



## **CLEAREYE.AI END USER LICENSE AGREEMENT (EULA)**

Your use of the Licensed Software (as defined below) is governed at all times by this End User License Agreement (“EULA”). References herein to “you,” “your,” and “licensee” in this EULA refers to the individual and, if applicable, the entity you represent using the Licensed Software. References in this EULA to “we,” “our,” “us,” and “Company” herein means CLEAR EYE.AI, INC. For purposes of this EULA, “Affiliate” means any legal entity that controls, is controlled by, or is under common control with a party, “Confidential Information” is defined in the “Confidentiality” section, “End User” means any person you permit to use the Licensed Software, “Feedback” means ideas, suggestions, comments, input, or know-how, in any form, that you provide to us in relation to our Confidential Information, products, or services. Feedback does not include sales forecasts, future release schedules, marketing plans, financial results, and high-level plans (e.g., feature lists) for future products, “Insolvent” means admitting in writing the inability to pay debts as they mature; making a general assignment for the benefit of creditors; suffering or permitting the appointment of a trustee or receiver for all or any of its (i.e., the non-terminating party’s) assets, unless such appointment is vacated or dismissed within 60 days from the date of appointment; filing (or having filed) any petition as a debtor under any provision of law relating to insolvency, unless such petition and all related proceedings are dismissed within 60 days of such filing; being adjudicated insolvent or bankrupt; having wound up or liquidated; or ceasing to carry on business, “Licensed Software” means that certain artificial intelligence software that run next-generation business applications, as specifically described and set forth in an Order, including all Documentation (as defined below) related thereto. For purposes hereof, an “Order” means an order form or statement of work which incorporates this EULA by reference and is signed by you and the Company.

### **Section 1. EULA Acceptance**

(a) You must agree to this EULA prior to your use of the Licensed Software. Please read this EULA in its entirety, as it governs your rights to access and use the Licensed Software made available to you, as described in an Order. If you do not agree to be bound by this EULA, you are prohibited from using the Licensed Software.

(b) By accepting this EULA, you represent you are at least 18 years old, are located in the United States or in a jurisdiction authorized by Company in writing (including in an Order), and you have all requisite authority to enter into this agreement on behalf of yourself, or, if applicable, the legal entity you represent. All others are prohibited from agreeing to this EULA and using the Licensed Software.

(c) This EULA is a binding legal agreement between you and Company and governs in all respects your use of the Licensed Software made available to you by the Company, except with respect to

any software or services made available to you by us pursuant to a separate written agreement, which shall be governed by that agreement. For purposes of this EULA, you understand and agree that Company may partner with third parties to provide some or all of the Licensed Software (hereinafter, the “Company Service Partners”). The Company Service Partners shall be third party beneficiaries of this EULA, with full power and authority to enforce all rights hereunder against you as if they were the Company and shall be protected as if they were the Company herein, provided that this EULA shall not alter or diminish such Company Service Partner’s rights under any separate agreement entered into with you and such Company Service Partner directly.

(d) This EULA can be accepted by you by either (i) clicking on an acceptance button with respect to the EULA, if one is provided by us, either as part of the registration process or in connection with the launch of the Licensed Software; (ii) by consenting to be bound via the Order made available to you; or (ii) by actually using the Licensed Software, or a portion of same, in which case your usage shall be deemed an acceptance of this EULA commencing upon your first use of the Licensed Software or a portion thereof.

## **Section 2. Your Use of the Licensed Software**

(a) You shall only use the Licensed Software for the purposes set forth in this EULA and as provided in an applicable Order and all such use must comply with all applicable laws, rules and regulations, as well as applicable guidelines and practices applicable to such Licenses Software, as may be promulgated in all jurisdictions with authority over your use of the Licensed Software, including without limitation, all applicable privacy, data, and software export laws. You agree, where required by law, to maintain a valid privacy policy and terms of service with respect to any website developed and launched by you in connection with your use of the Licensed Software. You further agree that you are solely responsible for ensuring that any websites created by you which incorporates the Licensed Software comply with all applicable laws, industry guidelines and standards, and other non-governmental and quasi-governmental standards.

(b) Under no circumstances are you permitted to engage in any activity that disrupts or otherwise interferes with the proper function of the Licensed Software, as well as any servers, technology, equipment and or network infrastructure provide and/or accessible in connection with same.

(c) Unless set forth in an applicable Order, under no circumstances are you allowed to (i) reverse engineer, disassemble, decompile, or otherwise attempt to derive the source code for the Licensed Software, except as may permitted by applicable law; (ii) alter, obscure or remove any copyright or other proprietary notices on the Licensed Software or any documentation related thereto; (iii) create derivative works from, adapt, translate, alter, or embed into any other service or product with or into the Licensed Software; (iv) install or use any third-party software or technology in any way that would subject our intellectual property or technology to any other license terms; (v) work around any technical limitations in or restrictions in documentation in the Licensed Software; (vi) upgrade or downgrade parts of the Licensed Software at different times; (vii) use the Licensed Software for any unlawful purpose; (viii) distribute, sublicense, rent, lease, or lend any Offerings, in whole or in part, or use them to offer hosting services to a third party. (ix) export, directly or indirectly, the Licensed Software to any person or entity outside the United States in violation of applicable U.S. export laws; and/or (x) use separate components of the Licensed Software on

different computers

(d) Any breach of your obligations under this EULA shall be solely your responsibility and under no circumstances shall Company have any responsibility or liability to you or any third party as a result of your breach of your obligations hereunder.

### **Section 3. License to Licensed Software**

(a) Subject at all times to the limitations, prohibitions and restrictions set forth herein or in an applicable Order, including without limitation the payment of Fees (as defined below), Company hereby grants you a worldwide, royalty-free, non-assignable, non-sublicensable and non-exclusive license to use the Licensed Software and the Documentation related thereto for the purposes set forth in the Order. For clarity, the foregoing license is granted to you solely to enable you to use Licensed Software in a manner consistent with this EULA. Under no circumstances are you allowed to sell, trade or resell the Licensed Software in any way or for any purpose, including without limitation any use in any application service provider environment, service bureau, or time-sharing arrangements. For purposes hereof, "Documentation" means documentation, user manuals, handbooks and other materials describing the use, design, installation, operation and maintenance of the Licensed Software solely to the extent made available by Company.

(b) Under no circumstances may you assign or sublicense your rights to use the Licensed Software pursuant to this EULA or otherwise transfer, hypothecate, or grant a security interest in any of your rights granted pursuant to this EULA, unless specifically agreed in an Order.

(c) License granted to you expires at the end of the applicable subscription period set forth in the Order, unless renewed, if applicable.

(d) You will control access to and use of the Licensed Software by End Users and you are solely responsible for any use of the Licensed Software that does not comply with this Agreement.

(e) We reserve all rights not expressly granted in this Agreement. The Licensed Software is protected by copyright and other intellectual property laws and international treaties. No rights will be granted or implied by waiver or estoppel. Rights to access or use Licensed Software on a device do not give you any right to implement our patents or other intellectual property in the device itself or in any other software or devices.

(f) You may transfer the fully paid Licensed Software to an Affiliate or a third party, provided that on such transfer you must uninstall and discontinue using the Licensed Software and render any copies unusable. You must notify us of such a License transfer and provide the transferee a copy of this Agreement and any other documents necessary to show the scope, purpose, and limitations of the licenses transferred. Attempted license transfers that do not comply with this section are void.

#### **Section 4. Fees Applicable to the Use of the Licensed Software**

The fees payable to Company by you for your use of the Licensed Software (the “Fees”) are set forth in the applicable Order or SOW (whether electronic or paper) which incorporates this EULA by reference. You will be invoiced for the Fees as set forth in the applicable Order or SOW. Payments are due upon receipt of invoice, unless an alternative date is set forth in the order form or SOW. No refunds will be given for use of the Licensed Software for partial months. Unless otherwise set forth in an applicable Order, you shall be responsible for the payment of the Fees during the Term (as defined below).

#### **Section 5. Licensed Software Updates; Discontinuation, Suspension and Verification**

(a) From time to time, Company may update, modify and otherwise change the Licensed Software without notice to you and you agree to same. Such updates may improve, enhance and/or further develop the Licensed Software, including updates for bug fixes, enhanced functions, new software modules and completely new versions. By agreeing to this EULA, you agree to receive such updates (and permit Company to deliver these updates) in connection with your use of the Licensed Software. Your continued use of the Licensed Software following any such updates, modifications, and/or changes constitutes your acceptance of same in all respects. You must destroy all previous copies of the Licensed Software, however duplicated or archived, within thirty (30) days of installation of the any upgrade and/or update provided to you pursuant to this Section 5.

(b) At any time and without notice to you, Company may permanently or temporarily terminate or suspend the provision of the Licensed Software or any portion thereof to you or in general for any reason or no reason, in its sole discretion. In such an event, you understand and agree that you may be unable to access the Licensed Software, as well as any of your data, information, and/or files created using the Licensed Software, that was previously accessible to you. You may terminate your use of the Licensed Software as set forth in the applicable Order (whether electronic or paper).

(c) You are required to maintain records relating to the Licensed Software and your affiliates and end users who use the same. If required, the above documents may be called for verification by us after providing you with a 30 day notice. If on such verification, it is found that unlicensed use of the Software by you is 5% or more of your total use of the Licensed Software, then costs upto 125% of the prevailing price of the Licensed Software or the maximum allowed under applicable law may be levied on you.

#### **Section 6. Content and Materials**

(a) Any and all content and information provided to you from or through the Licensed Software, including without limitation, text, files, content, data, graphics, images, links, software, communications, messages or other materials and terms of expression (collectively, “Content”) is owned by the party from which such Content originated and such party remains solely responsible in all respect for such Content.

(b) All Content provided from or through the Licensed Software may be subject to intellectual property rights with respect thereto, which are owned by the source and/or provider of such

Content or another third party which has authorized the provider of such Content to distribute such Content. Under no circumstances may you modify, distribute, sell, rent, lease, loan, or create derivative works based on this Content (either in whole or in part) unless the Content owner has provided you with specific written permission to do so in a separate written agreement. Upon termination of this EULA, all your rights to the Content provided from or through the Licensed Software shall terminate immediately and you shall have no further rights to use such Content for any purpose.

(c) Without the express written consent of the proper owner of any Content that is subject to a proprietary right, including without limitation, copyrights and trademarks, you are prohibited from creating, posting, transmitting, uploading, displaying, or otherwise making use of such Content either through the Licensed Software or otherwise. You shall be solely liable for any damages arising out of any infringement of any proprietary right of a third party, and any other damages that result from Content that you upload, post, transmit, display or otherwise make available on or through the Licensed Software. In its sole and absolute discretion, Company may establish additional policies and requirements governing the posting and submission of Content by you on or through the Licensed Software by updating this EULA with such additional policies and/or requirements. You are responsible for ensuring that any Content that you upload, transmit, display, post, or otherwise make available on or through the Licensed Software is done in full compliance with any applicable third party proprietary right, including copyright and/or trademark right. You agree not to post any Content that (i) contains any viruses, trojan horses, worms, time bombs, cancelbots, or other similar harmful or deleterious programming routines, (ii) unlawful, harmful, fraudulent, threatening, abusive, harassing, defamatory, vulgar, obscene (including without limitation pornography), profane, hateful, racially, ethnically, or otherwise objectionable, including, without limitation, any material that supports or otherwise encourages wrongful conduct or that would constitute a criminal offense; and/or (iii) gives rise to civil liability, bring disrepute onto Company or otherwise violates any applicable state, national or international law.

(d) Any Feedback is assumed to be given voluntarily and you grant to the us, without charge, a non-exclusive license under your owned or controlled non-patent intellectual property rights to make, use, modify, distribute, and commercialize the Feedback as part of any of our products and services, in whole or in part and without regard to whether such Feedback is marked or otherwise designated by the you as confidential.

## **Section 7. Ownership and Intellectual Property Rights**

(a) You acknowledge and agree you have no rights to use any of Company's trademarks, service marks, trade names, logos, domain names, and other distinctive brand features. As between you and the Company, the Company owns all legal right, title and interest in and to the Licensed Software, including any intellectual property rights with respect to same (whether those rights are registered or not, and regardless of the jurisdiction in which such rights may exist). You acknowledge and agree to same. The foregoing statement of ownership is subject to all applicable open source and/or third-party licenses with respect to the Licensed Software that Company is subject to or that are otherwise applicable to Company.

(b) You hereby grant Company an irrevocable, perpetual, worldwide license to use, broadcast, reproduce, recreate, store, distribute, have distributed, edit, market, publicly and privately display, communicate, publicly and privately perform, transmit, have transmitted, create derivative works based upon, and promote any Content that you upload, post, transmit, display or otherwise make available on or through the Licensed Software and/or the Services, for purposes of performing its obligations hereunder or under an applicable Order, as well as editorial, commercial, promotional and all other purposes.

(c) Subject at all times to the license set forth in Section 7(b) above, Company acknowledges and agrees that it obtains no right, title or interest in or to any Content uploaded, posted, transmitted, displayed or otherwise made available by you on or through the Licensed Software, including any intellectual property rights therein. Company shall have no responsibility to protect and/or enforce any such intellectual property rights in your Content, for which you remain solely responsible.

## **Section 8. Term and Termination**

(a) The Order or SOW shall specify the initial term of use for the Licensed Software (the “Initial Term”) and any applicable renewal terms (each, a “Renewal Term” and together with the Initial Term, the “Term”).

(b) Unless an alternative time frame is specified in an Order or SOW, you may terminate this EULA and your access to the Licensed Software upon thirty (30) days written Notice to Company prior to the end of the then-current Term. We may immediately terminate this EULA if you materially breach any provision hereof and fail to cure such breach within 30 days of receipt of notice of the breach or when either part becomes insolvent. Either party may terminate this EULA if the other party files a petition for bankruptcy, or makes an assignment for the benefit of the creditors, or a receiver is appointed for the other party or its business, provided in the case of an involuntary action, the party shall have sixty (60) days to have such involuntary proceeding stayed or vacated. Notwithstanding the foregoing, Company reserves the right to suspend and/or terminate its legal agreement with you pursuant to this EULA and all access to the Licensed Software at any time and for any reason or no reason without restriction.

(c) Until a termination, this EULA will continue to apply to you and your use of the Licensed Software. Following the termination of this EULA and/or an applicable Order, for whatever reason, (i) all licenses granted herein shall become null and void upon the termination of this EULA and/or an applicable Order; and (ii) licensee shall return to Company any and all software program documentation or any other materials, copies or reproductions of the foregoing, relating to the Licensed Software, and any upgrades, updates and enhancements thereto. Further, upon termination of this EULA, both parties hereto shall promptly, and in any event within 30 days following termination, return to the other party all other property and Confidential Information belonging to the other, in all forms partial and complete, in all types of media and computer memory, and whether or not merged with other materials, or to the extent such return is not reasonably practical, will destroy the foregoing and provide the originating party with a certificate by an officer of the company certifying destruction.

## **Section 9. Disclaimer of Warranties**

EXCEPT AS OTHERWISE SET FORTH IN AN ORDER (AND THEN ONLY WITH RESPECT TO THE LICENSED SOFTWARE LICENSED PURSUANT TO SUCH ORDER), THE COMPANY IS PROVIDING THE LICENSED SOFTWARE TO YOU SOLELY ON AN “AS IS, AS AVAILABLE” BASIS. WITHOUT LIMITING THE FOREGOING, THE COMPANY DOES NOT REPRESENT OR WARRANT TO YOU THAT (i) YOUR USE OF THE LICENSED SOFTWARE WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE; (ii) YOUR USE OF THE LICENSED SOFTWARE WILL MEET YOUR REQUIREMENTS (iii) ANY DEFECTS IN THE OPERATION OR FUNCTIONALITY OF ANY LICENSED SOFTWARE WILL BE CORRECTED; AND (iv) ANY CONTENT AND/OR INFORMATION OBTAINED BY YOU AS A RESULT OF YOUR USE OF THE LICENSED SOFTWARE, INCLUDING WITHOUT LIMITATION, ANY CONTENT SOURCED FROM THIRD PARTIES, INCLUDING COMPANY SERVICE PARTNERS, WILL BE ACCURATE OR RELIABLE. EXCEPT AS OTHERWISE SET FORTH IN AN ORDER (AND THEN ONLY WITH RESPECT TO THE LICENSED SOFTWARE LICENSED PURSUANT TO SUCH ORDER), COMPANY HEREBY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE LICENSED SOFTWARE AND/OR ANY CONTENT DELIVERED, SENT, ACCESSIBLE, OR RECEIVED BY OR THROUGH THE LICENSED SOFTWARE OFFERED BY COMPANY AND/OR ANY COMPANY SERVICE PARTNER, UNLESS SUCH WARRANTIES ARE LEGALLY INCAPABLE OF EXCLUSION. EXCEPT AS OTHERWISE SET FORTH IN AN ORDER (AND THEN ONLY WITH RESPECT TO THE LICENSED SOFTWARE LICENSED PURSUANT TO SUCH ORDER), COMPANY DOES NOT WARRANT, GUARANTEE OR MAKE ANY REPRESENTATIONS REGARDING THE USE, AVAILABILITY, RELIABILITY OR THE RESULTS OF THE USE OF THE LICENSED SOFTWARE, OR ANY PORTION THEREOF, INCLUDING WITHOUT LIMITATION THE INFORMATION AND CONTENT DELIVERED, SENT, OR RECEIVED BY OR THROUGH THE LICENSED SOFTWARE IN TERMS OF THE ACCURACY, VALIDITY, QUALITY, RELIABILITY, COMPLETENESS, STABILITY, CURRENTNESS, NON-INFRINGEMENT, OR OTHERWISE, UNLESS SUCH WARRANTIES ARE LEGALLY INCAPABLE OF EXCLUSION. THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF THE LICENSED SOFTWARE IS ASSUMED AND BORNE BY YOU. SOLELY TO THE EXTENT THE ABOVE LIMITATIONS ARE UNLAWFUL IN YOUR JURISDICTION, THEN OUR LIABILITY TO YOU WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

## **Section 10. Limitation of Liability**

EXCEPT AS OTHERWISE SET FORTH HEREIN OR IN AN ORDER (AND THEN ONLY WITH RESPECT TO THE LICENSED SOFTWARE LICENSED PURSUANT TO SUCH ORDER), (i) YOU EXPRESSLY UNDERSTAND AND AGREE THAT COMPANY WILL NOT, IN ANY EVENT, BE LIABLE TO ANY PARTY, INCLUDING YOU FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF BUSINESS PROFITS,

BUSINESS INTERRUPTION, LOSS OF PROGRAMS OR INFORMATION, AND THE LIKE), OR ANY OTHER DAMAGES ARISING IN ANY WAY OUT OF THE AVAILABILITY, USE, RELIANCE ON, OR INABILITY TO USE THE LICENSED SOFTWARE PROVIDED BY COMPANY, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE AND REGARDLESS OF WHETHER OR NOT COMPANY OR APPLICABLE COMPANY SERVICE PROVIDER HAS BEEN ADVISED OF OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF ANY SUCH LOSSES ARISING; AND (ii) COMPANY'S LIABILITY IN ALL CASES SHALL BE LIMITED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, WHICH SHALL NOT IN ANY CIRCUMSTANCES EXCEED THE TOTAL FEES PAID BY YOU DIRECTLY TO COMPANY (OR RECEIVED BY COMPANY IF YOU RECEIVE THE SERVICES THROUGH A RESELLER) IN THE IMMEDIATELY PRECEDING THREE (3) MONTHS PRIOR TO THE DATE OF THE EVENT GIVING RISE TO THE CLAIM.

### **Section 11. Third Party Content and Services**

(a) Portions of the Content and the Services may link to or be provided from a third party, including without limitation, a Company Service Partner, including without limitation third party databases, directories, applications, websites, software, programs, services, servers, networks, and systems (collectively, "Third Party Services"). These Third Party Services are provided to you subject to your adherence to the Third Party Services Terms as set forth in the Order, if applicable, and you hereby agree to be legally bound by same. In no way does Company manage or control any of the Third Party Services or Content. Company shall have no responsibility with respect to any Third Party Services and/or Content, including without limitation, the accuracy, availability, truthfulness, or functionality of any such Third Party Services or Content. Company does not endorse or warrant any such Third Party Services and/or Content or any product or service that may be available through such Third Party Service and/or Content in any way by virtue of making it available to you.

(b) Some or all of the Licensed Software provided by Company pursuant to this EULA may allow for the sending, delivering or receiving of information between you and other third parties, including Internet end users, which may be processed, transferred, relayed or carried through networks, systems, servers, websites or applications (e.g. telephone and cellular networks, e-mail servers) that are not owned or controlled by Company ("Third Party Networks"). Under no circumstances shall Company in any way be responsible for the performance, functionality, quality, availability, or reliability of any of the Third Party Networks or any of the information processed, transfer, sent, delivered, relayed, carried or received through any such Third Party Networks. Company makes no guarantee or warranty that the information processed, transferred, sent, relayed, carried or delivered through Third Party Networks will reach its intended destination, or that the details of the recipient or sender are correct or accurate. As between the Company and you, you shall be responsible for Third Party Networks at all times.



## **Section 12. EULA Amendments and Modifications.**

Our Company reserves the right, in its sole discretion, to amend, modify and otherwise change the terms of this EULA at any time, provided that the same is agreed to in writing and signed by both parties. Any such changes to this EULA will be posted at [WWW.CLEAREYE.AI/EULA](http://WWW.CLEAREYE.AI/EULA). Any use of the Licensed Software and/or Services by you after the date the EULA is changed shall constitute your acceptance of the EULA, as modified for all purposes. Except as provided herein, no amendments or modifications to the EULA shall be valid unless signed by Company.

## **Section 13. Indemnification.**

(a) As additional consideration for your use of the Licensed Software, you agree to fully indemnify and hold harmless Company and its officers, employees, agents, affiliates, partners, licensors, parents, subsidiaries, and Company Service Partners from and against any demand or claim, including reasonable attorneys' fees, made by any third party due to or arising out of (i) your use of the Licensed Software, (ii) any violation by you of this EULA, (iii) any Content you submit, post, transmit or otherwise make available through the Licensed Software, including any which link to and/or incorporate the Licensed Software, (iv) your use of any Content provided to you by or through the use of the Licensed Software, and/or any (v) violation by you of any rights of another.

(b) Company agrees to indemnify and hold harmless you from and against any and all third party claims or actions, including any losses, costs, liabilities, reasonable attorney's fees and other expenses arising from such claim or action, alleging that the Licensed Software infringes or violates any copyright, trademark, patent or trade secret of a third party (an "Infringement Claim"), provided: (i) the licensee promptly gives written notice of any claim to Company; (ii) the licensee provides any assistance which Company may reasonably request for the defense of the claim; and (iii) Company has the right to control of the defense or settlement of the claim. In any action based on an Infringement Claim, Company may, at its sole option, either: (x) obtain for licensee the right to continue using the Licensed Software, (y) replace or modify the Licensed Software with non-infringing software providing substantially the same functionality, or (z) solely if clauses (x) and (y) are not commercially viable, terminate the license granted hereunder. Company shall not be obligated to indemnify licensee with respect to any infringement claim based upon: (1) any use of the Licensed Software not in accordance with the EULA and/or an applicable Order; (2) any use of the Licensed Software in combination with other products, equipment, or software not supplied by Company, where such combination gives rise to the claim; (3) any modification of the Licensed Software by any person other than Company or its authorized agents; (4) continued infringing activity by licensee after Company has provided an alternative Licensed Software.

(c) Notwithstanding anything contained in the above subsections (a) and (b), (1) an indemnified party will always be free to choose its own counsel if it pays for the cost of such counsel; and (2) no settlement may be entered into by an indemnifying party, without the express written consent of the indemnified parties (such consent not to be unreasonably withheld), if: (A) the third party asserting the claim is a government agency; (B) the settlement arguably involves the making of admissions by the indemnified parties; (C) the settlement does not include a full release of liability

for the indemnified parties; or (D) the settlement includes terms other than a full release of liability for the indemnified parties and the payment of money.

#### **Section 14. Security**

(a) You acknowledge that there are certain inherent risks associated with the use of our Licensed Software, including, (1) damage to any data or files stored on your computer or those of your website end users, (2) potential damage to your computer systems, and (3) the potential that Content you share through the use of the Licensed Software will be redistributed and/or used without your permission or knowledge.

(b) You further acknowledge that the company shall at all times, take its best efforts to ensure that the service it provides does not contain any viruses or other malicious code that will degrade or infect any products, services, software or Customer's networks or systems, however, you are also aware that (1) data and information on the Licensed Software may be subject to unauthorized forgery, tampering, sniffing, spamming, eavesdropping, spoofing, password cracking, harassment, fraud, electronic trespassing, hacking, nuking, system contamination including viruses, worms and Trojan horses causing unauthorized, damaging and/or harmful access to, or retrieval of, information and data on your computer systems; (2) the Licensed Software may have security and privacy limitations that may not be acceptable to you, including without limitation the limitation of security, privacy and authentication measures and features; (3) the privacy and security features available through the Licensed Software are provided to you solely as a convenience and may not operate according to their description or may not operate at all; (4) information, data or messages may not reach their destination or may reach an erroneous address or recipient; and (5) by activating certain features, you may provide third parties, including Company Service Partners, with certain limited remote access to certain files on your computer systems. Activating these features increases the risk that third parties will be able to tamper with your computer systems.

#### **Section 15. Confidentiality.**

You will not use any Confidential Information (as defined below) of the Company or any of the Company Service Partners for your own or any third party benefit or for any purpose other than performing your obligations under this EULA. You will use the same degree of care that you use to protect your own confidential and proprietary information of similar nature and importance (but in no event less than reasonable care) to protect the confidentiality and avoid the unauthorized use, disclosure, publication or dissemination of the Confidential Information. "Confidential Information" means any and all information disclosed by Company, directly or indirectly, in writing, orally, electronically, or in any other form, in connection with your use of the Licensed Software made available to you hereby. If the disclosure of Confidential Information is required by law, you shall promptly notify the Company in advance of such required disclosure if lawfully able to do so and use its best efforts to minimize the scope of such disclosure.

## **Section 16. Company Support**

Except as set forth in an Order, (i) the Company does not provide any assistance to its users, including you, in connection with the use of the Licensed Software; (ii) your use of the Licensed Software is at your sole complete risk; and (iii) Company does not undertake nor is it obligated to provide you with any updates, upgrades, bug fixes, error corrections and/or enhancements to all or any portion of the Licensed Software.

## **Section 17. Rights and Remedies**

(a) In addition to any other legal remedies that may be available to Company, we may seek and obtain injunctive relief against you in the event of a breach of this EULA and/or the disclosure or misuse or threatened disclosure or misuse of any of the proprietary and/or Confidential Information of Company contained in or accessible through use of the Licensed Software, the disclosure of which would give rise to irreparable injury to Company and/or its Company Service Partners, which could not adequately be compensated in damages.

(b) This EULA is not intended to confer, nor does it confer, any rights or remedies upon any person other than Company and its Company Service Partners, that are intended third party beneficiaries hereof.

## **Section 18. General Terms.**

(a) Construction. If any part of this EULA is held invalid or unenforceable by a court of competent jurisdiction, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties hereto, and the remaining portions shall remain in full force and effect.

(b) Notices. Any and all legally required communications, including notices, disclosures, agreements, or other information required in connection with any of the Licensed Software and/or Services may be sent to you electronically, including via (i) e-mail to an e-mail address provided by you, and/or (ii) by pop up notice, system notice, or any other form of notice, on any portion of the Licensed Software and/or by (iii) U.S. Postal Service or other recognized overnight courier to the mailing address set forth in an applicable Order (hereafter, "Notices"). Company may provide Notices to you regarding the Licensed Software, including without limitation any notices with respect to violations of this EULA, any updates to the Licensed Software or the EULA, or any portions thereof, and promotional information. Regardless of whether you read a Notice when you receive it, the delivery of any Notice from Company is effective when sent by Company if sent pursuant to subsection (i) or (ii) above, or within three (3) days of Company sending it, if sent pursuant to subsection (iii) above.

(c) Survival. Sections 2, 4 through 11, 13 through 15, and 17 through 18 shall survive the termination of this EULA for any reason and the termination of your use of all or a portion of the Licensed Software.

(d) Applicable Law. This EULA, including any amendments hereto, shall be governed by and

construed in accordance with the laws of the State of California, excluding its conflicts-of-law rules. Notwithstanding the foregoing, your use of all or a portion of the Licensed Software may be subject to other local, state, national, and international laws. You expressly agree that exclusive jurisdiction for any claim or dispute with Company or relating in any way to your use of the Licensed Software resides in the courts of the State of California. You further agree and expressly consent to the exercise of personal jurisdiction in the courts of California in connection with any such dispute, including any claim involving Company, and/or its affiliates, subsidiaries, employees, contractors, officers, directors, telecommunication providers and content providers. The UN Convention on Contracts for the International Sale of Goods shall not apply to this EULA.

(e) Assignment. Company reserves the right, in its sole and absolute discretion, to transfer, assign, sublicense or pledge in any manner whatsoever, any of its rights and obligations under this EULA to any third party whatsoever, without your consent and without notice to you. You shall not transfer, assign, delegate, sublicense nor pledge in any manner whatsoever, any of your rights or obligations under this Agreement. Any purported assignment, sale, transfer, delegation or other disposition by you, except as permitted herein, will be null and void.

(f) Recovery of Fees. If you bring any legal action, including, without limitation, an action for arbitration or equitable relief, against the Company or any Company Service Partner relating to this EULA or the breach or alleged breach hereof, and the Company or applicable Company Service Partner is the prevailing party in any final judgment or arbitration award, or you voluntarily dismiss the action, the Company and/or applicable Company Service Partner will be entitled to reimbursement from you for the full amount of all reasonable expenses, including all court costs, arbitration fees and actual attorneys' fees paid or incurred in good faith.

(g) Force Majeure. Company will not be deemed in default of this EULA to the extent that performance of its obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, riots, acts of government (including any change in or the adoption of any law, ordinance, rule, regulation, order, judgment or decree), acts of war or terrorism, DDOS attacks, shortage of materials, power or supplies, labor controversy or threat thereof, civil disturbance or commotion, disruption of the public markets, failure of transportation, power or communications, including Internet access, or of suppliers of goods or services, or any other cause beyond the reasonable control of Company.

(h) Severability. If the application of any provision of this EULA to any particular facts or circumstances will be held to be invalid or unenforceable by an arbitration panel or a court of competent jurisdiction, then (a) the validity and enforceability of such provision as applied to any other particular facts or circumstances and the validity of other provisions of this EULA will not in any way be affected or impaired thereby, and (b) such provision will be enforced to the maximum extent possible so as to effect the intent of the parties and reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

(i) Independent Contractors. The relationship of Company and you established by this EULA is that of independent contractors, and nothing contained in this EULA will create or be construed to create any partnership, joint venture, agency, franchise, sales representative, employment or fiduciary relationship between the parties.

(j) Export Control. You agree to abide by U.S. and other applicable export control laws and not to export, re-export or otherwise transfer, by electronic transmission or otherwise, any content or software subject to restrictions under such laws to a national destination prohibited under such laws or to any person to whom exports, re-exports or transfers are prohibited under such laws, without first obtaining, and then complying with, any requisite government authorization. You further agree not to upload to Company any Content, data or software that cannot be exported without prior written government authorization, including, but not limited to, certain types of encryption software.

(k) Headings. The headings and captions used in this Agreement are inserted for convenience only and will not affect the meaning or interpretation of this Agreement.

(l) Construction. The construction of this EULA will not take into consideration the party who drafted or whose representative drafted any portion of it, and no canon of construction will be applied that resolves ambiguities against the drafter of a document.

(m) Entire Agreement. The provisions of this EULA and the Order constitute the entire agreement between the parties with respect to the subject matter hereof, and each applicable Order and this EULA supersedes all prior agreements or representations, oral or written, regarding such subject matter. In the event of a conflict between the terms of this EULA and an Order, this Order shall prevail.

(n) Reporting and Audit. Company shall provide such reporting as is required pursuant to an Order, including without limitation, total users, interactions, and such other key metrics as are reasonably necessary in order for the total Fees payable to the Company to be appropriately calculated. This reporting shall be made available to Company at least once per calendar month during the Term, unless an alternative time frame is set forth in the Order. Company or its designee shall have the right to have a reputable third party inspect Licensee's data processing systems and records for the sole purpose of verifying that Licensee has complied with this EULA and reporting its findings to Company. Such inspections will be made on not less than ten (10) days written notice, during regular business hours. If the inspection reveals an underpayment to Company of license fees, licensee shall pay to Company the deficit. Company shall bear the expense of such inspection unless the inspection reveals license fees that vary more than five percent (5%) from the license fees paid to Company, in which case the licensee shall bear the costs associated with the inspection.

(o) Waiver. Failure to enforce any provision of this Agreement will not constitute a waiver. Any waiver must be in writing and signed by the waiving party.