



KEEMOTION LICENSE AND SERVICE AGREEMENT

General Terms and Conditions

Keemotion (“Provider”) and its affiliates have developed patented technology (as further defined below, the “Keemotion Technology”) that enables users thereof to exploit sport motion capture.

In connection with the Keemotion Technology, Provider may offer the Recipient turnkey systems including material (as further defined below, the “Keemotion System”) and, if applicable, software (as further defined below, the “Keemotion Software Package”) to operate the Keemotion Technology.

The Recipient desires to use the Keemotion Technology and any additional materials provided by Provider on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth below, including those outlined on the Order Form (which is incorporated into this Agreement by this reference), and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. Certain Definitions

- 1.1. “Effective Date”** means the last signature date appearing on the Order Form.
- 1.2. “Deliverables”** means any deliverables described in any Order Form.
- 1.3. “Intellectual Property Rights”** means rights on a work of the mind, including, without limitation, inventions, patents and applications therefore, software/computer programs, copyrights and trademarks (whether registered or unregistered), service marks, utility models, registered or unregistered designs, databases, topography, trade secrets, know-how, trade or business names.
- 1.4. “Keemotion Technology”** means a computer-based method for autonomous production of an edited video from multiple video streams captured by a plurality of cameras distributed around the scene of interest, the method comprising: detecting objects in the images of the video streams, selecting each camera, a field of view based on joint processing of positions, and constructing the edited video segments provided by one or more individual cameras. The Keemotion Technology is registered under US Patent Number 8,854,457 and European Patent Number EP2428036.
- 1.5. “Keemotion System”** means physical elements enabling the Recipient to use the Keemotion Technology according to the terms and conditions set forth in this Agreement, including elements installed at the Recipient’s premises (cables, cameras, server, etc.) and any additional elements made available to the Recipient as described in any Order Form.
- 1.6. “Keemotion Software Package”** means software to be utilized in connection with the Keemotion Technology within the limits set forth in this Agreement, including, without limitation, Provider software and, if so specified in an Order Form, third party software.
- 1.7. “Keemotion Technology Specifications”** means all technical requirements designated by Provider and to be met by the Recipient’s premises and equipment to enable proper

performance of the Keemotion System, including, by way of example, electric power supply, computer network specifications and location of the Keemotion System.

- 1.8. **“Keemotion System Records”** means all data, whatever their nature or legal classification recorded and/or produced, totally or partially, by Recipient by, through or with the KEEMOTION SYSTEM, such as, inter alia: images, sound sequences, video sequences, game sequences, analysis, statistical data or analysis, game sequences classifications, game phase sequencing.
- 1.9. **“Order Form”** means any order form executed by both parties in connection with this Agreement from time to time, including, without limitation, the Order Form signed by both parties and dated as of the Effective Date.
- 1.10. **“Project Data”** means data in electronic form collected through the Services directly from the Recipient or other third parties, including but not limited to, all data recorded and/or produced, totally or partially, through or with the Keemotion System, including, without limitation, images, sound sequences, video sequences, game/practice sequences, analysis, statistical data or analysis, game sequences classifications and game/practice phase sequencing.
- 1.11. **“Services”** means the services described in any Order Form.

2. Applicability of the General Terms and Conditions

- 2.1. Any offers, orders, sales, deliveries, services or licenses are subject to the General Terms and Conditions unless clearly agreed to in writing by both Provider and Recipient. No deviation from the General Terms and Conditions is binding upon the Parties unless such deviation is agreed to in writing by both Provider and Recipient.
- 2.2. All Order Forms are subject to the latest version of the General Terms and Conditions applicable at the Effective Date. In the case of an extension or renewal of the Agreement, the renewal or extension shall be subject to the latest version of the General Terms and Conditions applicable at the Effective Date of such renewal or extension.

3. Order Forms; System Design

- 3.1. Services and Order Forms. Provider will perform the Services for the Recipient. Upon execution by authorized representatives of each of Provider and the Recipient, each Order Form will become part of this Agreement.
- 3.2. Change Orders. The parties may modify the requirements of any Order Form through a written change order, and such change order will become part of the applicable Order Form when executed by authorized representatives of both parties.
- 3.3. Limitations. The Keemotion Technology and Keemotion System are designed for standard sports activities' needs and for the types of sports identified by Provider. Unless otherwise stated in this Agreement, they are not tailored to meet specific needs of the Recipient and are otherwise subject to the terms of [Section 8](#).
- 3.4. Technical Changes. Provider reserves the right to change at all times, including after the execution of this Agreement, the technical elements or the characteristics of the Keemotion System.

4. Installation of the Keemotion System.

- 4.1. Specifications. The Keemotion System is designed for standard sports facilities ("Standard Facilities"). Standard Facilities are defined as facilities with a cube shaped shot clock that can accommodate, at Provider's discretion, the installation of the Keemotion System at least fifteen (15) feet from the sideline of the designated court and at least ten (10) feet off of the floor. Installations in facilities that are not Standard Facilities may result in additional service charges and/or delays in installing the Keemotion System.
- 4.2. Assessment. Provider may, at the Recipient's request, visit the Recipient's premises to audit and assess the overall feasibility of installation and conformance with the Keemotion Technology Specifications; provided, however, that any such audit shall be detailed in the applicable Order Form and billed separately on an hourly rate basis. If Provider does not perform an audit, it shall be the Recipient's responsibility to verify compliance with the Keemotion Technology Specifications.
- 4.3. Technical Map. Once the Recipient has confirmed, or received confirmation, that the Recipient's premises comply with the Keemotion Technology Specifications, Provider shall present to the Recipient a technical map describing the planned physical location of the main Keemotion System elements and a schedule of the Keemotion System installation works.
- 4.4. Work Schedule; Changes. Unless otherwise agreed in an Order Form, the proposed work schedule is indicative only and the Recipient is not entitled to any remedy or indemnification in case of delay in the installation works, provided such delay does not exceed six (6) weeks. Requests from the Recipient for changes to the proposed technical map and work schedule may result in additional charges for the Recipient. Such changes shall only be considered by Provider if they are technically feasible and do not affect the performance of the Keemotion System.
- 4.5. Access. In connection with Provider's installation of the Keemotion System, Provider shall have reasonable access for a period of two (2) consecutive business days to those areas of the Recipient's premises to be equipped with any of the KEEMOTION SYSTEM elements (cameras, servers, computers, cables, router, etc.) or to which access is needed to ensure the appropriate connection of the KEEMOTION SYSTEM to the Recipient's networks (electric panel, computer network, alarm and video monitoring systems, etc.). Any delay in the installation process caused by a lack of access to Recipient's premises will result in additional service charges.
- 4.6. Employees. Provider shall have full availability and collaboration of the Recipient's employees and/or usual subcontractors in charge of the access, maintenance or management of the Recipient's relevant premises and equipment.
- 4.7. Joint Inspection. Prior to the installation process Provider (or its designee) and the Recipient shall perform a joint inspection of the premises where the Keemotion System elements will be installed and draw up a report of such inspection. After completion of the installation, Provider shall notify Recipient indicating that the installation process has been completed.
- 4.8. Testing. Once the physical installation of the Keemotion System elements is completed, Provider shall run such tests as it deems necessary to assess the operation of the Keemotion System in accordance with the applicable specifications. After such tests are completed to the satisfaction of Provider, Provider shall notify the Recipient of the

completion of the installation process. Subject to Section 5, the Keemotion System shall be deemed approved and installed at the date of such notification.

- 4.9. Delivery of Access Codes and License Keys. On or about the date installation is complete, provided all amounts due by the Recipient to Provider in accordance with this Agreement have been paid and the Recipient is not otherwise in breach of this Agreement, Provider shall deliver to the Recipient the necessary access codes and license keys.
- 4.10. Option to Relocate the Keemotion System. Recipient may elect to relocate the Keemotion System. In such circumstance Provider will provide Recipient with an estimate of the cost of relocation. Recipient is responsible for the cost of the relocation and Keemotion will undertake all work necessary to conduct such relocation within a reasonable timeframe under the circumstances.

5. Deliverables License.

- 5.1. Limited License. Notwithstanding anything in this Agreement or any Order Form to the contrary, Provider grants the Recipient a limited, personal, revocable, non-exclusive and non-transferable license to use the installed Keemotion System for the term set forth in the applicable Order Forms and for the sole purpose of exploiting the Keemotion System within the limits set forth in this Agreement and any applicable Order Forms. The Recipient is not authorized to (personally or with the assistance of any third-party) move, remove, adapt, modify or decompile the Keemotion System elements installed on its premises or otherwise made available by Provider without Provider's prior consent. Without limiting the generality of the foregoing, the Recipient shall not: (a) modify, create derivative works from, distribute, publicly display, publicly perform, or sublicense the Keemotion System or Keemotion Technology; (b) use the Keemotion System for time-sharing purposes or otherwise allow third parties to exploit the Keemotion System; or (c) reverse engineer, decompile, disassemble, or otherwise attempt to derive any of the Keemotion System's or the Keemotion Software Package's source code.
- 5.2. Additional Limitations. The rights granted by Section 4.1 (a) are limited to local use within the Recipient's premises unless otherwise set forth in an applicable Order Form; (b) are limited to the simultaneous use of the Keemotion System by the specific teams/users set forth in the applicable Order Form; and (c) are not conveyed upon any third parties, including, without limitation, Recipient's parents, subsidiaries or other affiliates.
- 5.3. Software Licenses. All software which is part of the Keemotion Software Package is made available to the Recipient within the limits of the applicable end-user licenses and for the sole purpose of enabling the Recipient to use the Keemotion System within the limits set forth in this Agreement. Any software licenses for third-party software are subscribed by Provider on behalf of the Recipient for the term of, and limited purposes set forth in, this Agreement.
- 5.4. No Ownership Rights Conferred. Nothing in this Agreement shall be interpreted as a transfer of ownership or other conferring of rights from Provider to the Recipient of any element of the Keemotion Technology, the Keemotion System or the Keemotion Software Package. Provider shall at all times retain full ownership, during the term of this Agreement and perpetually upon its termination or expiration, of all elements of the



Keemotion Technology and the Keemotion System, and all elements of the Keemotion Software Package owned by Provider.

6. Deliverables Acceptance

Unless the relevant Order Form states otherwise, acceptance of Deliverables (“**Acceptance**”) shall occur according to the procedures set forth in this Section 5. Acceptance of each Deliverable will occur at the earlier of: (a) such time as the Recipient provides Provider written notice of acceptance or (b) 7 days after delivery, unless Provider is in actual receipt of written notice of rejection from the Recipient. The Recipient may reject a Deliverable only in the event that it materially deviates from its specifications or other requirements listed in the applicable Order Form. In the event of such rejection, Provider will correct the deviation and redeliver the Deliverable within twenty (20) business days. Re-delivery pursuant to the previous sentence will constitute another delivery, and the parties will again follow the acceptance procedures set forth in this Section 5, except that after any subsequent failure of the Deliverable to perform as required, either party may terminate the Order Form by written notice (until such time as the parties agree to continue the acceptance procedures of this Section 5). In the event of such termination, Provider will promptly refund all amounts paid pursuant to the Order Form as the Recipient’s exclusive remedy.

7. Keemotion System Records

- 7.1. Use of Records. Recipient is and remains the sole owner of the Keemotion System Records. Recipient authorizes Provider during the term of the Agreement to use the Keemotion System Records for its internal business or technical needs.
- 7.2. Third Parties. Provider will advise the Recipient of the usage of images in order to avoid any conflict that might occur from the sales of rights to any third party. If rights on the images are held by a third party, the Recipient will advise the right owner about the Keemotion System. The Recipient will give all necessary support in order to manage the relationship with the right owner and help Provider to negotiate with the right owner if needed and in Provider’s discretion.
- 7.3. Limitations. The Recipient is allowed to access and to use the KEEMOTION SYSTEM Records only: (i) through the remote access tools made available by Provider; (ii) during the term of this Agreement; and (iii) for the purpose(s) allowed in accordance with this Agreement.
- 7.4. Record Sharing. The Recipient grants Provider the right to share all Keemotion System Records as required by the Recipient’s League/Association or as requested by the Recipient.
- 7.5. Restricted Use. In case of any use by the Recipient in violation of this Agreement, Provider is entitled to delete all relevant Keemotion System Records, block access to the Keemotion System, or otherwise prevent, stop or limit the Recipient’s use of the Keemotion System to prevent such violations.
- 7.6. Individual Users. The Recipient warrants that it shall cause all the individual users of the KEEMOTION SYSTEM to comply with the above-mentioned access and use restrictions.

8. Payment

- 8.1. Base Fees. The Recipient shall pay Provider such fees as are set forth in each applicable Order Form in accordance with any specifications set forth therein. Such fees shall not be subject to adjustment without both Parties' written consent, regardless of any currency fluctuations that may occur during the term of this Agreement. Unless otherwise specified in the initial Order Form, the initial fees, costs and services payable by the Recipient and detailed in the initial Order Form are due and payable in full to Provider on the Effective Date. The fees, costs and services (if any) payable by the Recipient in relation to subsequent Order Forms or an extension or renewal of this Agreement are payable at the Effective Date specified in the applicable Order Form or in the extension or renewal.
- 8.2. Additional Services. Additional services may be delivered by Provider at the applicable hourly/daily rates set forth in the applicable Order Form(s) or, if not specified, at such rates as the parties may otherwise agree from time to time.
- 8.3. Invoicing; Late Payment. Unless otherwise agreed in the applicable Order Form, Provider will submit itemized invoices to the Recipient for the payments required in this Section 7, and all invoices will be due and payable within 30 days. The Recipient will pay a late fee on any overdue amounts equal to the lesser of (a) one percent (1%) per month or (b) the highest rate allowed under applicable law. Recipient also agrees to pay Provider all reasonable costs and expenses of collection of overdue amounts, including attorney's fees.
- 8.4. Suspension Upon Failure of Payment. Provider shall be entitled to immediately suspend all access codes and license keys and interrupt the functioning of the Keemotion System at any time after delivery of written notice to the Recipient of the Recipient's failure to pay any amount due under this Agreement. The suspension may continue as long as the payment (including any late fee) has not occurred in full.

9. Warranties

- 9.1. Function. Provider warrants only that each Deliverable will perform according to its descriptions and specifications in the relevant Order Form during the term of the applicable Order Form.
- 9.2. Infringement/Ownership. Provider warrants that it is and will be the owner of the Deliverables and of each and every component thereof, or the holder of a valid license thereto, and that it has and will maintain the full power and authority to grant the licenses granted in this Agreement throughout the term of the license(s) provided to the Recipient hereunder.
- 9.3. No Viruses. Provider warrants that as of the date of delivery the Deliverables contain no viruses or other computer instructions or technological means intended to disrupt, damage, or interfere with the use of computers or related systems.
- 9.4. Ability to Perform. Each party warrants that it has been duly authorized and has the full right and authority to enter into, execute, and perform its obligations under this Agreement and that no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required by this Agreement.
- 9.5. Disclaimers. EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED IN THIS SECTION 9, PROVIDER MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Provider does not

warrant that any software will perform without error or that it will run without immaterial interruption. Without limitation, Provider provides no warranty regarding, and will have no responsibility for, any claim arising out of: (a) a modification of a Deliverable made by anyone other than Provider, unless Provider approves such modification in writing; or (b) use of a Deliverable in any way other than strictly in accordance with the relevant Order Form. The warranty in Subsection 8.2 above does not apply to the extent that the infringement arises out of any of the conditions listed in Subsection 10.4 below.

- 9.6. Changes. During the term of the Agreement, the Recipient covenants that: (a) no changes will be made to its premises or equipment that would adversely impact the functioning of the Keemotion System or would cause the Recipient's premises or equipment to no longer comply with the Keemotion Technology Specifications; and (b) the elements of the Keemotion System will not be damaged, altered, relocated or in any way adversely impacted.
- 9.7. Internet access. The Recipient covenants that its premises shall be equipped with fully operational Internet access, meeting at least the minimum requirements detailed in the Keemotion Technology Specifications.
- 9.8. Usage. The Recipient covenants that the Keemotion System will only be used for recording of matches or training sessions at the Recipient's premises and that the Keemotion System will only be used for recording the matches and training sessions of the Recipient's team(s) specified in the relevant Order Form. Any unauthorized use of the Keemotion System will result in additional charges and/or the suspension of service.
- 9.9. Compliance. The Recipient covenants that the Keemotion System will only be used in strict compliance with (a) the rules of the League/Association to which the Recipient belongs; and (b) the universal rules and standards of fair-play in sports competition.

10. Recipient Obligations.

- 10.1. General. In order to enable Provider to maintain the Keemotion System, the Recipient shall, at its own cost and throughout the term of the Agreement: (a) make available to Provider a secured remote access to the Keemotion System and the Recipient's IT equipment to which the Keemotion System is connected; (b) grant Provider access to all areas of the Recipient's premises equipped with the Keemotion System elements or to which access is reasonably necessary to ensure maintenance of the Keemotion System; (c) cooperate with Provider to enable Provider to access and maintain the Keemotion System and its interface/integration with Recipient's relevant premises and equipment; (d) ensure that the scoreboard in Recipient's premises is activated and properly functioning; and (e) provide notice of any deviations from the official season calendar (as published prior to the beginning of the season by the relevant sports federation) at least two (2) business days prior to the new date.
- 10.2. Confidentiality of Access Codes. The Recipient is responsible for ensuring the confidentiality of the individual access codes to the Keemotion System and for causing all individual users of the Keemotion System to ensure confidentiality of their access codes. The Recipient shall be liable for any breaches of this Section 9.2 by its employees, representatives and/or contractors.

10.3. Damage. The Recipient is responsible for any damage caused by any of its employees, representatives and/or contractors accessing the Keemotion System or otherwise making use of the Keemotion System.

11. Third-Party Rights, Infringement Claims and Indemnity.

11.1. Certain Definitions. “**Additional Indemnified Parties**” shall mean the officers, directors, shareholders, parents, subsidiaries, agents, insurers, successors, and assigns of Provider or the Recipient, as applicable. An “**Indemnified Claim**” means any third party claim, suit, or proceeding against either party hereto (or its Additional Indemnified Parties) arising out of, related to, or alleging: (i) a breach of any of the representations, warranties or obligations of the other party to this Agreement or (ii) the intentional or grossly negligent acts or omissions of the other party to this Agreement (or any of such other party’s Additional Indemnified Parties). The “**Breaching Party**” shall mean the party hereto (being either Provider or the Recipient, as applicable) whose breach, or Additional Indemnified Party’s act or omission, is the cause of an Indemnified Claim.

11.2. Indemnity. The Breaching Party will indemnify, defend, and hold the other party and its Additional Indemnified Parties harmless against any Indemnified Claim, provided the party to be indemnified gives the Breaching Party prompt notice of such Indemnified Claim. The Breaching Party’s obligations set forth in the preceding sentence include, without limitation, retention and payment of reasonable attorneys’ fees and payment of court costs, as well as settlement at the Breaching Party’s expense, payment of judgments, or both.

11.3. Litigation. The Breaching Party shall control the defense of any Indemnified Claim including appeals, negotiations, and any settlement or compromise thereof; provided that the non-Breaching Party will have the right to approve the terms of any settlement or compromise that restricts its rights granted under this Agreement or subjects it to any ongoing obligations, which approval shall not be unreasonably withheld, conditioned or delayed.

11.4. Exclusions. Provider’s obligations set forth in Subsection 10.2 above do not apply to the extent that an Indemnified Claim arises out of: (a) the Recipient’s breach of this Agreement; (b) modifications to a Deliverable made without Provider’s written consent; (c) the Recipient’s failure to incorporate revisions to a Deliverable that would have avoided any infringement alleged in an Indemnified Claim, provided Provider offered such revisions without fees or charges not otherwise required pursuant to this Agreement; (d) use of a Deliverable in combination with hardware or software not provided by Provider: (i) that is specifically forbidden by the relevant Order Form (including without limitation any specifications included or referenced therein); or (ii) that is not designated in the Order Form as available for interface with the Deliverable, unless such hardware or software is necessary for the Deliverable to perform a function listed in such Order Form. Recipient’s obligations set forth in Subsection 10.2 above do not apply to the extent that an Indemnified Claim arises out of the Provider’s breach of this Agreement.

11.5. Third Party IP. The Recipient represents that it has obtained from all the concerned third parties the necessary authorizations to create, save, use, modify, maintain, etc. the Keemotion System Records in accordance with this Agreement without infringing any Intellectual Property Rights. Furthermore, the Recipient agrees to, at its own expense, defend Provider, its officers, directors, shareholders, parents, subsidiaries, agents, insurers, successors, and assigns or, at its option, to settle any claim or action brought against Provider alleging that the Keemotion System Records (or any part thereof)

infringe the Intellectual Property Rights of a third party, and the Recipient shall, upon Provider's request, indemnify Provider for all losses, damages, costs and expenses (including legal fees) incurred by or awarded against Provider as a result of or in connection with any such infringement claim.

12. Limitation of Liability.

(i) IN NO EVENT WILL PROVIDER'S OR PROVIDER'S AFFILIATES' LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED IN AGGREGATE PER CLAIM AND PER YEAR, THE TOTAL AMOUNT OF FEES (COSTS, EXPENSES AND ADDITIONAL SERVICES EXCLUDED) INVOICED BY PROVIDER TO THE RECIPIENT FOR THE YEAR IN WHICH THE CLAIM HAS BEEN NOTIFIED TO PROVIDER; AND (ii) IN NO EVENT WILL PROVIDER OR PROVIDER'S AFFILIATES BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES. THE LIABILITIES LIMITED BY THIS SECTION 11 APPLIES: (A) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; (B) EVEN IF PROVIDER IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (C) EVEN IF RECIPIENT'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. If applicable law limits the application of the provisions of this Section 12 Provider's and its affiliates' liability will be limited to the maximum extent permissible under applicable law.

13. Confidentiality and Nondisclosure.

- 13.1. Confidential Information. "**Confidential Information**" shall mean the following items of proprietary or otherwise confidential information that one party to this Agreement (the "**Disclosing Party**") discloses to the other (the "**Receiving Party**"): (a) any document the Disclosing Party marks "confidential"; (b) any information the Disclosing Party orally designates as "confidential" at the time of disclosure, provided the Disclosing Party confirms such designation in writing within five (5) business days; and (c) any information that the Receiving Party should otherwise know is confidential, proprietary or sensitive in nature based on its subject matter. For the avoidance of doubt, Provider's Confidential Information includes, without limitation, intellectual property and Intellectual Property Rights, trade secrets, information regarding the Keemotion Technology and the Keemotion System (or any of their elements). Notwithstanding the foregoing, Confidential Information does not include information that: (i) is lawfully in the Receiving Party's possession at the time of disclosure, based on tangible evidence in existence at the time of disclosure; (ii) is independently developed by the Receiving Party without use of or reference to Confidential Information as shown by tangible evidence; (iii) becomes known publicly, before or after disclosure, other than as a result of the Receiving Party's improper action or inaction; or (iv) is approved for release in writing by the Disclosing Party.
- 13.2. Nondisclosure and Nonuse Obligations. The Receiving Party will not use Confidential Information for any purpose other than to facilitate provision of the Services. The Receiving Party: (a) will not disclose Confidential Information to any employee or contractor of the Receiving Party unless such person needs access in order to facilitate provision of Services; (b) will not disclose Confidential Information to any other third party without the Disclosing Party's prior written consent; and (c) will not utilize or exploit the Disclosing Party's Confidential Information except as expressly contemplated by this Agreement. Without limiting the generality of the foregoing, the Receiving Party will protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but no less than reasonable care, and shall be responsible for breaches of this Section 12 by its

employees, contractors, affiliates or representatives. The Receiving Party will promptly notify the Disclosing Party of any misuse or misappropriation of Confidential Information that comes to the Receiving Party's attention. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information as required by applicable law or by proper legal or governmental authority, provided the Receiving Party gives the Disclosing Party prompt notice of any such legal or governmental demand and reasonably cooperates with the Disclosing Party in any effort to seek a protective order or otherwise to contest such required disclosure, at the Disclosing Party's expense.

- 13.3.** Third Parties. The Recipient shall, during the term of this Agreement, keep confidential, and shall not disclose without the prior written consent of Provider or unless required by applicable law or court order, to any third party any Confidential Information or other proprietary information of Provider or Provider's affiliates disclosed to the Recipient hereunder, including, without limitation, information regarding the KEEMOTION TECHNOLOGY, the KEEMOTION SYSTEM (or any of their elements), Provider Intellectual Property Rights, trade secrets and information of commercial value related to Provider's or providers affiliates' business operations, unless such information is public knowledge at the time of disclosure, or subsequently becomes public knowledge other than by breach of this Agreement.
- 13.4.** Employees. The Recipient covenants that it will cause its staff members (employees, consultants, students, trainees, etc.) and other affiliates and contractors who will use the KEEMOTION SYSTEM and/or have access Confidential Information of Provider or Provider's affiliates to comply with such requirements, and the Recipient shall be responsible for any violations thereof caused by such members, affiliates and/or contractors.
- 13.5.** Injunctive Relief. The Receiving Party agrees that breach of this Section 13 might cause the Disclosing Party irreparable injury, for which monetary damages may not provide adequate compensation, and that in addition to any other remedy available at law or in equity, the Disclosing Party shall be entitled to injunctive relief against such breach or threatened breach, without proving actual damage or posting a bond or other security.
- 13.6.** Termination and Return. Upon termination of this Agreement or at any time upon the Disclosing Party's written request, the Receiving Party shall return all copies of Confidential Information to the Disclosing Party or certify, in writing, the destruction thereof.
- 13.7.** No Ownership Rights Conferred. Nothing in this Agreement shall transfer ownership of Confidential Information or otherwise grant a license or any other rights thereto. Except to the extent that another section of this Agreement specifically provides to the contrary, the Disclosing Party will retain all right, title, and interest in and to all of its Confidential Information. The Disclosing Party makes no representations or warranties as to the accuracy of any Confidential Information disclosed by it hereunder.

14. Data Management & Security.

- 14.1.** Access, Use, & Legal Compulsion. Unless it receives the Recipient's prior written consent, Provider: (i) will not access or use Project Data other than as necessary to facilitate the Services; and (ii) will not give any third party access to Project Data. Notwithstanding the foregoing, Provider may disclose Project Data as required by applicable law or by proper legal or governmental authority. Provider will give the Recipient prompt notice of any such legal or governmental demand and reasonably cooperate with Recipient in

any effort to seek a protective order or otherwise to contest such required disclosure, at the Recipient's expense.

- 14.2. Individuals' Access. Provider will not allow any of its employees to access Project Data, except to the extent that an employee needs access in order to facilitate the Services
- 14.3. Compliance with Law & Policy. Provider will comply with all applicable federal and state laws and regulations governing the handling of Project Data.
- 14.4. Leaks. Provider will promptly notify the Recipient of any actual or potential exposure or misappropriation of Project Data that comes to Provider's attention. Provider will cooperate with the Recipient and with law enforcement authorities in investigating any such leak. Provider will likewise cooperate with the Recipient and with law enforcement agencies in any effort to notify injured or potentially injured parties.

15. Insurance.

During the term of this Agreement, the Recipient will maintain in full force and effect a commercial general liability insurance policy of at least \$250,000 covering personal injury and property damage, including without limitation contractual liability, worker's compensation and employer's liability insurance.

16. Term & Termination.

- 16.1. Term. The term of this Agreement shall commence on the Effective Date and continue until the earlier of (a) such time as Provider has performed all of its material obligations hereunder and under all applicable Order Forms or (b) termination by either party as otherwise specifically authorized therein.
- 16.2. Termination. In addition to termination or expiration in accordance with any other provisions hereof, this Agreement and/or any Order Form may be terminated (a) at any time by mutual written consent of the parties, (b) by the non-breaching party, fifteen (15) days after delivery of notice to the breaching party of such breaching party's material breach of this Agreement or failure to perform any of its material obligations hereunder; *provided, however*, that the breaching party shall have the opportunity to cure its breach during such fifteen (15)-day period, (c) by Provider, five (5) days after delivery of written notice to the Recipient of the Recipient's failure to make a payment when due hereunder; *provided, however*, that the Recipient shall have the opportunity to cure its breach during such five (5)-day period, and (d) by either party, immediately upon delivery of written notice to the non-terminating party in the event the non-terminating party (i) shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as such debts become due, (ii) shall make an assignment for the benefit of creditors, or shall petition or apply to any tribunal for the appointment of a custodian, receiver or trustee for such party or a substantial part of its assets, (iii) shall commence any voluntary proceeding under any bankruptcy, reorganization, arrangement, dissolution or liquidation law or statute of any jurisdiction, or (iv) shall have had any such petition or application filed, or shall have had any such proceeding commenced, against it, in which an adjudication or appointment is made or order for relief is entered and which remains undismissed or unstayed for a period of ninety (90) days or more.
- 16.3. Effects of Termination or Expiration.
 - 16.3.1. Upon termination of this Agreement: The Recipient will (i) immediately return to Provider or make available to Provider – at Provider's choice – all the elements of the KEEMOTION SYSTEM in good condition and repair, ordinary wear and tear excepted; (ii)

uninstall any software related to the KEEMOTION SYSTEM which has been installed on the Recipient's (or third parties related to the Recipient) devices; (iii) return or destroy and provide evidence of destruction – at Provider's choice - any documentation, data, records, etc. in possession of the Recipient (or third parties related to the Recipient) as a consequence of the performance of this Agreement and/or the use of the KEEMOTION SYSTEM. Provider will (i) keep the KEEMOTION records, (ii) take possession of the KEEMOTION SYSTEM, KEEMOTION SOFTWARE and all elements of the KEEMOTION TECHNOLOGY provided hereunder and (iii) interrupt all access codes, licenses keys and the functioning of the KEEMOTION SYSTEM.

- 16.3.2.** The following provisions shall survive termination or expiration of this Agreement or of any Order Form: (i) any obligation of the Recipient to pay for Services rendered prior to termination; (ii) Sections 2 and 8.2, 9, 10, 11,12 and 13 of this Agreement; and (iii) any other provision of this Agreement that must survive termination to fulfill its essential purpose.

17. Advertising

- 17.1.** Advertising. At no additional cost to Provider, Provider and its affiliates (a) may mention the existence of this Agreement; and (b) may identify the Recipient as a business reference, in each case for Provider's reasonable advertising and promotional purposes (including on Provider's web site and in Provider's advertising materials).

18. Maintenance of the Keemotion System / Helpdesk

- 18.1.** Support. Provider will periodically maintain the Keemotion System and provide updates of the Keemotion Software Package (within the limits of the updating schedule of the concerned editor in case of software provided by a third party). Provider will make available to the Recipient access to its helpdesk (by e-mail, internet or any other means) to allow the Recipient to report any technical issues with the Keemotion System. Provider will acknowledge receipt of any request logged with the helpdesk via the agreed procedure within twenty-four (24) hours, except weekends and public holidays. Except where the reported technical issue has a materially adverse impact on the performance of the Keemotion System, Provider may decide to remedy within the framework of a forthcoming software update and/or maintenance operation.
- 18.2.** Limitations. Unless the Recipient has subscribed to extended guarantee and maintenance services, the Recipient is entitled to a maximum of ten (10) requests to the helpdesk per annum and a maximum of one (1) on-site intervention by Provider per annum. Additional requests or interventions shall be invoiced by Provider at the then applicable hourly rates. The foregoing maintenance service does not cover costs associated with on-site support, except in case of defect of the installed material.

19. Miscellaneous

- 19.1.** Notices. Notices pursuant to this Agreement shall be sent to the addresses below, or to such others as either party may provide in writing in conformance with this Section 18.1. Such notices will be deemed received at such addresses upon the earlier of (a) actual receipt or (b) delivery in person or by internationally recognized courier service.

For Provider:
Keemotion LLC
7 West Cross Street
Hawthorne NY 10562

Attn: Greg Adams

For Recipient:

Address as indicated on the relevant Order Form.

- 19.2. Independent Contractors.** The parties shall be for all purposes independent contractors and shall so represent themselves in all regards. Neither party shall be the agent of the other and neither may bind the other in any way. The parties agree that no Provider employee, agent or contractor will be an employee of Recipient. Provider will be responsible for all employment rights and benefits of Provider employees, including without limitation: (a) federal, state, and local income and employment taxes and social security contributions; (b) workers' compensation, health benefits, vacation pay, holiday pay, profit sharing, retirement, pension, disability benefits, and other health and welfare benefits, plans, or programs; and (c) insurance.
- 19.3. No Waiver.** Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than in an express waiver made by an authorized representative of such party in writing. No waiver of a breach of this Agreement will constitute a waiver of any prior or subsequent breach of this Agreement.
- 19.4. Force Majeure.** To the extent caused by force majeure, no delay, failure, or default will constitute a breach of this Agreement. Provider is authorized to suspend one or several of its obligations or to partially or totally cancel this Agreement without liability to the Recipient in exceptional circumstances and/or force majeure events which might have been anticipated but which consequences cannot be avoided or overridden with reasonable efforts (such as, but not limited to: war, troubles, destruction by fire or other means, non-accessibility of the means of (tele) communication including Internet access, interruption or disturbance in the electrical power supply, legal or governmental decisions, total or partial non-performance of suppliers, sub-contractors or execution agents, strikes, lock-outs, disturbances in the internal organization) whether these exceptional circumstances or force majeure affect Provider, Provider's subcontractors or contracting parties, or the Recipient. The Recipient's obligation to pay for services previously rendered shall not be suspended by such exceptional circumstances or force majeure events.
- 19.5. Unforeseen Events.** If, during the term of the Agreement, unforeseen circumstances arise which make the performance of the Agreement by Keemotion more difficult or more expensive, Keemotion shall be authorized to suspend the Agreement and/or to adapt its obligations under the Agreement in order to restore the economic balance of the Agreement.
- 19.6. Assignment & Successors.** The Recipient may not assign this Agreement or any of its rights or obligations hereunder without Provider's express written consent. Either party may assign this Agreement to the surviving party in a merger of that party into another entity. Except to the extent forbidden in the previous sentence, this Agreement will be binding upon and inure to the benefit of the respective successors and assigns of the parties. Provider may subcontract or otherwise arrange for another person to perform any part of this Agreement, or assign the Agreement to any third party.
- 19.7. Choice of Law & Jurisdiction.** This Agreement shall be governed by and interpreted solely in accordance with the internal laws of the State of New York, United States of America. The parties hereto irrevocably submit to exclusive jurisdiction of the courts serving New York County, New York for any dispute arising hereunder, and hereby waive, to the fullest extent allowable under applicable law, any claim or defense that suit

may not be brought or is not maintainable in said courts or that the venue thereof may not be appropriate. Any judgment entered by such courts shall be enforceable in any court of competent jurisdiction worldwide.

- 19.8.** Severability. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement shall continue in full force and effect.
- 19.9.** Conflicts among Attachments. In the event of any conflict between the terms of this Agreement and those of any attachment, including without limitation any Order Form, the terms of this Agreement shall govern.
- 19.10.** Counterparts. This Agreement may be executed in one or more counterparts. Each counterpart shall be deemed an original, but all of such counterparts shall constitute a single instrument.
- 19.11.** Construction. The parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favor of or against either party by reason of authorship.
- 19.12.** Entire Agreement. This Agreement and any applicable Order Form(s) sets forth the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to the subject matter hereof.
- 19.13.** Amendment. This Agreement may not be modified except in a writing signed by an authorized representative of each party.