



ORDER FORM

| <u>CUSTOMER CONTACT INFORMATION</u> | | | |
|-------------------------------------|--|-------------------------|--|
| <u>CUSTOMER:</u> | | <u>ADDRESS:</u> | |
| <u>ADMINISTRATOR CONTACT:</u> | | <u>CITY/STATE/ZIP:</u> | |
| <u>EMAIL:</u> | | <u>BILLING CONTACT:</u> | |
| <u>PHONE:</u> | | <u>EMAIL:</u> | |
| <u>PROMOTION</u> | | <u>PHONE:</u> | |

| <u>SERVICE</u> | <u>DESCRIPTION</u> |
|----------------|--------------------|
|----------------|--------------------|



ON-PREMISE SDK

FEE TABLE

NUMBER OF DEPLOYMENTS

COST PER DEPLOYMENT

MAX ANNUAL IP REVENUE

TERMS AND CONDITIONS

AUTHORITY

THIS PURCHASE ORDER IS MADE PURSUANT TO THE MASTER LICENSE AGREEMENT BETWEEN CLARIFAI, INC. AND THE CUSTOMER LISTED ABOVE, THE TERMS OF WHICH ARE INCORPORATED HEREIN.



| | |
|--|--|
| <u>COMMENCEMENT DATE:</u> | |
| <u>TERM & TERMINATION DATE:</u> | |
| <u>PAYMENT TERMS:</u> | NET 30 |
| <u>INVOICED:</u> | ANNUAL. Overage fees, if applicable, will be invoiced monthly. |
| <u>AUTO-RENEW:</u> | THIS PURCHASE ORDER WILL RENEW FOR SUBSEQUENT TERMS OF ONE YEAR UNLESS EITHER PARTY PROVIDES WRITTEN NOTICE OF NON-RENEWAL TO THE OTHER PARTY AT LEAST 30 DAYS PRIOR TO THE END OF CURRENT TERM. |
| <u>MARKETING</u> | IN ADDITION, THE PARTIES WILL PARTICIPATE IN THE FOLLOWING JOINT MARKETING ACTIVITIES: (I) CUSTOMER AGREES TO ALLOW CLARIFAI TO WRITE A CASE STUDY FOR USE IN MARKETING MATERIALS, OR WHITEPAPERS, OR OTHER INSTRUMENTS IN A FORM AND CONTENT REASONABLY ACCEPTABLE TO CLARIFAI; (II) DURING THE TERM, CUSTOMER AND CLARIFAI MAY ENGAGE IN JOINT MARKETING ACTIVITIES WHICH PROMOTE THEIR PRODUCTS OR SERVICES, WHICH WILL INCLUDE CO-BRANDED CONTENT AND A JOINT PRESS RELEASE. |
| <u>STORE LOCATIONS</u> | LISTED ON <u>EXHIBIT A</u> |



IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS ORDER FORM.

CLARIFAI, INC.

Signature

Name: MATTHEW ZEILER

Title: CEO & FOUNDER

[CUSTOMER NAME]

Signature

Name

Title



MASTER LICENSE AGREEMENT

This Master License Agreement (this “Agreement”) is made as of _____, _____ (the “Effective Date”), between Clarifai, Inc., a Delaware corporation with a place of business at 137 Varick Street, 3rd Floor, NY, NY 10013 (“Clarifai”), and _____, a [state] [corporation/limited liability company/etc.] with a place of business at _____, (“Customer”) (each of Clarifai and Customer, a “Party”; together, the “Parties”).

The Parties hereby agree as follows:

1 Definitions. As used in this Agreement, the following terms will have the following meanings:

- 1.1 “**Affiliate**” means any entity that Customer owns or controls more than 50% of either the entity’s voting rights or the controlling body of the entity, but only for so long as this control continues to exist.
- 1.2 “**Commencement Date**” means, with respect to specific Software, the date on which Clarifai ships the first copy of such Software to Customer or, if no delivery is necessary, the effective date of the relevant Order Form.

- 1.3 “**Documentation**” means the documentation pertaining to the use of the Software and made available to Customer by Clarifai or its licensors.
- 1.4 “**Fees**” means Software license fees, Support fees, Upgrade fees, and all other fees or charges arising under this Agreement.
- 1.5 “**Key**” means a numerical or alphanumeric code or physical device necessary to gain access to or operate certain Software on certain media as delivered by Clarifai hereunder.
- 1.6 “**Order Form**” means the document pursuant to which Customer orders Software, Support, or Upgrades from Clarifai in accordance with Section 3.1 hereof.
- 1.7 “**Software**” means the software programs listed on the applicable Order Form, in object code only unless otherwise stated therein,



and provided by Clarifai to Customer, including any Upgrades thereto provided by Clarifai or its licensors to Customer.

1.8 **“Support”** means technical support services described in an Order Form or Statement of Work if attached hereto.

1.9 **“Term”** has the meaning set forth in Section 4.1.

1.10 **“Upgrades”** means any maintenance patches, new releases, or new versions for Software provided to Customer by Clarifai or its licensors.

2 **License Grants and Limitations.**

2.1 **Software License.** Subject to all the terms and conditions of this Agreement and any applicable Order Form, Clarifai hereby grants to Customer a nonexclusive, nontransferable, nonsublicensable license during the Term under Clarifai’s intellectual property rights in the Software to use such number of copies of the Software identified in the Order Form solely for its own internal business purposes and in accordance with the other restrictions set forth herein and in any applicable Order Form. The Software may only be copied as may be necessary for backup purposes or to replace a defective copy. If Customer is unable to operate the Software on the computer equipment due to an equipment malfunction, the Software may be transferred temporarily to other computer equipment during the period of equipment malfunction.

2.2 **Documentation License.** Subject to all the terms and conditions of this Agreement, Clarifai hereby grants to Customer a nonexclusive, nontransferable, nonsublicensable license during the Term under Clarifai’s intellectual property rights in the Documentation to use and copy it in support of Customer’s licensed use of the Software.

2.3 **Use by Affiliates.**

2.3.1 **Addendum.** The Software and Documentation may be used by Affiliates of Customer provided that prior to any such use each Affiliate executes a mutually agreeable addendum to this Agreement by which the Affiliate agrees to be bound by the terms hereof.

2.3.2 **Customer Responsibility.** Any use by Customer Affiliates will be subject to the following: (a) Customer is responsible for the acts or omissions of its Affiliates as if they were Customer’s acts or omissions; (b) Customer shall indemnify Clarifai against all losses and damages arising from breach of this Agreement by its Affiliates; and (c) such use will not constitute a violation under any applicable export law or regulation.

2.4 **Restrictions.**

2.4.1 **General.** Customer acknowledges that the Software contains valuable trade secret and confidential information of Clarifai or its licensors. Customer shall take the actions necessary to fulfill its obligations hereunder by instruction or agreement with its employees or agents who are permitted access to the Software or Documentation. Customer shall only give access to the Software or Documentation on a need-to-know basis.

2.4.2 **Proprietary Rights.** Title to all patents, copyrights, trade secrets, and other proprietary rights in or related to the Software and Documentation (including all of the parts thereof) are and will remain the exclusive property of Clarifai or its licensors. Customer will not acquire any right in the Software or Documentation except the limited rights specified in this Agreement, or take any action that jeopardizes Clarifai’s or its licensors’ proprietary rights. Unless otherwise specifically agreed in writing, Clarifai or its licensors will own all rights in



any copy, translation, modification, adaptation, or derivation of the Software, including any improvement or development thereof, whether or not authorized by Clarifai or the applicable licensor. At the request of Clarifai or the applicable licensor, Customer shall execute and deliver to Clarifai any instrument that may be appropriate to assign these rights to Clarifai or its licensor or perfect these rights in Clarifai's or its licensors' names.

2.4.3 **No Implied Licenses.** Any use, modification, or distribution of the Software or Documentation by Customer outside the scope of the express licenses granted is prohibited.

2.4.4 **No Reverse-Engineering.** Customer will not, and will not knowingly permit others to: (a) modify the Software; or (b) decompile, reverse-engineer, disassemble, or otherwise attempt, directly or indirectly, to obtain or create source code for the Software. Notwithstanding the foregoing, decompiling the Software is permitted solely to the extent the laws of Customer's jurisdiction give Customer the right to do so to obtain information necessary to render the Software interoperable with other software; provided, however, that Customer must first request such information from Clarifai and Clarifai may, in its sole discretion, either provide such information to Customer or impose reasonable conditions, including a reasonable fee, on such use of the Software to ensure that Clarifai's or its licensors' proprietary rights in the Software are protected. Customer acknowledges and agrees that the immediately preceding sentence may not be applicable to third-party Software.

2.4.5 **Unauthorized Distribution or Copying.** Other than in accordance with this Agreement, Customer shall not, and shall not knowingly permit others to: (a) lease, license, sublicense, transfer, or assign any of its rights under this Agreement; (b) sell, rent, or distribute the Software, including providing access to the Software or using the Software to operate a service bureau or on a timesharing basis; or (c) use, copy, duplicate, or otherwise reproduce all or any part of the Software or Documentation. Any breach of the foregoing is a material breach of this Agreement that is incapable of cure.

2.4.6 **Required Proprietary Notices.** Customer shall ensure that each copy it makes of the Software or Documentation contains the same proprietary notices as provided by Clarifai or its licensors.

2.4.7 **Restricted Rights.** The Software and Documentation are provided with RESTRICTED RIGHTS.

2.5 **Reasonable Cooperation.** Customer shall, upon Clarifai's written request, provide reasonable cooperation (at Clarifai's expense) in order to secure and perfect the intellectual property rights in the Software. Customer shall promptly provide to Clarifai all relevant facts upon becoming aware of a likelihood of infringement or other illegal use or misuse by any third party of the Software or any intellectual property rights of Clarifai or any of its licensors. Customer shall provide reasonable cooperation in any suits and actions related thereto, at Clarifai's or its licensor's request and expense.

2.6 **Acceptance.** Without prejudice to any warranty rights herein, Customer will be deemed to have accepted the Software on the Commencement Date. All subsequent copies of a particular



Software product will be deemed accepted upon acceptance of the first copy delivered to Customer hereunder.

3 Order Forms and Payment of Fees.

3.1 Order Forms

3.1.1 **Initial Order.** On or prior to the Effective Date, Customer shall issue to Clarifai a purchase order on the order form provided by Clarifai (the “Order Form”), which form will include the Software that Customer wishes to license or obtain from Clarifai and any applicable Support and/or Upgrades being purchased.

3.1.2 **Order Form Content.** Customer shall sign each Order Form. Customer shall ensure that all Order Forms submitted hereunder include the following information: (a) the specific Software to be licensed, including model or part number; (b) the Support and Upgrades, if any, ordered in connection with such Software; (c) the name and address of Customer; and (d) the physical location of the servers on which the Software will run.

3.1.3 **Subsequent Orders.** Following the Effective Date, Customer may order additional Software by submitting an additional Order Form to Clarifai. Clarifai shall use commercially reasonable efforts to accept or reject each such Order Form within ten (10) business days from the date of receipt of each Order Form. Any failure of Clarifai to accept or reject an Order Form within such period will be deemed a rejection. If Clarifai accepts an Order Form, Clarifai will deliver to Customer the Software or appropriate Keys within five (5) business days. Neither Party will have any obligation with respect to a rejected Order Form. Clarifai may by written notice at any time terminate Customer’s right to submit additional Order Forms.

3.1.4 **Applicable Terms.** Each Order Form is governed exclusively by the terms of this Agreement, whether or not this Agreement is specifically mentioned.

3.1.5 **Customer Purchase Orders.** Customer may, for purposes of administrative convenience, use Customer’s standard form of purchase order to provide the information requested in Clarifai’s form of Order Form. Any terms or conditions on any Order Form (including any Customer purchase order) in any way different from or in addition to the terms and conditions of this Agreement will have no effect whatsoever and Clarifai hereby rejects all such terms and conditions.

3.2 Payments.

3.2.1 **Prices.** Fees for the Software, Support and Upgrades are charged in accordance with the applicable Order Form.

3.2.2 **Payment Terms.** Unless otherwise stated on the applicable Order Form all payments are due within thirty (30) days after the Commencement Date. For all amounts not paid when due, Customer shall pay an additional charge equal to one and one-half percent (1.5%) of such amounts per month or partial month during which such amounts were owed and unpaid. Customer shall also reimburse Clarifai for all expenses incurred by Clarifai in exercising any of its rights under this Agreement or applicable law with respect to a default in payment or other breach of this Agreement by Customer, including reasonable attorney fees and the fees of any collection agency retained by Clarifai.

3.3 **Taxes.** Amounts payable by Customer hereunder do not include local, state, or federal sales, use, value-added, or other taxes or tariffs of the United States of America or other countries based on the licenses or services provided under this Agreement or



Customer's use thereof. Customer shall pay all such taxes or tariffs as may be imposed upon Clarifai or Customer, except income or similar taxes imposed on Clarifai by the United States of America or any state or local government therein. Customer will be invoiced for, and Customer shall pay, any such taxes or tariffs if Clarifai is required to pay them on Customer's behalf.

- 3.4 **Audit.** Upon Clarifai's written request, Customer shall provide to Clarifai a signed certification (a) verifying the Software is being used in accordance with the terms of this Agreement; and (b) listing the locations in which the Software is run. Clarifai may, at Clarifai's expense and not more than once annually, audit Customer's use of the Software and compliance with the terms hereof, upon notice to Customer. Any such audit will be conducted during business hours and will not unreasonably interfere with Customer's business activities. Customer shall provide Clarifai with all reasonable information and assistance (including copies of related software applications and other software) required to enable Clarifai to determine whether Customer is in compliance with the license granted hereunder. If an audit reveals that Customer has underpaid Fees to Clarifai, Customer will be invoiced for the underpaid Fees based upon Clarifai's generally available price list at the time the Fees would have otherwise been incurred, together with interest thereon at a rate of one and one-half percent (1.5%) per month or partial month or the highest rate allowed by law, whichever is less, compounded, during which any amounts were owed and unpaid. If an audit reveals that Customer has underpaid Fees totaling 5% or more of the Fees due in any year, Customer shall reimburse Clarifai all reasonable costs, fees, and expenses associated with the audit.

4 Term and Termination.

- 4.1 **Term.** This Agreement commences on the Effective Date and continue until the termination date, if any, set forth on the applicable Order Form, unless otherwise terminated as set forth in Section 4.2 (the "**Term**"). If no termination date is specified, then the licenses hereunder will be perpetual, subject only to termination under Section 4.2.
- 4.2 **Termination.** This Agreement may be terminated (i) by either party upon thirty (30) days prior written notice in the event of a material breach of this Agreement by the other party which is not cured within such period; (ii) by either party, immediately, if the other shall seek protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable insolvency proceeding, or if any such insolvency proceeding is instituted against the other (and not dismissed within one hundred twenty (120) days); or (iii) by Clarifai at any time following a breach by Customer of the license rights granted to it hereunder.
- 4.3 **Effect of Termination.** Upon termination of this Agreement, all licenses granted to Customer will immediately terminate. Termination of this Agreement by either Party will not limit either Party from pursuing any other remedies available to it, including injunctive relief, nor will such termination release Customer from any obligation to pay all Fees that have accrued or that Customer has agreed to pay under any Order Form. The Parties' rights and obligations under Sections 2.4, 2.5, 2.6, 3.2, 3.3, 3.4, 4, 6, 7, 8, 9, and 11 will survive termination of this Agreement. If this Agreement is terminated, Customer shall: (a) immediately cease using the Software and Documentation; and (b) certify to Clarifai within thirty (30) days after termination that Customer has destroyed or



returned to Clarifai the Software and Documentation and all copies remaining in Customer's possession. This requirement applies to copies in all forms, partial and complete, in all types of media and computer memory, and whether or not modified or merged into other materials.

5 Warranties.

5.1 **Limited Warranty.** Clarifai warrants that each unmodified copy of a Software product will substantially conform to the applicable published documentation at the time of delivery, when operated in accordance with the applicable user manuals. If Customer does not provide written notice to Clarifai that Customer has a claim for breach under this Section 5.1 within ninety (90) days after the Commencement Date with respect to a particular Software product, then its right to make any such claim will terminate. The warranty under this Section 5.1 does not apply to subsequent licenses of the same Software product after such period has passed for the initially licensed Software product.

5.2 **Remedies.** For any breach of warranty hereunder, Clarifai shall exercise commercially reasonable efforts to modify the applicable Software such that the applicable warranty is true and to deliver to Customer the modified Software, if any. If Clarifai concludes that such modification is impracticable, then: (a) with respect to Clarifai Software, Clarifai will refund the applicable Fees paid for the license of the nonconforming Software; and (b) with respect to third-party Software, Clarifai will exercise commercially reasonable efforts to obtain for Customer from the applicable vendor a refund of the applicable Fees paid for the license of the nonconforming Software; in both cases Customer must first return to Clarifai all

copies of the applicable Software in Customer's possession or control.

6 Disclaimers.

6.1 The express remedies set forth in Section 5 constitute Customer's exclusive remedies, and Clarifai's sole obligation and liability, for any claim (a) that any Software or other deliverable provided hereunder does not conform to specifications or is otherwise defective, or (b) that any services were performed improperly.

6.2 EXCEPT FOR THE WARRANTIES SET FORTH IN SECTION 5.1, WHICH ARE LIMITED WARRANTIES AND THE ONLY WARRANTIES PROVIDED TO CUSTOMER, THE SOFTWARE AND ANY SERVICES ARE PROVIDED "AS IS," AND NEITHER CLARIFAI NOR ITS LICENSORS MAKE ANY ADDITIONAL WARRANTIES, EXPRESS, IMPLIED, ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, OR STATUTORY, AS TO ANY SOFTWARE OR SERVICES PROVIDED HEREUNDER, OR ANY MATTER WHATSOEVER. THE PARTIES DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE, AND NON-INFRINGEMENT.

6.3 NEITHER CLARIFAI NOR ITS LICENSORS WARRANT THAT THE SOFTWARE OR ANY SERVICES WILL MEET ANY CUSTOMER REQUIREMENTS NOT SET FORTH HEREIN, THAT THE SOFTWARE WILL OPERATE IN THE COMBINATIONS THAT CUSTOMER MAY SELECT FOR USE, THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. IF PRE-PRODUCTION (E.G., "ALPHA" OR "BETA") RELEASES OF SOFTWARE ARE PROVIDED TO



CUSTOMER, SUCH COPIES ARE PROVIDED “AS-IS” WITHOUT WARRANTY OF ANY KIND.

- 6.4 Except as may be done in accordance with Section 11.14, no statement by any Clarifai employee or agent, orally or in writing, will serve to create any warranty or obligation not set forth herein or to otherwise modify this Agreement in any way.

- 7 **LIMITATION OF LIABILITY.** EXCEPT WITH REGARD TO CLAIMS BASED UPON CUSTOMER’S BREACH OF SECTION 2.4, NEITHER PARTY NOR CLARIFAI’S LICENSORS WILL BE LIABLE FOR ANY SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF PROFITS, SAVINGS, REVENUE, OR USE, DAMAGED OR LOST FILES OR DATA, OR BUSINESS INTERRUPTION) THAT MAY ARISE IN CONNECTION WITH THIS AGREEMENT, THE USE OR SUPPORT OF THE SOFTWARE, OR ANY MATTER WHATSOEVER, REGARDLESS OF THE CAUSE OF ACTION OR CHARACTERIZATION OF THE DAMAGES, EVEN IF THE PARTY SOUGHT TO BE HELD LIABLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NEITHER CLARIFAI NOR ITS LICENSORS WILL BE LIABLE FOR ANY DAMAGES FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR AGGREGATE LIABILITY TO CUSTOMER ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE USE OR SUPPORT OF THE SOFTWARE, OR ANY MATTER WHATSOEVER, REGARDLESS OF THE CAUSE OF ACTION OR CHARACTERIZATION OF THE DAMAGES, EXCEEDING THE AMOUNT OF FEES PAID BY CUSTOMER UNDER THIS AGREEMENT DURING THE ONE-YEAR PERIOD PRECEDING THE FIRST ACT GIVING RISE TO LIABILITY. NEITHER PARTY NOR CLARIFAI’S LICENSORS WILL BE LIABLE FOR ANY

DAMAGES BASED ON ACTIONS OR OCCURRENCES THAT OCCURRED MORE THAN ONE YEAR BEFORE THE OTHER PARTY PROVIDES NOTICE OF THE CLAIM. THE FOREGOING LIMITATIONS OF LIABILITY ARE INDEPENDENT OF ANY EXCLUSIVE REMEDIES FOR BREACH OF WARRANTY IN THIS AGREEMENT, AND WILL SURVIVE AND APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDIES SPECIFIED HEREIN.

- 8 **Essential Basis of Bargain.** Customer acknowledges that the Fees charged by Clarifai in this Agreement reflect the overall allocation of risk between the Parties, including by means of the provisions for limitation of liability and exclusive remedies described in this Agreement. Such provisions form an essential basis of the bargain between the Parties and a modification of such provisions would affect substantially the Fees charged by Clarifai hereunder. In consideration of such Fees, Customer agrees to such allocation of risk and hereby waives any right, through equitable relief or otherwise, to subsequently seek a modification of such provisions or allocation of risk.

9 **Indemnity.**

- 9.1 **Clarifai Intellectual Property Indemnity.** Clarifai shall defend or, at its sole option, settle, at its own expense any suit, action, or proceeding brought in a court of competent jurisdiction against Customer by a third party to the extent it is based on a claim that any Software infringes any United States patent issued or any copyright or trade secret arising under the laws of any jurisdiction (an “IP Action”), and Clarifai shall pay damages finally awarded against Customer in such IP Action, or those monetary damages agreed to by Clarifai and the claimant in a monetary settlement of



such IP Action; provided that Clarifai will be relieved of the foregoing obligations unless Customer: (a) gives Clarifai prompt written notice of each such claim; (b) tenders to Clarifai sole control of the defense or settlement of each such IP Action; and (c) cooperates with Clarifai in defending or settling each such IP Action. If Clarifai receives notice of an allegation that any Software infringes or misappropriates a third party's intellectual property rights, or if Customer's use of any Software is prohibited by permanent injunction of a court of competent jurisdiction as a result of such an infringement or misappropriation, Clarifai may, at its sole option and expense: (i) procure for Customer the right to continue using such Software as provided hereunder; (ii) modify such Software so that it is no longer infringing; or (iii) replace the Software with other Software of equal or superior functional capability. If none of the foregoing is in Clarifai's determination commercially reasonable, Clarifai will have the right to terminate all licenses and sublicenses to such Software granted hereunder. If Clarifai terminates any Software licenses as described above: (1) Clarifai shall refund the applicable Fees paid for the license of such Software, prorated over a straight-line five-year period; and (2) Customer shall immediately deliver to Clarifai all copies of the applicable Software in Customer's possession or control. Notwithstanding any other provision of this Agreement, Clarifai will not accept new orders for Software that is subject to a claim of infringement.

9.2 **CLARIFAI IP INDEMNITY LIMITATIONS.** THE RIGHTS GRANTED TO CUSTOMER UNDER SECTION 9.1 WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND CLARIFAI'S SOLE OBLIGATION FOR ANY ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK,

OR OTHER PROPRIETARY RIGHT. CLARIFAI WILL HAVE NO LIABILITY, INCLUDING UNDER SECTION 9.1, FOR ANY CLAIM OF INFRINGEMENT OR MISAPPROPRIATION BASED UPON OR ARISING OUT OF: (A) ANY SOFTWARE MODIFIED WITHOUT THE APPROVAL OF CLARIFAI OR THE APPLICABLE LICENSOR; (B) ANY CUSTOMER OR THIRD-PARTY APPLICATION OR OTHER TECHNOLOGY; (C) USE OF THE SOFTWARE IN CONNECTION OR IN COMBINATION WITH EQUIPMENT, DEVICES, OR SOFTWARE NOT PROVIDED BY CLARIFAI (BUT ONLY TO THE EXTENT THAT THE SOFTWARE ALONE WOULD NOT HAVE INFRINGED); (D) COMPLIANCE WITH CUSTOMER'S DESIGN REQUIREMENTS OR SPECIFICATIONS; (E) THE USE OF SOFTWARE OTHER THAN AS PERMITTED UNDER THIS AGREEMENT, OR IN A MANNER FOR WHICH IT WAS NOT INTENDED; OR (F) USE OR DISTRIBUTION OF OTHER THAN THE MOST CURRENT RELEASE OR VERSION OF THE SOFTWARE (IF SUCH INFRINGEMENT OR CLAIM WOULD HAVE BEEN PREVENTED BY THE USE OF SUCH RELEASE OR VERSION).

9.3 **Customer Use Indemnity.** Except with respect to infringement of third-party rights for which Clarifai is obligated to indemnify under Section 9.1, Customer shall defend at its own expense any suit, action or proceeding brought against Clarifai or its licensors (the "Indemnified Parties") by a third party based on any claim arising in connection with Customer's use of the Software (a "Use Action"), and Customer will pay the damages incurred by an Indemnified Party in such Use Action, or those damages agreed to in a settlement of such Use Action, and all reasonable attorney fees incurred in connection therewith. Clarifai shall: (a) notify Customer promptly in writing of each such Use Action, (b) tender to Customer



sole control of the defense or settlement of each such Use Action at Customer's expense, provided, however, Customer may not settle a Use Action in a manner that would have an adverse impact on the business of an Indemnified Party without receiving the prior written consent of the Indemnified Party, and (c) cooperate and, at Customer's expense, assist in such defense. Clarifai will have the right to participate at its own expense in any such Use Action or related settlement negotiations using counsel of its own choice.

10 Technical Support. Clarifai shall provide Support and Upgrades in accordance with the terms and conditions stated in an Order Form or Statement of Work (if attached), or the applicable third-party technical support agreement, only if purchased pursuant to an Order Form accepted by Clarifai. Unless otherwise specifically stated, the applicable third party will provide Upgrades and technical support for third-party Software.

11 General.

11.1 Export. Customer shall comply with all applicable export laws and regulations of the United States of America, the European Union, and other countries ("Applicable Export Laws") and assure that no Software is: (a) exported, directly or indirectly, in violation of Applicable Export Laws; or (b) intended to be used for any purposes prohibited by the Applicable Export Laws, including nuclear, chemical, or biological weapons proliferation. The Parties shall not take any actions that would cause either Party to violate the U.S. Foreign Corrupt Practices Act of 1997, as amended.

11.2 U.S. Government End Users. The Software and Documentation qualify as "commercial items," as that term is defined at Federal Acquisition Regulation ("FAR") (48 C.F.R.) 2.101, consisting of "commercial computer software" and "commercial computer

software documentation" as such terms are used in FAR 12.212. Consistent with FAR 12.212 and DoD FAR Supp. 227.7202-1 through 227.7202-4, and notwithstanding any other FAR or other contractual clause to the contrary in any agreement into which the Agreement may be incorporated, Customer may provide to a government end user or, if this Agreement is direct, a government end user will acquire, the Software and Documentation with only those rights set forth in the Agreement. Use of either the Software or Documentation or both constitutes agreement by the government that the Software and Documentation are "commercial computer software" and "commercial computer software documentation," and constitutes acceptance of the rights and restrictions herein.

11.3 Notice. All notices under this Agreement, including notices of address change, must be in writing and will be deemed to have been given when sent by (a) registered mail, return receipt requested, or (b) a nationally recognized overnight delivery service (such as Federal Express), to the General Counsel of the appropriate Party at the relevant address first listed above, or to a Party's address as changed in accord with this Section 11.3.

11.4 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, unenforceable, or in conflict with any law of a federal, state, or local government, the validity of the remaining portions or provisions will remain in full force and effect.

11.5 Governing Law; Venue. This Agreement, and all matters arising under or related hereto, are governed according to the laws of the State of New York, without regard to its conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. All litigation



arising under or related to this Agreement must be brought in a state or federal court located in New York, NY, as permitted by law. Customer hereby consents to the personal jurisdiction of the above-referenced courts.

- 11.6 **No Waiver.** No failure on the part of either Party to exercise, and no delay in exercising, any right, power, or privilege will operate as a waiver thereof; nor will any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The waiver by either Party of any default or breach of this Agreement will not constitute a waiver of any other or subsequent default or breach.
- 11.7 **Assignment.** Neither Party may assign or transfer, by merger, operation of law or otherwise, this Agreement or any right or duty arising hereunder to a third party without the other Party's prior written consent. Any purported assignment in violation of this Section 11.7 is void. Notwithstanding the foregoing, Clarifai may transfer this Agreement and its rights and obligations hereunder in its sole discretion to a successor entity in the event of an acquisition of Clarifai, whether by equity or asset purchase, merger, corporate restructuring or reorganization, or the like.
- 11.8 **Independent Contractor; Use of Subcontractors.** Clarifai is an independent contractor and nothing in this Agreement or related to Clarifai's performance will be construed to create an employee relationship between Customer and Clarifai or any Clarifai employee or subcontractor. Clarifai may, in its discretion, utilize subcontractors to provide services hereunder.
- 11.9 **No Third-Party Beneficiaries.** This Agreement is an agreement between the Parties, and confers no rights upon any of the Parties' employees, agents, contractors or customers, or upon any other person or entity.

- 11.11 **Construction.** All references in this Agreement to "Sections" and "Exhibits" refer to the sections and exhibits of this Agreement. The words "hereof," "herein," and "hereunder" and other words of similar import refer to this Agreement as a whole, as the same may from time to time be amended or supplemented, and not to any subdivision contained in this Agreement. The word "including" when used herein is not intended to be exclusive and means "including, but not limited to." The word "or" when used herein is not intended to be exclusive unless the context clearly requires otherwise. Each of the Parties and their counsel have carefully reviewed this Agreement, and, accordingly, no rule of construction to the effect that any ambiguities in this Agreement are to be construed against the drafting Party will apply in the interpretation of this Agreement.
- 11.12 **Force Majeure.** Except with regard to any obligation to pay money hereunder, neither Party will be held responsible for any delay or failure in performance hereunder caused in whole or in part by fire, strike, flood, embargo, labor dispute, delay or failure of any subcontract, telecommunications failure or delay, act of sabotage, riot, accident, delay of carrier or supplier, voluntary or mandatory compliance with any governmental act, regulation or request, act of God or by public enemy, or any act or omission or other cause beyond such Party's control. If any such contingency does occur, the time to perform an obligation under this Agreement affected thereby will be extended by the length of time such contingency continues.



11.13 **Entire Agreement.** This Agreement, together with the Exhibits hereto and all Order Forms, which are hereby incorporated herein by this reference, contain all the agreements, representations, and understandings of the Parties and supersedes any previous understandings, commitments, representations or agreements, oral or written, with respect to the subject matter of this Agreement.

11.14 **Modification.** This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of

each Party that expressly states the sections of this Agreement to be modified; no other act, usage, or custom will be deemed to amend or modify this Agreement. Each Party hereby waives any right it may have to claim that this Agreement was subsequently modified other than in accordance with this Section.

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT AS OF THE EFFECTIVE DATE.

CLARIFAI, INC.

Signature

Name: MATTHEW ZEILER

Title: CEO & FOUNDER

[CUSTOMER NAME]

Signature

Name

Title



EXHIBIT A

STORE LOCATION LISTING: