notified Party has failed to perform any material obligation and has not fully cured the failure within thirty (30) days after it has been given an initial notice specifying the breach.

11.3 Termination Upon Bankruptcy or Insolvency. Either Party may also have the right to terminate this Agreement in the event the other Party (i) becomes insolvent, (ii) becomes subject to a petition in bankruptcy filed by or against it that is not dismissed within thirty days of the filing of such petition, (iii) is placed under the control of a receiver, liquidator or committee of creditors, or (iv) dissolves, ceases to function as a going concern or to conduct its business in the normal course.

11.4 Termination of Certain Features or Functionality. Applitools reserves the right, at its sole discretion, at any time to modify, improve, correct, or discontinue, temporarily or permanently, any feature or functionality of the Subscription Services or any part thereof with or without notice. If Applitools in its discretion chooses to cease providing the current version of the Service or any of its features and/or specific functions, whether through discontinuation of the Service or by upgrading or downgrading the Service to a newer version, Customer may not be able to continue using the previous version of the Service. Features and/or functions of previous Service versions might be removed on future versions thereof. Customer agrees that Applitools shall not be liable to Customer or to any third party for any modification, suspension or discontinuance of any particular feature or functionality of the Service to the extent Applitools has determined in good faith that was not materially used by its customers generally or it has replaced such feature or functionality with another feature(s) or functionality that it believes its customers generally will deem preferable.

11.5 General consequences of termination. Effective immediately upon expiration or termination of this Agreement, (i) Customer shall cease, and shall direct its users to cease use of the Subscription Services, (ii) all licenses granted under this Agreement will become void, and (iii) neither Party will have continuing rights to use any Confidential Information of the other Party or to exercise any Intellectual Property Rights having been licensed under this Agreement. As soon as can reasonably be accomplished after this Agreement expires or is terminated, each Party will discontinue its use and will return the Confidential Information and proprietary materials of the other Party. If a Party has payment obligations that have accrued but remain unpaid at the time of expiration or termination, the Party will make payment in full within ten (10) days after the expiration or termination. Following expiration or termination, Applitools will have no obligation to retain Customer Content and may, unless legally prohibited, elect at its sole option to delete all such Customer Content from its systems.

11.6 Continuing Force of Certain Provisions. Even if this Agreement expires or is terminated, the Parties agree to remain bound by the provisions of Section 3, 6, 7, 9 (with regard to claims accrued prior to expiration or termination), 10, 11.5 11.6, 12 and 13. The rights and duties created by those provisions will not expire or terminate, but will remain in effect for so long as the provisions themselves expressly state, or, if not stated, indefinitely. Each Party will retain any claims accrued prior to expiration or termination, such as accrued rights to receive payments from the other Party.

12. MISCELLANEOUS PROVISIONS.

12.1 Notices. All notices required by or relating to this Agreement will be in writing and will be sent by means of overnight express courier or by certified mail, postage prepaid, to the Parties at their respective addresses set forth on the Cover Page, or addressed to such other address as the receiving Party may have given by written notice in accordance with this provision. Notices to Applitools shall be addressed to the attention of its General Counsel and its Chief Financial Officer and copied by email to contracts@Applitools.com, and notices to Customer shall be addressed to the person identified as Customer's primary point of contact on the Cover Page, unless in either case the receiving Party has otherwise indicated by written notice in accordance with this provision. All notices required by or relating to this Agreement may also be communicated by electronic mail, provided that the sender receives and retains confirmation of successful transmittal to the recipient. Such notices will be effective on the date indicated in such confirmation. If either Party delivers any notice by means of facsimile or email transmission in accordance with the preceding sentence, such Party will promptly thereafter send a duplicate of such notice in writing by certified mail, postage prepaid, to the receiving Party.

12.2 Excuse from liability for non-performance due to *Force Majeure*. Except for payments owed hereunder, if a Party is prevented from performing its duties under this Agreement as a result of an event of *Force Majeure*, its failure to perform will not be considered a breach of this Agreement, and its performance will be excused for the duration of the Force Majeure. For purposes of this Agreement, an event of *"**Force Majeure**"* refers to an act of god, war, natural disaster and other events beyond all reasonable control of the non-performing Party.

12.3 Assignment. This Agreement shall be binding and inure to the benefit of Customer, Applitools and each of their respective successors and assigns. Neither Party shall assign its rights or obligations under this Agreement without the express, prior written consent of the other Party, and, absent such consent, any attempted assignment or delegation will be null, void and of no effect, provided that either Party may assign this Agreement to an acquirer, who is not a competitor of the other Party, of all or substantially all of the assets to which this Agreement relates by operation of law or otherwise, without the prior written consent of the other Party.

12.4 No Third Party Beneficiaries. The Parties acknowledge that the covenants set forth in this Agreement are intended solely for the benefit of the Parties, their successors and permitted assigns. Nothing herein, whether express or implied, will confer upon any person or entity, other than the Parties, their successors and permitted assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement.

12.5 Governing Law; Jurisdiction. THIS AGREEMENT WILL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES THEREOF OR TO THE UNITED NATIONS CONVENTION ON THE INTERNATIONAL SALE OF GOODS. FOR PURPOSES OF ALL CLAIMS BROUGHT UNDER THIS AGREEMENT, EACH OF THE PARTIES HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN SANTA CLARA, CALIFORNIA. To that end, each Party irrevocably consents to the exclusive jurisdiction of, and venue in, such court(s), and waives any, (i) objection it may have to any proceedings brought in any such court, (ii) claim that the proceedings have been brought in an inconvenient forum, and (iii) right to object (with respect to such proceedings) that such court does not have jurisdiction over such Party. To the fullest extent permitted by law, each Party hereby expressly waives (on behalf of itself and on behalf of any person or entity claiming through such Party) any right to a trial by jury in any action, suit, proceeding, or counterclaim arising out of or connected with this Agreement or the subject matter hereof.

12.6 Entire Agreement. The Parties agree that the provisions of this Agreement are the entire agreement between them regarding the matters that this Agreement addresses, including the parties' respective confidentiality obligations. The Parties also agree that any prior agreements about those same matters, whether written or oral, are superseded by this Agreement, and previous oral agreements about those matters do not have any legally binding force.

12.7 Customer Reference Program. Customer agrees that Applitools may use Customer's name and Marks in its customer lists including in its website listings of customers.

12.8 Independent Contractor. The Parties are and shall be independent contractors to one another, and nothing herein shall be interpreted or construed as creating or establishing the relationship of employer and employee, partners, agent, a joint venture or any other legal relationship.

12.9 Interpretations. The Parties agree that the following rules should be applied when interpreting the words of this Agreement, unless the express words of the Agreement indicate otherwise: (i) all references to one gender apply equally to both genders; (ii) definitions of nouns in the singular also apply to the plural, and vice versa; and (iii) any use of the term "including," if followed by a list, will be interpreted to mean "including, without limitation." If any provision in this Agreement requires a writing, the writing must be typed or hand-written on paper, and any provision requiring a signed writing will be interpreted to require an electronic signature (in accordance with applicable law) or a hand-written signature. References to "sections," "paragraphs," "clauses" and "provisions" are references to portions of this document only, unless the reference expressly states otherwise. Whenever this Agreement makes reference to a certain number of days, it is referring to calendar days, unless it specifically references "business days," in which case the counting of days will exclude Saturdays, Sundays, and all holidays when the offices of U.S. federal agencies are closed.

12.10 Background Information. If any background information or "recitals" are contained on the first page(s) of this document prior to the contractual provisions, the Parties intend that such information and recitals should have no legally binding effect whatsoever, nor be interpreted as representations or warranties.

12.11 Participation in Drafting. The Parties intend that this Agreement should be interpreted in all instances as if they participated equally in the drafting of all its provisions, and that no provision in this Agreement should be interpreted in a manner unfavorable to a Party on the basis that it drafted the provision.

12.12 Enforceability. Even if the law will not enforce a provision of this Agreement in a particular instance, the Parties intend to remain bound by the other, enforceable provisions. If the unenforceable provision could be interpreted in a manner that would render it enforceable, while still reflecting the Parties' mutual intent, they intend for that interpretation to apply. If permitted by law, the Parties also intend for the provision that cannot be enforced in that instance to remain applicable in any other instances when it can be enforced.

12.13 Agreement Amendments. The Parties acknowledge that they may desire to modify this Agreement in the future, but that no modifications will be legally binding unless the modifications are expressly set forth in a writing that is physically or digitally signed by representatives of each of them.

12.14 Waivers. Even if a Party fails to enforce its rights under this Agreement in a particular instance, the other Party must still perform its duties in that instance unless the non-enforcing Party physically signs a paper that expressly waives its rights in that instance, and any such waiver only applies to the particular instance and particular rights expressly waived.

12.15 No implications of section titles. The titles to each of the sections of this Agreement are intended only to facilitate convenient reference; the Parties agree that those titles are not part of the Agreement and should not be used to interpret any part of this Agreement.

12.16 Execution of Multiple Copies. If the Parties sign multiple copies of this Agreement, they intend that all of those copies will be considered original copies, but together all of those copies represent only one contract.

13. GLOSSARY OF DEFINED WORDS AND PHRASES.

For purposes of this Agreement, certain capitalized words and phrases will have the meanings set forth or cross-referenced below.

"*Access Rights*" are contractual rights to access, receive, use and digitally display the Subscription Services according to the technical procedures and protocols established according to this Agreement. The scope of any particular Access Rights may be defined by the terms of the applicable Order Form pursuant to which such Access Rights are purchased, including the Access Term, Maximum Pages, Maximum Checkpoints, Maximum Concurrent Executions and/or any other use restrictions applicable to such Access Rights.

"*Access Term*" means the period of time during which particular Access Rights remain valid, as stated in the applicable Order Form pursuant to which such Access Rights are purchased. For avoidance of doubt, particular sets of Access Rights purchased under separate Order Forms may have differing Access Terms.

"*Checkpoint*" means a single execution of a visual validation using the Subscription Services of a single visual object (such as a webpage, application page or document or any Component of any of the foregoing) that is selected by the Customer. For clarity, every execution of such visual validation will be counted as one (1) Checkpoint.

"*Component*" means a modular UI element, tested through a component-supported SDK (Storybook or Component testing with Cypress), that undergoes visual testing to verify its conformity with design expectations and its consistent performance across diverse scenarios and updates. The fundamental dimensions of a Component are confined to 1024 x 768 pixels as a standard benchmark. In instances where a Component surpasses these dimensions, it will be assessed as multiple Components or Component Checkpoints, proportionate to its size in comparison to the benchmark size.

"*Concurrent Executions*" means the simultaneous opening of more than one test from Customer's Account.

"*Confidential Information*" means all confidential data or information in any form disclosed by one Party to the other Party by any means, if and for so long as the data and information are protectable as trade secrets by the disclosing Party or are otherwise subject to legal rights that give the disclosing Party, independent of contract, a right to control use and/or disclosure of the data and information. As a non-exhaustive list of examples, Confidential Information includes data, information regarding a Party's financial condition and financial projections, business and marketing plans, product plans, product prototypes, the results of product testing, research data, market intelligence, technical designs and specifications, secret methods, manufacturing processes, source code of proprietary software, the content of unpublished patent applications, customer lists, vendor lists, internal cost data and the terms of contracts with employees and third parties. Information may be Confidential Information regardless of the medium or manner by which it is disclosed, including disclosures orally or via printed or handwritten document, email or other electronic messaging, fax or telephone.

"*Customer Content*" means the Customer application data generated, collected or recorded by the Customer, or by any supplier or licensor to Customer, that is uploaded to or that is otherwise made available by the Customer to the Subscription Services.

"*Documentation*" means the manuals, tutorials, reference materials, SDK software and similar materials, whether in print or electronic format, ordinarily provided by Applitools to customers that describe the functionality of the Subscription Services.

"*Intellectual Property Rights*" are the exclusive rights held by the owner of a copyright, patent, trademark, or trade secret, including (i) the rights to copy, publicly perform, public display, distribute, adapt, translate, modify and create derivative works of copyrighted subject matter; (ii) the right to exclude another from using, making, having made, selling, offering to sell, and importing patented subject matter and from practicing patented methods, (iii) the rights to use and display any marks in association with businesses, products or services as an indication of ownership, origin, affiliation, endorsement, or sponsorship; and (iv) the rights to apply for any of the foregoing rights, and all rights in those applications. Intellectual Property Rights also include any and all rights associated with particular information that are granted by law and that give the owner, independent of contract, exclusive authority to control use or disclosure of the information, including enforceable privacy rights and any rights in databases recognized by applicable law.

"*Maximum Checkpoints*" means, with respect to any particular Order Form, (a) the maximum number of Checkpoints that may be processed using the Subscription Services per month applicable to that Order Form, which shall be as follows: (i) for a commercial customer, the maximum number of Checkpoints which is specified in the Order Form, or (ii) for a Free Trial Service Customer, up to 100 Checkpoints per month, and (b) the maximum number of Checkpoints per Page per month, which is 1,000.

"*Maximum Concurrent Executions*" means the maximum number of Concurrent Executions using the Subscription Services which may be performed at any particular time during the Access Term as specified in the applicable Order Form, and if no such maximum is stated in the Order Form, up to a maximum of 40 concurrencies (more than 40 concurrencies must be explicitly stated in the Order Form).

"*Maximum Pages*" shall mean, with respect to any particular Order Form, the maximum number of Pages that may be processed using the Subscription Services each month during the Access Term applicable to that Order Form.

"*Order Form*" means a document which expressly identifies itself as an order form that is subject to this Agreement, whereby the Customer orders one or more of the following: (i) Access Rights for the Subscription Services; (ii) Professional Services; or (iii) any other products or services offered by Applitools pursuant to this Agreement.

"*Pages*" are the default license unit for the Subscription Services, and a "Page" means a unique Checkpoint regardless of how many times the Checkpoint is executed, regardless of the viewport size, browser, device, or browser version.

"*Permitted Users*" are individual persons for whom Customer has purchased Access Rights; and may include only employees or agents of Customer who are acting on Customer's behalf in the internal operation of Customer's business.

"*Professional Services*" means configuration services, training services, and/or technical support services to be provided by Applitools as specified in a mutually executed Order Form.

"*Reports*" means the content of any reports, summaries, analyses, data, information or other items of output, whether in textual or graphical form, produced by the Services that are comprised of reports on or representations of Customer Content or other Customer Confidential Information after processing or transformation in any manner by or pursuant to the Services; but excluding for the purposes of clarity the format, design, method, algorithms and all intellectual property and technology and any Intellectual Property Rights therein used in or underlying the preparation and presentation of the Reports.

"*Service Levels*" means the standard service levels provided by Applitools, as further described in the Documentation.

"*Services*" means, collectively or individually, the Subscription Services and/or the Professional Services.

"**Statement of Work**" means a separate, mutually signed document that unambiguously identifies this Agreement and expressly states that the Parties intend for it to be considered a Statement of Work under this Agreement, and that (i) identifies the duties that each Party agrees to perform and, if applicable, the time period during which those duties are to be performed and/or completed; (ii) identifies any deliverables to be provided by either Party; (iii) states any payments to be made by Customer and any other applicable economic terms; and (iv) includes any additional terms or conditions that the Parties desire to include related to the rights and duties of the parties under that Statement of Work.

"**Subscription Services**" means the particular online services identified in a mutually executed Order Form, to be performed by means of Applitools' proprietary methodologies and systems, to which Access Rights are purchased by Customer, and to which access is provided by Applitools via its Website. Customer acknowledges that the Subscription Services may include access to particular functional modules of Applitools' system, but not to other modules, as may be indicated in the applicable mutually executed Order Form.

"*Website*" means the Applitools website accessible at the URL www.Applitools.com.