TERMS OF SERVICE

PLEASE READ THESE TERMS OF USE CAREFULLY BEFORE USING ANY WEBSITE OR OTHER MATERIALS PROVIDED BY SECOND PEAK PRODUCTIONS LTD. THESE TERMS WILL AFFECT YOUR LEGAL RIGHTS AND OBLIGATIONS. YOU MUST READ AND ACCEPT THE FOLLOWING TERMS BEFORE USING OUR WEBSITE OR SERVICES.

LAST UPDATED: April 18, 2024

1. INTRODUCTION

1.1 Parties. Our website, accessible at www.xds-spark.com (the "**Website**") and any other associated materials, content and services, including all social media and online community channels, together form the XDS Spark platform (the "**Platform**"). The Platform is owned and operated by Second Peak Productions Ltd. ("**Spark**", "**us**", "**we**", or "**our**").

1.2 Summary. Through the Platform, Spark offers a global database of diverse buyers and service providers in creative industries, including game development, film, education, health, enterprise and more, providing a onestop-shop to meet production goals and grow your business.

1.3 Binding Agreement. These terms of service ("**Terms**") constitute an agreement between us and you. These Terms govern your use and access of the Platform and the products and services made available by us through the Platform (collectively our "**Products**"). **BY ACCESSING OR USING THE PLATFORM, OR BY CLICKING A BUTTON OR CHECKING A BOX INDICATING THAT YOU ACCEPT THESE TERMS, YOU CONFIRM THAT YOU HAVE READ THESE TERMS AND HEREBY ACCEPT AND AGREE TO BE BOUND BY AND COMPLY WITH THESE TERMS AND OUR PRIVACY POLICY. IF YOU DO NOT AGREE TO THESE TERMS OR THE PRIVACY POLICY, YOU MUST NOT ACCESS OR USE THE PLATFORM.**

1.4 Amendments to Terms. We may change or otherwise modify these Terms in the future in accordance with the terms and conditions herein, and you understand and agree that your continued access or use of the Platform after such change signifies your acceptance of the updated or modified Terms. We will note the date that revisions were last made to this Agreement at the top of these Terms, and any revisions will take effect upon posting. We will notify registered users of the Platform (such registered users to be referred to as "**Account Holders**") of material changes to these terms and conditions by either sending a notice to the email address associated with the Account Holder's profile or by placing a notice on the Website. Be sure to return to this page periodically to review the most current version of these Terms

1.5 Modifications to Platform. The Platform, including its Products, functionalities, features, offerings, pricing, information, and materials, may be changed, withdrawn, or terminated by Spark at any time in Spark's sole discretion without notice. Spark will not be liable if for any reason all or any part of the Platform is restricted to users or unavailable at any time or for any period.

1.6 **NOTICE OF BINDING ARBITRATION; WAIVER OF CLASS ACTION. THESE TERMS CONTAIN A BINDING ARBITRATION PROVISION IN SECTION 10.1 WHICH PROVIDES THAT YOU AND SPARK WILL RESOLVE ALL DISPUTES THROUGH MANDATORY AND BINDING ARBITRATION, UNLESS YOU OPT OUT THROUGH THE MECHANISM PROVIDED IN THESE TERMS OR ARE IN A PROVINCE, STATE, OR COUNTRY IN WHICH THE COURTS WILL NOT PERMIT YOU TO CONSENT TO BINDING ARBITRATION. THIS MEANS THAT, IN THE EVENT OF A DISPUTE WITH SPARK, YOU WILL NOT BE ABLE TO HAVE THAT DISPUTE RESOLVED BY A JUDGE OR A JURY. ADDITIONALLY, IN SECTION 10.2 OF THESE TERMS, YOU ALSO WAIVE YOUR RIGHT TO PARTICIPATE IN CLASS ACTIONS AGAINST SPARK. PLEASE CAREFULLY READ SECTIONS 10.1 AND 10.2.**

2. ACCOUNT

2.1 Registration. In order to access certain features of the Platform, you will need to become an Account Holder by creating an account (an "**Account**"), which may involve registering a unique user name and password (collectively, "**Credentials**"). When you create an Account, you must provide complete and accurate information. You are solely responsible for the activity that occurs on your Account, including your interaction and communication with others, and you must safeguard your Account and your Credentials. Towards this end, if you are an Account Holder, you agree to keep your contact information up to date.

2.2 Entities. If you are creating an Account for commercial purposes and are accepting these Terms on behalf of a company, organisation or other legal entity, you represent and warrant that you are authorised to do so and have the authority to bind such entity to these Terms, in which case the words "you" and "your" as used in these Terms shall refer to such entity and the individual acting on behalf of such entity.

2.3 Accounts May Not Be Transferred. Your Account may not be transferred, sold or otherwise encumbered in any manner. Your Account and Credentials are specific to you and may not be shared with any other person.

2.4 Communications with Spark. Spark may act upon any communication that is given through your Account. Spark is not required to verify the actual identity or authority of a person using your Account, but Spark may in its discretion at any time require verification of the identity of a person seeking to access your Account and may deny access to and use of your Account if Spark is not satisfied with the verification.

3. PAYMENT

3.1 Charges. You acknowledge and agree that your use of certain Products on the Platform may result in charges to you ("**Charges**"). When you purchase or subscribe for a Product on the Platform, you agree to pay the applicable Charges without delay.

3.2 Payment. By providing a payment method, such as a credit card, that is accepted by us, you represent and warrant that you are authorized to use such payment method and that you authorize us (or our third-party payment processor) to charge your payment method for all applicable Charges, which may include recurring subscriptions that auto-renew. If we, or our third-party payment processor, are unable to verify your payment method, or if it is otherwise invalid or not acceptable, the applicable Product may be suspended or cancelled.

3.3 Accurate Information. When incurring a Charge on the Platform, you must provide accurate and complete personal information as requested by us, such as your name, address, telephone number, e-mail address, credit card information, and billing address.

3.4 Payment Processor. We may use third-party payment processors to process your payments. In that case, your payments will be subject to the terms and conditions and privacy policies of such third-party payment processors. These terms and conditions and privacy policies will be made available to you before you incur a Charge on the Platform. We recommend that you read these terms and conditions and privacy policies before making a payment.

3.5 Refunds. Payments made for the purchase of Products on the Platform are non-refundable.

4. USE OF THE PLATFORM

4.1 Intellectual Property and Ownership. You understand and agree that the Platform and its entire contents (excluding Your Content), features, and functionality, including, but not limited to, all information, software, code, data text, displays, graphics, photographs, images, video, audio, music, broadcast, design, presentation, website layout,

selection, and arrangement, are owned by Spark, its licensors, or other providers of such material and are protected in all forms by intellectual property laws including, without limitation, copyright, trademark, patent, trade secret, and any other proprietary rights. The Spark name, the Spark logo, and all related names, logos, product and service names, designs, images, and slogans are trademarks of Spark or its affiliates or licensors. You must not use such marks without the prior written permission of Spark. Other names, logos, product and service names, designs, images, and slogans mentioned, or which appear on the Platform are the trademarks of their respective owners. Use of any such property, except as expressly authorized, shall constitute an infringement or violation of the rights of the property owner and may be a violation of federal or other laws and could subject the infringer to legal action.

Unless authorized by us in writing, you shall not directly or indirectly reproduce, compile for an internal database, distribute, modify, create derivative works of, publicly display, publicly perform, republish, download, store, or transmit any of the material on the Platform (excluding Your Content), in any form or medium whatsoever except your computer and browser may temporarily store or cache copies of materials being accessed and viewed.

4.2 Permitted Use. The following content standards apply to any and all content, material, and information a user submits or transmits (collectively, "**submit**") to the Platform or to other users or persons (collectively, "**User Submissions**") and any and all interactive functions of the Platform. Any and all User Submissions must also comply with all applicable federal, provincial, local, and international laws, regulations, and terms of service. Without limiting the foregoing, you warrant and agree that your use of the Platform and any User Submissions shall not:

(a) in any manner violate any applicable federal, provincial, local, or international law or regulation including, without limitation, any laws regarding the export of data or software, patent, trademark, trade secret, copyright, or other intellectual property, legal rights (including the rights of publicity and privacy of others) or contain any material that could give rise to any civil or criminal liability under applicable laws or regulations or that otherwise may be in conflict with these Terms or our Privacy Policy;

(b) in any manner violate the terms of use of any third-party website that is linked to the Website, including but not limited to, any third-party social media website;

(c) include or contain any material that is exploitive, obscene, harmful, threatening, abusive, harassing, hateful, defamatory, sexually explicit or pornographic, violent, inflammatory, or discriminatory based on race, sex, religion, nationality, disability, sexual orientation, or age or other such legally prohibited ground or be otherwise objectionable, such determination to be made in Spark's sole discretion;

(d) involve, provide, or contribute any false, inaccurate, or misleading information;

(e) impersonate or attempt to impersonate Spark, a Spark employee, another user, or any other person or entity (including, without limitation, by using email addresses or screen names associated with any of the foregoing);

(f) encourage any other conduct that restricts or inhibits anyone's use or enjoyment of the Platform, or which, as determined by us, may harm the Spark or users of the Platform or expose them to liability;

(g) cause annoyance, inconvenience, or needless anxiety or be likely to upset, embarrass, or alarm any other person;

(h) promote any illegal activity, or advocate, promote, or assist any unlawful act;

(i) send bulk emails, surveys, or other mass messaging, whether commercial in nature or not; engage in keyword spamming, or otherwise attempt to manipulate the Platform’s search results, or any third party website;

(j) give the impression that they originate from or are endorsed by us or any other person or entity, if this is not the case;

(k) use our Products, and any other information or content made available through our Platform, to engage in, directly or indirectly, any activity that competes with the business of Spark;

(l) use or attempt to gain unauthorised access to any Account which is not your own, or any aspects of the Platform you are not authorised to access; or

(m) upload to the Platform, or use the Platform to distribute, viruses, trojans, malware or other harmful software code of any nature.

4.3 Platform Availability. While we make commercially reasonable efforts to ensure that the Platform is available, we do not represent, warrant or guarantee in any way the Platform's continued or uninterrupted availability. You acknowledge that access and use of the Platform may be subject to bugs, malfunctions, delays, and downtime.

4.4 Information on Platform. Spark reserves the right to monitor, edit, review or remove content from the Platform at any time. While we make reasonable efforts to ensure that the information available through the Platform is accurate, we do not represent, warrant or promise (whether expressly or by implication) that any such information is accurate, complete or free from errors or omissions or fit or suitable for any purpose. Any reliance you may place on the information on the Platform is at your own risk.

4.5 Access to Platform. We do not represent the Platform will function as intended when used in conjunction with all hardware and with all software. You are solely responsible for obtaining and maintaining compatible devices necessary to access and use the Platform.

5. YOUR CONTENT

5.1 Responsibility for Your Content. You alone are responsible for all content that you submit, upload, or transmit to, through, or in connection with the Platform, such as text, images, photos, videos, and any information that you contribute to your user profile ("**Your Content**"). You assume all risks associated with Your Content, including anyone's reliance on its quality, accuracy, or reliability, and any risks associated with personal information you disclose. You represent that you own or have the necessary permissions to use and authorize the use of Your Content as described herein. You may not imply that Your Content is in any way sponsored or endorsed by Spark, unless otherwise agreed in writing by Spark.

5.2 Branding for White Labeling. Branding materials uploaded for white labeling (such as logos, trademarks, and color schemes) will only be used for customization within your account and will not be shared or displayed outside your account without your consent.

You may expose yourself to liability if, for example, Your Content contains material that is false, intentionally misleading, or defamatory; violates any third-party right, including any copyright, trademark, service mark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right; contains material that is unlawful, including illegal hate speech or pornography; exploits or otherwise harms minors; violates or advocates the violation of any law or regulation; or violates these Terms.

5.3 Our Right to Use Your Content. We may use Your Content in a number of different ways, including by publicly displaying it, reformatting it, creating derivative works from it, promoting it, and distributing it. As such, you hereby irrevocably grant us world-wide, perpetual, non-exclusive, royalty-free, assignable, sublicensable, transferable rights to use Your Content for any purpose. Please note that you also irrevocably grant the users of the Platform the right to access Your Content in connection with their use of the Platform. Finally, you irrevocably waive, and cause to be waived, against Spark and its users any claims and assertions of moral rights or attribution

with respect to Your Content. By "use" we mean use, copy, publicly perform and display, reproduce, distribute, modify, translate, remove, analyze, commercialize, and prepare derivative works of Your Content.

5.4 Branding Carve-Out. Notwithstanding Section 5.3, Spark will not use branding materials uploaded for white labeling for any purpose other than account customization.

5.5 Representations and Warranties. By submitting or transmitting Your Content to, through, or in connection with the Platform, you represent and warrant that you own or have the necessary rights to submit Your Content and have the right to grant the licence hereof to us, and each of our licensees, successors, and assigns to Your Content and comply with these Terms. You represent and warrant that all Your Content complies with applicable laws and regulations and the conditions of use and user submissions and site content standards set out in these Terms.

5.6 Ownership of Your Content. As between you and Spark, you own Your Content, subject to the license granted under Section 5.2.

5.7 Moderation of Your Content. Except as required by law, we reserve the right to screen, remove, edit, or reinstate Your Content at our sole discretion for any reason or no reason, and without notice to you.

5.8 Infringement Reports. As copyright holders ourselves, we respect copyright holders' rights and will quickly respond to any claims of copyright infringement reported on our Platform. If you find anything on our Platform that you believe infringes your copyright or the copyrights of a person you are authorized to represent, please report the alleged infringement to us at [info@xds-spark.com].

5.9 Partner Information Uploaded by Users. If you upload or import information relating to service providers or business partners (including names, email addresses, or company details), you represent and warrant that you have obtained all rights and consents necessary to provide such information. Spark processes such data solely for display within your account and does not disclose it to other users.

6. FEEDBACK

6.1 Feedback. By sending us any ideas, suggestions, documents or proposals ("**Feedback**"), you agree that (i) your Feedback does not contain any third party confidential or proprietary information, (ii) we are under no obligation of confidentiality, express or implied, with respect to the Feedback, (iii) we may have something similar to the Feedback already under consideration or in development, (iv) we have no obligation to review, consider, or implement the Feedback, or to return to you all or part of the Feedback, and (v) you grant us an irrevocable, non-exclusive, royalty-free, perpetual, worldwide, assignable, sublicensable, transferable license to use, modify, prepare derivative works of, publish, distribute and sublicense the Feedback, and you irrevocably waive, and cause to be waived, against Spark and its users any claims and assertions of any moral rights contained in such Feedback.

7. THIRD PARTY SERVICES AND CONTENT

7.1 Third Party Content. The Platform may host content that originates from parties other than Spark or its users ("**Third Party Content**"), or include links to other websites or applications (each, a "**Third Party Service**"). We do not control or endorse any Third Party Content or Third Party Service. You agree that we are not responsible for the availability, accuracy, or content of any such Third Party Content or Third Party Service. Your use of and reliance on any Third Party Content or Third Party Service is at your own risk. Some of the services made available through the Platform and Third Party Services may be subject to additional third party terms of service, privacy policies, licensing terms and disclosures, and other terms, conditions, and policies. It is your responsibility to familiarize yourself with any such applicable third party terms.

8. DISCLAIMER OF WARRANTIES & LIMITATIONS OF LIABILITY

8.1 DISCLAIMER OF WARRANTIES. YOU AGREE THAT YOU USE THE PLATFORM AT YOUR OWN RISK. THE PLATFORM INCLUDING THE ASSOCIATED PRODUCTS AND SERVICES AVAILABLE THROUGH THE PLATFORM ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY REPRESENTATIONS, WARRANTIES, OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SPARK HEREBY DISCLAIMS ALL CONDITIONS OR WARRANTIES WHATSOEVER, WHETHER STATUTORY, EXPRESS, OR IMPLIED, WITH RESPECT TO THE PLATFORM OR SUCH PRODUCTS AND SERVICES. WITHOUT LIMITING THE FORGOING, THE PLATFORM AND PRODUCTS AND SERVICES ARE PROVIDED WITHOUT STATUTORY, IMPLIED, OR EXPRESS WARRANTIES OR CONDITIONS OF MERCHANTABILITY, QUALITY, PERFORMANCE, FITNESS FOR A PARTICULAR PURPOSE, COMPLETENESS, ACCURACY, CURRENCY, RELIABILITY, EFFECTIVENESS, USABILITY, OR NON-INFRINGEMENT. WE CANNOT GUARANTEE THAT THE PLATFORM WILL FUNCTION WITHOUT ERRORS, INTERRUPTION, OR DOWNTIME.

8.2 LIMITATION OF LIABILITY. YOU EXPRESSLY UNDERSTAND AND AGREE THAT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL SPARK OR ITS DIRECTORS, OFFICERS, EMPLOYEES, PARTNERS, JOINT VENTURES, LICENSORS (EXCEPT OTHER USERS), AGENTS, AFFILIATES, SUCCESSORS, ASSIGNS, OR SUBSIDIARIES (COLLECTIVELY, THE "**REPRESENTATIVES**") BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR OTHER DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR OR RELATED TO LOSS OF PROFITS, LOSS OF REVENUES, PROPERTY DAMAGE, LOSS OF GOODWILL, USE, DATA LOSS, PERSONAL INJURY, LOST OPPORTUNITIES, DAMAGE TO REPUTATION, COMMERCIAL LOSS, FINANCIAL LOSS, OR ECONOMIC LOSS, OR INTANGIBLE LOSSES, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER THEORY OR BASIS OF LIABILITY. THE FOREGOING LIMITATION SHALL APPLY EVEN IF SPARK, OR SPARK'S REPRESENTATIVES, HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FOR GREATER CERTAINTY, BUT WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SPARK, AND ITS REPRESENTATIVES, SHALL NOT BE LIABLE FOR ANYTHING WHICH RESULTS FROM:

(a) YOUR USE OF OR RELIANCE ON THE PLATFORM;

(b) YOUR INABILITY TO ACCESS OR USE THE PLATFORM DUE TO ANY CAUSE;

(c) YOUR RELIANCE ON CONTENT, THIRD-PARTY CONTENT, OR INFORMATION MADE AVAILABLE ON THE PLATFORM;

(d) YOUR USE OF PRODUCTS OR SERVICES SOLD OR MADE AVAILABLE THROUGH THE PLATFORM;

(e) ANY ACT YOU TAKE OR FAIL TO TAKE AS A RESULT OF YOUR USE THE PLATFORM; OR (f) ANY OTHER MATTER RELATING TO THE PLATFORM.

8.3 Liability Cap. WITHOUT LIMITING THE GENERALITY OF SECTION **Error! Reference source not found.**, IN NO CIRCUMSTANCE WILL SPARK OR ITS REPRESENTATIVES' AGGREGATE LIABILITY UNDER THESE TERMS EXCEED THE AMOUNT YOU PAID SPARK IN THE THREE MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM (OR IF YOU USED THE PLATFORM ON A FREE BASIS, THEN THE CUMULATIVE LIABILITY WILL NOT EXCEED $10.00 CAD).

8.4 Limitation Period. ANY CAUSE OF ACTION OR CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING IN ANY WAY TO THESE TERMS OF USE, YOUR USE OF THE PLATFORM MUST BE COMMENCED IN ARBITRATION WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. AFTER THAT ONE (1)-YEAR PERIOD, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.

8.5 Security Breach. Spark strives to keep your personal information and Account safe from security breaches; however, we cannot guarantee the safety or security of your personal information or Account. If you believe that a security breach is occurring, or will occur, you must notify us immediately. BY USING THE PLATFORM YOU AGREE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, TO RELEASE SPARK AND ITS REPRESENTATIVES FROM ALL AND ANY LIABILITY FOR ANY HARM, INJURY, LOSS, OR DAMAGES SUFFERED BY YOU AS A RESULT OF A SECURITY BREACH, FAILURE, OR SHORT COMING OF THE SERVICES.

8.6 Legal Limitation. Notwithstanding any other provision of these Terms, if applicable law limits or prohibits the application of Sections 8.1 to 8.5, then Spark and its Representatives liability will be limited and excluded to the maximum extent permissible.

8.7 Indemnification. You agree to defend, indemnify, and hold harmless Spark and its Representatives (as that term is defined in section 8.1 above) from and against any and all claims, proceedings, suits, disputes, demands, threats, actions, obligations, liabilities, costs (including legal and accounting fees), damages, losses, penalties, fees, expenses, and injuries arising or resulting from: (a) your use of the Platform; (b) your breach of these Terms; (c) any violation of any right of, or harm or loss of, any person caused by you; or (d) your violation of any law, regulation, order, or by-law. Spark reserves the right, in its sole discretion and at its own expense, to assume the exclusive defense and control of any matter subject to indemnification by you and you shall not in any event

settle any matter without the prior written consent of Spark. You will co-operate as fully as reasonably required in the defense of any indemnified claim.

8.8 Reliance. You understand and agree that we are making the Platform available to you in reliance upon the limitations and exclusions of liability, indemnities, release, and the disclaimers set forth herein and that the same form an essential basis of the contract between you and us. You agree that the limitations and exclusions of liability, indemnities, and the disclaimers set forth herein will survive, and continue to apply in the case of a fundamental breach or breaches of, the failure of essential purpose of contract, the failure of any exclusive remedy or the termination, suspension, or cancellation of your Account or suspension or termination of use of, or access to, the Platform.

9. TERMINATION

9.1 Termination of Your Account. You may terminate your Account by emailing us at [info@xds-spark.com] with your deletion request and following the instructions we provide you. We may terminate or disable (either in full, or in respect to certain features) your Account at any time and for any reason or no reason whatsoever in our sole discretion without notice to you, including if you breach these Terms or we suspect you have done so, or that your Account's security has been compromised.

9.2 Effect of Account Termination. If we or you terminate your Account, you will lose access to all information and materials that were stored in your Account. Additionally, you will lose the ability to use certain features of the Platform.

Although your Account is terminated, we reserve the right to retain information and content associated with your Account for purposes of archive, back-up, audit, and investigation, and also for legal compliance. To completely delete your Account, you must make a specific deletion request to [info@xds-spark.com]. Deleting your Account will not release you from any prior obligations incurred hereunder.

9.3 Termination of Platform. Spark may terminate these Terms or stop providing the Platform to you at any time in its sole discretion.

10. DISPUTES

10.1 **Arbitration. If the courts in your province, state, or country will not permit you to consent to binding arbitration, then any legal suit, action, or proceeding arising out of or related to these Terms will be instituted exclusively in the courts of the Province of British Columbia, Canada, and you irrevocably submit to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. Otherwise, you agree that in the event of any dispute between you and Spark arising out of or relating to these Terms, the Platform, Products, or the relationship between Spark and you, that you and Spark shall consult and negotiate with each other and, recognizing your mutual interests, attempt to reach a solution satisfactory to both you and Spark. If you and Spark do not reach settlement within a period of 60 days, then such dispute shall be referred to and finally resolved by mandatory and binding arbitration under the International Commercial Arbitration Rules of Procedure of the Vancouver International Arbitration Centre. The appointing authority shall be the Vancouver International Arbitration Centre. The case shall be administered by the Vancouver International Arbitration Centre in accordance with its Rules. The place of arbitration shall be Vancouver, British Columbia, Canada. The number of arbitrators shall be set to one unless otherwise required by the Rules. The language of the arbitration will be English. The existence and content of the arbitration proceedings, including documents submitted by the parties, correspondence to and from the Vancouver International Arbitration Centre, correspondence to and from the arbitrator, and orders and awards issued by the sole arbitrator, shall remain strictly confidential and shall not be disclosed to any third party (except for professional advisors) without the express written consent from the other party unless: (a) (i) the disclosure to the third party is reasonably required in the context of conducting the arbitration proceedings; and (ii) the third party agrees unconditionally in writing to be bound by the confidentiality obligation stipulated herein; or (b) such disclosure is required by applicable law or court order. Notwithstanding the foregoing, Spark may seek injunctive or other equitable relief to protect its rights, and for any other purpose, in any court of competent jurisdiction.**

You may opt out of the above arbitration clause. If you opt out, then neither you nor we will be able to require the other to participate in arbitration for the purposes of resolving any dispute, claim or controversy between you and Spark arising out of or relating to these Terms, the Platform, Products, or the relationship between Spark and you. To opt out, you must, within 30 days of accepting these Terms, deliver to Spark a clear written statement indicating that you wish to opt out of the arbitration provisions in these Terms. The statement must contain: (a) your name; (b) your address; (c) your telephone number; (d) your email address; and (e) your Account name (if any). The opt-out statement must be delivered to the following address:

Second Peak Productions Ltd.
[info@xds-spark.com]

If you opt out of the arbitration clause in the manner provided above, then, unless the first sentence of this section 10.1 applies to you, you irrevocably agree that the courts of British Columbia will have exclusive jurisdiction to settle any dispute, claim, or controversy arising out of or related to these Terms, the Platform, Products, or your relationship with Spark.

10.2 **Waiver. You agree to waive any right you may have to commence or participate in any class action against Spark related to any claim and, where applicable, you also agree to opt out of any class proceedings against Spark. Where applicable, if a dispute arises between us and you, you waive any right you may have to participate in a trial by jury with respect to that dispute.**

10.3 **Trial by Jury Waiver. Where applicable, if a dispute arises between us and you, you waive any right you may have to participate in a trial by jury with respect to any dispute you may have with Spark.**

11. PRIVACY

11.1 Privacy. We take your privacy seriously. To find out about how we collect, share and use your content and information, please read our Privacy Policy. The Privacy Policy forms part of these Terms and is incorporated by reference.

11.2 Controller and Processor Roles. With respect to third-party data uploaded by users, Spark acts as a data processor on behalf of the user. The user remains the data controller responsible for compliance with applicable data protection laws.

12. GENERAL

12.1 Consumer Rights. Nothing in these Terms affects consumer rights that, pursuant to applicable law, cannot be limited or waived.

12.2 Survival. Sections and Articles 4.1, **Error! Reference source not found.**6, 8, 9, 10, 12 and all other provisions of these Terms which must survive termination of these Terms to fulfill their purpose will survive termination of these Terms or the termination or suspension of your Account.

12.3 Entire Agreement. These Terms, which incorporates any applicable Privacy Policy, constitute the entire agreement between you and Spark with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

12.4 Assignment. We may assign these Terms in part or in their entirety, including our rights, interests, and obligations hereunder, without notice to you or your consent. These Terms are personal to you and you may not assign these Terms nor your rights, interests, or obligations under these Terms to any person.

12.5 No Waiver. Our failure to exercise or enforce any right or provision of these Terms will not operate as a waiver of such right or provision. No waiver of a breach of these Terms will constitute a waiver of any other breach of these Terms.

12.6 Severability. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of these Terms invalid or otherwise unenforceable in any respect. In the event that a provision

of these Terms are 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 these Terms will continue in full force and effect.

12.7 Governing Law. The courts in some countries or provinces will not apply the law of British Columbia to some types of disputes. If you reside in one of those countries or provinces, then where British Columbia law is excluded from applying, your country or province's laws will apply to such disputes related to these Terms. Otherwise, these Terms are governed and interpreted pursuant to the laws of the Province of British Columbia, Canada and the federal laws of Canada applicable therein, without regard to principles of conflicts of law that would impose the law of another jurisdiction. You agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to these Terms.

12.8 Headings. Headings are for convenience only and shall not affect the interpretation of these Terms.

12.9 Language. The parties acknowledge that they have required that the Terms, and all related documents be prepared in English. If these Terms are translated into another language, the English language text shall in any event prevail.

12.10 Interpretation. Unless the context otherwise requires, words importing the singular include the plural and vice versa, and words importing gender include all genders. Where the word “including” or “includes” is used in these Terms, it means “including (or includes) without limitation”.

12.11 Enurement. These Terms will enure to the benefit of and be binding upon the parties to these Terms and their respective successors, heirs and permitted assigns.

12.12 Notice. Any notices to be provided to Spark pursuant to these Terms may be provided by email at the following email address [info@xds-spark.com].

12.13 Further Assurances. You agree to provide such further documents or instruments, and take such further actions, reasonably requested by Spark, to effect the purposes of these Terms and carry out its provisions.

12.14 Force Majeure. In no event will Spark be liable or responsible to you, or be deemed to have defaulted under or breached these Terms, for any failure or delay in fulfilling or performing any term of these Terms, when and to the extent that such failure or delay is caused by any circumstances beyond Spark’s reasonable control, including acts of God, flood, fire, public health emergency, earthquake, tsunami, war, terrorism, riot or other civil unrest, embargoes or blockades in effect on or after the date of these Terms, national or regional emergency, strikes, labour stoppages or slowdowns or other industrial disturbances, passage of law or any action taken by a governmental or public authority, including restrictions passed as a result of a public health emergency.

12.15 Relationship of the Parties. Each party to these terms is and shall remain at all times an independent contractor. Nothing in these Terms shall be construed to create any association, partnership, joint venture, agency, fiduciary, or employment relationship between you and Spark for any purpose, and neither party has the authority to contract for or bind the other party in any manner whatsoever.