HEYDAY SOFTWARE-AS-A-SERVICE AGREEMENT
(the "**Agreement**")

BACKGROUND

A. Heyday provides software as a service (SaaS) solutions for use in various messaging applications and customer engagement applications.

B. Client wishes to purchase access to certain Heyday SaaS solutions, as well as related set-up, training, and technical support services.

C. Heyday SaaS solutions will be hosted by Heyday and may be accessed remotely by Client on a SaaS basis in accordance with the terms and conditions of this Agreement.

In light of the above, the parties have agreed to the following.

1. DEFINITIONS

1.1 "**Affiliate(s)**" with respect to an entity, means any other entity which controls, is controlled by, or is under common control with that entity, and includes, for greater certainty, subsidiaries and parent corporations.

1.2 "**Additional Usage SaaS Fees**" means the additional usage fees set out in the Business Terms for the Right of Access, subject to any price increases that may be made pursuant to the terms of this Agreement.

1.3 "**Business Terms**" means the contract document provided to Client which includes the description of the project and details about the selected features to deploy.

1.4 "**Confidential Information**" means (i) any and all non-public, confidential or proprietary information of a party, including any information relating to the content of this Agreement and a party's business, products, services, activities, operations, business affairs, customers and prospects, intellectual property, technology, know-how, design rights and trade secrets, whether such information is provided orally, in writing, in computer readable form or otherwise and whether or not it is specifically identified as confidential, and (ii) any copies, extracts or reproduction, in whole or in part, of any of the foregoing.

1.5 "**Configuration Fees**" means the fees set out in the Business Terms.

1.6 "**Configuration Services**" means the services referred to in Section 4 of this Agreement.

1.7 "**Client**" has the meaning set out in the Business Terms.

1.8 "**Defect**" means a failure in program logic or functions of the Software which prevents the Software from operating in all material respects as described in its online user documentation.

1.9 "**Effective Date**" has the meaning set out in the Business Terms.

1.10 "**Force Majeure**" means any unavailability caused by circumstances beyond Heyday's reasonable control, including natural disasters, acts of government, floods, fires, earthquakes, civil unrest, pandemics, epidemics, government-mandated quarantines, publicly declared states of emergency,

terrorism, strikes or other labour problems (other than those involving Heyday employees), Internet service provider failures or delays, or denial of service attacks.

1.11   "**Heyday**" means Heyday Technologies Inc.

1.12   "**Plan SaaS Fees**" means the base usage fees set out in the Business Terms for the Right of Access in connection with the plan selected by Client, subject to any price increases that may be made pursuant to the terms of this Agreement.

1.13   "**Right of Access**" means the right to obtain the services of the Software remotely as described in section 2.1 of this Agreement.

1.14   "**SaaS Fees**" means the fees set out in the Business Terms for the Right of Access, namely the Plan SaaS Fees and the Additional Usage SaaS Fees, subject to any price increases that may be made pursuant to the terms of this Agreement.

1.15   "**Service Credit**" means the credit on the monthly SaaS Fees to which Client is entitled in the event of the Software's unavailability pursuant to Section 2.10 of this Agreement.

1.16   "**Software**" means the software described in the Business Terms, including its online user documentation (which, for greater certainty, does not include any source code or programming documentation).

1.17   "**Support Services**" means the services referred to in Section 4 of this Agreement.

1.18   "**Third Party Services**" means any third-party software or services, such as messaging applications, necessary to use the Software.

1.19   "**Training Services**" means the services referred to in Section 4 of this Agreement.

1.20   "**Updates**" means modifications to the Software to fix or by-pass known Defects or to make minor changes to its functionality, including patches and bug fixes, released by Heyday from time to time at its discretion, to the exclusion of Upgraded Software (as defined in Section 2.2 of this Agreement).

1.21   "**User(s)**" means the employees, consultants or contractors of Client. Client remains liable for any breach of the terms of this Agreement by Users.

2.   RIGHT OF ACCESS

2.1   **Permitted Access**. Subject to the terms and conditions of this Agreement and to payment of the applicable SaaS Fees, Heyday grants to Client a personal, non-exclusive, non-transferable and non-assignable right to allow Client's Users to remotely access and use the Software on a non-concurrent (named user) basis in accordance with the parameters set out in this Agreement and the Business Terms. Such access is for the sole purpose of Client's online automated customer engagement and, for clarity and without limitation, is not for the purposes of offering the services of the Software to others.

2.2   **Upgrades.** New modules or versions which add material functional capabilities or new features to the Software ("**Upgraded Software**") may or may not be included in the Right of Access of Client pursuant to this Agreement. Heyday may make certain Upgraded Software available at no charge

and as part of this Agreement. However, other Upgraded Software will be available only upon payment of a fee beyond the SaaS Fees and upon execution of a new set of Business Terms or other written agreement between the parties.

2.3 **Beta Features.** Other than Upgraded Software, which will be specifically identified as such by Heyday, Heyday may also make available to Client certain beta features (the "**Beta Features**") of the Software at no charge in order to obtain Client's feedback and to test out the Beta Features. Whenever Heyday makes Beta Features available to Client, it will obtain Client's written consent prior to doing so. Client expressly agrees and acknowledges that the Beta Features (including any modifications or improvements thereto) are not ready for general commercial release and may contain bugs, errors, Defects or harmful components and that Heyday is providing the Beta Features to Client "as is". Heyday does not guarantee that the Beta Features (or any part thereof) will ever be made generally commercially available, or that any generally commercially available release of the Beta Features will contain the same or similar functionalities as the release made by Heyday to Client.

2.4 **Restrictions**. Client agrees that it shall not itself, either directly or indirectly including through any Affiliate, agent or other Person: (a) sell, lease, license, sublicense, loan, encumber or otherwise transfer its Right of Access to a third party, in whole or in part; (b) attempt to access or derive the source code of any portion of the Software; (c) attempt to make modifications, corrections, alterations, enhancements or other additions to the Software; (d) make the Software available to a third party by online services, remote dial-in, virtual private network, or network or telecommunication links of any kind; (e) provide, disclose, divulge or make available to, or permit use of the Software by Persons other than Users, without Heyday's prior written consent; (f) circumvent the Software's authentication or security access control systems or assist others to do so, or attempt to do so; or (g) disclose log-in or access credentials to unauthorized parties or fail to implement reasonable security measures to prevent such an occurrence.

2.5 **Intellectual Property**. Client recognizes and agrees that all trade-marks (registered or not), inventions (whether patentable or not), patent applications, patents, industrial designs, works protected by copyright or related rights (registered or not), trade secrets, know-how or other intellectual property in or related to the Software (the "**Intellectual Property**") are the exclusive property of Heyday or are otherwise controlled by Heyday. While this Agreement is in effect, Client and its Affiliates shall not take any action that challenges the Intellectual Property, including, but not limited to, invalidity actions brought against patents owned by Heyday.

2.6 **Data**. By using the Software, Client recognizes and agrees that Heyday collects, uses and has specific rights (including ownership rights) to the following data:

2.6.1 <u>Conversational Data.</u> Heyday collects the conversations generated by Client's use of the Software (the "**Conversational Data**"). Client recognizes and agrees that the rights in such Conversational Data shall be held jointly by Heyday and Client, each of whom shall have the right to use the Conversational Data. A copy of such Conversational Data may be requested by Client at any time during the term of the Agreement by sending Heyday a written notice to that effect, upon which Heyday shall make available a copy of the Conversational Data to Client within a reasonable delay. Conversational Data is no longer accessible to Client upon termination of the Agreement.

2.6.2 <u>Client Data.</u> Heyday accesses various Client-owned data by connecting to Client's systems in order to access the data found there. This data is unique to Client, is

generated by and hosted on Client hardware and software and does not include either Conversational Data or Heyday Data (the "**Client Data**"). Client Data is used by Heyday to improve and enhance Client's conversational experience, Client's customer's user experience, and the general performance of the Software. Such Client Data shall remain fully owned by Client, with Heyday having only a limited right to use such data for the purposes outlined in the previous sentence and only on an internal basis. Heyday recognizes and agrees that it has no right to sell, share or disclose Client Data to any third party, and no right to use Client Data other than for the purposes described in this Section 2.6.2. Client is responsible for maintaining back-ups of Client Data and for the post-termination storage, use, processing, and anonymization (if any) of Client Data.

2.6.3   <u>Heyday Data</u>. Heyday Data means all data other than Client Data or Conversational Data as defined above, and for greater certainty, includes data gathered, purchased, or licensed in whole or in part by Heyday, and the trained version of Heyday's AI algorithm and Heyday analytics data. Client recognizes and agrees that Heyday data shall remain fully owned by Heyday, which shall have all rights over the Heyday data.

2.6.4   <u>Anonymization</u>. Upon termination of the Agreement, Heyday shall anonymize all personal information found in the data controlled by Heyday, namely the Conversational Data and Heyday Data, and according to procedures that comply with the anonymization standards under applicable data protection laws.

2.7   **Reservation of Rights**. All rights, titles, and interests that are not expressly granted to Client in this Agreement are hereby reserved by Heyday.

2.8   **Location of Server**. Unless otherwise expressly set out in the Business Terms, the Software will be hosted in facilities located in Canada or the United States or both.

2.9   **No Access to Source Code**. This Agreement does not grant Client the right to access or obtain the source code of the Software nor any programming documentation.

2.10   **Service Level**. The Software shall be available 99.5% of the time, calculated on a monthly basis. In the event Heyday fails to attain this level of Software availability, Client will be eligible to receive the following credit ("**Service Credit**") which will be applied on Client's next invoice:

Monthly Software unavailability	Service Credit on the SaaS fees
0.5 % to 1%	25% of the monthly SaaS Fees paid by Client to Heyday
1% to 4%	50% of the monthly SaaS Fees paid by Client to Heyday
> 4%	100% of the monthly SaaS Fees paid by Client to Heyday

The following time periods shall not be considered unavailable time for the purpose of this Section 2.10: (i) unavailability caused by Client's inability to access the Software due to problems with Client's hardware or software, or due to problems with third-party telecommunications services or networks, or with any of the Third Party Services with which the Software interacts, such as Facebook or any other third-party messaging service; (ii) unavailability caused by a Force Majeure

event; (iii) unavailability due to previously-scheduled maintenance (Heyday shall take commercially reasonable measures to ensure that scheduled maintenance takes place between 9 PM and 9 AM (UTC-5), and that Client receives advance notice of any such maintenance); and (iv) emergency maintenance, for example to install urgent security updates.

Heyday's sole and exclusive liability for the unavailability of the Software, including failure to meet the service levels set out in the table above, shall be to provide Client with a Service Credit. The aggregate maximum number of Service Credits to be issued by Heyday to Client for all Software unavailability that occurs in a single calendar month shall not exceed 100% of the fees paid by Client to Heyday for that month. Service Credits shall not be exchanged for, or converted to, monetary amounts under any circumstances. In order to receive any of the Service Credits described above, Client must notify Heyday within thirty (30) days from the time Client becomes eligible to receive a Service Credit.

2.11 **Suspension of Access Right**. Heyday may suspend Client's Right of Access if Client fails to comply with any material obligation under this Agreement, including, without limitation, Sections 2.4, 2.5, 3.2(h)and 6.1-6.4. Heyday may also suspend Client's Right of Access if Heyday detects fraud, a security breach a denial of service attack or any other similar threat that causes or that could cause, in Heyday's reasonable opinion, damage to the Software or to the Client Data or Heyday Data. Any suspension by Heyday of the Software in application of this section shall not release Client from its payment obligations under the Agreement.

3. CLIENT RESPONSIBILITIES

3.1 **Third Party Services.** The Software may use Third Party Services. Such use of Third Party Services is subject to these third parties' terms and conditions. To the fullest extent possible while still complying with this Agreement and all applicable laws, Client shall use the Software in accordance with such Third Party Services' terms and conditions and privacy policies. These Third Party Services remain the property of their respective creators and are products and services separate from Heyday's and are not governed by this Agreement. Client hereby understands and acknowledges that Heyday has no control whatsoever on such Third Party Services, and that it is Client's sole responsibility to ensure that it understands, agrees and complies with the terms of use and other policies applicable to these Third Party Services. Heyday represents and warrants that these Third Party Services are compliant with all applicable privacy laws.

3.2 **Other Client Responsibilities**. Client acknowledges that its Right of Access is conditional on respecting the following terms:

(a) Procuring and maintaining all of the hardware, connections, telecommunication services and other products or services required to remotely access the Software and exercise the Right of Access. The parties agree that Heyday has no obligation to provide any such hardware, connections, telecommunications services, etc., under this Agreement;

(b) Cooperate with Heyday's reasonable requests in order to assist Client with configuration and support;

(c) Keep the log-in and access credentials required to exercise the Right of Access strictly confidential and ensure that its Users do the same, take reasonable steps to prevent their disclosure to third parties and ensure that any internal disclosure is on a need-to-know basis. Client shall be responsible for any damages suffered by Heyday as a result of the disclosure or misuse of Client's and its Users' log-in or access credentials;

(d)   Maintain security measures in conformity with best industry practices and promptly inform Heyday upon becoming aware of unauthorized access to the Software, or the unauthorized disclosure or misuse of log-in or access credentials;

(e)   Promptly inform Heyday of all issues or errors involving the Software of which it becomes aware;

(f)   Share any personal information and other data about or relating to identifiable individuals (including Users) with Heyday only in conformity with privacy laws, regulations and binding guidelines to which Client is subject, that may be applicable to Client's activities in Canada or any other jurisdiction where Client operates;

(g)   Provide Heyday's technical support personnel with access to Client's computer systems and networks where reasonably required for technical support purposes; and

(h)   Use the Software and Right of Access only in conformity with laws, regulations and binding guidelines to which Client is subject, including in particular Canada's anti-spam law regarding commercial electronic messages, as well as any other laws, regulations and binding guidelines that may be applicable to Client's activities in Canada or any other jurisdiction where Client operates.

4.   HEYDAY'S SERVICES

4.1   **Configuration Services**. Heyday shall deploy reasonable efforts to perform the Configuration Services described in the Business Terms, where applicable. Client acknowledges that these services will require its input and cooperation and agrees to provide same in a timely manner. Any timelines set out in the Business Terms shall be automatically postponed in the event that Client is not in a position to provide necessary information, material or responses in a timely manner. Client acknowledges that if it chooses to delay the performance of the Configuration Services, this does not result in the postponement of payment for the SaaS Fees, nor any extension to the term of this Agreement. Except as expressly set out in the Business Terms, the Configuration Services are to be performed remotely by Heyday. In the event that the foregoing is not possible or desired by Client, Heyday may charge reasonable travel and living expenses for attending the premises of Client, which Client agrees to pay promptly upon presentation of the supporting documentation.

4.2   **Training Services**. Heyday shall provide the Training Services pertaining to the Software set out in the Business Terms and those subsequently agreed to in writing by the parties. Unless otherwise expressly agreed to by the parties in a separate written agreement: (i) the Training Services will be provided remotely via videoconference or similar means; (ii) in the event that the Training Services are provided in person at one or more facilities designated by Client, any prices quoted do not include reasonable travel and living expenses, which Client agrees to pay promptly upon presentation of the supporting documentation; and (iii) the Training Services will not be provided in languages other than in the English or French language.

4.3   **Support Services**. Heyday agrees to provide its Support Services in the form of remote technical support via telephone, chat, email or other efficient communication method between 8 AM and 5 PM (UTC-5), Monday to Friday. The purpose of the Support Services is to attempt to identify and resolve functional problems in the Software.

4.4   **Severity**. Each support request received will be given a severity level by Heyday according to the following guidelines:

a) High: when the Software is not operational or has suffered a major loss of capability resulting in the inability to use the Software, or if a failure is so frequent that it precludes productive use of the Software or when the Software is operational but its capability is severely degraded, such as the inability to run a major application within the Software, a critical product feature or function does not work, or a failure requires on-going intervention in order to maintain productive use;

b) Medium: when the Software is not operational or has suffered a loss of capability, but an acceptable workaround exists, which allows Client to use the Software, or if the Software suffers from a degradation in capacity or traffic handling capabilities, or if there is a problem which results in a significant impact on the Software's performance for a period of eight (8) hours or more;

c) Low: when the Software is operational and the problem does not result in a significant impact on the Software's performance.

4.5 **Support Response Time**. Heyday shall exercise all commercially reasonable efforts to meet the following response times:

a) High severity problems will be acknowledged and work begun to address them within four (4) business hours;

b) Medium severity problems will be acknowledged and work begun to address them within twenty-four (24) business hours;

c) Low severity problems will be acknowledged and work begun to address them within five (5) business days.

4.6 **Exclusions.** The Support Services shall not include services: (i) in respect of Client hardware and software problems; (ii) in respect of education, installation, training or customization; (iii) in respect of the use of the Software in violation of the Agreement; (iv) in respect of Defects in or caused by third party software; or (v) problems arising from network connectivity problems.

4.7 **No Defect**. Heyday shall not be responsible to correct any Defect or other failure of performance of the Software caused by the following: (i) use of the Software that materially deviates from its online user documentation; (ii) modification, customization, alteration or addition or attempted modification, customization, alteration or addition to the Software; (iii) abuse or misuse of the Software; or (iv) failure of Client to use the latest version of the Software.

4.8 **Updates.** Heyday may at its sole discretion update the Software from time to time and shall make commercially reasonable efforts to advise Client in advance of all Updates that materially affect the functionalities of the Software.

4.9 **Previous Versions**. Client shall not refrain Heyday from updating the Software or delay the performance of Updates. Heyday shall not be required to continue Support Services (including patches, bug fixes and other technical support set out in this Agreement) if problems or a Defect arise because Client abstains or refuses to apply one or more Updates.

5. CONFIDENTIALITY

5.1 **Obligation of Confidentiality.** The Party ("**Recipient**") receiving from the other Party ("**Discloser**") any Confidential Information, or otherwise obtaining any Confidential Information, shall keep confidential Discloser's Confidential Information and shall protect Discloser's Confidential Information with the same degree of care as Recipient employs in the protection of its own confidential and proprietary information, but at least with a reasonable degree of care. Without limiting the scope of the foregoing, Recipient shall not copy, reproduce, disclose, circulate or publish Discloser's Confidential Information or permit such action, except as reasonably required for the purpose of the Agreement to comply with applicable laws, directives, policies or procedures. Recipient shall disclose Confidential Information only to those of its employees, consultants and subcontractors who have a need to know said Confidential Information for the purposes of the Agreement or as permitted herein. Recipient remains liable for any breach of the terms of this Section 5 by its employees, consultants or subcontractors (including Client's Users). It remains understood that any disclosure of Confidential Information permitted by Section 9.6 will not constitute a breach of this Section 5.

5.2 **Use of Confidential Information.** Recipient may not use Discloser's Confidential Information in any manner except as reasonably required for the purpose of the Agreement or as permitted herein.

5.3 **Legal Communication.** In the event Recipient becomes legally compelled to disclose any portion of Discloser's Confidential Information, Recipient immediately shall give notice thereof to Discloser and shall collaborate with Discloser reasonably and in good faith to prevent or limit the disclosure or obtain a protective order or other recourse. In the event that disclosure cannot be prevented, that the protective order or other recourse fails, or that Discloser waives compliance with this provision, Recipient shall disclose only that portion of the Confidential Information which it is legally bound to disclose (as reasonably determined by Recipient) and exercise all reasonable efforts to obtain a reliable guarantee that the confidentiality of the disclosed Confidential Information will be ensured in accordance with the terms hereof.

5.4 **Injunctive Relief.** Each party acknowledges that the restrictions contained in this Section 5 are reasonable and necessary to protect the other party's legitimate interests. Each party understands and agrees that the remedies at law for the violation of any of the undertakings or provisions of this Section 5 are insufficient, that such violations will cause irreparable harm within a short period of time, and that the other party shall be entitled to preliminary injunctive relief or other injunctive relief against any such violation without the necessity of proving actual damages. Such injunctive relief shall be in addition to, and in no way in limitation of, any and all other remedies the other party shall have at law and in equity for the enforcement of these undertakings and provisions.

5.5 **Assistance.** Each party agrees that it shall notify the other party if it becomes aware of, or has reasonable grounds to suspect, that the unauthorized disclosure of the Confidential Information of the other party has occurred or is likely to occur.

6. FEES AND PAYMENT TERMS

6.1 **SaaS Fees**. In consideration for the rights granted herein, Client shall pay Heyday the SaaS Fees set forth in the Business Terms. Except as otherwise set out in the Business Terms, the Plan SaaS Fees are payable at the beginning of the initial term and any renewal terms, subject to the payment terms set forth in Section 6.4, and Heyday will provide Client with an invoice for each payment of Plan SaaS Fees. Except as otherwise set out in the Business Terms, the Additional Usage Fees shall be invoiced by Heyday on a monthly basis. For greater certainty, a reasonable amount of Support Services, as determined by Heyday in its sole discretion, are included as part of the SaaS Fees.

Except as otherwise set out in the Business Terms, the SaaS Fees may be increased by Heyday on or after January 1st of a given year by an amount equal to the general rate of inflation in Canada for the previous year, as measured by the Consumer Price Index.

6.2 **Fees for Configuration Services**. Client agrees to pay for the Configuration Services in accordance with the fees set out in the Business Terms, which fees represent budgetary estimates based on the information provided by Client. Fees for Configuration Services are calculated on an hourly basis at the hourly rate(s) set out in the Business Terms. In the event that Client requires further or other Configuration Services other than as set out in the Business Terms, the prices set out in the Business Terms will no longer be valid and new prices will be negotiated.

6.3 **Fees for Training Services**. Client agrees to pay for the Training Services in accordance with the fees set out in the Business Terms. In the event that Client requires further or other Configuration Services other than as set out in the Business Terms, Heyday shall provide those Training Services in accordance with its then-applicable hourly rates and the desired parameters communicated by Client.

6.4 **Payment Terms**. Except as otherwise set out in the Business Terms, Client shall make all payments to Heyday within thirty (30) days of receipt of the applicable invoice.

6.5 **Non-Refundable**. All amounts paid or payable under this Agreement are non-refundable.

6.6 **Taxes**. All payments shall be exclusive of any tariffs, duties or taxes imposed or levied by any government or governmental agency. Client shall be liable for payment of all such taxes, however designated, levied or based on Client's possession or use of the Software or on this Agreement including, federal, provincial, state or local sales taxes. Client agrees that all amounts payable by Client pursuant to this Agreement shall be paid without any deduction or withholding on account of any taxes, monetary transfer fees, or other charges or withholdings of any nature, except to the extent that the deduction or withholding of any tax is required by applicable law, in which event Client shall (i) pay to Heyday such additional amount as is necessary so that Heyday receives, after such deduction or withholding (including any withholding with respect to this additional amount), an amount equal to the amount that Heyday would have received if such deduction or withholding had not been made and (ii) deliver to Heyday within thirty (30) days after the date of such payment an official receipt of the relevant taxing authority showing that Client paid to such taxing authority the full amount of the tax required to be deducted or withheld. Heyday shall take reasonable administrative actions, if possible, to lawfully mitigate or to help recover on behalf of Client any withholding taxes, if and only if none of the foregoing actions would operate to prejudice Heyday with respect to its tax liability or otherwise.

6.7 **Currency**. Except as otherwise set out in the Business Terms, all prices are expressed in Canadian dollars.

6.8 **Interest**. Payments not received by the due date in accordance with this Agreement shall bear interest at the rate that is the lesser of 2% per month, compounded monthly (effective annual rate of 26.8% per year) or the maximum rate allowable by law.

7. TERM AND TERMINATION

7.1 **Term**. The Right of Access is granted for the initial term set out in the Business Terms and, except as otherwise set out in the Business Terms, shall renew automatically for successive renewal terms, equal in length to the initial term, unless one party notifies the other party in writing at least thirty

(30) days prior to the expiration of the then-current term that it does not wish to renew the Agreement. Notwithstanding any provision of applicable law, including section 2125 of the *Quebec Civil Code* (the benefit of which is hereby waived by Client), this Agreement may not be terminated for convenience in the middle of the then-current term.

7.2 **Termination for Cause**. Each party may terminate this Agreement in the event the other party breaches the terms of this Agreement and fails to remedy such breach within thirty (30) days of written notice given by such party.

7.3 **Effect of Termination**. The Right of Access ends when this Agreement is terminated, regardless of the reason for termination, and no right of use or other such right to access the Software shall subsist for Client.

7.4 **Surviving Provisions.** Sections 2.5, 2.6 and 5 to 9 shall survive the termination or expiry of this Agreement.

8. DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY

8.1 **Professional and Workmanlike**. Heyday warrants that the Support Services (and, where applicable, the Configuration Services and the Training Services) shall be performed in a professional and workmanlike manner.

8.2 **Disclaimer of Warranties.** OTHER THAN THE EXPRESS WARRANTY SET OUT IN SECTION 8.1, HEYDAY MAKES NO REPRESENTATION, WARRANTY OR CONDITION OF ANY KIND WHATSOEVER IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES DESCRIBED IN THIS AGREEMENT, AND HEREBY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, REPRESENTATIONS OR CONDITIONS, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, PERFORMANCE, ACCURACY, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, AND/OR FITNESS FOR A PARTICULAR PURPOSE.

8.3 **Limitation of Liability**. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT MAY HEYDAY, ITS AFFILIATES, AND THEIR RESPECTIVE SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUBCONTRACTORS, VENDORS AND LICENSORS BE LIABLE FOR (I) ANY INDIRECT, INCIDENTAL, EXTRAORDINARY, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES OR (II) ANY LOSS OF REVENUE OR PROFITS, LOST OR DAMAGED DATA, LOSS OF USE, BUSINESS INTERRUPTION OR ANY OTHER FINANCIAL LOSS, ARISING DIRECTLY OR INDIRECTLY FROM THE AGREEMENT, OR CAUSED BY THE SOFTWARE OR THE SERVICES, OR THE MISUSE OR INABILITY TO USE THE SOFTWARE OR THE SERVICES, EVEN IF HEYDAY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION OF LIABILITY WILL APPLY REGARDLESS OF THE FORM OF ACTION: WHETHER IN CONTRACTUAL LIABILITY, APPLICATION OF THE WARRANTY, TORT, NEGLIGENCE, PRODUCT LIABILITY OF MANUFACTURERS AND VENDORS, STRICT CIVIL LIABILITY OR UNDER ANY OTHER LEGAL THEORY.

8.4 **Amount Limitation.** THE TOTAL LIABILITY OF HEYDAY IN RESPECT OF THE CLAIMS OF CLIENT OR ANY OTHER PERSON ARISING UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AGGREGATE SUMS PAID BY CLIENT TO HEYDAY DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT FROM WHICH THE LIABILTIY ARISES. THE OCCURRENCE OR FILING OF MULTIPLE CLAIMS SHALL NOT INCREASE

THIS AMOUNT.

8.5   **Allocation of Risk**. It is agreed that the limitation of remedies/liability set forth in this Article 8, and elsewhere in this Agreement, allocates the commercial risks between Heyday and Client arising out of or in connection with this Agreement and that the financial terms of Section 6 and the other terms and conditions of this Agreement reflect this allocation of risk.

9.   MISCELLANEOUS

9.1   **Amendment.** This Agreement may not be modified or amended, in whole or in part, except in writing signed by a duly authorized representative of each party; no other act, document, usage or custom will be deemed to modify the Agreement.

9.2   **Successor and Assigns**. Client shall not sell, transfer or assign any right, title or interest it has in this Agreement, without the prior written consent of Heyday. Any assignment not in accordance with this Section 9.2 shall be void. Heyday may, upon notice to Client, sell, transfer or assign this Agreement or any right, title or interest it has in this Agreement, if such sale, transfer or assignment (i) is part of the sale, transfer or assignment of all or substantially all of its assets or business; or (ii) is made to one of its Affiliates.

9.3   **Entire Agreement**. This Agreement (including the Business Terms, which form an integral part hereof) shall constitute the entire agreement between the parties with respect to the subject matter hereof and merges all prior, contemporaneous, or collateral agreements, representations, warranties, and communications, including marketing materials, advertisements, and any other documents emanating from Heyday or otherwise. It shall not be modified except by a written agreement signed by the parties' authorized representatives.

9.4   **Governing Law; Forum**. This Agreement shall be governed and construed in accordance with the laws in force in the Province of Quebec, Canada. The courts sitting in the district of Montreal in the Province of Quebec, Canada shall have exclusive jurisdiction in respect of any dispute related to this Agreement. The foregoing choice of jurisdiction and venue shall not prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights, confidentiality obligations or enforcement or recognition of any award or order in any appropriate jurisdiction. The *United Nations Convention on Contracts for the International Sale of Goods* and any legislation implementing such Convention shall not apply to this Agreement nor to any dispute arising therefrom.

9.5   **Independent Contractors**. This Agreement does not make either party the partner, employee, trustee, agent or legal representative of the other for any purpose whatsoever. Neither party is granted any right or authority to assume or to create any obligation or responsibility, express or implied, on behalf of or in the name of the other party.

9.6   **Promotional Terms.** Notwithstanding Section 5 (Confidentiality), Client hereby grants to Heyday the right to identify Client as a commercial partner on Heyday's websites, social media, commercial brochures and documents, and for such purpose only, Client hereby grants unto Heyday the limited, non-exclusive and royalty-free right to display Client's name and logo. Further, Heyday is authorized to disclose in general terms to third parties the nature of the commercial relationship between Heyday and Client. Client may withdraw its consent at any time by sending Heyday a notice to such effect, it being understood that such withdrawal cannot apply retroactively.

9.7 **Contact.** Client agrees to provide Heyday with the contact details of its authorized representative and to immediately notify Heyday of any changes to the contact details.

9.8 **Force Majeure.** No default, delay or failure to perform on the part of either party shall be considered a breach of this Agreement where such default, delay or failure is due to a Force Majeure.

9.9 **Language**. The parties have expressly requested that this Agreement and be drawn up in English and that all modifications thereof can be made in this language. *Les parties ont expressément demandé que ce contrat soit rédigé en anglais et que toute modification à celui-ci puisse également être rédigée dans cette langue*.