



This End User License Agreement (“Agreement”) is a binding legal contract between you (either an individual or a legal entity) (“you” or “Customer”) and Alcatraz AI, Inc., a California corporation (“Alcatraz”). By installing, accessing, or using the Hardware, Software, SDK and any associated Documentation and Enhancements, (collectively, the “Product”) you will be bound by the terms of this Agreement. If you do not agree to the terms of this Agreement, Alcatraz is not willing to license any right to use or access the Hardware or Software to you. In such event, you may not install, access or use the Product. Notwithstanding anything to the contrary in this notice, your first use of the Product shall be deemed your express consent to this Agreement.”).

1. DEFINITIONS

- 1.1 Capitalized terms used in this Agreement shall have their meanings specified in this Section or elsewhere in this Agreement.
- 1.2 “Biometric Data” means Biometric Identifiers and Biometric Information (as defined herein), including but not limited to any information collected in connection with the Product (as defined herein).
- 1.3 “Biometric Identifier” means a scan or record of face geometry.
- 1.4 “Biometric Information” means any information, regardless of how it is captured, converted, stored, or shared, based on an individual’s biometric identifier, used to identify an individual, including but not limited to any face images added to, collect by, and/or stored in the Product, whether stored in the local memory of a particular Hardware unit, or stored in an internal or external database accessed by the Product.
- 1.5 “Data Law” means any applicable biometric privacy, data privacy, or data protection law, rule, or regulation, including without limitation, the Illinois Biometric Information Privacy Act (“BIPA”), Texas Capture or Use of Biometric Identifier Act (“CUBI”), and Washington R.C.W. § 19.375.010, *et seq.*
- 1.6 “Documentation” means Alcatraz’s system specifications, technical materials, training materials and all other instructions regarding the operation, installation and use of the Product as may be amended from time-to-time.
- 1.7 “Software” means the firmware, application software and scripts licensed to Customer pursuant to this Agreement, and any documentation provided by Alcatraz regarding the Software.
- 1.8 “Hardware” means the hardware on which the Software is installed and which you lease or acquired from Alcatraz or its designated agent.
- 1.9 “SDK” means the software development kits licensed to Customer pursuant to this Agreement, and any documentation provided by Alcatraz regarding the SDK.
- 1.10 “Support Services” means the services provided to you by Alcatraz under Section 7 (Technical Support, Training and Other Services).

2. ACCESS AND USE LICENSE

- 2.1 Product, Documentation and Enhancements. The Software is licensed to you, not sold. Except for the limited license granted in this Agreement, Alcatraz and its licensors retain all right, title and interest in and to the Software and any SDKs, all copies and derivative works thereof, and all intellectual and proprietary rights in the Product, including copyrights, patents, trademarks and trade secret rights.

3. GRANT OF LICENSE

- 3.1 License. Subject to the terms and conditions of this Agreement and your payment of all fees set forth in this Agreement, Alcatraz grants you a revocable, non-sublicenseable, non-exclusive license during the Term of this Agreement to use the object code version of the Product, in connection with the Hardware, within your organization solely for your internal business purposes.
- 3.2 Enhancements. Alcatraz reserves the right to upgrade, enhance, change, or modify the Product at any time in its sole discretion (“Enhancements”). Any Enhancements made available to you by Alcatraz or Alcatraz’s agent, if any, will be subject to the terms of this Agreement, except to the extent that the parties mutually agree, in writing, to more restrictive provisions relating to such Enhancements.
- 3.3 Third Party Components. The Product and future Enhancements may contain certain third party components (“Third Party Components”) which

are provided to you under terms and conditions which are different from this Agreement, or which require Alcatraz to provide you with certain notices and information. Alcatraz will identify such third party components in the Documentation (and shall include any associated license agreement, notices and other related information therein) delivered with the Product or future Enhancements. Your use of each Third Party Component which contains or is accompanied by its own license agreement will be subject to the terms and conditions of such other license agreement, and not this Agreement.

- 3.4 Beta Applications. Alcatraz may designate certain Enhancements or new releases of Product as “Beta Product.” Such Beta Product will not be ready for use in a production environment and operation of the Beta Product may be unpredictable and lead to erroneous results. You acknowledge and agree that: (a) the Beta Product is experimental and has not been fully tested; (b) the Beta Product may not meet your requirements; (c) the use or operation of the Beta Product may not be uninterrupted or error free; (d) your use of the Beta Product is for purposes of evaluating and testing the product and providing feedback to Alcatraz; (e) you shall inform your employees, staff members and other users regarding the nature of the Beta Product; and (f) you will hold all information relating to the Beta Product and your use of the Beta Product, including any performance measurements and other data relating to the Beta Product, in strict confidence and shall not disclose such information to any unauthorized third parties. Your use of the Beta Product shall be subject to all of the terms and conditions set forth herein relating to the Product. You shall promptly report any errors, defects, or other deficiencies in the Beta Product to Alcatraz. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, ALL BETA PRODUCT IS PROVIDED “AS-IS” AND “AS-AVAILABLE,” WITHOUT WARRANTIES OF ANY KIND. You hereby waive any and all claims, now known or later discovered, that you may have against Alcatraz and its suppliers and licensors arising out of your use of the Beta Product.

- 3.5 End User Content. If you or your End Users provide information to Alcatraz (or its affiliates and agents) as part of any Support Services, you agree that Alcatraz and its affiliates and agents may collect, process and use such information for Alcatraz’s business purposes, including for product support and development. You or any of your End Users may provide any suggestions, ideas, inventions, innovations, improvement or enhancement requests, feedback, recommendations, or other information to Alcatraz regarding the Product or any services provided by Alcatraz (collectively, “Feedback”). Feedback is voluntary and Alcatraz is not required to hold it in confidence. Alcatraz may use Feedback for any purpose without obligation of any kind. To the extent a license is required under your intellectual property rights to make use of the Feedback, you hereby grant Alcatraz an irrevocable, non-exclusive, perpetual, royalty-free license to use the Feedback in connection with Alcatraz’s business, including enhancement of the Product and related products and services.

- 3.6 SDK Restrictions. Customer is only authorized to use the SDKs in accordance with its accompanying documentation and this Agreement. Customer shall not configure or modify the SDK to alter in any way the accurate, complete reporting of SDK Data to Alcatraz. Except for the limited license granted in Section 3.1 (License), Alcatraz is not granting Customer any express or implied right under any of Alcatraz’s patents, copyrights, trademarks, trade secrets, or any other proprietary rights. Customer shall not: (a) remove or obscure any copyright, patent, trade secret, proprietary, or other legal notices contained on or in the SDKs, including any associated documentation; (b) remove or obscure any Alcatraz logos or branding screens that are automatically included in any Customer product when it is created using the SDKs, without prior written permission from Alcatraz; (c) use any Alcatraz logo or trademark (except as expressly set forth herein) without prior written permission from Alcatraz; (d) use or exploit the following in any way that results in direct or indirect compensation or commercial gain in any form, personal or otherwise, to Customer or any other party: (i) the SDK (or any portions thereof); (ii) derivative works of the SDK (or any portions thereof); or (iii) applications which contain any SDK code and/or content; or (iv) applications which contain any derivative works of any SDK code and/or content; (e) use the SDK to develop applications that competes with or could compete with the SDK or any other middleware or Product software produced by Alcatraz; (f) use the SDK to develop hacks or similar applications; or (g) infringe or violate any intellectual property or proprietary rights or rights of privacy or publicity of Alcatraz or any third party. If Alcatraz grants written permission, pursuant to this Agreement, permitting Customer to use a Alcatraz trademark or logo on Customer’s

website or in Customer's software or hardware, such Alcatraz trademark or logo (1) shall not imply any endorsement by Alcatraz of Customer, Customer's website, software, or hardware, and (2) shall be less prominent than the logo or trademark that primarily describes the Customer's website, software, or hardware.

3.7 SDK Data. The SDKs are designed to send certain, non-personally identifiable click stream data ("SDK Data") to Alcatraz. SDK Data constitutes a different data stream than Face Image Data or any personal information or anonymous information that Customer may collect from or about users of Customer's products. The Parties agree that SDK Data constitutes Alcatraz Confidential Information.

3.8 Open Source in SDKs. The SDKs may contain software, programming or other intellectual property that is subject to (a) the GNU General Public License, GNU Library General Public License, Artistic License, BSD license, Mozilla Public License, or any similar license, including, but not limited to, those licenses listed at www.opensource.org/licenses; or (b) any agreement with terms requiring any intellectual property owned or licensed by Customer to be (i) disclosed or distributed in source code or object code form, (ii) licensed for the purpose of making derivative works, or (iii) redistributable ("Open Source Software"). Open Source Software may be accompanied by separate license terms. Customer's license rights with respect to Open Source Software that is accompanied by separate license terms are defined by those terms. Nothing in this Agreement shall restrict, limit, or otherwise affect any rights or obligations Customer may have, or conditions to which Customer may be subject, under such license terms. If Customer uses Open Source Software in the SDKs or uses the SDKs to create an application that includes any Open Source Software, Customer agrees to comply with all applicable licensing terms for the Open Source Software. If Customer distributes copies of any Open Source Software independent of the SDKs, Customer must remove all Alcatraz trademarks, trade dress and logos from each copy. Notwithstanding anything to the contrary in this Agreement, Customer is not licensed to (and Customer agrees that it will not) (a) integrate or use the SDKs with any Open Source Software in a way that requires the disclosure, distribution or licensing of all or any part of the SDKs in source code form under open source licensing terms, (b) use any Open Source Software in the development of its application in such a way that would cause the non-open source or proprietary portions of the SDKs to be subject to any open source licensing terms or obligations, or (c) otherwise take any action that could require disclosure, distribution, or licensing of all or any part of the SDKs in source code form, for the purpose of making derivative works, or at no charge. Any violation of the foregoing provision shall immediately terminate all of Customer's licenses and other rights to the SDKs granted under this Agreement.

4. LIMITATIONS ON LICENSE

You may not, and you may not permit any third party to, (a) reverse engineer, decompile, disassemble, modify, or create works derivative of the Product or Hardware, or attempt to reverse engineer, reconstruct, identify or discover any source code of any Software or Hardware, (b) alter or modify any disabling mechanism which may be resident in the Product, (c) modify or improve the Software or Hardware or make derivative works based upon the Software or Hardware, or (d) use the Software or Hardware in order to build any software, product, or service that is competitive or similar to the Product. You may not assign, sublicense, rent, timeshare, loan, lease, or otherwise transfer the Software or Hardware, or directly or indirectly permit any third party to use the Product. You may not conduct, perform, or disclose any form of public benchmarking of the Software or Hardware or any services provided by Alcatraz, or publicize the results of any benchmarking of the Software or Hardware or any services, without the prior, written approval of Alcatraz. You may not remove any product identification, trademark, copyright, patent, or other proprietary notices or markings contained in, displayed by, or provided with the Software or Hardware. All use of the Software and/or Hardware shall be in accordance with its then-current Documentation. You shall be solely responsible for ensuring that your use of the Software and/or Hardware is in compliance with all applicable foreign, federal, state and local laws, rules and regulations.

5. TERM AND TERMINATION

The license will commence on the date you first use the Product or accept this Agreement, whichever is earlier, and continue in effect until it is terminated as provided in Section 5 (Term and Termination). Without

prejudice to any other rights, Alcatraz may terminate this Agreement (including your license to the Product) on five (5) calendar days prior written notice if you fail to comply with any of the terms and conditions of this Agreement. Alcatraz may terminate this Agreement immediately in the event that you breach Section 3.1 (License), Section 4 (Limitations on License), Section 6 (Biometric Data), or Section 9 (Confidentiality) of this Agreement. In the event of a claim (refer to Section 11.2) of intellectual property infringement by any third party relating to the Product ("Infringement Claims"), Alcatraz reserves the right to terminate this Agreement and the rights granted hereunder. In the event of any expiration or termination of this Agreement for any reason, you must immediately stop using the Product and securely destroy all related media and Documentation, if any. The license granted to the Product will automatically terminate on expiration or termination of this Agreement.

6. BIOMETRIC DATA

6.1 Collection and Use. You understand and agree that the Product will collect, log, use, and store Biometric Data. You, not Alcatraz, owns and controls the Biometric Data used by the Product, and you are solely responsible for satisfying all applicable compliance obligations with BIPA and other Data Laws in connection with your use of the Product.

6.2 You warrant that you will: (i) comply with all relevant Data Laws to the extent such laws are applicable to your use of the Product and/or Biometric Data; and (ii) with respect to BIPA: (a) maintain all necessary publicly-available privacy policies in accordance with 740 ILCS 14/15(a); (b) provide all necessary notices in accordance with 740 ILCS 14/15(b)(1)-(2); (c) obtain all necessary user consents in accordance with 740 ILCS 14/15(b)(3); (d) satisfy all applicable requirements and limitations in accordance with 740 ILCS 14/15(d); (e) satisfy all applicable security requirements in accordance with 740 ILCS 14/15(e); and comply with and satisfy all other requirements of BIPA consistent with your use of the Product under this Agreement.

6.3 You acknowledge and agree that Alcatraz has no responsibilities or obligations whatsoever for Biometric Data, and Alcatraz expressly disclaims all responsibility and liability for Biometric Data, including any breach of any Data Laws or other laws related to the Biometric Data.

6.4 Security. As the owner of the Biometric Data, you are further responsible for limiting access to Biometric Data, implementing and enforcing policies to prevent unauthorized access to, use of, or distribution of the Biometric Data, and, if you retain, store, or copy Biometric Data, securing it, including, at a minimum, by encrypting the Biometric Data.

7. TECHNICAL SUPPORT, TRAINING AND OTHER SERVICES

7.1 Technical Support. While you may be entitled to support by your dealer, if you choose, Alcatraz will provide telephone and on-site technical support for the Product at the prices set forth in Alcatraz's then-current prices for technical support, such prices subject to change at the sole discretion of Alcatraz. You shall designate one or more employees as your principal contact for communicating technical issues and technical support questions to Alcatraz, which designation may be amended from time-to-time by written notice to Alcatraz.

8. WARRANTY

8.1 Limited Warranty. Alcatraz warrants that the products shall be free from material defects for a period of one (1) year from the date of purchase (the "Warranty Period"). This warranty shall apply only to the original purchaser unless the buyer is authorized by Alcatraz to resell the products, in which event this warranty shall apply only to the first repurchase. It is necessary to obtain a Return Material Authorization (RMA) number before returning suspected defective products to Alcatraz. An RMA number may be requested by contacting Alcatraz Support at support@alcatraz.ai. The RMA number must be written on the documentation accompanying the return. If the product is delivered by mail or by an equivalent shipping carrier, the purchaser agrees to insure the product or assume the risk of loss or damage in transit, to prepay shipping charges to the warranty service location and to use the original shipping container or equivalent. Alcatraz will in its sole discretion decide either to repair or replace the returned product. Repair parts and replacement products will be furnished on an exchange basis and will be either reconditioned or new. All replaced parts and products become the property of Alcatraz. This limited warranty does not include service to repair damage to the product resulting from accident, disaster, unreasonable use, misuse, abuse, customer's negligence, reseller's

- negligence, installation or service by other than an Alcatraz-certified installer, or non-Alcatraz modification of the product. Alcatraz reserves the right to examine the alleged defective goods to determine whether the warranty is applicable. Without limiting the generality of the foregoing, Alcatraz specifically disclaims any liability or warranty for goods resold in other than Alcatraz's original packages, and for goods modified, altered, or treated by customers.
- 8.2 Extended Warranty.** When Product is purchased subject to a multi-year contract, the Warranty Period equals the length of the contract, as long as contract payments remain current. Furthermore, if a contract extension is executed before the then current contract ends, the Warranty Period is likewise extended. For example, if Product is purchased for a contract length of three (3) years, the Warranty Period is three (3) years, and if a contract is extended for two (2) years, the Warranty Period is likewise extended by two (2) years, but only if the contract extension is executed before the previous contract has expired. If a contract expires before being extended, the Warranty Period reverts to one (1) year. If contract payments lapse, the Warranty Period reverts to one (1) year. IF A CONTRACT EXPIRES BEFORE BEING EXTENDED, OR IF CONTRACT PAYMENTS LAPSE, THE WARRANTY PERIOD IRREVOCABLY REVERTS TO ONE (1) YEAR.
- 8.3 Restrictions.** The warranties in Sections 8.1 and 8.2 (Limited Warranty and Extended Warranty) do not apply to expendable or consumable parts and does not extend to any Hardware or Software that has been damaged, rendered defective, or rendered inoperable: (a) as a result of accident, misuse, abuse, contamination, improper, or inadequate maintenance, or calibration or other external causes; (b) by operation outside the usage parameters stated in the Documentation; (c) by software interfacing, parts or supplies not supplied by Alcatraz under this Agreement; (d) improper site preparation or maintenance; (e) loss or damage in transit; and (f) by modification or service by anyone other than Alcatraz or Alcatraz's authorized service provider.
- 9. CONFIDENTIALITY**
- 9.1 Definition.** "Confidential Information" means all nonpublic information disclosed by a Party or any of its Affiliates or its agents to the other Party that is designated as confidential or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential. Confidential Information includes the Product, Documentation and Enhancements.
- 9.2 Exclusions.** Confidential Information shall not include any of such information which: (a) was publicly available at the time of disclosure by the Party disclosing such information (the "Disclosing Party"); (b) became publicly available after disclosure through no fault of the Party receiving such information (the "Receiving Party"); (c) was already rightfully known to the Receiving Party prior to being disclosed by or obtained from the Disclosing Party as evidenced by written records kept in the ordinary course of business or by proof of actual use by the Receiving Party; or (d) was rightfully acquired by the Receiving Party after disclosure by the Disclosing Party from a third-party who was lawfully in possession of the information and was under no legal duty to the disclosing Party to maintain the confidentiality of the information.
- 9.3 Protection of Confidential Information.** Except to the extent expressly and specifically authorized in this Agreement, the Receiving Party shall: (a) maintain the confidentiality of the Confidential Information of the Disclosing Party; (b) minimize the dissemination or copying of the Confidential Information of the other Party except to the extent necessary to perform its obligations under this Agreement; (c) use the same care to prevent disclosure of the Confidential Information of the Disclosing Party to third parties as it employs to avoid disclosure, publication, or dissemination of its own Confidential Information, but in no event less than a reasonable standard of care; (d) use the Confidential Information of the Disclosing Party solely for the purpose of performing its obligations under this Agreement or exercise the express rights granted to it under this Agreement; and (e) inform its employees, officers, agents, subcontractors and independent contractors who perform duties with respect to this Agreement about these restrictions.
- 9.4 Permitted Disclosures.** Each Party may disclose Confidential Information of the other Party to its employees, officers, agents, subcontractors and independent contractors who have a need to know such Confidential Information in order to perform their duties under this Agreement and a legal duty to protect the Confidential Information. A Party receiving Confidential Information of the other Party assumes full responsibility for

- the acts and omissions of its employees, officers, agents, subcontractors and independent contractors with respect to such Confidential Information. Where the disclosed Confidential Information contains Personally Identifiable Information (PII) shared with subcontractors and independent contractors, the other Party should be informed of the disclosure.
- 9.5 Required Disclosures.** To the extent required by applicable law or by lawful order or requirement of a court or governmental authority having competent jurisdiction over the Receiving Party, the Receiving Party may disclose Confidential Information in accordance with such law or order or requirement, provided that, as soon as possible after becoming aware of such law, order, or requirement and prior to disclosing Confidential Information pursuant thereto, the Receiving Party will so notify the Disclosing Party in writing and, if possible, the Receiving Party will provide notice to the Disclosing Party not less than five (5) business days prior to the required disclosure. The Receiving Party will use reasonable efforts not to release Confidential Information pending the outcome of any measures taken by the Disclosing Party to contest, otherwise oppose, or seek to limit such disclosure by the Receiving Party and any subsequent disclosure or use of Confidential Information that may result from such disclosure. The Receiving Party will cooperate with and provide assistance to the Disclosing Party regarding such measures. Notwithstanding any such compelled disclosure by the Receiving Party, such compelled disclosure will not otherwise affect the Receiving Party's obligations hereunder with respect to Confidential Information so disclosed. Each Party shall be responsible for its own costs with respect to the performance of its obligations under this Section 9 (Confidentiality).
- 9.6 Notification.** In the event of any disclosure or loss of Confidential Information, the Receiving Party shall notify the Disclosing Party as soon as possible.
- 9.7 Injunctive Relief.** Each Party acknowledges that any breach of any provision of this Section 9 (Confidentiality) by the Receiving Party, or its employees, officers, agents, subcontractors, or independent contractors, may cause immediate and irreparable injury to the Disclosing Party, and in the event of such breach, the Disclosing Party shall be entitled to seek and obtain injunctive relief to the extent provided by a court of applicable jurisdiction, without bond or other security, and to any and all other remedies available at law or in equity.
- 9.8 Return of Confidential Information.** Unless it is expressly authorized by this Agreement to retain the other Party's Confidential Information, a Party shall promptly return or destroy, at the other Party's option, the other Party's Confidential Information, including materials prepared in whole or in part based on such Confidential Information to the extent containing Confidential Information, and all copies thereof, at the other Party's request, and an officer of such Party shall certify to the other Party that it no longer has in its possession or under its control any Confidential Information in any form whatsoever, or any copy thereof.
- 9.9 Duration.** The obligations of confidentiality set forth herein shall continue in full force and effect throughout the Term and continue beyond the Term in perpetuity or for so long as permitted under applicable law.
- 10. LIMITATION OF LIABILITY**
- 10.1 TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL ALCATRAZ OR ITS SUPPLIERS OR LICENSORS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR INDIRECT DAMAGES, OR ANY OTHER DAMAGES OF ANY KIND, WHICH SHALL INCLUDE DAMAGES FOR PERSONAL INJURY, LOST PROFITS, LOST DATA AND BUSINESS INTERRUPTION, ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE OR HARDWARE, EVEN IF ALCATRAZ HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES (WHETHER SUCH DAMAGES ARISE IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE). IN ANY CASE, THE ENTIRE LIABILITY OF ALCATRAZ AND ITS SUPPLIERS/LICENSORS UNDER THIS AGREEMENT FOR ALL DAMAGES OF EVERY KIND AND TYPE (WHETHER SUCH DAMAGES ARISE IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE) SHALL BE LIMITED TO THE INITIAL LICENSE FEE PAID BY YOU, IF ANY, FOR THE PRODUCT.**
- 10.2** Some states do not allow the exclusion of incidental or consequential damages, or the limitation on how long an implied warranty lasts, so some of the above may not apply to you.
- 10.3 Exclusions From Limitation of Liability Provision.** The limitations contained in this Section 9 shall not apply to losses resulting from the gross negligence, willful misconduct, fraud, or criminal activity of Alcatraz.

11. INDEMNIFICATION

- 11.1** You shall indemnify, defend, and hold Alcatraz, its respective officers, directors, employees, agents, affiliates, vendors and licensors, harmless from and against all Claims (defined below), asserted against, imposed upon, or incurred by Alcatraz due to, arising out of, resulting from, relating to, or in connection with: any material breach by you of any term or condition of this Agreement, including but not limited to your warranties, covenants, obligations, and/or representations in this Agreement; (ii) your use or misuse of the Software or Hardware, including any combination of the Software or Hardware with any hardware, software, or other intellectual property not provided by Alcatraz; (iii) any Claim arising out of your failure to comply with BIPA or other applicable Data Laws; (iv) the loss of personal or real property by Alcatraz due to your negligent and/or willful acts; or (v) any negligent act or omission, or intentional misconduct, by you. All rights and duties of indemnification that are set forth herein shall survive termination of this Agreement.
- 11.2** If the Product becomes, or in Alcatraz's opinion is likely to become, the subject of an infringement claim, Alcatraz may, in its sole and exclusive discretion, (i) obtain for you the right or license to continue to use the Product, (ii) modify the Product to make it non-infringing, (iii) replace the product, provided the modified or replaced Product shall have at least the same functionality of the original Product, or, if Alcatraz is unable to accomplish the remedies in (i), (ii) or (iii) after using commercially reasonable efforts, then (iv) refund you the purchase price for the Product based on a seven (7) year straight line amortization. This Section 11.2 represents your sole and exclusive remedy and Alcatraz's sole and exclusive liability for any infringement claims based on the Product.
- 11.3** In the event both you and Alcatraz are sued by the same plaintiff as defendants in the same lawsuit for purported violations of BIPA, each Party shall defend itself, at its own expense, during the course of the litigation, but ultimately bear the proportionate cost of any loss attributable to such Party's fault for the violations of BIPA asserted in the action. The Parties hereby agree that the resolution of each Party's respective level of fault shall be delayed until after resolution of the underlying third-party claim (whether by settlement, final non-appealable judgment, or binding arbitration). In the event both Parties bear fault for a matter, each Party's liability (including liability for defense costs) shall be equal to the percentage of determined to be due to the fault of such Party as agreed upon by the Parties or as fixed by settlement agreement approved by the Parties or set forth in a final judgment of a court of competent jurisdiction or the decision of the arbitrator or arbitration panel in a binding arbitration proceeding. The Parties agree that the provisions of this Section 11.3 shall only apply in the event of a third-party claim.
- 11.4** Procedure for Indemnification. Upon receipt of notice, from whatever source, of a Claim against Alcatraz, you must immediately take necessary and appropriate action to protect Alcatraz's interests with respect to the Claim. You must promptly notify Alcatraz of the assertion, filing, or service of any Claim of which you have knowledge. Alcatraz reserves, and you grant to Alcatraz, the right to assume exclusive defense and control of any matter subject to indemnification by you.
- 11.5** Conflict. Notwithstanding the foregoing, if you provide counsel for the defense of any Claim and a conflict of interest exists between Alcatraz and counsel, Alcatraz may request that you replace counsel and such counsel shall promptly be replaced by you (at your expense). If you fail to so timely replace counsel, Alcatraz may replace the counsel and, as part of your indemnification obligation to Alcatraz, you must pay the new counsel, or reimburse Alcatraz, any reasonable fees and expenses as to the new counsel, including any and all expenses or costs to change counsel.
- 11.6** Settlement. Alcatraz reserves, and you grant to Alcatraz, the right to have control over any negotiation or settlement of any Claim, and you shall not settle any Claim against Alcatraz in a manner which is adverse to Alcatraz without Alcatraz's prior written consent. Further, you shall not make any settlement of any Claim that might give rise to liability on the part of Alcatraz without the prior written consent of Alcatraz.
- 11.7** Definition. For purposes of this Section 11, the word "Claim(s)" means any and all foreseeable or unforeseeable and alleged or actual actions, causes of action (whether in tort, agreement or strict liability, and whether in law, in equity, statutory or otherwise), bodily harm or personal injury (including sickness, disease, or death of any person), claims, direct damages, demands, disbursements, judgments, lawsuits, legal proceedings, liability, litigation, property damage (including any harm, impairment, theft, loss, or loss of use), sanctions, settlement payments, costs or expenses of any nature

whatsoever, whether accrued, absolute, contingent, or otherwise, including, without limitation, attorney's fees and costs (whether or not suit is brought), including but not limited to claims arising from any failure to comply with applicable Data Laws.

12. WARRANTY DISCLAIMER

- 12.1** EXCEPT AS EXPRESSLY PROVIDED IN SECTION 8 (LIMITED WARRANTY), THE SOFTWARE, HARDWARE AND MAINTENANCE SERVICES (IF ANY) ARE PROVIDED ON AN "AS AVAILABLE," "AS IS" BASIS WITH ALL FAULTS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALCATRAZ AND ITS LICENSORS EXPRESSLY DISCLAIM ALL OTHER WARRANTIES WITH RESPECT TO THE SOFTWARE, HARDWARE AND SUPPORT SERVICES, INCLUDING THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, AND FITNESS FOR A PARTICULAR PURPOSE. ALCATRAZ DOES NOT WARRANT THAT THE SOFTWARE AND/OR HARDWARE WILL MEET YOUR REQUIREMENTS, OR THAT THE OPERATION OF THE PRODUCT AND/OR HARDWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE PRODUCT WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY ALCATRAZ SHALL CREATE ANY ADDITIONAL ALCATRAZ WARRANTIES OR IN ANY WAY INCREASE THE SCOPE OF ALCATRAZ'S OBLIGATIONS HEREUNDER.
- 12.2** ALCATRAZ MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH REGARD TO ANY HARDWARE, SOFTWARE, OR PROGRAMMING OBTAINED BY YOU FROM THIRD PARTIES (COLLECTIVELY, THE "THIRD PARTY ITEMS"). ALCATRAZ EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE/NON-INFRINGEMENT, QUALITY OF INFORMATION, QUIET ENJOYMENT, AND FITNESS FOR A PARTICULAR PURPOSE WITH REGARD TO THE THIRD PARTY ITEMS. YOU SHOULD CONSULT THE RESPECTIVE VENDORS OR MANUFACTURERS OF THE THIRD PARTY ITEMS FOR WARRANTY AND PERFORMANCE INFORMATION.
- 12.3** THE PRODUCT MAY BE USED TO ACCESS AND TRANSFER INFORMATION OVER THE INTERNET. YOU ACKNOWLEDGE AND AGREE THAT ALCATRAZ DOES NOT OPERATE OR CONTROL THE INTERNET AND THAT: (A) VIRUSES, WORMS, TROJAN HORSES, OR OTHER UNDESIRABLE DATA OR SOFTWARE; OR (B) UNAUTHORIZED USERS (E.G., HACKERS) MAY ATTEMPT TO OBTAIN ACCESS TO AND DAMAGE YOUR DATA, WEB SITES, COMPUTERS, OR NETWORKS. ALCATRAZ SHALL NOT BE RESPONSIBLE FOR SUCH ACTIVITIES. YOU ARE SOLELY RESPONSIBLE FOR THE SECURITY AND INTEGRITY OF YOUR DATA AND SYSTEMS.
- 13. REPRESENTATIONS AND WARRANTIES**
- 13.1** Customer Representations and Warranties. Customer represents, warrants, and covenants to Alcatraz that: (i) it shall perform its obligations under this Agreement by using reasonable skill, care, and diligence, and in accordance with generally accepted methods; (ii) it shall comply with all applicable federal, state, and local laws, regulations, and binding guidance documents directly applicable to its use of the Product, including but not limited and as applicable to rules and regulatory requirements relating to the collection, use, and processing of Biometric Data to the extent such laws are applicable to the Product under the terms of this Agreement; (iii) it shall maintain compliance with applicable privacy and information security requirements set forth in relevant Data Laws to the extent such laws are applicable to the Product under the terms of this Agreement; (iv) it shall: (a) provide all necessary advance notices; (b) obtain all necessary consents; (c) maintain its privacy policy on its website made accessible to users; (d) adhere to its stated data retention and destruction guidelines and schedule as provided in its publicly-available privacy policy; (d) adhere to all limitations on disclosure and dissemination; and (e) satisfy all applicable security requirements in accordance with BIPA and other Data Laws relating to the collection and use of Biometric Data; and (v) with respect to BIPA, it shall keep the proofs of, as is feasible: (a) its provision of all necessary advance notices to users; and (b) its acquisition of all necessary user consents.
- 13.2** Ongoing Warranties. Except as otherwise expressly provided in this Agreement, the representations and warranties made by Customer in this Agreement are continuous in nature and are deemed to have been given at the execution of this Agreement and at each stage of performance of this Agreement.

14. MISCELLANEOUS

- 14.1** Notices. You consent to receive from Alcatraz all communications including notices, agreements, legally required disclosures, or other information in connection with the Product (collectively, "Notices") electronically. Alcatraz

may provide such Notices by transmitting them to the email address you provided to Alcatraz. If you desire to withdraw your consent to receive Notices electronically, you must discontinue your use of the Product.

14.2 Governing Law; Jurisdiction; Venue. This Agreement shall be made, governed, construed, and enforced in accordance with the laws of the State of California without reference to conflicts of law principles. The parties agree that the exclusive jurisdiction of any actions arising out of, relating to, or in any way connected with this Agreement shall be in the state and federal courts located in the State of California, and the Parties hereby agree to submit to the jurisdiction and venue of the courts of the State of California. This Agreement shall not be governed by the 1980 U.N. Convention on Contracts for the International Sale of Goods.

14.3 Force Majeure. Any delay in or failure of performance of either Party to this Agreement (excluding obligations to pay money in accordance with this Agreement) shall not constitute a default under this Agreement or give rise to any claim for damages to the extent such delay or failure of performance are caused by a force majeure event, including acts of god, fire, flood, explosion, war, strikes, or other concerted work stoppages of labor, inability to obtain raw material, equipment or transportation, breakage or failure of equipment or apparatus, loss of any necessary utility or interruption of power or communications sources or connections, failures in or affecting the performance, use, or availability of the Internet or associated intranets, any computer virus or other malicious code released by a third party, the terrorist, illegal, malicious, wanton, or capricious acts a third party, changes or modifications in international, national, or industry standards or protocols, and the existence of or changes in laws prohibiting or imposing criminal penalties or civil liability for performance hereunder; provided that, any such delay does not extend beyond thirty (30) calendar days.

14.4 Export Control. You shall not export, directly or indirectly, the Product to any country for which the United States requires any export license or other governmental approval without first obtaining such license or approval. It shall be your responsibility to comply with such export laws, rules and regulations. You shall defend, indemnify, and hold harmless Alcatraz from and against any and all damages, fines, penalties, assessments, liabilities, costs and expenses (including attorneys' fees and expenses) arising out of any claim that the Product was exported, shipped or transported in violation of applicable laws, rules, or regulations.

14.5 Independent Contractors; No Agency. The relationship of the parties is that of independent contractors and nothing in this Agreement should be construed to create a partnership, joint venture, or employer-employee relationship. Neither party is the agent of the other Party, nor is either Party authorized to make representations on behalf of, act on behalf of, or contractually bind the other party.

14.6 Severability. In the event that one or more of the provisions herein shall be invalid, illegal, or unenforceable in any respect, each such provision shall be deemed modified to the extent necessary and possible to render it valid and enforceable. Notwithstanding the foregoing, the unenforceability or invalidity of any provision shall not affect any other provision of this Agreement, and this Agreement shall continue in full force and effect, and be construed and enforced as if such provision had not been included, or had been modified as above provided, as the case may be.

14.7 No Waiver. Alcatraz's failure or delay to enforce any provision of this Agreement or respond to any breach by you or others shall not operate or be construed as a waiver or prevent Alcatraz from taking any permitted action to prevent further breaches.

14.8 Survival. The following provisions shall survive termination or expiration of these Terms: 1 (Definitions), 5 (Term and Termination), 6 (Face Image Data), 10 (Confidentiality), 11 (Limitation of Liability), 12 (Indemnification), 13 13 (Warranty Disclaimer), and 14 14 (Miscellaneous).

14.9 Entire Agreement. This Agreement constitutes the entire understanding of Alcatraz and you with respect to the subject matter hereof, and supersedes all prior and contemporaneous written and oral agreements with respect to the subject matter. Except as otherwise provided herein, this Agreement shall not be modified in any manner except by an instrument in writing and signed by a duly authorized representative of each of the Parties.

14.10 Modifications. Alcatraz reserves the right, at its sole discretion, to modify or replace any of the provisions set forth in this Agreement at any time. It is your responsibility to check the Agreement periodically for changes. Your continued use of the Product following the posting of any changes to the Agreement constitutes acceptance of and agreement to those changes.

14.11 Assignment. You may not assign this Agreement, in whole or in part, by operation of law or otherwise, without Alcatraz's prior written consent. Any

attempt to do so shall be deemed null and void and of no legal force or effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties' successors and permitted assigns.

14.12 Construction. The section headings in this Agreement are for convenience of reference only, will not be deemed to be a part of the Agreement and will not be referred to in connection with the construction or interpretation of the Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party will not be applied in the construction or interpretation of this Agreement. As used in this Agreement, the words "include" and "including," and variations thereof, will not be deemed to be terms of limitation, but rather will be deemed in each instance to be followed by the words "without limitation."

By signing below, you indicate that you have the authority to bind yourself and any entity indicated below to the terms of this Agreement.

CUSTOMER

Signature

Name, Company and Title

Date