

Customer Services Agreement

This Customer Services Agreement (“**Services Agreement**”) applies to and governs access to and use of the Company services, products, and materials (collectively, “**Services**”) specified in the order form (including exhibits) between the customer identified in the order form (“**Customer**”) and Beambell Inc. (“**Company**,” and the order form, the “**Order Form**”). This Services Agreement is hereby incorporated by reference into each Order Form executed between the parties. Collectively, the Services Agreement and all Order Forms under it, including all exhibits or attachments thereto, constitute the “**Agreement**.”

By signing the Order Form or by accessing or using the Services, Customer accepts the Agreement. Company and Customer may enter into additional Order Forms or exhibits for additional Services. All such Order Forms will be governed by this Services Agreement. If Customer has accepted the Agreement and also has accepted the Company Terms of Service (available at <https://www.beambell.com/terms-of-service>) (the “**Terms of Service**”), this Services Agreement replaces such Terms of Services and governs the Services in its place. Customer’s affiliates and Company may mutually agree to enter into Order Forms that incorporate this Services Agreement by reference. Each such agreement will constitute a separate agreement between Company and such affiliate. If there is a conflict between this Services Agreement and the Order Form, this Services Agreement will control, except to the extent a provision of the Order Form expressly provides that it is intended to amend and supersede a specific provision of this Services Agreement.

1. SERVICES

- 1.1 Service Obligations. Subject to the terms and conditions of the Agreement, Company will, itself or through its affiliates or subcontractors, provide to Customer the Services as specified in the Order Form. Company will be responsible for the acts and omissions of its affiliates and subcontractors, including any acts or omissions that, if taken (or not taken) by Company, would constitute a breach of the Agreement.
- 1.2 Access and Use Rights. Subject to the terms and conditions of the Agreement, Company hereby grants to Customer a limited, non-exclusive, non-transferable, non-sublicensable, and revocable (except in connection with a permitted assignment under Section 11.4) right, during the Term, to allow the number of Authorized Users designated on the Order Form to access and use the Services as specified in the applicable Order Form. Unless expressly agreed in writing in the applicable Order Form, the Services are not for resale or distribution to any third party. Company reserves all rights not expressly granted to Customer hereunder. Company does not grant any other rights, whether by implication, estoppel, waiver, or otherwise.
- 1.3 Authorized Users. Customer will allow only Authorized Users to access or use the Services and will take commercially reasonable measures to protect such passwords, including by prohibiting and preventing any Authorized User, or any other person or entity, from sharing such passwords. “**Authorized Users**” means Customer’s employees and independent contractors working for Customer in the ordinary course of Customer’s business who are specifically authorized by Customer to access or use the Services, in each case whether or not such employees or independent contractors actually access or use the Services. Customer will be responsible for the acts and omissions of its Authorized Users, including any acts or omissions that, if taken (or not taken) by Customer, would constitute a breach of the Agreement. If permitted under the applicable Order Form, Customer may assign Authorized Users who are employees or contractors of Customer’s affiliates.
- 1.4 Suspension. Company may, directly or indirectly, suspend or otherwise deny Customer’s or any Authorized User’s access to or use of all or any part of the applicable Services under the applicable Order Form, without incurring any resulting obligation or liability, if: (a) required under applicable law, rule, or regulation, to prevent an imminent security threat to Company, or to prevent any harm or damage to any natural person(s); or (b) Company believes, in its reasonable discretion, that Customer or any Authorized User has failed to comply with any material term or condition of the Agreement (including Customer’s payment obligations) or accessed or used the Services beyond the scope of the rights granted, or for a purpose not authorized. The foregoing

sentence does not limit any rights or remedies that either party may be entitled under the Agreement or at law or in equity.

- 1.5 Performance Data. Company may collect and use data and information related to Customer's use of the Services in an aggregate or anonymized manner ("**Performance Data**"), including to compile statistical and performance information related to the provision and operation of the Services and for billing purposes.
- 1.6 Personal Data. The Company Data Processing Addendum (the "**DPA**") governs Company's Processing of any Personal Data in Input. "**Processing**" and "**Personal Data**" have the meaning ascribed to them in the DPA. Company may Process Personal Data relating to the operation, support, or use of the Services for its own business purposes, such as billing, account management, data analysis, benchmarking, technical support, and compliance with law. Personal Data does not include Performance Data or any other information reflecting the access or use of the Services by or on behalf of Customer or any Authorized User.
- 1.7 Information Security. Company will protect the security and integrity of Customer Content (defined under Section 3.4) that is collected, accessed, stored or received by Company in connection with the Services.
- 1.8 Updates. (a) Company reserves the right to change or modify the Services, including modifying features and functionalities thereof, as Company deems necessary or useful to comply with applicable law or to maintain or enhance the quality, functionality, performance, reliability or cost efficiency of the Services. (b) Company may, upon thirty (30) days' notice, which notice may be given by any reasonable means including by notification on or through the Company Services, require Customer to obtain and use the most recent version of the Company API or may deprecate older versions of the Company API. Client acknowledges and agrees that Customer's use of any version of the Company API other than the most recent version may adversely affect how Customer's applications communicate or interoperate with the Services. Customer will be responsible for making any changes to Customer's application(s) or Equipment (defined below) that are required for any integration with the Services resulting from any Company's changes to the Services, at Customer's sole cost and expense.

2. RESTRICTIONS AND RESPONSIBILITIES

- 2.1 Compliant Use. Customer represents, covenants, and warrants that Customer will use the Services only in compliance with the Agreement and all applicable laws, rules, and regulations.
- 2.2 Export Controls. Customer is responsible for compliance with United States export controls and for any violation of such controls, including any United States embargoes or other federal rules and regulations restricting exports. Customer represents, covenants, and warrants that Customer is not located in a country or territory that is subject to economic sanctions or trade embargoes imposed by the United States Government (including Belarus, Cuba, Iran, North Korea, Russia, Syria, and the annexed regions of Ukraine), that Customer is not listed on or identified on any United States Government list of sanctioned individuals, that Customer will comply fully with all relevant export laws and regulations of the United States and other international trade laws applicable to Customer's use of the Services.
- 2.3 Customer Responsibilities. Customer shall be responsible for (a) obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including modems, hardware, servers (including cloud hosting, if applicable), operating systems, data backup systems, networking, web servers, software, and the like (collectively, "**Equipment**"), (b) maintaining the security of the Equipment, Customer accounts, passwords and other administrative and user passwords) and files, and for all uses of Customer's account or the Equipment with or without Customer's knowledge or consent, and (c) providing media and content and otherwise reasonably assisting and cooperating with Company as necessary for Company to perform the Services. Except as expressly set forth in the Agreement, Company is not responsible for supplying any Equipment to Customer under the Agreement.

- 2.4 **Restricted Access.** Customer will not, directly or indirectly, permit any person to access or use the Services except as expressly permitted by the Agreement. Customer shall notify Company as soon as practicable of any unauthorized access to or use of the Services. Customer shall be responsible and liable for all access to and use of the Services resulting from access provided by Customer, directly or indirectly, whether such access or use is permitted by or in violation of the Agreement.
- 2.5 **Usage Limits.** Customer will not consume tokens, API calls, or other computational resources in a volume or at a rate that Company determines, in its reasonable discretion, to be excessive. If Customer's usage exceeds such limits or otherwise imposes undue load on the Services, Company may, with or without notice, implement technical or administrative controls, including rate limiting, throttling, queuing, or suspension of access to some or all features of the Services.

3. INTELLECTUAL PROPERTY

- 3.1 **Company Rights.** As between Customer and Company, Company owns and retains all right, title and interest in and to the Services and all Intellectual Property Rights therein. "**Intellectual Property Rights**" means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, model, data, know-how, or other intellectual property rights, in any part of the world.
- 3.2 **Feedback.** Company may use and exploit, without any payment or attribution obligation of any kind, any comments, feedback, suggestions, or ideas ("**Feedback**") Customer or any of its personnel, employees, agents, or subcontractors provide to Company in connection with the Agreement or the Services. Customer waives any moral and similar rights relating to Feedback that Customer may have under any applicable law.
- 3.3 **Customer Rights.** As between Customer and Company, Customer is and shall remain the sole and exclusive owner of all right, title, and interest in and to any and all data and information that (a) Customer or its Authorized Users transmit to Company's systems in connection with access or use of the Services, or (b) is otherwise provided to Company by or on behalf of Customer in connection with the Agreement ((a) and (b), collectively, "**Input**").
- 3.4 **Output Rights.** When Customer provides Input to Company or the Services, Customer may receive visual or audio output generated and returned by one or more Generative AI Models (defined below), or text output generated and returned by one or more LLMs (defined below), based on Input (the "**Output**") (Input and Output, collectively, the "**Customer Content**"). Outputs may be generated by, but do not constitute a part of, generative artificial intelligence models (the "**Generative AI Models**") or large language models ("**LLMs**") (Generative AI Models and LLMs, collectively, the "**Models**"). As between Company and Customer, Customer owns all right, title and interest in and to the Output in perpetuity and, subject to Customer's payment of all Fees, to the fullest extent possible under applicable law, Company hereby assigns to Customer all of its right, title, and interest in and to such Output (but excluding, for clarity, any Models), provided that Customer's use of the Services and the Output (whether by or for the benefit of Customer) always complies with all applicable law, rules and regulations.
- 3.5 **Customer License.** Customer hereby grants to Company an irrevocable, non-exclusive, non-transferable license to reproduce, distribute, create derivative works of, translate, broadcast, publicly perform, publicly display, and otherwise use Customer Content to perform Company's obligations and exercise Company's rights under the Agreement. Customer hereby grants Company a revocable, non-exclusive, non-transferable right to use Customer's name and logo in Company's marketing materials, presentations, and on Company's website, solely for the purpose of identifying Customer as a customer of Company. Company agrees to promptly cease any such use upon written request from Customer.
- 3.6 **Customer Content.** Customer represents, covenants, and warrants that (a) it is either the owner of, or otherwise has the necessary rights and licenses to use and to authorize Company to use, the Inputs in any

manner contemplated by this Agreement; or (b) it has the written consent, release, or permission of each and every natural person that appears in or is included in the Input to use the personal data and likenesses of each such person to enable inclusion and use of Customer Content in any manner contemplated by this Agreement, including for the purposes of using the Services as contemplated under the Agreement.

3.7 Customer Requirements. Notwithstanding anything to the contrary in the Agreement, Customer's use of the Services and Output is subject to the following:

- (a) Customer acknowledges and agrees that (i) certain Generative AI Models are developed based on content belonging to third parties or the likeness of natural persons, and those third parties or natural persons may have certain rights in and to the Outputs separate from any rights granted by Company to Customer hereunder, and (ii) Models may become unavailable at any point during the Term;
- (b) Customer may not create, train, test or improve artificial intelligence or machine learning models (including architectures, models or weights) on Outputs (or any derivatives thereof);
- (c) Customer may not (i) upload or provide any Outputs to any artificial intelligence or machine learning product or service for the purpose of cloning any of the content or Models available through the Services or (ii) download or retrieve a copy of any Models; and
- (d) Due to the nature of machine learning, the Output generated by Customer using the Services may not be unique across users, as the Services may produce the same or similar output for Customer and a third party. Responses requested by and generated for users that are not Customer or an Authorized User shall not be considered Output for Customer.

4. CONFIDENTIALITY

4.1 Definition. "**Confidential Information**" means any confidential or proprietary information of the disclosing Party (the "**Discloser**") that is marked as "Confidential" or under the circumstances of disclosure should reasonably be considered confidential or proprietary. Confidential Information of Company includes the Order Form and non-public information regarding features, functionality and performance of the Services. Confidential Information does not include information that (a) is lawfully in or enters the public domain through no fault of or breach by the receiving party (the "**Recipient**"), (b) the Recipient was lawfully in possession of without any obligation of confidentiality prior to receiving it from the Discloser, (c) the Recipient developed independently and without use of or reference to the Discloser's Confidential Information, or (d) the Recipient receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation.

4.2 Mutual Obligations. Each party will: (a) hold in strict confidence all Confidential Information of the other party, using at least the same degree of care to protect the Discloser's Confidential Information as it uses to protect its own Confidential Information of like nature, but at least reasonable care; (b) use such Confidential Information only to perform its obligations under the Agreement; and (c) not transfer or disclose such Confidential Information to any individual or entity except to the directors, officers, employees, agents, contractors, accountants, auditors, or legal and financial advisors of such party who need to know such Confidential Information and who are under confidentiality obligations substantially similar to those set forth hereunder; provided, that the handling and treatment of Confidential Information in accordance with the Agreement by any such individual or entity will be such party's full responsibility. A Recipient may disclose the Discloser's Confidential Information to the extent required by law provided that the Recipient (i) notifies the Discloser in writing prior to disclosure of the information so that the Discloser has a reasonable opportunity to obtain a protective order, (ii) assists the Discloser, at the Discloser's expense, in any attempt to limit or prevent the disclosure of the Confidential Information, and (iii) discloses only the minimum Confidential Information actually required to be disclosed. Neither party will disclose the existence or terms and conditions of the Agreement to any third party.

- 4.3 Equitable Relief. Each party agrees that the other party may have no adequate remedy at law if there is a breach or threatened breach of Section 4.1 or 4.2 and, accordingly, that the non-breaching party will be entitled to seek injunctive or other equitable relief to prevent or remedy such a breach, in addition to any legal remedies available to that party, without the necessity of proving actual damages and without the necessity of posting a bond (or other security).

5. PAYMENT OF FEES

- 5.1 Fees. Customer will pay Company the fees described in the Order Form for the Services in accordance with the terms therein (the “**Fees**”). If Customer’s use of the Services exceeds the scope set forth on the Order Form or otherwise requires the payment of additional fees based on usage as set forth in the Order Form, Customer will pay the applicable Fees. If Customer believes that Company has billed Customer incorrectly, Customer must contact Company no later than 60 days after the closing date on the first billing statement in which the error or problem appeared, to receive an adjustment or credit.
- 5.2 Payment. Customer will pay all invoices within 30 days of the invoice date. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower. Customer shall be responsible for all taxes associated with Services other than United States taxes based on Company’s net income. Amounts due, including all sales, use, or other taxes or duties, must be paid in full without deduction or set off.

6. TERM AND TERMINATION

- 6.1 The Term. Subject to any earlier termination as provided in the Agreement, the Agreement is effective as of the date that Customer and Company enter into the first Order Form under the Agreement and continues until all Order Forms under the Agreement have expired or been terminated (“**Term**”).
- 6.2 Mutual Right to Terminate for Material Breach. Either party may terminate the Agreement immediately upon notice to the other party if the other party materially breaches the Agreement and fails to cure such breach within thirty (30) days after receipt of written notice describing in reasonable detail the nature of the breach.
- 6.3 Effect of Termination. Upon termination of the Agreement, (a) Customer will pay Company all Fees incurred prior to such termination and each party will return or destroy (and, upon request, certify in writing to the destruction of) any Confidential Information of the other party in such party’s possession or control; (b) all rights, licenses, consents, and authorizations granted by either party to the other hereunder will immediately terminate; and (c) Customer will immediately cease all use of any Services. Sections 1.4 (Suspension); 2.1 (Compliant Use); 2.2 (Export Controls); 2.4 (Restricted Access); 3.1 (Company Rights); 3.2 (Feedback); 3.3 (Customer Rights); 3.4 (Output Rights); 3.6 (Customer Content); 3.7 (Customer Requirements); 4 (Confidentiality); 5 (Payment of Fees); 6.3 (Effect of Termination); 7.1 (Mutual Warranties); 7.2 (No Other Warranties); 7.3 (Disclaimers); 8 (Indemnification); 9 (Limitation of Liability); 10 (Dispute Resolution); and 11 (Miscellaneous) will survive any expiration or termination of the Agreement.

7. WARRANTIES AND DISCLAIMER

- 7.1 Mutual Warranties. Each party represents and warrants that: (a) it is an entity duly organized, validly existing, and in good standing under the laws of the jurisdiction where it is organized; and (b) it has power and authority to enter into and perform its obligations under the Agreement.
- 7.2 No Other Warranties. Customer acknowledges that Company is not responsible for any other warranties, whether express or implied by law, with respect to the Services. The parties acknowledge that to the extent that there are any applicable warranties, any other claims, losses, liabilities, damages, costs, or expenses attributable to any failure to conform to any such applicable warranty would be the sole responsibility of Company. However, Company has disclaimed all warranties of any kind, with respect to the Services, and therefore, there are no warranties applicable to the Services, except those listed in Section 7.1.

7.3 **DISCLAIMERS.** Customer's use of the Services and any content or materials provided therein or therewith is at Customer's sole risk. Except as otherwise provided in a writing by Company and to the fullest extent permitted under applicable law, the Services, and any content or materials provided therein or therewith are provided "as is" and "as available" without warranties of any kind, either express or implied. Company disclaims all warranties with respect to the foregoing, including implied warranties of merchantability, fitness for a particular purpose, title, and non-infringement. In addition, Company does not represent or warrant that the Services or any content provided therein or therewith are accurate, complete, reliable, current, or error-free or that access to the Services or any content provided therein or therewith will be uninterrupted. While Company attempts to make Customer's use of the Services and any content provided therein or therewith safe, Company cannot and do not represent or warrant that the Services or any content provided therein or therewith or servers are free of viruses or other harmful components or content or materials. Customer assumes the entire risk as to the quality and performance of the Services and any content provided therein or. All disclaimers of any kind (including in this section and elsewhere in this Agreement) are made for the benefit of Company, Company parties, and Company's respective shareholders, agents, representatives, licensors, suppliers, and service providers, as well as their respective successors and assigns.

8. INDEMNIFICATION

8.1 **Definitions.** As used herein, "**Claim**" means any claim, action, or proceeding, in each case brought or made by a third party. "**Losses**" means all losses, damages, liabilities, deficiencies, settlements, judgments, awards, penalties, interest, fines, costs, fees and expenses of whatever kind (including reasonable attorneys' fees and legal costs and expenses).

8.2 **Company Obligations; Claims against Customer.** Company, at its expense, will defend, indemnify, and hold Customer harmless from and against any and all Losses in connection with any Claim to the extent arising from: (a) the infringement, misappropriation or violation of such third party's Intellectual Property Rights to the extent resulting from Company's provision of the Services, (b) Company's gross negligence or willful misconduct, or (c) Company's violation of applicable law. Notwithstanding the foregoing, Company's indemnification obligations under Section 8.2(a) do not apply to the extent that the alleged infringement or misappropriation arises from: (i) Input; (ii) use of the Services in combination with hardware, systems, software, networks, or other materials or services not provided by Company and not approved or specified for Customer's use in applicable Order Form; (iii) modification of the Services not authorized by Company; or (iv) Customer's failure to timely implement any modifications, upgrades, replacements, or enhancements made available to Customer by or on behalf of Company (items (i) through (iv), "**Excluded Claims**").

8.3 **Customer Obligations; Claims against Company.** Customer, at its expense, will defend, indemnify, and hold Company harmless from and against any and all Losses in connection with any Claim to the extent arising from: (a) Input, (b) Output, to the extent the Claim arises from or relates to the Input, (c) Customer's gross negligence or willful misconduct, (d) Customer's violation of applicable law, or (e) the Excluded Claims.

8.4 **Procedure.** The party providing the indemnification ("**Indemnitor**") shall have exclusive control of the defense of any Claims and all negotiations for settlement or compromise of a Claim; provided that (a) the indemnified party ("**Indemnitee**") may, at its own cost and expense, appoint its own counsel with respect to defense of the Claim, and (b) the Indemnitor shall not have the right to settle any Claim without the prior written consent of the Indemnitees, not to be unreasonably withheld, conditioned, or delayed, to the extent that the settlement (i) does not provide for a full and unconditional release of the Indemnitees or (ii) imposes any form of equitable relief against the Indemnitees. The Indemnitees shall provide all reasonable assistance in defending any Claim as may be requested by the Indemnitor, at the Indemnitor's sole cost and expense. The Indemnitee shall give the Indemnitor written notice of the Claim subject to indemnification hereunder,

provided that in no event will an Indemnitee's failure to provide such notice relieve or excuse the Indemnitor's obligations under this Section 8 unless the Indemnitor is actually and materially prejudiced thereby.

- 8.5 Company Options; Customer's Exclusive Remedies. If (a) use of the Services in accordance with the Agreement infringes, misappropriates or violates a third party's Intellectual Property Rights or proprietary rights, (b) a court of competent jurisdiction enjoins the provision of Services in connection with a claim of infringement, misappropriation or any other violation of third party Intellectual Property Rights or proprietary rights, or (c) Company reasonably believes that the Services may become subject to a claim of infringement, misappropriation or any other violation of third party Intellectual Property Rights or proprietary rights, then in each case of (a) through (c), Company may, at its sole option: (1) procure the rights necessary to continue providing the Services; (2) modify the Services to make them non-infringing; or (3) if Company believes that neither option (1) nor option (2) is commercially practicable, cancel its applicable Services to Customer. If Company cancels its provision of Services to Customer, Customer will immediately discontinue all use of the Services and Company will provide Customer with a refund for pre-paid and unused Services if any. SECTIONS 8.2 AND 8.5 SET FORTH COMPANY'S SOLE OBLIGATIONS AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY THIRD-PARTY CLAIM OR ALLEGATION THAT COMPANY HAS INFRINGED, MISAPPROPRIATED, OR OTHERWISE VIOLATED ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHT OR ANY OTHER THIRD-PARTY PROPRIETARY, PERSONAL, OR PRIVACY RIGHT.

9. LIMITATION OF LIABILITY

- 9.1 Indirect Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, EXCEPT FOR CUSTOMER'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 8 OR EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT WILL EITHER PARTY OR ITS SUPPLIERS, OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS, OR EMPLOYEES BE RESPONSIBLE OR LIABLE WITH RESPECT TO THE AGREEMENT OR THE SERVICES, UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (I) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, OR (II) AS TO COMPANY ONLY, FOR ERROR OR INTERRUPTION OF USE, LOSS OR INACCURACY OR CORRUPTION OF DATA, COST OF COVER OR PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY, OR LOSS OF BUSINESS; IN EACH CASE OF (I) AND (II), WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 9.2 Aggregate Damages. EXCEPT FOR CUSTOMER'S INDEMNIFICATION OBLIGATION UNDER SECTION 8 OR LIABILITY ARISING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR A PARTY'S MISAPPROPRIATION OR INFRINGEMENT OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT WILL A PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THE AGREEMENT OR THE SERVICES, WHETHER IN CONTRACT, TORT, OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED AN AMOUNT EQUAL TO THE FEES PAID BY CUSTOMER TO COMPANY IN THE 12 MONTHS PRIOR TO THE FIRST EVENT THAT GAVE RISE TO THE LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10. DISPUTE RESOLUTION

- 10.1 Mandatory Informal Dispute Resolution. For any dispute or claim between the parties arising out of or relating to the Agreement or Services, including any privacy or data security claims, (collectively, "**Disputes**", and each a "**Dispute**"), Customer and Company agree to attempt to first resolve the Claim informally. If Customer and Company cannot reach an agreement to resolve the Dispute within 30 days after Customer or Company receives notice of the Dispute, then either party may submit the Dispute to binding arbitration as set forth below. The statute of limitations and any filing fee deadlines shall be tolled for thirty (30) days from the date that either Customer or Company first send the applicable notice so that the parties can engage in this informal dispute-resolution process.

10.2 **Mandatory Arbitration.** Except for any disputes exclusively related to the intellectual property or Intellectual Property Rights of Customer or Company, including any disputes in which Customer or Company seek injunctive or other equitable relief for the alleged unlawful use of Customer's or Company's intellectual property or other infringement of Customer's or Company's Intellectual Property Rights, all Disputes that are not resolved in accordance with Section 10.1 will be resolved by a neutral arbitrator through final and binding arbitration instead of in a court by a judge or jury. The arbitration shall be administered by the American Arbitration Association ("AAA"), <https://www.adr.org> pursuant to the then-current version of the AAA's Commercial Arbitration Rules and Mediation Procedures. The arbitrator will have the authority to grant any remedy or relief that would otherwise be available in court. The arbitration award may be confirmed and enforced in any court having jurisdiction. Unless Customer and Company agree otherwise, any decision or award will include a written statement stating the decision of each claim and the basis for any award, including the arbitrator's essential factual and legal findings and conclusions. The parties will cooperate to seek from the arbitrator protection for any confidential, proprietary, trade secret, or otherwise sensitive information, documents, testimony, and other materials that might be exchanged or the subject of discovery in the arbitration.

11. MISCELLANEOUS

11.1 **Force Majeure.** Company shall not be liable to Customer for any failure to perform any of its obligations under the Agreement during any period in which such performance is delayed, hindered, or adversely affected as a result of circumstances beyond its reasonable control including fire, flood, war, pandemic, plague, epidemic, outbreaks of infectious disease, or any other public health crisis, including quarantine or other employee restrictions, act of authority whether lawful or unlawful, compliance with any law or governmental order, rule, regulation or direction, curfew restriction, embargo, strike, riot, civil unrest, or disputes with suppliers or vendors (each, a "**Force Majeure**"). Company will promptly provide Customer with written notice of the Force Majeure. Company will use commercially reasonable efforts to avoid or mitigate the effects of the Force Majeure and will resume performance of any suspended obligation as soon as reasonably practicable after termination of such Force Majeure. Company's time for performance will be excused for the duration of the Force Majeure.

11.2 **Publicity.** Company may issue publicity or general marketing communications identifying Customer as a customer, including on its website and in its marketing materials. Customer hereby grants Company a non-exclusive, worldwide, royalty-free, revocable license to use Customer's name, logo, and other trademarks or service marks solely in connection with the foregoing. Customer must obtain Company's prior written approval prior to issuing any press releases, public statements, or marketing communications regarding Company or the Services.

11.3 **Severability.** If any provision of the Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that the Agreement will otherwise remain in full force and effect and enforceable.

11.4 **Assignment.** The Agreement is not assignable, transferable, or sublicensable by Customer except with Company's prior written consent. Company may transfer and assign any of its rights and obligations under the Agreement without consent.

11.5 **Entire Agreement.** The Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of the Agreement. The Agreement will be deemed to be the product of both parties, and no ambiguity will be construed in favor of or against either party.

11.6 **Interpretation.** The terms "e.g.," "such as," "include," "includes," and "including" are not limiting and are deemed to be followed by the words "without limitation." The terms "herein," "hereto," "hereunder" and terms of similar import refer to the Agreement in its entirety and not to any particular provision of the

Agreement. Except where the context otherwise requires, wherever used, the word “or” is used in the inclusive sense. URLs are understood to also refer to successor URLs, URLs for localized content, and information or resources linked from within the websites at the specified URLs.

- 11.7 No Waiver. All waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein.
- 11.8 No Agency. No agency, partnership, joint venture, or employment is created as a result of the Agreement and Customer does not have any authority of any kind to bind Company in any respect whatsoever.
- 11.9 Prevailing Party. In any action or proceeding to enforce rights under the Agreement, the prevailing party will be entitled to recover costs and attorneys’ fees from the non-prevailing party.
- 11.10 Notices. All notices under the Agreement will be in writing and will be deemed to have been duly given when received if personally delivered; when receipt is electronically confirmed if transmitted by e-mail; the day after it is sent if sent for next day delivery by recognized overnight delivery service; and upon receipt if sent by certified or registered mail, return receipt requested.
- 11.11 Governing Law. The Agreement shall be governed by the laws of the State of California without regard to its conflict of laws provisions. Subject to Section 10, any actions and proceedings not subject to mandatory arbitration under the Agreement shall be brought exclusively in the state or federal courts in San Francisco County, California.