

## **END USER LICENSE AGREEMENT**

October 2017

This End User License Agreement, including the Order Form and the Master Software License Services Agreement, which by this reference are incorporated in this Agreement (collectively, the “Agreement”), is a binding agreement between the person or entity identified on the Order Form as the licensee of the Software (“you” or “your” or the “End User”), and Ayfie, Inc., a New York corporation, having its offices at 28 West 44<sup>th</sup> St., Suite 908, New York, NY (the “Company” or “ayfie”).

**THE COMPANY SOFTWARE IS LICENSED AND NOT SOLD. THE COMPANY LICENSES THE SOFTWARE SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT AND ON THE CONDITION THAT YOU ACCEPT AND COMPLY WITH THEM. BY CHECKING THE "I AGREE" BOX OR OTHERWISE USING THE SOFTWARE YOU (A) ACCEPT THIS AGREEMENT AND AGREE THAT YOU ARE LEGALLY BOUND BY ITS TERMS; AND (B) REPRESENT AND WARRANT THAT: (I) YOU ARE OF LEGAL AGE TO ENTER INTO A BINDING AGREEMENT; AND (II) IF YOU ARE A CORPORATION, GOVERNMENTAL ORGANIZATION OR OTHER LEGAL ENTITY, THE PERSON ACCEPTING THIS AGREEMENT HAS THE RIGHT, POWER AND AUTHORITY TO ENTER INTO THIS AGREEMENT ON YOUR BEHALF AND TO BIND YOU TO ITS TERMS. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, COMPANY WILL NOT AND DOES NOT LICENSE THE SOFTWARE TO YOU AND YOU MUST NOT DOWNLOAD, USE OR INSTALL THE SOFTWARE OR DOCUMENTATION.**

**NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR YOUR ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, NO LICENSE IS GRANTED (WHETHER EXPRESSLY, BY IMPLICATION OR OTHERWISE) UNDER THIS AGREEMENT, AND THIS AGREEMENT EXPRESSLY EXCLUDES ANY RIGHT, CONCERNING ANY SOFTWARE THAT YOU DID NOT ACQUIRE LAWFULLY OR THAT IS NOT A LEGITIMATE, AUTHORIZED COPY OF THE COMPANY’S SOFTWARE.**

### **1. DEFINITIONS.**

(a) “Affiliate” shall mean, with respect to a party, any entity that directly or indirectly controls, is controlled by, or is under common control with such party, where “control” (or variants of it) shall mean the ability (whether directly or indirectly) to direct the affairs of another by means of ownership, contract or otherwise.

(b) “Authorized Users” means those specific users for whom you have paid the required fees and whom you shall designate through the applicable Product, as specified in the Order Form.

(c) “ayfie Technology” has the meaning set forth in Section 9 hereof.

- (d) “Confidential Information” has the meaning set forth in Section 15 hereof.
- (e) “Designated Server” shall mean the Server specified in the Order Form with respect to a particular Software license. Such Server may be that of a third-party under nondisclosure obligations that will host the Software for the exclusive benefit of the End User.
- (f) “Disclosing Party” has the meaning set forth in Section 15 hereof.
- (g) “Documentation” shall mean any and all documentation, instructions, technical data, specifications, administration and other documentation, including without limitation written comments and programmer documentation, flow charts, logic diagrams, pseudo code, notations and other writings supporting the Software.
- (h) “End User Data” has the meaning set forth in Section 2 (b)(iv) hereof.
- (i) “Hosted Services” shall mean ayfie’s hosted solutions in connection with the use of the Software.
- (j) “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, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.
- (k) “Laws” has the meaning set forth in Section 2 (b)(vi) hereof.
- (l) “License Fees” shall mean the fees stated in the Order Form.
- (m) “Maintenance and Support” shall mean the maintenance services provided by ayfie as set forth in Section 7 of the Agreement.
- (n) “Order Form” means ayfie’s product ordering documentation, which shall specify your authorized scope of use for the Products, which may include: (i) number and type of the Authorized Users, (ii) storage or capacity (for the Hosted Services), (iii) numbers of licenses, copies or instances (for the Software), or (iv) other restrictions on use by you (as applicable, the “Scope of Use”). No Affiliate and/or subsidiary of the End User may use the applicable Software unless such Affiliate and/or subsidiary executed a separate Order Form and this Agreement, representing such Affiliates’ and/or subsidiary’s independent acceptance of, and agreement to be bound by, the terms and conditions of this Agreement.
- (o) “Person” means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other entity.
- (p) “Product” or “Products” means the Software and Hosted Services, together with related Documentation.
- (q) “Receiving Party” has the meaning set forth in Section 15 hereof.

(r) “Scope of Use” has the meaning set forth in Section 1(n) hereof.

(s) “Server” means a physical server or a virtual server from which a single instance of the Software is accessed and used for production purposes.

(t) “Site” means www.ayfie.com (or such other location as ayfie may designate from time to time).

(u) “Software” means: (i) ayfie’s proprietary software in object code form licensed in accordance with this Agreement and listed on the Order Form; and (ii) subject to the End User’s payment of the License Fees, any Upgrade thereto made available to the End User under this Agreement.

(v) “Subscription Term” has the meaning set forth in Section 2(b)(ii).

(w) “Term” has the meaning set forth in Section 11.

(x) “Third Party” means any Person other than you or the Company.

(y) “Third Party Software” has the meaning set forth in Section 3(a).

(z) “Update” has the meaning set forth in Section 7(b).

## **2. LICENSE GRANT AND SCOPE.**

### **(a) Software Terms.**

(i) ***License Rights.*** Subject to the terms and conditions of this Agreement and the applicable Order Form and the End User’s payment of the License Fees, ayfie grants the End User a revocable, non-exclusive, non-sublicenseable and non-transferable license to install and use the Software during the applicable license term in accordance with this Agreement, the Order Form, the applicable Scope of Use, and the Documentation and solely for the End User’s internal business purposes. The term of each Software license (“License Term”) shall be specified in the Order Form. The License Term will end upon any termination of this Agreement, even if no expiration date is specified in the Order Form. The Software requires a license key in order to operate, which shall be delivered to the email addresses specified in the End User’s Order Form when ayfie has received payment of the applicable fees. For the avoidance of doubt, the End User is responsible for installation of any Software, and the End User hereby acknowledges that ayfie has no further delivery obligation with respect to the Software after delivery of the license keys.

(ii) ***Number of Instances.*** Unless otherwise specified in the Order Form, for each Software license that the End User shall purchase, the End User may install one production instance of the Software on systems owned or operated by the End User (or the third party service providers of the End User, for the End User’s sole and exclusive use, so long as the End User shall remain responsible for their compliance with the terms and conditions of this Agreement).

(iii) ***Modifications.***

(A) Subject to the terms and conditions of this Agreement and other ayfie's policies in existence as of the date hereof: (1) for any elements of the Software provided by ayfie in source code form, and to the extent permitted in the Documentation, the End User may modify such source code solely for purposes of bug fixes, customizations and additional features for the Software and (2) the End User may also modify the Documentation to reflect its permitted modifications of the Software source code or the particular use of the Products within its organization. Any modified source code or Documentation constitutes "End User Modifications." The End User may use End User Modifications solely with respect to its own instances in support of its permitted use of the Software but the End User may not distribute the code to the End User Modifications to any third party. Notwithstanding anything in this Agreement to the contrary, ayfie has no support, warranty, indemnification or other obligation or liability with respect to the End User Modifications or their combination, interaction or use with ayfie's Products. The End User shall bear all risk of such End User Modifications. The End User shall indemnify, defend and hold ayfie harmless from and against any and all actions, claims, costs, damages, losses, liabilities and expenses (including reasonable attorneys' fees and costs) arising out of or in connection with any claim brought against ayfie by a third party relating to the End User Modifications (including but not limited to any representations or warranties the End User shall make about the End User Modifications or the Software) or the End User's breach of this Section 2(a)(iii).

(B) The End User shall not directly or indirectly, without the prior written consent of ayfie or unless otherwise expressly provided herein: (1) copy or modify all or any portion of the Software, except as provided in Section 2(a)(iii); (2) decompile, disassemble or otherwise reverse engineer the Software or any portion thereof, or determine or attempt to determine any source code, algorithms, methods, interfaces, data structures or techniques embodied in or used by the Software or any portion thereof (except to the extent, if at all, expressly permitted by applicable law, notwithstanding a contractual obligation to the contrary); (3) create any derivative works; (4) distribute, disclose, market, sell, rent, lease, time-share, assign, sublicense, pledge, encumber or otherwise transfer or make available the Software or rights granted under this Agreement, as applicable, in whole or in part, to any third party; (5) remove or alter any copyright, trademark, trade name, confidentiality or other proprietary notices, legends, symbols or labels appearing on or in copies of the Software; (6) perform, or release the results of, benchmark tests or other comparisons of the Software with other programs; (7) transfer the Software to any site other than the Designated Server; (8) permit the Software to be used in connection with a service bureau or otherwise used for processing the data of any third party; (9) incorporate the Software or any portion thereof into any other program or product; and (10) use the Software other than in accordance with the provisions of this Agreement and the Order Form.

(iv) ***Attribution.*** In any use of the Software, the End User must include the following attribution to ayfie on all user interfaces in the following format: "powered by ayfie," which must in every case include a hyperlink to [www.ayfie.com](http://www.ayfie.com), and which must be in the same format as delivered in the Software.

(b) **Hosted Services Terms.**

(i) **Access to Hosted Services.** Subject to the terms and conditions of this Agreement and the applicable Order Form and the End User's payment of the License Fees, ayfie grants the End User a revocable, non-exclusive, non-transferable, non-sublicenseable right in the Hosted Services during the applicable Subscription Term in accordance with this Agreement, the applicable Scope of Use and the Documentation and solely for the End User's internal business purposes. The End User acknowledges that the Hosted Services are an on-line and subscription-based and shall be available to the End User through the Site. The End User further acknowledges that ayfie may make changes to the Hosted Services from time to time, at ayfie's sole and absolute discretion.

(ii) **Subscription Term and Termination.** The Hosted Services are provided on a subscription basis for a set term specified in the Order Form ("Subscription Term"). The Subscription Term shall terminate upon the termination of this Agreement, unless renewed or extended in accordance with its terms.

(iii) **Credentials.** ayfie shall deliver the applicable login instructions to the email addresses specified in the End User's Order Form when ayfie has received payment of the applicable fees. The End User must ensure that all Authorized Users keep their login credentials and passwords for the Hosted Services strictly confidential and not share such information with any unauthorized person. The End User shall be responsible for any and all actions taken using all accounts and passwords, and the End User agrees to immediately notify ayfie of any unauthorized use of which it becomes aware.

(iv) **End User Data.** "End User Data" means any data, content, code, video, images or other materials of any type that the End User uploads, submits or otherwise transmits to or through Hosted Services. The End User will retain all right, title and interest in and to End User Data in the form provided to ayfie. Subject to the terms of this Agreement, the End User hereby grants to ayfie a non-exclusive, worldwide, royalty-free right to collect, use, copy, store, transmit, modify and create derivative works of the End User Data, in each case solely to the extent necessary to provide the applicable Hosted Service to the End User. ayfie may also access the End User's account or instance in order to respond to any support requests.

(v) **Security.** ayfie shall implement security procedures to help protect End User Data from security attacks. However, the End User understands that use of the Hosted Services necessarily involves transmission of End User Data over networks that are not owned, operated or controlled by ayfie. ayfie shall not be responsible for any of End User Data lost, altered, intercepted or stored across such networks. ayfie cannot guarantee that ayfie's security procedures will be error-free, that transmissions of End User Data will always be secure or that unauthorized third parties will never be able to defeat ayfie's security measures or those of its third party service providers.

(vi) **Responsibility for End User Data.**

(A) **Compliance.** The End User must ensure that its use of the

Hosted Services and all End User Data is at all times compliant with ayfie's applicable policies and all applicable local, state, federal and international laws and regulations, including but not limited to, HIPAA, as amended from time to time, and Gramm-Leach-Bliley Act, as amended from time to time ("Laws"). The End User represents and warrants that: (1) the End User has obtained all necessary rights, releases and permissions to provide all End User Data to ayfie and to grant the rights granted to ayfie in this Agreement and (2) End User Data and its transfer to and use by ayfie as authorized by the End User under this Agreement do not violate any Laws (including without limitation those relating to export control and electronic communications) or rights of any third party, including without limitation any intellectual property rights, rights of privacy, or rights of publicity, and any use, collection and disclosure authorized herein is not inconsistent with the terms of any applicable privacy policies. Other than its security obligations under Section 2(b)(v) (Security), ayfie assumes no responsibility or liability for End User Data, and the End User shall be solely responsible for End User Data and the consequences of using, disclosing, storing, or transmitting it.

(B) *Indemnity for End User Data.* The End User shall defend, indemnify and hold harmless ayfie from and against any actions, claims, loss, cost, liability or damage, including reasonable attorneys' fees and costs, for which ayfie becomes liable arising from or relating to any claim relating to End User Data, including but not limited to any claim brought by a third party alleging that End User Data, or the End User's use of the Hosted Services in breach of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law.

(vii) *Removals and Suspension.* ayfie has no obligation to monitor any content uploaded via the Hosted Services. Nonetheless, if ayfie deems such action necessary based on the End User's violation of this Agreement, ayfie may (A) remove the End User Data; or (B) suspend the End User's access to the Hosted Services as set forth in Section 2(b)(viii) (Suspension of Service) hereof. ayfie shall generally notify the End User when ayfie takes such action and shall give the End User a reasonable opportunity to cure any breach, but if ayfie determines that the End User's actions endanger the operation of the Hosted Service or other users, ayfie may suspend the End User's access or remove the End User Data immediately without notice. The End User shall continue to be charged for the Hosted Service during any such period. ayfie shall have no liability to the End User for removing or deleting End User Data from or suspending the End User's access to any Hosted Services as described in this Section 7(b)(vii) (Removals and Suspension).

(viii) *Suspension of Service.* The End User agrees that ayfie may suspend the Hosted Services to the End User without liability if: (A) ayfie reasonably believes that the Hosted Services are being used in violation of the Agreement, the applicable Order Form or applicable law; (B) the End User fails to cooperate with any reasonable investigation by ayfie of any suspected violation of any of ayfie's policies; (C) there is an event for which ayfie reasonably believes that the suspension of the Hosted Services is necessary to protect its network or its other customers; or (D) requested by a law enforcement or government agency. ayfie shall give the End User written notice of a suspension under this Section, which notice shall be at least twenty-four (24) hours in advance of the suspension unless a law enforcement or government agency directs otherwise or suspension on shorter or contemporaneous notice is necessary to protect ayfie or ayfie's other customers from an imminent and significant risk.

(ix) ***Deletion at End of Subscription Term.*** ayfie may remove or delete End User Data within a reasonable period of time after the termination of the Subscription Term.

(x) ***Modifications. Ownership of Site.*** The End User shall not directly or indirectly, without the prior written consent of ayfie or unless otherwise expressly provided herein: (A) copy or modify all or any portion of the Software; (B) decompile, disassemble or otherwise reverse engineer the Software or any portion thereof, or determine or attempt to determine any source code, algorithms, methods, interfaces, data structures or techniques embodied in or used by the Software or any portion thereof (except to the extent, if at all, expressly permitted by applicable law, notwithstanding a contractual obligation to the contrary); (C) create any derivative works; (D) distribute, disclose, market, sell, rent, lease, time-share, assign, sublicense, pledge, encumber or otherwise transfer or make available the Software or rights granted under this Agreement, as applicable, in whole or in part, to any third party; (E) remove or alter any copyright, trademark, trade name, confidentiality or other proprietary notices, legends, symbols or labels appearing on or in copies of the Software; (F) perform, or release the results of, benchmark tests or other comparisons of the Software with other programs; (G) transfer the Software to any other site; (H) permit the Software to be used in connection with a service bureau or otherwise used for processing the data of any third party; (I) incorporate the Software or any portion thereof into any other program or product; and (J) use the Software other than in accordance with the provisions of this Agreement and the Order Form. The End User hereby acknowledges and agrees that ayfie owns all legal right, title and interest in and to the Site and the Hosted Services provided by ayfie, including, without limitation, any intellectual property or other proprietary rights which subsist in the Site and Hosted Services (whether such rights are registered or unregistered, and wherever in the world those rights may exist). As between the End User and ayfie, all materials on the Site, including, but not limited to, graphics, user and visual interfaces, images, software, applications, and text, as well as the design, structure, selection, coordination, expression, “look and feel,” and arrangement of the Site and its content (except for any End User Data), and the domain names, trademarks, service marks, proprietary logos and other distinctive brand features found on the Site, are all owned by ayfie.

### **3. THIRD PARTY SOFTWARE.**

(a) The Software may include software, content, data or other materials, including related documentation, that are owned by Persons other than the Company (“Third Party Software”) and that are provided to you on licensee terms that are in addition to and/or different from those contained in this Agreement. You agree to comply with such license terms. Any breach by you or any of your Authorized Users of any Third Party Software license is also a breach of this Agreement. A list of the Third Party Software included in the Software is provided in the “Licenses” folder of the Software.

(b) All Third Party Software is provided “as is.” You acknowledge and agree that the Company has no responsibility for, and makes no representations or warranties regarding, Third Party Software or your use of such Third Party Software. Without limiting the foregoing, and for the avoidance of doubt, you acknowledge that the Company has no responsibility for any and all defects, delays or decreases in performance, damages, or other issues associated with the Software

relating to or arising from Third Party Software or your use thereof, and you hereby irrevocably waive any rights or claims that you have or may have in the future against the Company in connection with the presence or effects of any such Third Party Software, to the maximum extent permitted by applicable law.

**4. USE RESTRICTIONS.** You shall not, and shall require your Authorized Users not to, directly or indirectly:

- (a) use (including make any copies of) the Products beyond the Scope of Use;
- (b) provide any Person (other than Authorized Users) with access to or use of the Products;
- (c) modify, translate, adapt or otherwise create derivative works or improvements, whether or not patentable, of the Software or Documentation or any part thereof;
- (d) combine the Software or any part thereof with, or incorporate the Software or any part thereof in, any other programs;
- (e) reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain access to the source code of the Software or any part thereof;
- (f) remove, delete, alter or obscure any trademarks or any copyright, trademark, patent or other intellectual property or proprietary rights notices provided on or with the Software or Documentation, including any copy thereof;
- (g) except as expressly set forth in Section 2 (License Grant and Scope) hereof, copy the Software, in whole or in part;
- (h) without the prior written consent of the Company, rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the Software, or any features or functionality of the Software, to any Third Party for any reason, whether or not over a network or on a hosted basis, including in connection with the internet or any web hosting, wide area network (WAN), virtual private network (VPN), virtualization, time-sharing, service bureau, software as a service, cloud or other technology or service;
- (i) use the Products in violation of any federal, state, local or other law, regulation or rule;
- (j) use the Software or Documentation for purposes of competitive analysis of the Software, the development of a competing software product or service or any other purpose that is to the Company's commercial disadvantage; or
- (k) without the prior written consent of the Company, use or disclose any proprietary or confidential information of the Company, including, without limitation, the results of any benchmark test of the Software, other than as specifically provided in this Agreement.

**5. RESPONSIBILITY FOR USE OF SOFTWARE.** You are responsible and liable for all uses of the Products through your access thereto, directly or indirectly. Specifically, and without limiting the generality of the foregoing, you are responsible and liable for all actions and failures to take required actions with respect to the Products by your Authorized Users or by any other Person to whom you or an Authorized User may provide access to or use of the Products, whether such access or use is permitted by or in violation of this Agreement.

**6. AUDIT RIGHTS.** At ayfie's request, the End User agrees to provide a signed certification that the End User is using all Products pursuant to the terms of this Agreement, including the Scope of Use, and the Order Form. The End User agrees to allow ayfie, or its authorized agent, to audit the End User's use of the Products. ayfie shall provide the End User with at least ten (10) days advance notice prior to the audit, and the audit will be conducted during normal business hours. ayfie shall bear all out-of-pocket costs that ayfie incurs for the audit, unless the audit reveals that the End User has exceeded the Scope of Use. The End User shall provide reasonable assistance, cooperation, and access to relevant information in the course of any audit at its own cost. If the End User exceeds its Scope of Use, ayfie may invoice the End User for any past or ongoing excessive use, and the End User shall pay the invoice promptly after receipt. This remedy is without prejudice to any other remedies available to ayfie at law or equity or under this Agreement. To the extent ayfie is obligated to do so, it may share audit results with certain of its third party licensors or assign the audit rights specified in this Section 6 (Audit Rights) to such licensors. The Company's remedies set forth in Section 6 (Audit Rights) are cumulative and are in addition to, and not in lieu of, all other remedies the Company may have at law or in equity, whether under this Agreement or otherwise.

**7. MAINTENANCE AND SUPPORT NOT INCLUDED.**

(a) ***Maintenance and Support.*** Unless specifically set forth in the Order Form, the Company will not provide you with any maintenance or support services with respect to the Products pursuant to this Agreement. Notwithstanding the foregoing, the Company may offer you such services separately, provided, however, that any such services provided to you will be subject to and governed by a separate maintenance and support services contract entered into by you and the Company, and in accordance with the terms and conditions set forth in Exhibit A (the "***SUBSCRIPTION AND TECHNICAL SUPPORT POLICY***")

(b) ***Updates.*** Unless specifically set forth in the Order Form, the Company may, but need not, provide you with updates, upgrades, extensions or enhancements to the Software (collectively, "Updates"), provided, however, that any such Updates provided shall be subject to and governed this Agreement.

**8. COLLECTION AND USE OF INFORMATION.**

(a) You acknowledge that the Company may, directly or indirectly through the services of Third Parties, collect and store information regarding use of the Software and about equipment on which the Software is installed or through which it otherwise is accessed and used, and you

authorize the Company to perform all action required or desired in connection with the collection of this information.

(b) You acknowledge and agree that the Company may use such information for any purpose related to any use of the Software by you or on your equipment, including but not limited to: (i) improving the performance of the Software or developing Updates; and (ii) verifying your compliance with the terms of this Agreement and enforcing the Company's rights, including all Intellectual Property Rights in and to the Software and the Documentation.

**9. INTELLECTUAL PROPERTY RIGHTS AND OWNERSHIP.** The Products are made available on a limited license or access basis, and no ownership right is conveyed to the End User, irrespective of the use of terms such as "purchase" or "sale." The End User does not acquire any ownership rights in the Products. All Products are licensed, not sold. The Products (including any content or information contained therein) and all copies thereof are protected by copyright and other intellectual property laws and treaties. ayfie shall have and retain all right, title and interest, including all intellectual property rights, in and to the Products, any and all related or underlying technology, and any modifications or derivative works of the foregoing created by or for ayfie (the "ayfie Technology").

**10. PAYMENT.** License Fees are payable in accordance with and in the manner set forth in the Order Form. All License Fees are nonrefundable. Unless otherwise agreed to in writing by the parties, any renewal of the license pursuant this Agreement shall not be effective until the fees for such renewal have been paid in full.

**11. TERM AND TERMINATION.** This Agreement is in effect for as long as the End User shall have a valid License Term or Subscription Term (collectively, the "Term"), unless sooner terminated as permitted in this Agreement. Either party may terminate this Agreement before the expiration of the Term if the other party materially breaches any of the terms of this Agreement and does not cure the breach within thirty (30) days after written notice of the breach, provided that any failure of the End User to pay any fees due ayfie shall be cured within five (5) days after written notice of the breach. Either party may also terminate the Agreement before the expiration of the Term if the other party ceases to operate, declares bankruptcy, or becomes insolvent or otherwise unable to meet its financial obligations. The End User may terminate this Agreement at any time with notice to ayfie, but the End User shall not be entitled to any credits or refunds as a result of convenience termination for prepaid but unused Software, Hosted Services subscriptions, or Maintenance and Support. Except where an exclusive remedy may be specified in this Agreement, the exercise by either party of any remedy, including termination, will be without prejudice to any other remedies it may have under this Agreement, by law, or otherwise. Once the Agreement terminates, the End User (and its Authorized Users) shall no longer have any right to use or access any Products, or any information or materials that ayfie makes available to the End User under this Agreement, including ayfie's Confidential Information. The End User shall be required to delete any of the foregoing from its systems as applicable (including any third party systems operated on the End User's behalf) and provide written certification to ayfie that the End User has done so at ayfie's request. Sections 1, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16 and 17, as well as any other provision that, to give proper effect to their intent, shall also survive termination or expiration of this Agreement.

## 12. WARRANTY AND DISCLAIMER.

(a) **Reciprocal.** ayfie represents and warrants to the End User, and the End User represents and warrants to ayfie that: (i) it has the power and authority and the legal right to enter into the Agreement and to perform its obligations under the Agreement; (ii) it has taken all necessary action on its part to authorize the execution and delivery of the Agreement; and, (iii) the execution and delivery of the Agreement and the performance of its obligations hereunder do not conflict with or violate applicable laws or regulations, and do not conflict with or constitute a default under its charter documents. If the End User is an individual, the End User represents and warrants that he or she is at least eighteen (18) years of age and has the legal capacity to enter into the Agreement.

(b) **WARRANTY DISCLAIMER.** ALL PRODUCTS ARE PROVIDED “AS IS,” AND AYFIE EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND, INCLUDING ANY WARRANTY OF NON-INFRINGEMENT, TITLE, FITNESS FOR A PARTICULAR PURPOSE, FUNCTIONALITY, OR MERCHANTABILITY, WHETHER EXPRESS, IMPLIED, OR STATUTORY. THE END USER MAY HAVE OTHER STATUTORY RIGHTS, BUT THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW. AYFIE SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES AND OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF AYFIE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER AYFIE NOR ANY OF ITS THIRD PARTY SUPPLIERS MAKES ANY REPRESENTATION, WARRANTY OR GUARANTEE AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF ANY PRODUCTS OR ANY CONTENT THEREIN OR GENERATED THEREWITH, OR THAT: (A) THE USE OF ANY PRODUCTS WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE; (B) THE PRODUCTS WILL OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM, OR DATA; (C) THE PRODUCTS (OR ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY THE END USER THROUGH THE PRODUCTS) SHALL MEET THE END USER’S REQUIREMENTS OR EXPECTATIONS; (D) ANY STORED DATA SHALL BE ACCURATE OR RELIABLE OR THAT ANY STORED DATA SHALL NOT BE LOST OR CORRUPTED; (E) ERRORS OR DEFECTS SHALL BE CORRECTED; OR (F) THE PRODUCTS (OR ANY SERVER(S) THAT MAKE A HOSTED SERVICE AVAILABLE) ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

13. **LIMITATION OF LIABILITY.** TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW:

(a) IN NO EVENT WILL THE COMPANY OR ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS OR SERVICE PROVIDERS, BE LIABLE TO LICENSEE OR ANY THIRD PARTY FOR ANY USE, INTERRUPTION, DELAY OR INABILITY TO USE THE SOFTWARE OR HOSTED SERVICES, LOST REVENUES OR

PROFITS, DELAYS, INTERRUPTION OR LOSS OF SERVICES, BUSINESS OR GOODWILL, LOSS OR CORRUPTION OF DATA, LOSS RESULTING FROM SYSTEM OR SYSTEM SERVICE FAILURE, MALFUNCTION OR SHUTDOWN, FAILURE TO ACCURATELY TRANSFER, READ OR TRANSMIT INFORMATION, FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION, SYSTEM INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION OR BREACHES IN SYSTEM SECURITY, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT THE COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) IN NO EVENT WILL THE COMPANY'S AND ITS AFFILIATES', INCLUDING ANY OF ITS OR THEIR RESPECTIVE LICENSORS' AND SERVICE PROVIDERS', COLLECTIVE AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID TO THE COMPANY PURSUANT TO THIS AGREEMENT FOR THE PRODUCTS IN THE LAST TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE CLAIM.

(c) YOU MUST COMMENCE ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THIS AGREEMENT WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, YOU ACKNOWLEDGE AND AGREE THAT SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

(d) THE LIMITATIONS SET FORTH IN SECTION 13(a), SECTION 13(b) and SECTION 13(c) SHALL APPLY EVEN IF YOUR REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

**14. EXPORT REGULATION.** You acknowledge that the Software and/or the Documentation may be subject to United States export control laws, including the United States Export Administration Act and its associated regulations, to Norwegian export control laws, or to other international export laws, rules or regulations, as applicable. You shall not, directly or indirectly, export, re-export or release the Software or Documentation to, or make the Software or Documentation accessible from, any jurisdiction or country to which export, re-export or release is prohibited by law, rule or regulation. You shall comply with all applicable federal laws, regulations and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing or otherwise making the Software or Documentation available outside the jurisdiction in which you are located. Without limiting the generality of the foregoing, you understand that under no circumstances may you export (whether directly or indirectly) the Software to any country subject to United States embargo or to United States –designated denied persons or prohibited entities or United States specially designated nationals.

**15. CONFIDENTIALITY.** Except as otherwise set forth in this Agreement, each party agrees that all code, inventions, know-how, business, technical and financial information disclosed to such party (“Receiving Party”) by the disclosing party (“Disclosing Party”) constitute the confidential property of the Disclosing Party (“Confidential Information”), provided that it is identified as confidential at the time of disclosure. Any ayfie Technology and any performance information relating to the Products shall be deemed Confidential Information of ayfie without any marking or further designation. Except as expressly authorized herein, the Receiving Party will hold in confidence and not use or disclose any Confidential Information. The Receiving Party’s nondisclosure obligation shall not apply to information which the Receiving Party can document: (i) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (ii) is or has become public knowledge through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (iv) is independently developed by employees of the Receiving Party who had no access to such information. The Receiving Party may also disclose Confidential Information if so required pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Disclosing Party). The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party the Disclosing Party shall be entitled to appropriate equitable relief in addition to whatever other remedies it might have at law. For the avoidance of doubt, this Section 15 (Confidentiality) shall not operate as a separate warranty with respect to the operation of any Product.

**16. IP INDEMNIFICATION BY AYFIE.** ayfie shall defend the End User against any claim brought against the End User by a third party alleging that a Product, when used as authorized under this Agreement, infringes a United States patent or registered copyright (a “Claim”), and ayfie shall indemnify the End User and hold the End User harmless against any damages and costs finally awarded by a court of competent jurisdiction or agreed to settlement by ayfie (including reasonable attorneys’ fees) arising out of a Claim, provided that ayfie shall have received from the End User: (a) prompt written notice of the Claim (but in any event notice in sufficient time for ayfie to respond without prejudice); (b) reasonable assistance in the defense and investigation of the claim, including providing us a copy of the Claim and all relevant evidence in the End User’s possession, custody or control; and (c) the exclusive right to control and direct the investigation, defense, and settlement (if applicable) of the Claim. If the End User’s use of a Product is (or in ayfie’s opinion is likely to be) enjoined, if required by settlement, or if ayfie determines such actions are reasonably necessary to avoid material liability, ayfie may, at its option and in its discretion: (i) procure a license for the End User’s continued use of the Product in accordance with this Agreement; (ii) substitute a substantially functionally similar Product; or (iii) terminate the End User’s right to continue using the Product and refund, in the case of the Software, the license fee paid by the End User in the case of a Hosted Service, any prepaid amounts for the terminated portion of the Subscription Term. ayfie’s indemnification obligations above do not apply: (A) if the total aggregate fees received by ayfie with respect to the End User’s license to the Software or subscription to the Hosted Services in the twelve (12) month period immediately preceding the Claim is less than US\$50,000; (B) if the Product is modified by any party other than ayfie, but solely to the extent the alleged infringement is caused by such modification; (C) if the Product is used in combination with any non-ayfie product, software or equipment, but solely to

the extent the alleged infringement is caused by such combination; (D) to unauthorized use of Products; (E) to any Claim arising as a result of (y) End User Data (or circumstances covered by the End User's indemnification obligations in Section 2(b)(vi)(B) (Indemnity for Customer Data)) or (z) any third-party deliverables or components contained with the Products; (E) to any unsupported release of the Software; or (F) if the End User settles or make any admissions with respect to a claim without ayfie's prior written consent. THIS SECTION 16 (IP INDEMNIFICATION BY AYFIE) STATES AYFIE'S SOLE LIABILITY AND THE END USER'S EXCLUSIVE REMEDY FOR ANY INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS IN CONNECTION WITH ANY PRODUCT OR OTHER ITEMS PROVIDED BY AYFIE UNDER THIS AGREEMENT.

## 17. MISCELLANEOUS.

(a) **Governing Law and Interpretation.** This Agreement shall be governed and conformed in accordance with the laws of the State of New York without regard to its conflict of laws provision, and the Parties in any action arising out of this Agreement shall be subject to the jurisdiction and venue of the federal and state courts, as applicable, in New York County, New York. In the event of a breach of any provision of this Agreement, either Party may institute an action specifically to enforce any term or terms of this Agreement and/or to seek any damages for breach.

(b) **Force Majeure.** The Company shall not be in default pursuant this Agreement by reason of any failure or delay in the performance of its obligations pursuant this Agreement where such failure or delay is due to strikes, labor disputes, civil disturbances, riot, rebellion, invasion, epidemic, hostilities, war, terrorist attack, embargo, natural disaster, acts of God, flood, fire, sabotage, fluctuations or non-availability of electrical power, heat, light, air conditioning or your equipment, loss or destruction of property or any other circumstances or causes beyond the Company's reasonable control.

(c) **Notices.** All notices and other communications required or permitted under this Agreement shall be in writing and shall be (as elected by the person giving such notice) hand delivered or provided by overnight messenger or courier service to the receiving party at the addresses appearing on the Order Document for such party (which address may be changed by a notice complying with this Section 17 (c) (Notice)). Each notice or other communication shall conclusively be deemed to have been given and delivered (a) on the date delivered, if by hand or messenger or courier service; or (b) upon the date delivery is refused, if applicable.

(d) **Entire Agreement.** This Agreement constitutes the sole and entire agreement between you and the Company with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings, proposals, negotiations, agreements, representations and warranties, both written and oral, with respect to such subject matter. For the avoidance of doubt, you agree that: (i) any terms or conditions contained in any purchase order, or other request for the Software or for Hosted Services made by you have been and are rejected by the Company; (ii) no course of dealing or usage of trade or course of performance shall be relevant to explain or supplement any terms expressed in the Agreement; (iii) no representations or statements of any kind, including, but not limited to dealer advertising, presentations, oral or

written, made by any agent or representative of the Company that are not stated in the Agreement shall be binding upon the Company; and (iv) the terms of the Agreement supersede any terms contained in the Software package and Documentation delivered to you pursuant to this Agreement.

(e) **Assignment.** You shall not assign or otherwise transfer any of your rights, or delegate or otherwise transfer any of your obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the Company's prior written consent, which consent the Company may give or withhold in its sole discretion. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation or reorganization involving you (regardless of whether you are a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations or performance under this Agreement for which the Company's prior written consent is required. No delegation or other transfer will relieve you of any of your obligations or performance under this Agreement. Any purported assignment, delegation or transfer in violation of this Section 17(e) is void. The Company may freely assign or otherwise transfer all or any of its rights, or delegate or otherwise transfer all or any of its obligations or performance, under this Agreement without your consent. This Agreement is binding upon and inures to the benefit of the Company and you and the Company's and your respective permitted successors and assigns.

(f) **Third Party Rights.** This Agreement is for the sole benefit of you and the Company and your and the Company's respective successors and permitted assigns and nothing in this Agreement, express or implied, is intended to or shall confer on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

(g) **Amendments.** This Agreement may be amended, modified or supplemented only by an agreement in writing signed by you and the Company. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege pursuant this Agreement preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

(h) **Waiver.** No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by both parties. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

(i) **Severability.** If any term or provision of this Agreement is invalid, illegal or

unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

(j) **Headings.** The section numbers and captions utilized in this Agreement are for reference only and in no way are intended to define, limit, construe or describe the scope or intent of such sections of this Agreement, or in any way affect this Agreement.

(k) **Authorized Distributors and Resellers.** For the avoidance of doubt, you acknowledge and agree that the Company's authorized distributors and resellers do not have the right to make modifications to this Agreement, or to make any additional representations, warranties or commitments binding on the Company.

(l) **Publicity Rights.** The Company may identify the End User as a customer in Product promotional material. End User may request that the Company cease identifying the End User at any time by submitting an email to [sales@ayfie.com](mailto:sales@ayfie.com). Requests may take thirty (30) days to process.