BY INDICATING CUSTOMER'S ACCEPTANCE OF THIS AGREEMENT OR ACCESSING OR USING THE SDK AND SERVICES, CUSTOMER ACCEPTS ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT.

IF A PARTY IS ACCEPTING THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH PARTY REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH COMPANY OR OTHER LEGAL ENTITY TO THIS AGREEMENT, AND CUSTOMER AS USED HEREIN SHALL MEAN SUCH COMPANY OR LEGAL ENTITY.

IF CUSTOMER DOES NOT AGREE TO THESE TERMS AND CONDITIONS, DO NOT ACCESS AND USE THE SDK AND SERVICES. CUSTOMER AGREES THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN AGREEMENT SIGNED BY CUSTOMER.

ONLINE SERVICES AGREEMENT

This Online Services Agreement, including any Exhibits ("**Services Agreement**") is entered into by and between Optico, Inc. ("**Company**") and the entity that signs an Order Form to access and use the SDK and Services ("**Customer**") (each referred to as a "**Party**" and collectively as the "**Parties**"). The Services Agreement incorporates any Exhibits, Order Forms, and/or any documents incorporated therein by reference (collectively the "**Agreement**").

The "**Effective Date**" of the Services Agreement is the date which is the effective date of the first Order Form referencing this Agreement. This Agreement will govern Customer's initial purchase of access to and use of the SDK and Services, on the Effective Date, as well as any future purchases made by Customer through any additional Order Forms that references this Agreement

From time to time, Company may modify the terms of the Services Agreement. If Company makes changes to the Services Agreement, Company will provide Customer with notice by displaying a prominent notice on Company's website, located at www.optico.ai ("**Website**") or the Services or by sending Customer an email. Customer needs to be sure to read any such notice carefully. Having received notice of any changes to the Services Agreement, if Customer continues to access and use the Services, then Customer agrees to the updated Services Agreement. Neither the course of conduct between the Parties nor trade usage will act to modify or alter the provisions of the Services Agreement. If Customer does not wish to continue accessing and using the Services under the updated Services Agreement, then Customer can terminate their access and use of the Services, see Section 12 (Term and Termination).

1.0   DEFINITIONS

1.1   <u>Defined terms</u>. All defined terms in this Agreement with initial capital letters have the meaning as set forth in Exhibit A, unless defined elsewhere in this Agreement. "**Section**" or "**Exhibit**" means a section or exhibit of this Agreement. The singular meaning of a defined term will have the same meaning as the plural meaning and visa versa.

2.0   LICENSE, RIGHTS, AND RESTRICTIONS

2.1   <u>License to use SDK</u>. Subject to Customer's compliance with the terms and conditions of this Agreement, the payment of Fees, and during the Term, Company grants Customer a non-exclusive, non-transferable, non-assignable license to use and incorporate the SDK into Customer Applications solely to access the Services. Customer and their Authorized Users will not use the SDK for any other purpose than set forth in this Agreement and the Documentation. Customer will be responsible and liable for ensuring that only Authorized Users are authorized to access and use the SDK.

2.2   <u>Right to use Services</u>. Subject to Customer's compliance with the terms and conditions of this Agreement, the payment of Fees, and during the Term, Company grants Customer a non-exclusive, non-transferable right to access and use the Services solely for internal use by Customer and their Authorized Users for Customer's general business purposes. Customer and their Authorized Users will not use the Services for any purposes beyond the scope of the access and use as set forth in this Agreement, and the Documentation. Customer will be responsible and liable for ensuring that only Authorized Users are authorized to access and use the Services.

2.3   <u>Access to the Services</u>. Subject to the terms and conditions of this Agreement and during the Term, Company will provide Customer with the necessary access credential and network links or connections needed to allow Customer to access the Services. The Services will be provided solely from within the continental United States, and on computing and storage devices residing in the United States.

2.4   <u>Restrictions on use</u>. Customer will not at any time, directly or indirectly, and will not permit, authorize, or allow any Authorized Users or any third parties, to carry out any one or more of the following:

   a.   use, copy, duplicate, or publish the features, functions, or user interfaces of the SDK or Services, in whole or in part;

   b.   rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the SDK or Services; or include the Services in any service bureau or outsourcing offering;

   c.   modify, reverse engineer, disassemble, decompile, decode, adapt, hack, attempt to hack, or otherwise attempt to derive or gain access to any software component, underlying idea or algorithm of the SDK or Services, in whole or in part;

   d.   decipher any transmissions to or from the server running the Services;

   e.   interfere with or disrupt the integrity or performance of the SDK or Services;

   f.   attempt to bypass or break any security mechanism of the SDK or Services, or using the SDK or Services in any other manner that possesses a material security or service risk to the Company or any of their users;

   g.   attempt to gain unauthorized access to the SDK or Services or its related systems and networks;

h.   permit access to or use of the SDK or Services in a way that circumvents any contractual usage limits;

i.   alter, remove, disable, or suppress the display of any copyright, trademark, trade name, logo, or trade dress included as part of the SDK, Services, and Company's Content;

j.   use the SDK or Services in any one or more of the ways specified in the Acceptable Use Policy, as set forth in Exhibit B.

2.5   <u>Unauthorized Uses</u>. Customer will: (a) limit the Personal Data that they post, upload, process, and store on the Services to only the Personal Data that is necessary to identify the Unauthorized Uses; (b) store Customer's Content and Customer's Data only for as long as necessary to identify the Unauthorized Uses.

2.6   <u>Company reserves rights</u>. The rights and licenses granted in this Agreement are subject to all terms, conditions, requirements, restrictions, and limitations set forth in this Agreement. Company reserves all rights not expressly granted to Customer in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any Intellectual Property Rights or other right, title, or interest in or to the Company Property.

2.7   <u>Company's use of Customer's Data and Content</u>. During the Term, Customer hereby grants Company, directly and indirectly, a non-exclusive, worldwide, royalty-free license to use, collect, host, store, copy, reproduce, aggregate, distribute, display, and perform Customer's Data and Customer's Content <u>only as necessary</u> for Company to provide Customer with access to and use of the SDK and Services.

2.8   <u>Aggregated Statistics</u>. Notwithstanding anything to the contrary in this Agreement, Company may monitor Customer's use of the Services and collect and compile anonymized Aggregated Statistics. Company will use the Aggregated Statistics to make improvements, changes, enhancements, and updates to the Services and for any other purpose that Company deems fit; provided, that, such Aggregated Statistics do not identify Customer's Data, Customer's Content, or Customer's Confidential Information, without Customer's prior written consent.

2.9   <u>Feedback</u>. Each Party (as "**Discloser**") hereby grants to the other Party (as "**Recipient**"), directly and indirectly, a non-exclusive, worldwide, perpetual, irrevocable, royalty-free license to use, reproduce, license, sublicense, distribute, disclose, transmit, publicly display, publicly perform, modify, create derivative works of, translate, reformat, and incorporate the Discloser's Feedback into Recipient's products and services. During the Term and any time period thereafter (i.e. in perpetuity), Recipient will (a) have no obligation to (i) report on any uses of the Discloser's Feedback; (ii) keep the Discloser's Feedback secret, (iii) compensate or credit Discloser in any way regarding the Discloser's Feedback, or (iv) be required to restrict publishing or disclosure of the Discloser's Feedback; and (b) be entitled to profit from, disclose, publish, or otherwise exploit the Discloser's Feedback in any way that Recipient deems appropriate.

3.0   COMPANY OBLIGATIONS

Subject to Customer's payment of Fees for use of the Services and compliance with all terms and conditions of this Agreement, and during the Term:

3.1   Maintenance Releases. Customer will be entitled to receive Maintenance Releases, at no additional charge, when and as they are made generally available to other customers of Company. Maintenance Releases will be considered integral to the SDK and Services for purposes of this Agreement from the time such Maintenance Releases are first delivered to Customer. Customer's use and access to Maintenance Releases is subject to the same rights, obligations, and limitations set forth in this Agreement for the SDK and Services.

3.2   Non-flagged Unauthorized Use. Any of Customer's Content and/or Customer's Data that is not flagged as Unauthorized Use, will be immediately deleted from the Services. Any Unauthorized Use flagged by Company, will be maintained only for as long as such information is necessary, and will be deleted when such information is no longer necessary, in Company's opinion. For purposes of clarification, Personal Data used to set up Customer's Account will not be deleted until such time as Customer's access and use of the SDK and Services are terminated.

3.3   Security. Company will maintain commercially reasonable administrative, physical, and technical safeguards to protect the security, confidentiality, and integrity of Customer's Data.

4.0   CUSTOMER OBLIGATIONS

4.1   Prevent unauthorized access. Customer and their Authorized Users will treat passwords and network links or connections to the Services as confidential information, and will use commercially reasonable efforts to prevent unauthorized access to or use of the Services. Customer will notify Company promptly if they learn or become aware of any such unauthorized access or use of the SDK and/or Services.

4.2   Internal use. Customer understands and agrees that use of the SDK and Services is limited to Customer's internal use for their general business purposes.

4.3   Customer responsibilities. Customer will be responsible and liable for: (a) the accuracy, quality, and legality of Customer's Data, and Customer's Content; (b) the means by which Customer acquired the Customer's Data and Customer's Content; (c) obtaining any and all permissions and consents for Customer to post, upload, process, and store Customer's Data and Customer's Content to the SDK and as used in the Services; (d) Customer's use of Customer's Data and Customer's Content within the SDK and Services; and (e) Customer's compliance with all applicable laws and regulations, including but not limited to, COPPA and GDPR, in the use of Customer's Data and Customer's Content within the SDK and Services.

4.4   Additional Customer responsibilities. Customer will be responsible and liable for the actions, activities, and omissions of their Authorized Users, including, but not limited to, use of the SDK and Services in accordance with the terms and conditions of this Agreement, breach of this Agreement, and compliance with applicable laws and regulations, including, without limitation,

any privacy laws. Customer will use commercially reasonable efforts to make all Authorized Users aware of the terms and conditions of this Agreement, as applicable to such Authorized User's use of the SDK and Services, and will cause Authorized Users to comply with such terms and conditions.

4.5   Privacy responsibilities. Customer will comply with the following privacy obligations:

   a.   Ensure that Customer has the necessary permission and consent from End Users or they are relying on an appropriate legal basis in order to provide End User's data to the Company;

   b.   Ensure that Customer has the necessary permissions and consents from parents and/or legal guardians in order to provide End User Child's data to the Company;

   c.   State in their privacy policy that Customer is sharing the End User's data with the Company; and

   d.   Identify Company as a sub-processor of Customer, as follows:
        Name: Optico, Inc.;
        Purpose: Optico Services is used to monitor unauthorized content; and
        Data Center: United States.

4.6   End User Agreement. For an End User's use of Customer Application (that incorporates the SDK), Customer agrees to include the suggested additional terms and conditions, as set forth in Exhibit C, in their EUA. Customer will be responsible and liable for any action or inaction by Customer and/or an End User due to any differences between the suggested additional terms and conditions, as set forth in Exhibit C, and Customer's terms and conditions with End Users.

4.7   DPA. To the extent that Customer's Data and/or Customer's Content (from End Users located in the European Union, European Economic Area or the United Kingdom) is (a) processed by Company, then a data processing addendum ("**DPA**") will be signed by and between the Parties; and (b) transferred to Inadequacy Decision Countries, then the Standard Contractual Clauses ("**SCCs**") and the United Kingdom international data transfer addendum ("**ICO Addendum**"), as applicable, will be signed by and between the Parties. The DPA, SCCs, and ICO Addendum signed by both Parties are hereby incorporated into this Services Agreement by reference. For purposes of this Section 4.7, "**Inadequacy Decision Countries**" will mean countries located outside of the European Union, European Economic Area or United Kingdom where it has been determined by the European Commission and the United Kingdom Information Commissioner's Office that such countries do not have adequate data protection laws compared to the rights and freedoms protected under the GDPR.

5.0   MARKETING ACTIVITIES

5.1   Press releases. Each Party will obtain the other Party's prior written consent (email sufficient) before making any press release, official public statement, or other announcement concerning this Agreement via any website pages, news groups, mailing lists, or similar communications media.

5.2   Use of Marks. During the Term, each Party (as "**Licensor**") hereby grants to the other Party (as "**Licensee**") a non-exclusive, non-transferable, worldwide, royalty-free license to use Licensor's

Marks to identify Customer as a customer of Company on the Website, and for marketing activities such as references, case studies, event participation, etc. Licensee's use of the Licensor's Marks will be in accordance with Licensor's usage policies then in effect, as updated from time to time, and provided by Licensor to Licensee upon request. Licensee agrees not to disparage or defame Licensor's name, image, and likeness, in any manner. Except as otherwise agreed in writing by Licensor, Licensee will not register, directly or indirectly any trademark, service mark, trade name, copyright, company name or other proprietary or commercial right which is identical or confusingly similar to the Licensor's Marks or which are considered translations in any other language(s). All goodwill associated with and use of the Licensor's Marks will inure to the benefit of Licensor.

6.0   FEES AND PAYMENT TERMS

6.1   <u>Fees</u>. Customer will pay the Company all Fees and other applicable amounts that are due and payable by Customer to Company in accordance with the terms of this Agreement. Unless otherwise set forth in an Order Form, (a) Customer will make payment of all Fees and other applicable amounts that are due and payable by Customer to Company on net [alphanumeric] [(numeric)] calendar days from Company's invoice date, and (b) Company's invoices will be issued electronically to Customer once a calendar month. All amounts due and payable by Customer to Company are non-cancelable and non-refundable.

6.2   <u>Failure to make payment</u>. In addition to any other rights or remedies Company may have under this Agreement or as a matter of law, if Customer fails to pay any amounts due under this Agreement by the due date then such failure to pay will be deemed a Material Breach of this Agreement, and Company reserves the right to:

a.   suspend providing any Services during the term of an Order Form should Customer not make payment of Fees when due and payable to Company, as set forth in an Order Form; and

b.   charge Customer interest at a rate equal to the greater of one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law, until such time as Customer makes payment of the amount due. Further, Customer will reimburse Company for all costs incorrect by Company in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees.

6.3   <u>Taxes and payment processing fees</u>. All Fees are exclusive of any (a) local, federal, state, or foreign taxes, levies, duties, or similar governmental assessments of any nature, including, but not limited to, value-added, use, or withholding, excluding any taxes based on Company's net income or property tax (collectively, "**Taxes**"); or (b) payment processing fees. Customer is responsible for paying all Taxes and payment processing fees associated with the payment of the Fees by Customer to Company hereunder.

7.0   OWNERSHIP

7.1   <u>Company Property</u>. Company and their suppliers, as applicable, own all right, title, and interest in and to: (a) the Services; (b) SDK; (c) Documentation; (d) Maintenance Releases; (e) Aggregated

Statistics; (f) Company's Content; (g) Company's Marks; (h) Company's Feedback; (i) derivative works of the Feedback, subject to Customer's rights in Customer's Feedback; (j) Company's Confidential Information, and (k) any and all Intellectual Property Rights therein to the foregoing Section 7.1(a) through Section 7.1(j) ("**Company Property**"). Except as expressly set forth in this Agreement, Customer will have no right to (nor the right to permit, allow or authorize any third party to) sell, assign, lease, transfer, use, encumber, or otherwise suffer to exist any lien or security in the Company Property.

7.2   Customer Property. Customer and their suppliers/customer, as applicable, own all right, title, and interest in and to: (a) Customer's Data; (b) Customer's Content; (c) Customer's Feedback; (d) Customer's Marks; (e) Customer's Confidential Information, and (f) any and all Intellectual Property Rights therein in the foregoing Section 7.2(a) through Section 7.2(e) ("**Customer Property**"). Except as expressly set forth in this Agreement, Company will have no right to (nor the right to permit, allow or authorize any third party to) sell, assign, lease, transfer, use, encumber, or otherwise suffer to exist any lien or security in the Customer Property.

8.0   CONFIDENTIALITY

8.1   Protection of Confidential Information. The Receiving Party shall (a) maintain the confidentiality of the Confidential Information using the same degree of care they employ to maintain the confidentiality of their own confidential information, but no less than a reasonable degree of care; (b) disclose only to those Personnel who have a need to know and who have signed an agreement with the Receiving Party to protect the Confidential Information of the Disclosing Party; (c) not disclose to any third party the Confidential Information except to their legal and financial advisors who have a need to know and who have signed an agreement with the Receiving Party or have a fiduciary duty to the Receiving Party to protect the Confidential Information of the Disclosing Party; and (d) use the Confidential Information only to fulfill their rights and obligations under the terms of this Agreement.

8.2   Non-confidential information. This Agreement imposes no obligation upon the Receiving Party with respect to Confidential Information that: (a) is known at the time of disclosure by the Receiving Party, without an obligation of confidentiality; (b) is, or becomes publicly know, through no fault of the Receiving Party; (c) is developed by the Receiving Party independent of, and without use, access to, or reference to the Confidential Information; or (d) is rightfully obtained by the Receiving Party from a third party without an obligation of confidentiality.

8.3   Request for disclosure. In the event that the Receiving Party is requested or required in a court or administrative proceeding or subpoena to disclose the Disclosing Party's Confidential Information, the Receiving Party will give the Disclosing Party prompt notice of such request or requirement and the opportunity to seek confidential treatment, a protective order or similar remedies or relief prior to disclosure.

8.4   Violations of law or regulation. Company may report any activity that they suspect violates any law or regulation to the appropriate law enforcement authorities, regulators, or other appropriate third parties. The Company's reporting may include disclosing any of Customer's Confidential

Information and other information of Customer, as applicable, that is necessary for the investigation and prosecution of the violation, without any liability to the Company. Company will have no obligation to notify Customer of such reports.

8.5   <u>Contacted by law enforcement</u>. In the event that Company (a) is contacted by any law enforcement authorities, regulators, or other appropriate third parties, or (b) receives a court order or subpoena for violation of any law or regulation, then Company will cooperate fully and provide any of Customer's Confidential Information and other information of Customer, as applicable, that is requested or necessary for the investigation and prosecution of the violation, without any liability to the Company. Company will have no obligation to notify Customer of such requests.

9.0   REPRESENTATIONS AND WARRANTIES; AND DISCLAIMERS

9.1   <u>General representations and warranties</u>. Each Party represents and warrants that:

a. they have and will have the power and authority to enter into and perform their obligations under this Agreement;

b. the execution, delivery, and performance of their obligations under this Agreement by such Party does not and will not (i) result in a violation of any law, judgment, or order applicable to such Party, or (ii) conflict with or breach any contract or other obligation to which such Party is bound;

c. they hold and will hold all licenses, approvals, registrations, permits, and certifications required under applicable law to conduct their business, including without limitation, all necessary business licenses, tax registrations, and import and export licenses; and

d. they do and will comply with all applicable federal, state, and local laws and regulations, including, but not limited to anti-bribery, anti-corruption and privacy laws, applicable to their performance and obligations under this Agreement.

9.2   <u>Export representation and warranty</u>. Each Party represents and warrants that they and their Personnel were not, are not, and will not be included on any list of entities or individuals maintained and updated by the Department of Commerce, Bureau of Industry and Security, or any successor or replacement agency ("**BIS**") and the United States Department of Treasury's Office of Foreign Assets Control, or any successor or replace agency ("**OFAC**") to whom the export of certain types of technology, materials, and information is prohibited by United States laws.

9.3   <u>Consents representation and warranty</u>. Customer represents and warrants that, to the best of their knowledge, Customer has obtained and will obtain any and all permissions and consents for Customer to post, upload, process, and store Customer's Data and Customer's Content to the SDK and Services.

9.4   <u>Company Property representation and warranty</u>. Company represents and warrants that, to the best of their knowledge, (a) Company Property does not and will not violate any Intellectual Property Rights or other rights of any third party; and/or (b) Company has secured or will secure the rights in and to the Intellectual Property Rights in Company Property.

9.5   <u>Customer Property representation and warranty</u>. Customer represents and warrants that, to the best of their knowledge, (a) Customer Property does not and will not violate any Intellectual Property Rights or other rights of any third party; and/or (b) Customer has secured or will secure the rights in and to the Intellectual Property Rights in Customer Property.

9.6   <u>Company's no Viruses representation and warranty</u>. Company represents and warrants that they do not and will not knowingly incorporate any Viruses in the SDK or Services.

9.7   <u>Customer's no Viruses representation and warranty</u>Customer represents and warrants that they do not and will not incorporate any Viruses in Customer's Data, Customer's Content, the SDK, and/or the Services.

9.8   <u>Company's use of Contractors and Consultants representations and warranties</u>. Company represents and warrants that they (a) have or will have an agreement with Company's Contractors and/or Consultants with terms at least as restrictive as the terms set forth in this Agreement; and (b) are and will be responsible and liable for the actions or inactions of Company's Contractors and/or Consultants, and any breach of this Agreement by Company's Contractors and/or Consultants, as if such Company's Contractors and/or Consultants were Company hereunder.

9.9   <u>Customer's use of Contractors and Consultants representations and warranties</u>Customer represents and warrants that they (a) have and will have an agreement with Customer's Contractors and/or Consultants with terms at least as restrictive as the terms set forth in this Agreement; and (b) are and will be responsible and liable for the actions or inactions of Customer's Contractors and/or Consultants, and any breach of this Agreement by Customer's Contractors and/or Consultants, as if such Customer's Contractors and/or Consultants were Customer hereunder.

9.10   <u>AS-IS AND AS-AVAILABLE</u>. THE SERVICES AND SDK ARE PROVIDED ON AN "AS-IS" AND "AS-AVAILABLE" BASIS.

9.11   <u>COMPANY'S DISCLAIMERS</u>. COMPANY DISCLAIMS ALL WARRANTIES THAT ANY USE OF THE SDK AND/OR SERVICES WILL YIELD ANY SPECIFIC RESPONSES, RESULTS, OR RESPONSE TIMES AS USED WITH CUSTOMER APPLICATION, INCLUDING, BUT NOT LIMITED TO, THAT THE SDK AND/OR SERVICES WILL DISCOVER ALL UNAUTHORIZED USES.

9.12   <u>COMPANY'S ADDITIONAL DISCLAIMERS</u>. EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED ABOVE IN THIS SECTION 9, COMPANY (A) MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE REGARDING THE SERVICES AND SDK; (B) DISCLAIMS ALL WARRANTIES, INCLUDING ANY IMPLIED OR EXPRESS WARRANTIES, INCLUDING WITHOUT LIMITATION, (I) OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, COMPATIBILITY; (II) ARISING OUT OF RESULTING FROM, CAUSED BY AND/OR RELATED TO ANY COURSE OF DEALING OR USAGE OF TRADE, (III) THAT THE SERVICES OR SDK WILL BE DELIVERED FREE OF ANY INTERRUPTIONS, DELAYS, OMISSIONS OR ERRORS,

OR IN A SECURE MANNER, OR (IV) THAT ANY CUSTOMER'S CONTENT AND/OR CUSTOMER'S DATA WILL BE SECURE OR NOT OTHERWISE LOST OR ALTERED.

10.0   INDEMNIFICATION

10.1   <u>Customer's Indemnification Obligations.</u> Customer shall defend, indemnify, and hold harmless Company and their Representatives, from or against any and all third party claims, actions, and demands ("**Third Party Claims**") in each case including any related liabilities, losses, damages, judgements, settlements, costs, and expenses (including reasonable attorneys' fees) that are awarded against Company and their Representatives, or agreed in settlement by Customer insofar as such Third Party Claims allege or relate to or arise from one or more of the following:

    a.   the gross negligent or willful acts or omissions of Customer;

    b.   the unfair or deceptive acts or practices of Customer;

    c.   the infringement of any Intellectual Property Rights or other rights of any third party of any one or more of the following: (i) Customer's Marks; (ii) Customer's Data; (iii) Customer's Content;

    d.   a breach by Customer of the provisions of Section 2 (License, Rights, and Restrictions);

    e.   a breach by Customer of the provisions of Section 4 (Customer Obligations);

    f.   a breach by Customer of any of their representations and warranties as set forth in Section 9 (Representations and Warranties; and Disclaimers);

    g.   a breach by Customer of the provisions of Exhibit B (Acceptable Use Policy); and

    h.   a breach by Customer of the provisions of Exhibit C (Suggested EUA Terms).

Section 10.1(c) will not apply to the extent that the Third Party Claim of infringement of any Intellectual Property Rights allege or relate to or arise from one or more of the following: (i) use of the Customer's Marks in combination with any data, software, hardware, equipment, or technology not provided by Customer; (ii) use of Customer's Data in combination with any data, software, hardware, equipment or technology not provided by Customer; (iii) use of Customer's Content in combination with any data, software, hardware, equipment or technology not provided by Customer.

10.2   <u>Indemnification Procedures</u>. Customer will not settle any Third Party Claim that would bind the Company to any obligations (other than payment covered by Customer) or require any admission of fault by Company, without the Company's prior written consent. Further, any indemnification obligations under this Section 10 will not apply if the Customer settles or makes any admission with respect to the Third Party Claim, without Company's prior written consent.

11.0   LIMITATION OF LIABILITY

11.1   <u>INDIRECT DAMAGES</u>. IN NO EVENT WILL COMPANY BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES WHATSOEVER, INCURRED BY EITHER PARTY

ARISING OUT OF, RESULTING FROM, CAUSED BY AND/OR RELATED TO THIS AGREEMENT, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF THE DAMAGES IN QUESTION OR EVEN IF THE DAMAGES WERE FORESEEABLE.

11.2   DIRECT DAMAGES. IN NO EVENT WILL COMPANY'S TOTAL LIABILITY UNDER ANY AND ALL CAUSES OF ACTION ON A CUMULATIVE BASIS EXCEED THE PAYMENTS MADE BY CUSTOMER TO COMPANY DURING THE IMMEDIATELY PRECEDING THREE (3) MONTH PERIOD.

11.3   NO LIABILITY OF COMPANY. IN NO EVENT WILL COMPANY OR THEIR REPRESENTATIVES BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING OUT OF, RESULTING FROM, CAUSED BY, RELATED TO, AND/OR IN CONNECTION WITH (A) CUSTOMER'S INABILITY TO (I) USE THE SDK AND/OR SERVICES, INCLUDING AS A RESULT OF ANY PERMITTED TERMINATION OR SUSPENSION OF THIS AGREEMENT OR PERMITTED TERMINATION OR SUSPENSION OF THE SDK AND/OR SERVICES; OR (II) ACCESS AND USE THE SDK AND/OR SERVICES; OR (B) THE COST OF PROCUREMENT OF ANY SUBSTITUTE SERVICE.

11.4   FUNDAMENTAL ELEMENTS. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE EXCLUSIONS AND LIMITATIONS SET FORTH HEREIN ARE FUNDAMENTAL ELEMENTS OF THE BASIS FOR THE BARGAIN BETWEEN THE PARTIES AND THE PARTIES WOULD NOT HAVE ENTERED INTO THIS AGREEMENT ABSENT SUCH EXCLUSIONS AND LIMITATIONS.

12.0   TERM AND TERMINATION

12.1   Term of this Agreement. Unless otherwise set forth in this Section 12, the term of this Agreement will begin on the Effective Date and continue until either Party terminates this Agreement as set forth in this Section 12 (referred to herein as the "**Term**").

12.2   Termination of this Agreement. This Agreement may be terminated, with or without cause, by either Party providing the other Party with ten (10) business days prior written notice; provided, that, an Order Form is not current and valid. For purposes of clarification, neither Company nor Customer may terminate an Order Form prior to the end of the term of an Order Form, unless either Party is in Material Breach of an Order Form or this Agreement..

12.3   Material Breach. Either Party may terminate this Agreement for a Material Breach of this Agreement by the other Party, provided, that, the breaching Party has first been notified in writing of the breach and has been given thirty (30) calendar days to cure and fails or refuses to cure within such thirty (30) calendar day period, unless the Parties agree, in writing, to a longer cure period.

12.4   Obligations upon termination. Upon termination of this Agreement for any reason:

a. all Fees owed by Customer to Company prior to the date of termination of this Agreement will be immediately due and payable;

b. access to and use of the SDK and Services to Customer and their Authorized Users will be terminated; and

c. Customer will have thirty (30) calendar days to make a copy of Customer's Content and Customer's Data. After thirty (30) calendar days, Company will have no obligation to maintain any of Customer's Content or Customer's Data, unless Company is otherwise legally required.

12.5   Additional obligations upon termination. Within thirty (30) calendar days of the termination date of this Agreement, (a) the Receiving Party will return or destroy the Disclosing Party's Confidential Information; and (b) Licensee will cease using Licensor's Marks.

12.6   Survival Provisions. The following provisions of this Agreement will survive termination of this Agreement: Section 2.8 (Aggregated Statistics); Section 2.9 (Feedback); Section 6 (Fees and Payment Terms), Section 7 (Ownership); Section 8 (Confidentiality); Section 9 (Representations and Warranties; and Disclaimers); Section 10 (Indemnification); Section 11 (Limitation of Liability); Section 12.6 (Survival Clauses); Section 13 (General); and any other provisions by their nature that would survive the termination of this Agreement.

13.0   GENERAL

13.1   Governing Law. Any dispute or claim (including non-contractual disputes or claims) arising out of, resulting from, caused by and/or related to this Agreement, its subject matter, or its formation will be governed by and construed in accordance with (a) the laws of the state which has venue and jurisdiction, without reference to its conflicts of laws and choice of law rules or principles, and (b) any controlling United States federal laws. The Parties irrevocably agree that the federal and state courts located in San Francisco county, California, will have exclusive venue and jurisdiction to adjudicate and settle any dispute or claim (including non-contractual disputes or claims) arising out of, resulting from, caused by, and/or related to this Agreement, its subject matter, or its formation. The United Nations Convention on Contracts for the International Sale of Goods is expressly excluded from application to this Agreement.

13.2   Entire Agreement. This Agreement, including its Exhibits and any Order Forms, contains the full understanding of the Parties hereto with respect to the specific subject matter hereof and supersedes and cancels all other previous agreements, negotiations, commitments, discussions, and warranties, whether oral or in writing, with respect to such subject matter. The Parties have not relied on any statement, representation, warranty, or agreement of the other Party or of any other person on such Party's behalf, including any representations, warranties, or agreements arising from statute or otherwise in law, except for the representations, warranties, or agreements expressly contained in this Agreement. Nothing in this Section 13.2 purports to limit or exclude any liability for fraud.

13.3   Assignment. This Agreement and the rights and obligations hereunder may not be assigned, assumed, delegated, novated, or transferred by Customer, without the prior written consent of the

Company, which consent will not be unreasonably withheld. Subject to the foregoing sentence, this Agreement will be binding upon and inure to the benefit of the Parties, their successors and permitted assigns. Any purported assignment, assumption, delegation, novation, and/or transfer of rights and/or obligations under this Agreement in violation of this Section 13.3 will be null and void.

13.4   <u>Tiered Dispute Resolution and Arbitration</u>. The Parties agree to resolve any disputes, as set forth in Exhibit D.

13.5   <u>Export Compliance</u>. The Parties acknowledge that certain software and technical data in connection with this Agreement, and certain transactions contemplated hereunder, may be subject to the export laws of the United States and other countries. The Parties will not export or re-export any such items or undertake any transaction or action, nor fail to take any required action, in violation or contravention of any such export laws.

13.6   <u>Waiver</u>. The waiver by either of the Parties hereto of any breach of any term, provision, condition, or covenant hereof of the other Party will not be construed to be either a waiver of any succeeding breach of any term, provision, condition, or covenant, a waiver of the term, provision, condition, or covenant itself, or remedy. A waiver of any term, provision, condition, covenant, or breach of this Agreement by either Party will only be effective if given in writing and signed by both Parties, and then only in the instance and for the purpose for which it is given.

13.7   <u>Severable</u>. The provisions or parts of provisions of this Agreement will be fully severable and the invalidity, illegality, or unenforceability of any provision of this Agreement under any applicable present or future law will not affect the validity of the remaining provisions hereunder. If any provision of this Agreement or part of any provision is or becomes illegal, invalid, or unenforceable but would be legal, valid, and enforceable if some part of it was deleted or modified, the provision or part-provision in question will apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the Parties will negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision. If any portion of this Agreement is, for any reason, held to be excessively broad as to duration, geographical scope, activity, or subject, it will be construed by limiting and reducing it, so as to be enforceable to the extent allowed by the then applicable law.

13.8   <u>Force Majeure</u>.On the occurrence of a Force Majeure Event, the Non-Performing Party will be excused for as long as (a) the Force Majeure Event continues, and (b) the Non-Performing Party continues to use commercially reasonable efforts to recommence proper and timely performance to the greatest extent possible ("**Force Majeure Period**"). Unless the Agreement is terminated as set forth in this Section 13.8, the Parties agree to extend the term of the applicable Order Form for the Force Majeure Period. The Parties agree that any amount that was due and payable by Customer to Company prior to the beginning of the Force Majeure Event, Customer will be obligated to pay Company, pursuant to Company's payment terms, as set forth in the applicable Order Form. Further, the Parties agree to pause the payment of any further amounts that are due and payable by Customer to Company during the Force Majeure Period, and Customer's obligation to make

payments to Company will resume after the end of the Force Majeure Period. If any Force Majeure Period lasts for ninety (90) calendar days in the aggregate, then at either Party's option, either Party may terminate this Agreement with thirty (30) calendar days written notice to the other Party.

13.9   Reasonable Attorneys' Fees. If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing Party in such action will be entitled to reimbursement for reasonable attorneys' fees and costs. Further, if any action at law determines a Party to be the prevailing Party under circumstances where the prevailing Party won on some but not all of the claims and counterclaims, the prevailing party may be entitled to an appropriate percentage of the costs and attorneys' fees reasonably incurred by the prevailing Party in connection with the action at law.

13.10   Equitable Relief. Each of the Parties hereto acknowledges and agrees that, in the event of any breach or threatened breach of any term, provision, condition, covenant, or agreement set forth in this Agreement by either Party, money damages may be inadequate with respect to any such breach or threatened breach and the non-breaching Party may have no adequate remedy at law. It is accordingly agreed that each of the Parties hereto will be entitled, in addition to any other remedy to which they are entitled by law or in equity, to seek injunctive relief, equitable relief, and/or to compel specific performance without bond to prevent breaches by the other Party thereto of any term, provision, condition, covenant, or agreement of such other Party contained in this Agreement without proof of special damages.

13.11   Non-Solicitation. The Parties acknowledge and agree that the relationship that they each have with their employees, consultants or independent contractors are valuable business assets. To the extent permitted by applicable law, the Parties agree that during the Term, and for the period of twelve (12) months after the termination of this Agreement, for any reason, neither Party will, as an officer, director, employee, consultant, owner, partner, or in any other capacity, either directly or through others, solicit, induce, encourage any person known by a Party to be an employee, consultant or independent contractor of the other Party to terminate their relationship with such Party. Accordingly, during the Term and for a period of twelve (12) months thereafter, if either Party engages or hires any employee, consultant, or independent contractor of the other Party, then the hiring Party will promptly pay to the other Party a fee equal to thirty percent (30%) of the employee, consultant, or independent contractor's annual salary or fees, as applicable (where twenty percent (20%) will be for finding a replacement and ten percent (10%) will be for training a replacement). The provisions of this Section 13.11 will not restrict or preclude a Party from making generalized searches for employees, consultants or independent contractors by the use of advertisements online or in the media or by engaging search firms to engage in the searches that are not targeted or focused on the other Party's employees, consultants, or independent contractors.

13.12   Independent Entities. The Parties entering into this Agreement are and will continue to be independent entities and will so represent themselves in all regards. Accordingly, nothing contained herein will be deemed to constitute the Parties as a partnership, joint venture, employer/employee, principal/agent or any other type of relationship, nor to make one Party liable in whole or in part for any obligations assumed by the other herein or for any liability incurred by

the other Party in carrying out any of the provisions hereof, or otherwise. Neither Party is the agent of the other, and neither Party may make commitments or enter into any agreements on the other's behalf. The Parties agree that each Party's employees will not be an employee of the other Party. Each Party will be responsible for all employment rights and benefits of their own employees, including without limitation (a) federal, state and local income and employment taxes and social security contributions; (b) workers' compensation, health benefits, vacation and holiday pay, profit sharing, retirement, pension, disability benefits, and other health and welfare benefits, plans or programs and (c) insurance.

13.13   Drafting Party. This Agreement will not be construed in favor of or against either Party solely on the basis of a Party's drafting or participation in the drafting of any portion of this Agreement.

13.14   Notice. Any notice or other communication given to a Party under or in connection with this Agreement will be in writing, addressed to the other Party at their registered office, and delivered personally, sent by email or sent by post, express mail or commercial courier. Any notice required or permitted to be given by the provisions of this Agreement will be conclusively deemed to have been received on the day it is delivered to that Party as set forth in the forgoing with acknowledgment of receipt.

13.15   Headings, Translation, and Communications. The headings in this Agreement are for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any of its provisions. In the event this Agreement is translated into any language other than the English language, the meanings contained in the English language version will control and be used in any interpretation or dispute related to this Agreement. All documents incorporated herein by reference, notices, and any other communications related to this Agreement will be in the English language.

14.0   CHANGES TO THIS AGREEMENT

From time to time, Company may modify the terms of this Agreement. If we make changes to this Agreement, Company will provide Customer with notice by displaying a prominent notice on our website or by sending Customer an email. Please make sure to read any such notice carefully. Having received notice of any changes to this Agreement, if Customer continues to access and use the SDK and Service, then Customer agrees to the updated Agreement. Neither the course of conduct between the Parties nor trade usage will act to modify or alter the provisions of this Agreement. If Customer does not wish to continue accessing and using the SDK and Services under the updated Agreement, Customer can terminate their access and use of the SDK, Services and your Account, please reference Section 12 (Term and Termination).

This Agreement was last updated on: February 14, 2024

EXHIBIT A

DEFINITIONS

1. "**Aggregated Statistics**" means data, information or other Content (a) derived from Company's monitoring of Customers' access to the Services; and (b) related to Customer's use of the Services that is used by Company in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services. For purposes of clarification: Aggregated Statistics does not include Customer's Data.

2. "**Authorized Users**" means Customer's current employees, Consultants, and Contractors who are authorized by Customer to access and use the SDK and Services under the rights granted to Customer pursuant to the terms and conditions of this Agreement. For purposes of clarification, former employees, consultants, contractors and agents will not have access to the SDK and Services.

3. "**Confidential Information**" means any information of a confidential or proprietary nature that is disclosed by one Party ("**Disclosing Party**") to the other Party ("**Receiving Party**") under this Agreement, in written or oral form, including but not limited to, technical, financial, marketing, commercial, legal, reports, drawings, designs, data, manufacturing or other processes, inventory, customer lists, customer information, any information that by its nature would be deemed confidential, and/or any information from third parties that the Disclosing Party has agreed to treat as confidential and is authorized to disclose under this Agreement. The Parties agree that the terms and conditions of this Agreement will be deemed Confidential Information.

4. "**Content**" means information, documents, photos, images, videos, graphics, data, marketing materials, and other such information including but not limited to picture, music, video game collectible, meme, graphics interchange format (GIF).

5. "**Contractor**" or "**Consultant**" means a person or entity who is under an agreement with a Party to perform services for such Party.

6. "**COPPA**" means the Children's Online Privacy Protection Act.

7. "**Copyrights**" means the exclusive legal right to reproduce, perform, display, distribute and make derivative works of a work of authorship (for example, a literary, musical, or artistic work) recognized by the laws of any jurisdiction in the world.

8. "**Customer Application**" means Customer's gaming application.

9. "**Data**" means information, and data of a Party, in any form or medium, that is posted, uploaded, processed, and stored by or on behalf of a Party through the Services, including, but not limited to, information provided to set up an Account.

10. "**Documentation**" means Company's guides, manuals, handbooks, and other information relating to the Services and SDK, as applicable, offered by Company, updated from time to time, in whatever form or regardless of the media on which it may be contained, stored or transmitted. Documentation will be considered a component of the Services.

11. "**End User**" means a customer, client, or end user of Customer that obtains a right to use Customer Application (that incorporates the SDK), pursuant to the terms and conditions of an EUA. An End User will not include any entities that will resell or market Customer Application (that incorporates the SDK). End User includes End User Child.

12. "**End User Agreement**" or "**EUA**" means an agreement between Customer and an End User.

13. "**End User Child**" means an End User that is under the legal age as specified in the country, state, region, or province where they reside, and require consent from a legal guardian or parent.

14. "**Feedback**" means any comments, suggestions, concepts, ideas, or the like for improving, enhancing, or otherwise modifying Recipient's products or services, regardless of the method of communication.

15. "**Fees**" means the fees for access to and use of the Services, in United States currency, as set forth in an Order Form.

16. "**Force Majeure Event**" means a default or delay in the performance of either Party's obligations under this Agreement ("**Non-Performing Party**"), if such default or delay occurs beyond the control of the Non-Performing Party, including but not limited to, caused by any one or more of the following events: (a) acts of God; (b) flood, fire, earthquake, tornado, hurricane, tsunami, other potential disasters, catastrophes, or explosions; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, insurrection, or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the effective date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, lockouts, labor disturbances or other industrial disturbances; (h) telecommunication breakdowns, power outages or shortages; and (i) pandemics, epidemics and any associated quarantine or shelter-in-place orders or similar orders.

17. "**GDPR**" means the General Data Protection Regulation.

18. "**Intellectual Property Rights**" means all past, present, and future rights, whether registered or unregistered, of the following types, which may exist or be created under the laws of any jurisdiction in the world: trade secrets, Copyrights, trademark and trade name rights, mask work rights, patents and industrial property, and all proprietary rights in technology or works of authorship (including, in each case, any application for any such rights and any rights to apply for any such rights, as well as all rights to pursue remedies for infringement or violation of any such rights).

19. "**Maintenance Releases**" means releases for improvement in functionality, performance, bug fixes of the SDK and Services, Documentation and Company's Content. Maintenance Releases will be considered a component of the Services.

20. "**Marks**" means the name, trademarks, service marks, trade names, trade dress. logos or other words or symbols identifying any of a Party's products/services and/or business.

21. "**Material Breach**" means a breach of the obligations, terms and conditions or covenants of this Agreement by a Party, which materially and substantially affects the performance of the transactions contemplated by this Agreement, including, but not limited to, (a) Customer's breach of or non-compliance with one or more of the following: (i) Section 2 (License, Rights, and Obligations); (ii) Section 6 (Fees and Payment Terms); (iii) Section 10 (Indemnification); (iv) Exhibit B (Acceptable Use Policy); and (iv) any other Section by its nature would be deemed as material; and (b) either Party's breach of or non-compliance with one or more of the following: (i) Section 8 (Confidentiality); (ii) Section 9 (Warranties and Representations; and Warranty Disclaimer); and (iii) any other Section by its nature would be deemed as material.

22. "**Order Form**" means an ordering document, including any exhibits to an Order Form, signed by both Parties which references this Agreement, and which may include any one or more of the following terms and any other terms not specified: date the Services will begin, the term of the Services, the Fees, payment terms, and contact information.

23. "**Payment Processor**" means a third party provider engaged by Company that processes the payment of Fees paid by Customer to Company.

24. "**Personal Data**" means any Data or Content about an individual and that identifies an individual.

25. "**Personnel**" means employees, Contractors, and/or Consultants of a Party.

26. "**Representatives**" means the directors, officers and employees of a Party.

27. "**Services**" means the Company's subscription based software as a service for visual and audio chat moderation, which includes Documentation, Company's Content, and Maintenance Releases.

28. "**Unauthorized Uses**" means inappropriate and/or harmful and/or aggressive content, or similar content that offends another person.

29. "**Virus**" means malicious content (including, but not limited to, code, files, scripts, agents or programs), such as worm, virus, trojan horse, backdoor, malware, time bombs, drop dead device, or similar harmful content that are intended to interfere with, restrict, impede, disable, erase, or do harm to a computer program, website or online service.

EXHIBIT B

ACCEPTABLE USE POLICY

Customer will not, nor permit, authorize or allow any Active Users or any third party, to use the SDK and Services to do any one or more of the following:

   a. for any illegal or fraudulent activity;

   b. to violate any laws, regulations, governmental orders, or industry standards or guidance in any applicable jurisdiction;

   c. to violate the rights of others (whether confidentiality, privacy or otherwise);

d. to threaten, incite, promote, or actively encourage violence, terrorism, or other serious harm to another;

e. to include Customer's Data and/or Customer's Content that infringes or misappropriates the Intellectual Property Rights of others;

f. to include Customer's Data and/or Customer's Content that is health or medical related and protected under the Health Insurance and Portability and Accountability Act (HIPAA);

g. to include Customer's Data and/or Customer's Content that includes debit card, credit card, banking information, financial account information, and code or password that could be used to gain access to financial information or similar information; but only through the Payment Processor;

h. to include Customer's Data and/or Customer's Content that includes social security number, driver's license number, other government-issued identification number, insurance identification number or account number, background check information, biometric data, digital signatures or personal Data;

i. to distribute, publish, send, or facilitate the sending of unsolicited mass email or other messages, promotions, advertising, or solicitations or spam;

j. to send altered, deceptive, or false source-identifying information, including spoofing and phishing;

k. to violate the security, integrity, or availability of any user, network, computer or communications system, software application, or network or computing device or the Services;

l. to incorporate malicious content (including but not limited to, code, files, scripts, agents or programs), such as malware, time bombs, trojan horses, viruses or similar content that are intended to interfere with the SDK and/or Services or do harm to the SDK and/or Services;

m. to interfere with or in any way disrupt the SDK and/or Services, tamper with, breach, or attempt to probe, scan, or test for vulnerabilities of the Company's computer systems, network, usage rules, or any of the Company's security components, authentication measures or any other protection measures applicable to the Services or any part thereof;

n. launching or facilitating, whether intentional or unintentional, a denial of service attack (including any actions, which effectively cause a similar result) on the Services, or any other conduct that materially and adversely impacts the availability, reliability, or stability of the SDK and/or Services; or

o. to use any robot, spider, offline readers, or other automatic systems or devices, process or means to access the Services for any purpose, including monitoring or copying any of the material (including data mining, data harvesting, data extraction, scraping) on the Services.

EXHIBIT C

SUGGESTED EUA TERMS

A EUA will include the following suggested additional terms and conditions:

1. Neither Customer, nor any of their third party suppliers, will be responsible and/or liable in the event that an End User (including an End User Child) views, is exposed to, and/or accesses unauthorized content by using Customer Application (that incorporates the SDK), by whatever means or for whatever reason, and associated results.

   Any claims, actions, or demands made by an End User or End User Child's parent and/or legal guardian will be against the offending party (not Customer or their third party suppliers).

   Customer, and their third party suppliers, will only be responsible for providing any help to assist in any claims, actions, or demands by End User and/or End User Child's parent and/or legal guardian against the offending party.

2. Neither Customer, nor any of their third party suppliers, will be responsible and/or liable in the event that an End User's equipment, hardware, devices, and the like, are damaged due to use of the Customer Application (that incorporates the SDK).

EXHIBIT D

TIERED DISPUTE RESOLUTION AND ARBITRATION

1.0   TIERED DISPUTE RESOLUTION

1.1   <u>Resolution Between the Parties</u>. The Parties will attempt in good faith to resolve any claim, dispute or other matter in question arising out of or relating to this Agreement ("**Dispute**") promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Either Party may give the other Party written notice of any Dispute not resolved in the normal course of business. Within fifteen (15) calendar days after delivery of the notice, the receiving Party will submit to the other a written response. The notice and response will include with reasonable particularity (a) a statement of each Party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within thirty (30) calendar days after delivery of the notice, the executives of both Parties will meet at a mutually acceptable time and place.

1.2   <u>First Meeting</u>. Unless otherwise agreed in writing by the negotiating Parties, the above-described negotiation will end at the close of the first meeting of executives described above ("**First Meeting**"). Such closure will not preclude continuing or later negotiations, if desired.

1.3   <u>Confidential Communications</u>. All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by either of the Parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the Parties; provided, that, evidence that is otherwise admissible or discoverable will not be rendered inadmissible or non-discoverable as a result of its use in the negotiation.

1.4 <u>Initiation of Arbitration</u>. At no time prior to the First Meeting will either Party initiate an arbitration or litigation related to this Agreement, unless agreed by the Parties in writing.

1.5 <u>Tolling</u>. All applicable statutes of limitation and defenses based upon the passage of time will be tolled while the procedures specified in this Section 1 (Dispute Resolution) of this Exhibit D are pending and for thirty (30) calendar days thereafter. The Parties will take such action, if any, required to effectuate such tolling.

2.0 ARBITRATION

Within thirty (30) calendar days after the First Meeting, if the Parties cannot resolve the Dispute, as set forth in Section 1 (Dispute Resolution) of this Exhibit D, then a Party or the Parties may submit such Dispute to binding arbitration, as set forth in this Section 2 (Arbitration) of this Exhibit D.

2.1 <u>Arbitration Services</u>. After an informal dispute resolution process, the Parties agree that any remaining dispute, claim, or controversy between the Parties arising out of, resulting from, in connection with, or relating in any way to this Agreement (whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory, and whether the claims arise during or after the termination of this Agreement), including the determination of the scope of applicability of this Agreement to arbitrate, will be determined through binding arbitration administered by the Judicial Arbitration and Mediation Services ("**JAMS**").

2.2 <u>Injunctive Relief</u>. Notwithstanding the foregoing, either Party may seek emergency injunctive relief or other provisional relief at any time in a court of competent jurisdiction.

2.3 <u>Rules and Procedures</u>. Arbitration will be conducted pursuant to the Comprehensive Arbitration Rules and Procedures of JAMS. Such disputes will be heard by a single arbitrator, selected by the JAMS default process for selecting arbitrators.

2.4 <u>Governing Law and Venue</u>. Arbitration will take place in San Francisco, California or a city located near San Francisco, California. The Agreement and substantive rights of the Parties will be governed by the laws of the State of California, without reference to its conflict of laws or choice of law rules or principles. Notwithstanding the foregoing, the Parties acknowledge that this Agreement evidences a transaction involving interstate commerce, and the arbitration conducted pursuant to the terms of this Agreement will be governed by the Federal Arbitration Act.

2.5 <u>Confidentiality</u>. The Parties will maintain the confidential nature of the arbitration proceeding, including the information exchanged in discovery and the content or results of the Hearing (defined below) and award, unless otherwise required by law or judicial decision.

2.6 <u>Timelines</u>. Before the first preliminary conference, the Parties will agree in writing to a timeline for the completion of arbitration. The timeline will contain deadlines for discovery, conducting an evidentiary hearing on the merits ("Hearing"), and the issuance of the Arbitrator's award. The Arbitrator will agree to comply with this schedule before accepting appointment.

2.7   <u>Discovery</u>. The Parties shall complete an exchange of all relevant, non-privileged documents, including, without limitation, copies of all documents in their possession or control on which they rely in support of their positions, and names of individuals whom they may call as witnesses at the arbitration Hearing. There will be no further discovery, such as depositions or expert discovery. The Parties shall promptly notify the Arbitrator if a dispute exists regarding discovery issues, and a conference will be arranged with the Arbitrator, either by telephone or in person, and the Arbitrator shall decide the dispute within three (3) business days.

2.8   <u>Costs and Fees</u>. Each Party will bear an equal share of the administrative costs and fees of arbitration, including the Arbitrator's fees. The Arbitrator will award to the prevailing Party, if any, the costs and attorneys' fees reasonably incurred by the prevailing Party in connection with the arbitration. If the Arbitrator determines a Party to be the prevailing Party under circumstances where the prevailing Party won on some but not all of the claims and counterclaims, the Arbitrator may award the prevailing Party an appropriate percentage of the costs and attorneys' fees reasonably incurred by the prevailing Party in connection with the arbitration.

2.9   <u>Award</u>. The award of the Arbitrator will be accompanied by a brief, reasoned written opinion. The Arbitrator is not empowered to award (a) incidental, indirect, or consequential damages including damages for lost profits; or (b) punitive or exemplary damages, except where permitted by statute, and the Parties waive any right to recover any such damages. The Parties will have no right to appeal an award from the Arbitrator. Judgment on the award finally rendered by the Arbitrator may be entered into a court having jurisdiction thereof.