

## SEEMLYAPP TERMS OF SERVICE

### IMPORTANT INFORMATION

PLEASE REVIEW THIS SERVICES AGREEMENT SETTING OUT THE TERMS OF SERVICE CAREFULLY AS IT DETAILS IMPORTANT INFORMATION ABOUT YOUR RIGHTS AND OBLIGATIONS, CERTAIN RESTRICTIONS AND LIMITATIONS AND EXCLUSIONS TO OUR LIABILITY. IT IS INTENDED TO BE A LEGALLY BINDING AGREEMENT. BY PROCEEDING TO DOWNLOAD, INSTALL AND/OR USE Seemly SOFTWARE, SAAS AND/OR SERVICES, WHETHER DIRECTLY OR THROUGH ANY SERVANT OR AGENT: (1) YOU ARE EXECUTING THIS AGREEMENT, (2) YOU ACKNOWLEDGE THIS IS A LEGALLY BINDING AGREEMENT, (3) YOU ACKNOWLEDGE THAT YOU HAVE READ ALL OF THE FOLLOWING TERMS AND CONDITIONS AND ACCOMPANYING ANNEXURES, AND (4) YOU AGREE TO BE BOUND BY ALL SUCH TERMS AND CONDITIONS AND ANNEXURES AS A PARTY TO THIS AGREEMENT AND, IF YOU ARE AN EMPLOYEE OR AGENT, TO BIND YOUR EMPLOYER OR PRINCIPAL.

IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS AND CONDITIONS AND ANNEXURES OR ARE NOT PROPERLY AUTHORIZED TO BIND ANY EMPLOYER OR PRINCIPAL, PLEASE NAVIGATE AWAY FROM THIS PAGE WITHOUT DOWNLOADING THE SOFTWARE AND/OR REMOVE THE SOFTWARE IF YOU NO LONGER AGREE TO BE BOUND BY THESE TERMS.

This Terms of Service Agreement, including all and any Annexures and referenced URLs (“Agreement”), is entered into between Uniqode Phygital, Inc., with its principal place of business located at 12 East 49th Street, New York, NY 10017 (“Seemly”) and the customer identified on the order for Seemly Services (as later defined), (“Customer”), and effective on the date on which Customer executes this Agreement (“Effective Date”).

**1. SCOPE.** This Agreement governs Seemlyapp’s provision to Customer of such Seemly SaaS and/or such other services selected and ordered (“Seemly Services”) by Customer on the Seemly website (“Website”). The parties agree that the terms of this Agreement shall extend to and govern all orders placed on Seemlyapp by Customer as well as any receipt and use by Customer and/or Permitted Users (as later defined) of the Seemlyapp Services. It is understood by Customer that any software functionality, including that enabled by Seemlyapp’s proprietary software, ‘Seemlyapp’ (“Software”), made available to Customer pursuant to this Agreement shall be provided as part of Seemly’s software-as-a-service offering (“Seemly SaaS”) forming part of the Seemly Services and that no physical copies of Software shall be provided by Seemly.

**2. RIGHT TO USE.** Seemlyapp hereby grants to Customer, effective as of the date this Agreement is executed (“Service Commencement Date”), a worldwide, non-exclusive, non-transferable, revocable and limited right and license to receive, access and use the Seemlyapp Services, through Customer’s internet connection or proprietary telecommunications line, for Customer’s internal business purposes (“Agreed Purpose”), in return for Customer’s strict compliance with the terms of this Agreement. Seemly may collect cookies while providing the Seemly Services to Customer and/or Permitted Users and its collection and usage thereof shall be governed by the policy set out in Seemly’s then prevailing cookie policy. While Seemly shall employ its reasonable efforts to safeguard any Service Data (as later defined) uploaded by Customer and/or Permitted Users to the Seemlyapp system (“Seemlyapp System”) used by Seemly as part of its provision of the Seemlyapp Services, Customer acknowledges that it and/or its Permitted Users shall be solely responsible for making backup copies of any and all such Service Data. Customer specifically understands and agrees that the

agreed Fees are specifically predicated on this allocation of risk and that consequently Seemly shall have no liability to Customer, its servants, or agents for any loss of or damage to such Service Data.

**3. PERMITTED USE BY OTHERS.** Seemly hereby authorizes Customer to permit Customer's affiliates, servants and agents ("Permitted Users") to receive, access and use Seemlyapp Services for the Agreed Purpose on condition that (i) Customer shall procure the compliance of Permitted Users with the terms of this Agreement and (ii) Customer shall remain responsible and liable for any misuse of the Seemly Services or breach of the terms of this Agreement by Permitted Users in connection with their use of the Seemly Services or in connection with this Agreement, specifically including any applicable security, integrity or privacy laws or regulations and Acceptable Use (as later defined).

**4. ACCEPTABLE USE.** Receipt, access and use of and to the Seemlyapp Services by Customer and/or Permitted Users is granted on condition of their strict compliance with the following restrictions, that under no circumstances shall Customer and/or Permitted Users: (i) transmit content that violates the privacy, intellectual property or other proprietary rights of Seemly or any other party; (ii) knowingly or recklessly transmit viruses, trojan horses, worms, malicious code, or other harmful or destructive content; (iii) breach any terms of this Agreement, or any applicable law; (iv) attempt to probe, scan, test, re-engineer or violate the security features of Seemly Services or any associated system or network, or to obtain unauthorized access to materials or other information stored thereon; (v) attempt to sell, resell, transfer, assign, license, sublicense, pledge, lease, rent, distribute, timeshare, or share or otherwise commercially exploit or make the Seemlyapp Services available to or for the benefit of any third party, other than Permitted Users; (vi) attempt to interfere with or disrupt the integrity or provision of the Seemly Services or the data contained therein; (vii) exploit or present minors in a sexual way, or promote adult sexual services, or represent a private person offering to trade or sell drugs, firearms, or other hazardous materials, including any indication or promotion of hate speech; (viii) remove any copyright, trademark, or other proprietary notices from any portion of the Seemly Services; (ix) use meta tags, hidden text or metadata with Seemly's trademark, logo, URL or product name without Seemly's prior written consent; (x) use Seemly's user information to forge any TCP/IP packet header or any part of the header information in any email or newsgroup posting, or in any way use the Seemly Services to send altered source-identifying information; (xi) share with any third party the login credentials used to access and use the Seemly Services; and/or (xii) attempt to interfere with the provision or use of the Seemly Services, whether directly or indirectly, by any other manner not expressly mentioned above (collectively, "Acceptable Use").

**5. ACCOUNT ACCESS.** To enable receipt, access and use of and to the Seemlyapp Services, Customer and/or each Permitted User shall register for and maintain an active Seemlyapp account ("Account"). It is a condition of receipt, access and use of and to the Seemly Services that each Permitted User must be at least 18 years of age and Seemly shall, in no manner whatsoever, be liable for any violation of the foregoing. Customer shall be responsible for all activity that emanates from any Customer or Permitted User Account and for any use not in conformance with Acceptable Use.

**6. SUPPORT.** By creating an Account, Customer consents to Seemly sending Customer and/or Permitted Users email communications necessary to give effect to the terms of this Agreement. Customer and/or Permitted Users may opt-out of receiving such communication at any time by clicking the unsubscribe button located on any such email communications from Seemly. Customer acknowledges that opting out of such communication may impact the quality and beneficial use of the Seemly Services. As part of its provision of the Seemly Services, Seemly shall make available to Customer and/or Permitted Users reasonable support and information in connection with same,

which support and information may be provided via phone, email or other reasonable means, in accordance with instructions to be shared by Seemly with Customer and each Permitted User.

**7. NON-COMPLIANCE.** Upon Customer or any Permitted User becoming aware of any non-compliance with the terms of this Agreement, including without limitation any Acceptable Use, Account maintenance, and/or applicable security, integrity or privacy requirements, Customer shall notify Seemly without undue delay, by sending an email summarizing any such non-compliance to info@Seemly.com, to enable any appropriate remedial action to be undertaken by Seemlyapp.

**8. MODIFICATIONS TO SYSTEM & UPDATES.** Customer acknowledges that it is obtaining the benefit of a standard service and that, as such, Seemly may, in its sole discretion: (i) reengineer its network or service components, (ii) change the locations of its hosting centers, (iii) modify and/or replace technology and/or service architectures, without material degradation of the Seemlyapp Services, and (iv) from time to time, provide enhancements or improvements to the features and/or functionality of the Seemlyapp Services, which may include patches, bug fixes, updates, upgrades and other modifications (collectively, “Updates”). As the Seemly Services evolve over time, such Updates may operate to modify or delete certain then-existing features and/or functionalities of the Seemly Services. To this end, Customer hereby agrees that Seemly has no obligation: (i) to provide any specific Updates, or at all, or (ii) to continue to provide or enable any particular features and/or functionalities of Seemly Services to Customer and/or Permitted Users. Customer further agrees that all Updates will, upon installation by Seemly, be: (i) deemed to constitute an integral part of the Seemly Services, and (ii) subject to the terms of this Agreement.

**9. SALE OF Seemly HARDWARE.** From time to time, Seemly makes available for sale certain hardware, including, without limitation, beacon or near-field communication technology (each, a “Product”). In the event Customer would like to purchase any Product, it shall place an order for such Product on the Website, which order shall be subject to the provisions of this Section 9 and more generally these standard terms and conditions. Seemly shall supply any such ordered Products, at the corresponding prices for same set forth on the Website at the time of order. Shipments of the Products shall be made FCA (Incoterms 2010) Seemly’s or its affiliate’s facility (“Point of Origin”). Notwithstanding the foregoing, title to the Products and risk of loss will pass to Customer upon delivery to the carrier at the Point of Origin. For shipments outside the United States of America, Customer shall be responsible for clearing the Product shipment for import and shall pay all applicable duties, taxes and other charges, if any, upon import. Customer acknowledges and agrees that any estimated shipment or delivery dates, if any, are good faith estimates only, and Seemly shall not be liable for any loss, damage or penalty on account of any delay to such shipping or delivery dates. Seemly warrants that Products shall accord in all material respects to their corresponding specifications and any documentation supplied therewith (“Specification”). In the even the Products fail to comply in any material respect with such Specification, within 90 days of their purchase, then Customer may contact Seemly via the contact information provided herein For such non-conforming Products, Seemly may, at the Customer’s option, arrange for either: (i) replacement of the Products within a commercially reasonable time period; or (ii) a refund of the amounts paid for the Products, less shipping costs.

**10. SDK.** In circumstances where Customer requires software development to enable it to use the Seemly Services in conjunction with any Products and the Seemly mobile application (“Purpose”), Seemly hereby grants the Customer a worldwide, non-exclusive, non-transferable, royalty-free license

to use the software development kit (“SDK”) to realize the Purpose, which SDK shall be made available by Seemly as a downloadable file.

**11. FEES.** Customer agrees to pay Seemly the fees corresponding to the particular Seemly Services ordered by Customer, as set forth from time to time on the Website (“Fees”), in accordance with the payment terms set out therein. Such Fees are exclusive of all applicable taxes in any relevant jurisdiction and Customer shall be responsible for the payment of all such validly levied taxes, specifically excluding all and any taxes accruing on the basis of Seemly’s income which shall remain the responsibility of Seemly. Customer acknowledges that all Fees due hereunder are payable in advance and that any delay or failure on the part of Customer to pay the agreed Fees by the due date for payment shall enable Seemly, without further notice, to suspend the Seemly Services or terminate this Agreement in accordance with its terms.

**12. THIRD PARTY INTERACTIONS.** The Seemly Services may contain links to third party provided websites, applications, resources and advertisements (“Third Party Provision”). Customer understands and agrees that Third Party Provision is not under the control of Seemly and that any access to Third Party Provision by Customer and/or Permitted Users shall be entirely at Customer’s risk and subject to any Third Party Provision terms of use associated with same. Customer further agrees that Third Party Provision is outside of the scope of this Agreement and that Seemly shall have no responsibility or liability to Customer and/or Permitted User for: (i) the availability or accuracy of Third Party Provision; and/or (ii) the content, products, or services available from such Third Party Provision.

**13. INTELLECTUAL PROPERTY RIGHTS.** Notwithstanding anything to the contrary set forth in this Agreement, each party shall continue to own title to any Intellectual Property Rights (i) it owned as at the Effective Date, (ii) created and owned independently of this Agreement, and (iii) any modifications, adaptations and derivations of subsections (i) and (ii) above (“Background IP”) and nothing in this Agreement shall operate to transfer any Background IP between the parties. Seemly and/or its licensors own all worldwide Intellectual Property Rights in the: (a) Software and user interfaces used for providing the Seemly Services; (b) Seemly SaaS; (c) Products; (d) SDK; and (e) all trademarks, service marks and logos of Seemly (“Seemly IP”). Except for the right to receive, access and use the Seemly Services as expressly set forth herein specifically for the Purpose, no right or license is granted hereunder with respect to the Seemly IP. Further, Customer shall not, and shall procure that its Permitted Users shall not, nor permit any third party to: (a) use, copy, adapt, modify or create derivative works of the Seemly IP; (b) where applicable, reverse-engineer, disassemble, or decompile the Seemly IP or otherwise attempt to determine its underlying source code; (b) sell, lease, sublicense, rent, lend or provide any portion of the Seemly IP to any third party or allow the use of the Seemly IP by, or for the benefit of any person other than its Permitted Users ((a), (b) and (c) collectively “IP Restrictions”). For the purposes of this Agreement, “Intellectual Property Rights” shall mean all patents, inventions, discoveries, registered and unregistered rights in respect of copyright, industrial and other designs, databases, circuit layouts, trademarks, domain names, know-how, confidential information trade secrets, and all other intellectual property.

**14. CUSTOMER/PERMITTED-USER REQUIREMENTS & CONDUCT.** Customer shall ensure that neither it nor any Permitted Users will, in connection with their use of the Seemly Services, upload, share, or otherwise distribute any electronic data, text, messages or other materials, including personal data of such Permitted User (“Service Data”) in violation of Acceptable Use. Seemly reserves the right, in its sole discretion, to remove any Service Data that, in its good faith judgment, fails to comply with the

terms of this Agreement, any other rules of user conduct, or is otherwise harmful, objectionable, or inaccurate. Seemly shall not be responsible for any failure or delay in removing such content or any business consequences of removing same.

**15. SERVICE DATA.** As between the parties, all right, title and interest in and to Service Data remains vested in Customer and Customer hereby grants Seemly a non-exclusive, worldwide, royalty free license to use, transmit, distribute, modify, reproduce, display, store and process Service Data to the extent necessary for Seemly to make available and provide the Seemly Services to Customer and/or Permitted Users and to perform its obligations under the Agreement. In no circumstances shall Seemly share such Service Data or use such Service Data for the benefit of Seemly directly or Seemly's other customers.

**16. ANONYMOUS DATA.** Notwithstanding anything to the contrary herein, Customer hereby agrees that Seemly may create de-identified, aggregated or anonymous data which may, in part, include processing of and anonymizing Service Data ("Anonymous Data") for the purposes of operating, analyzing, improving, or marketing the Seemly Services provided always that any such Anonymous Data will in no circumstances, identify Customer or any Permitted User or enable the identification of same and that all persistent identifiers have been removed.

**17. SERVICE USAGE DATA.** For the sole purpose of providing and improving the Seemly Services, Seemly may collect and use data relating to the usage by Customer and/or Permitted Users of the Seemly Services, including without limitation monitoring and analysing usage and traffic patterns of its websites and Seemly Services. Such usage data: (a) is not Service Data; (b) does not include any personal information about Customer or Permitted Users; and (c) is owned by Seemly.

**18. CONFIDENTIALITY.** Any data and information, whether written, oral, or visual, including data and information that at the time of disclosure by disclosing party to the receiving party is identified as 'confidential' or which, based upon the content and circumstances of disclosure, would lead a reasonable person to conclude such data and information to be 'confidential' shall be deemed "Confidential Information". Each party shall hold the Confidential Information of the other party in confidence, use same only to meet its obligations under the Agreement and not disclose such Confidential Information to any third party, save as expressly permitted by this Section 18. Each party may share the Confidential Information with those of its servants and agents that have a bona fide reason to receive same in furtherance of the sharing party's obligations under the Agreement provided: (i) the sharing party remains liable for the breach of this section by its servants and agents receiving Confidential Information; and (ii) any such receiving servants and agents are similarly bound by broadly comparable obligations of confidentiality. Notwithstanding the foregoing, Confidential Information shall not include information that: (a) was already known by the receiving party through legitimate means; (b) is in the public domain, or becomes so, without fault of receiving party; (c) is independently derived by receiving party without access to the Confidential Information of the other party; or (d) is obtained from a third party absent breach of any obligations of confidentiality. Any breach of this provision by either party may cause irreparable harm to the other party for which monetary damages would be an inadequate remedy. Consequently, the non-breaching party shall be entitled to seek injunctive or other equitable relief from the court without proof of loss.

**19. PRIVACY.** The Seemly Services are not intended to be used for the storing or processing of personal data and any Service Data containing personal data/personally identifiable information ("PII") is at the discretion and risk of Customer and/or Permitted Users. In the case of any PII processed in connection with the Seemly Services, as between the parties, Customer shall remain the

owner and data controller of its PII and Seemly shall be the data processor, in which capacities the parties shall each comply with their respective obligations under then-applicable data privacy laws. In particular, Customer undertakes to comply with the applicable laws in respect of its collection of data and PII for use by Customer and/or Permitted User in their use of the Seemly Services. Collection and use of personal information by Seemly in connection with the provision of the Seemly Services will be governed by the terms set out in Seemly's current privacy policy.

## **20. WARRANTY & DISCLAIMER.**

**20.1. LIMITED WARRANTY.** Seemly represents and warrants that it has all necessary authority to enter into this Agreement and all necessary rights, title and interest to enable Seemly to perform its obligations under this Agreement, including the provision of Seemly Services.

**20.2. WARRANTY DISCLAIMER.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, AND EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN SECTION 20.1, Seemly MAKES NO WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, NOR ANY WARRANTY ARISING FROM THE COURSE OF PERFORMANCE OR COURSE OF DEALING. Seemly DOES NOT WARRANT THAT THE Seemly SERVICES AND/OR USAGE OF THE PRODUCTS WILL BE FREE OF INTERRUPTIONS, ERRORS, BUGS, VIRUSES OR SECURITY ISSUES OR THAT THEY WILL MEET ANY SPECIFIC CUSTOMER OR PERMITTED USER REQUIREMENTS. CUSTOMER AGREES THAT IT IS FOR CUSTOMER TO VALIDATE THAT THE Seemly SERVICES MEET THE SPECIFIC NEEDS OF CUSTOMER AND/OR PERMITTED USERS.

## **21. INDEMNITY.**

**21.1. Seemly INDEMNITY.** Seemly hereby agrees to indemnify, and defend Customer, its directors, officers and employees ("Indemnified Customer Parties") from and against all costs, expenses (including reasonable attorneys' fees), liabilities, and damages suffered by Indemnified Customer Parties, arising out of any third-party claim: (i) that Customer's receipt, access, and use or possession of the Seemly Services and/or Products infringed the Intellectual Property Rights of a third party ("IP Claim"); (ii) for death or bodily injury resulting from the negligence of Seemly, its servants or agents. Notwithstanding the foregoing, Seemly shall have no liability or obligation to indemnify Indemnified Customer Parties against any IP Claim to the extent such IP Claim results from: (a) any modification or unauthorized use of the Seemly Services and/or the Products (collectively, "Deliverables"); or (b) any breach of this Agreement by Customer and/or Permitted Users ((a) and (b), collectively "Indemnity Exclusions").

**21.2. IP CLAIM.** If the provision by Seemly of any Deliverable becomes the subject matter of a third party IP Claim that does not fall within the Indemnity Exclusions, Seemly may, at its option: (i) obtain for Customer and/or Permitted Users the right to continue using the affected portion of the Deliverables; or (ii) replace or modify the affected portion of the Deliverables. If either of the above options are not reasonably available, Seemly may immediately terminate this Agreement upon giving 15 calendar days' prior written notice to Customer. This Section 21 states Seemly's sole and exclusive liability with respect to any IP Claim (whether actual or alleged) resulting from Seemly's provision of Deliverables (or any part thereof) pursuant to this Agreement.

**21.3. CUSTOMER INDEMNITY.** Customer hereby agrees to indemnify and defend Seemly, its directors, officers and employees ("Indemnified Seemly Parties") from and against all costs, expenses (including reasonable attorneys' fees), liabilities, and damages suffered by the Indemnified Seemly Parties,



arising out of any third-party claim: (i) based on violation by Customer and/or any Permitted User of any applicable law; (ii) that Seemly's storage or use of Service Data in accordance with this Agreement infringed the Intellectual Property Rights of a third party; (iii) for death or bodily injury resulting from the negligence of Customer, its servants or agents. The indemnification obligation set forth above will survive the termination or expiration of this Agreement.

## **22. LIABILITY**

**22.1. EXCLUSION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL Seemly, ITS SERVANTS AND AGENTS BE LIABLE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF A STATUTORY DUTY OR OTHERWISE, FOR ANY PURE ECONOMIC LOSS, LOST PROFITS, LOST BUSINESS OPPORTUNITY, ANTICIPATED SAVINGS, REPUTATIONAL DAMAGE, LOST GOODWILL, LOST (INCLUDING THEFT THROUGH HACKING) OR CORRUPTED DATA OF CUSTOMER OR ANY THIRD PARTY, OR ANY INDIRECT, SPECIAL, INCIDENTAL AND CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE Seemly SERVICES OR THIS AGREEMENT, EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH LOSSES.

**22.2. LIMITATION OF LIABILITY.** Seemly'S ENTIRE LIABILITY FOR ALL CLAIMS IN AGGREGATE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PROVISION OF DELIVERABLES, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY OR OTHERWISE, IS LIMITED TO AND SHALL NOT EXCEED: (A) IN THE CASE OF NON-PRODUCT BASED CLAIMS, THE FEES ACTUALLY PAID BY CUSTOMER TO Seemly FOR THE Seemly SERVICES DURING THE PERIOD OF TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE DATE ON WHICH THE CLAIM AROSE; OR (B) IN THE CASE OF PRODUCT BASED CLAIMS, THE PRICE PAID BY CUSTOMER FOR THE NON-CONFORMING PRODUCTS THAT RESULTED IN THE CLAIM.

**22.3. EXCEPTIONS TO LIABILITY LIMITATION.** NOTWITHSTANDING SECTIONS 22.1 AND 22.2 ABOVE, NEITHER PARTY SEEKS TO EXCLUDE LIABILITY FOR WILLFUL DEFAULT, FRAUD, DEATH OR BODILY INJURY RESULTING FROM ITS NEGLIGENCE AND/OR ANY OTHER MATTER FOR WHICH LIABILITY MAY NOT BE EXCLUDED OR LIMITED BY LAW (COLLECTIVELY, "LIABILITY CAP EXCEPTIONS"). CONSEQUENTLY, THE EXCLUSIONS AND LIMITATION SET OUT IN SECTIONS 22.1 AND 22.2 ABOVE SHALL NOT APPLY TO LIABILITY CAP EXCEPTIONS.

**22.4. FAIRNESS OF LIABILITY PROVISION.** CUSTOMER ACKNOWLEDGES AND AGREES THAT Seemly HAS ENTERED INTO THIS AGREEMENT AND PROVIDED CUSTOMER AND PERMITTED USERS WITH ACCESS TO THE Seemly SERVICES FOR THE AGREED LEVEL OF FEES IN RELIANCE UPON THE EXCLUSIONS OF LIABILITY, SET FORTH IN SECTION 22.1 THE LIMITATION OF LIABILITY, SET FORTH IN SECTION 22.2 AND THE EXCEPTIONS TO LIABILITY LIMITATIONS SET OUT IN SECTION 22.3 (COLLECTIVELY, "AGREED RESTRICTIONS"). CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT AS AN ESSENTIAL CONDITION OF Seemly ENTERING INTO THIS AGREEMENT AND PROVIDING THE Seemly SERVICES, SUCH AGREED RESTRICTIONS REFLECT A REASONABLE AND FAIR ALLOCATION OF THE RISK BETWEEN Seemly AND CUSTOMER, UPON WHICH THE AMOUNT OF THE FEES HAS BEEN PREDICATED AND AGREED.

## **23. TERM, RENEWAL & TERMINATION.**

**23.1. TERM.** The Seemly Services are provided and paid for by the Customer on either a monthly plan basis or an annual plan basis through the Website. The selected basis of either a monthly payment basis or an annual payment basis (as selected by Custom through the Website, the "Term Basis") forms the basis for the term. This Agreement is effective as of the Effective Date and shall continue in

effect for the Term Basis (the “Initial Term”), unless terminated earlier as provided herein. After the Initial Term and unless terminated earlier, this Agreement shall automatically renew for additional Term Basis periods (each, a “Renewal Term”). For example, a monthly subscription would have an Initial Term of one month and a Renewal Term of one month, whereas a yearly subscription would have an Initial Term of one year and a Renewal Term of one year. The Initial Term and any Renewal Terms hereunder shall be collectively referred to as the “Term.” Either Party may terminate this Agreement by providing written notice to the other Party no later than fifteen (15) days prior to the start of a Renewal Term, whereupon this Agreement shall terminate at the end of the Initial Term or Renewal Term, as applicable, in effect at the time of such notice.

**23.2. TERMINATION FOR CONVENIENCE.** Either party may terminate this Agreement for its convenience, without further liability, at any time by providing 30 days’ prior written notice to the other party.

**23.3. TERMINATION FOR CAUSE.** Either party may terminate the Agreement by notice in writing in the following circumstances: (i) the other party materially breaches the Agreement and fails to cure such breach within 20 calendar days of a written request by the non-breaching party to do so; (ii) the other party becomes insolvent or generally unable to pay its bills; (iii) Seemly may terminate the Agreement for cause where Customer has failed to pay any Fees that are at least 10 calendar days in arrears following the issuance by Seemly of a written request for payment.

**23.4. SUSPENSION.** Seemly may without notice suspend access to the Seemly Services in circumstances where: (i) Fees are overdue on the Customer’s account; (ii) Customer and/or Permitted Users are non-compliant with Acceptable Use; (iii) Customer is in breach of any provision of the Agreement; (iv) suspension is advisable to prevent or mitigate any damage or harm to Seemly Services or other users; and/or (v) Seemly intends to perform maintenance, updates or improvements to the Seemly Services.

**23.5. CONSEQUENCES OF TERMINATION.** Upon termination of the Agreement for any reason: (i) Seemly shall disable all access of Customer and Permitted Users to the Seemly Services; (ii) Customer shall pay all amounts due and payable to Seemly upon demand; (iii) Seemly shall not be liable to refund any amounts paid in advance by Customer for the Seemly Services; and (iv) Seemly may upon the expiry of 14 calendar days following termination purge from the Seemly System all Service Data. Notwithstanding section 23.5 (iii), solely in the event that Seemly terminates for convenience under Section 23.2, then any amounts paid in advance by Customer for the Seemly Services shall be refunded on a prorated basis for any unused portion of the prepaid Seemly Services.

## **24. MISCELLANEOUS PROVISIONS.**

**24.1 FORCE MAJEURE.** Neither party will be in default of its failure to perform any obligation hereunder (other than any payment obligation) to the extent that its non-performance results from causes beyond its reasonable control, including, without limitation, acts of God, civil commotion, epidemics and pandemics (together with the resulting consequences or mitigations of same), strikes, labor disputes, internet service disruptions or slowdowns, vandalism or “hacker” attacks, or governmental demands or requirements. Upon the duration of any such event of force majeure continuing for longer than 10 calendar days, the other party may terminate this Agreement for its own convenience, without incurring additional liability.

**24.2 ASSIGNMENT.** (a) Subject to Subsection (b) of this Section 24.2, neither party may assign, novate or otherwise transfer any of its rights and/or obligations under this Agreement to any person without



the prior written consent of the other party and any attempt to do so will be void. (b) Notwithstanding Subsection (a) of this Section 24.2, Seemly may, without consent, assign this Agreement to an Affiliate or in connection with any merger, acquisition, reorganization, or other transfer of all or substantially all of its assets.

**24.3 NOTICES.** All notices made under or in connection with this Agreement must be in writing and sent to the other party at the address for such other party first set out in this Agreement or, in the case of the Customer, at the address provided by Customer at the time the order for Seemly Services was placed. Either party may elect to change its address for the purposes of receiving notices pursuant to this Agreement by providing the other party with written notice of such change. In the event of a termination under Section 23.1, Customer may provide notice through the Website, if such functionality is present at the time of such termination notice.

**24.4 SURVIVAL.** Each party's obligations under this Agreement, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement shall survive such termination, cancellation or expiration.

**24.5 WAIVER.** Any waiver or purported waiver shall be void unless made in writing and neither party's failure to exercise any of its rights under this Agreement shall constitute or be deemed a waiver or forfeiture of any such rights.

**24.6 ENTIRE AGREEMENT.** This Agreement sets forth the entire agreement between the parties as to the matters set out herein and supersedes any prior agreement or communication. Any subsequent modification of this Agreement, or any part of it, shall only be effective if reduced to writing and signed and dated by both parties.

**24.7 SEVERABILITY.** If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remainder of the Agreement shall continue to be valid and such impacted provision shall be deemed modified to the extent necessary to render such provision enforceable, while preserving to the fullest permissible extent the intent of the parties.

**24.8 GOVERNING LAW & JURISDICTION.** The Agreement shall be governed by and construed in accordance with the substantive laws of the State of New York and each party submits to the exclusive jurisdiction of the courts of New York City.