Toybox Terms and Conditions

These Terms and Conditions are between MAHKO, CORP. d/b/a Toybox ("**Toybox**") and the subscriber identified on the Order Form (the "**Subscriber,**" as such term is further defined below) (each a "**Party**" and together the "**Parties**"). These Terms and Conditions, together with the Order Form, constitute the agreement between the Parties with respect to the Subscriber's access to and use of the Toybox System.

Recitals

WHEREAS, Toybox has developed a system of software tools that assist in the development, design, re-design, and updating of external and internal web pages (the "**System**");

WHEREAS, the Subscriber wishes to obtain access to the System for purposes of work on its own web pages, and/or the web pages of its clients; and

WHEREAS, Toybox is willing to provide such access, all on the terms and conditions set out below;

NOW THEREFORE, the Parties agree as follows:

Agreement

1   Definitions. Capitalized terms have the meanings set out below. Other capitalized terms are defined in the context in which they are used:

1.1   "**Administrative Functions**" means Subscriber-facing functions and features of the System that are available to Team Members, but not to other Users, as further specified in the Online Documentation. Unless otherwise provided on the Order Form, Administrative Functions include (i) adding new Projects to a Team Member Account; (ii) inviting individuals to become Team Members; (iii) inviting individuals to become Guests with respect to Projects; (iv) accessing information concerning the Subscriber's open Projects; (v) accessing information concerning Users associated with the Subscriber; and (vi) performing tasks under other functions that Toybox makes available to Team Members.

1.2   "**Agreement**" means (i) these Terms and Conditions; (ii) the Order Form; and (iii) any mutually agreed-upon amendments thereto.

1.3   "**AUP**" means the Toybox Acceptable Use Policy, as further set out in Section 12 (Acceptable Use Policy).

1.4   "**Business Day**" means a day, other than a Saturday, Sunday or day on which banking institutions are authorized or required by applicable law to be closed in the State of New York.

1.5   "**Comments**" means information, directions, tasks, and other content that a User attaches to a Web Page via the System.

1.6   "**Edits**" means a User's edits, via the System, to CSS elements on a Web Page, if and where the System implements features that support such editing.

1.7   "**Effective Date**" means the start date of this Agreement, as specified on the Order Form.

1.8   "**Extension**" means the zipped Toybox files that a Toybox subscriber downloads in order to access the Toybox System, as an alternative or supplement to the Snippet.

1.9   "**Fees**" has the meaning set out in Section 9 (Fees and Payment).

1.10   "**Guest**" has the meaning set out in Section 2.3 (Guest Accounts).

1.11   "**Guest Functions**" means the functions for a Guest Account that are specified in the Online Documentation.

1.12   "**Helpdesk Support**" has the meaning set out in Section 6.1 (Standard Support Services).

1.13   "**Intellectual Property**" or "**Intellectual Property Rights**" means (i) patent rights; (ii) rights under trademark law; (iii) rights under copyright law; (iv) rights in trade secrets and Confidential Information; and (v) other similar rights to exclude another from the use or enjoyment of an asset or process.

1.14   "**Online Documentation**" means the documentation available via the Toybox Help Center, located at: https://www.notion.so/toybox/Toybox-Help-Center-b0f1054678be43d682386012648a0229

1.15   "**Order Form**" means the Subscription Agreement order form, attached or linked to these Terms and Conditions.

1.16   "**Project**" means a set of tasks that involve the development, design, re-design, or updating of one or more interrelated Web Pages, as such tasks and Web Pages are reasonably specified by the Subscriber (or its client) in accordance with its (or their) standard approach to project management.

1.17   "**Public-User**" has the meaning provided in Section 2.4 (Public-User Accounts).

1.18 "**Snippet**" means the Toybox code that a Toybox subscriber includes on its website for purposes of accessing the Toybox System, as an alternative or supplement to the Extension.

1.19 "**Style Guide**" means the styles, such as colors, font size, and other style elements, which the Subscriber (or its client) proscribe for use in connection with its (or their) web presence, if and where the System implements features that support use of such style guides.

1.20 "**Subscriber**" means the person or entity executing this Agreement. Among other responsibilities under this Agreement, the Subscriber is responsible (i) for the payment of Fees and (ii) for its Users' compliance with this Agreement.

1.21 "**Subscriber Client**" means a client or other person or entity for whom the Subscriber provides creative, design, or other services.

1.22 "**Subscriber Marks**" has the meaning set out in Section 8.2 (Use of Subscriber Marks).

1.23 "**Subscriber Portal**" means the Toybox online portal that permits the Subscriber to manage its account. The Subscriber Portal, for example, permits designation of Team Members and Guests.

1.24 "**Subscriber Request**" has the meaning set out in Section 6.4.1 (Subscriber Requests).

1.25 "**Submissions**" means (i) Comments; (ii) Web Pages; (iii) Edits; (iv) Style Guides; and (v) other information or content that the Subscriber, Subscriber Clients, or Users provide to Toybox for purposes of this Agreement.

1.26 "**Team Member**" has the meaning set out in Section 2.2 (Team Member Accounts).

1.27 "**Term**" has the meaning set out in Section 17 (Term).

1.28 "**Terms and Conditions**" means these Terms and Conditions, non-inclusive of the Order Form.

1.29 "**Toybox Marks**" has the meaning set out in Section 8.3 (Use of Toybox Marks).

1.30 "**Toybox Response**" has the meaning set out in Section 6.4.2 (Toybox Response).

1.31 "**Users**" means (i) Team Members, (ii) Guests, and (iii) Public-Users.

1.32 "**Web Page**" means a web page a Team Member submits for Comments under this Agreement. The term "Web Page" includes (i) public-facing web pages, (ii) web pages behind a paywall or login; and (iii) web

pages in a local, staging or production environment.

2 Users and User Accounts. There are three types of System account available to the Subscriber, and each account provides a user with different access and use rights with respect to the System, as further set out in this Section 2 (Users and User Accounts).

2.1 Subscriber Account. On or immediately after the Effective Date, Toybox will create and provision a System account for the Subscriber (the "**Subscriber Account**"). Toybox will then provide the Subscriber with the Extension and/or the Snippet which, when activated by the Subscriber in accordance with the Online Documentation, will provide the Subscriber with System access, in accordance with the terms and conditions of this Agreement.

2.2 Team Member Accounts. The Subscriber is then entitled, through the Subscriber Portal, to designate one or more individuals as its "**Team Members.**" In response, Toybox will create and provision a user account for the Team Members so designated (each a "**Team Member Account**"). Unless otherwise provided in the Order Form, a Team Member Account gives the user access (i) to all Administrative Functions, and (ii) all Guest Functions.

2.3 Guest Accounts. Each Team Member, through the Subscriber Portal, is entitled to invite one or more individuals to a Project as the Team Member's "**Guest.**" In response, Toybox will create and provision a user account for the Guest at issue, and specific to the particular Project selected by the designating Team Member (each a "**Guest Account**"). A Guest Account gives the user access to all Guest Functions, and withholds access to Administrative Functions.

2.4 Public-User Account. If so provided in the Order Form, the Subscriber shall be entitled to allow individuals, while visiting the Subscriber's Web Pages, to insert Comments on such web pages (each a "**Public-User**"). To activate this set of features, the Subscriber configures the Snippet in the manner specified in the Online Documentation.

2.5 Accounts, Projects, and Pricing. Toybox's offerings are priced, and applicable Fees calculated, based on the number of permitted (i) Team Member Accounts, (ii) Guest Accounts, (iii) Public-User Accounts, and/or (iv) Projects. The specific pricing and Fees applicable to the Subscriber are set out in the Order Form.

2.6 Relationship of (a) Team Members and Guests to (b) Subscriber. Team Members and Guests may be (i) employees of the Subscriber or a Subscriber Client, as well as (ii) others associated with a Project, such as

consultants or service providers to the Subscriber or its client. In addition, there are instances where Subscriber and Team Member are the same person; in that instance, such person shall hold the rights and owe the duties of both a Subscriber and a Team Member.

2.7   Subscriber Responsibility. The Subscriber is responsible to Toybox for the actions or omissions of its Users under this Agreement, in the same manner as if the Subscriber had itself taken (or failed to take) the action at issue.

3   Comments. The System records Comments from Team Members, Guests, and Public-Users, and makes these Comments available to the Subscriber, its Team Members, and their Guests, all in accordance with the Online Documentation. Team Members, via Administrative Functions, have the ability, as and when they wish, to export Comments in CSV format (or other mutually agreeable industry standard format) to its own systems and applications.

4   Integration with Other Applications. Toybox recognizes that its subscribers frequently use the System in connection with other, third party design solutions and applications (each a "**Third Party Application**"). To facilitate these uses, Toybox has integrated the System with certain Third Party Applications, and these are identified in Toybox's Online Documentation.

4.1   Subscriber Authorizations; Effect. Depending on the nature of the Third Party Application, the Subscriber may need to authorize Toybox's integration to the Third Party Application at issue, and instructions for doing so are included in Toybox's Online Documentation (or via a Subscriber Request).

4.2   Synchronization between Toybox and Third Party Applications. For certain Third Party Applications, Toybox has implemented two-way synchronization features, such that Comments, Comment resolutions, and other applicable data are shared by and between (a) the System and (b) the Third Party Application at issue. For other Third Party Applications, Toybox provides one-way synchronization features. The Online Documentation identifies which Toybox integrations provide two-way synchronization features and which provide one-way synchronization features.

4.3   Scope of Responsibility for Third Party Applications. Toybox is responsible for the performance of the System; it is not responsible for the performance of Third Party Applications or for obtaining licenses or other rights the Subscriber may need in order to use or access such Third Party Applications.

5   Subscriber Responsibilities.

5.1   Subscriber Systems and Submissions. The Subscriber is responsible, at its expense, for (i) obtaining the IT infrastructure needed to interact with the System; (ii) installing the requisite Toybox browser extensions or snippets, in accordance with instructions provided in Toybox's Online Documentation (or via a Subscriber Request); (iii) supplying Web Pages; (iv) submitting Comments; and (v) for providing other Submissions (where System features support or otherwise require such Submissions).

5.2   Data Backups; Retention. The System will retain and backup Comments, and make such Comments available to Users, for the duration of the Term. The Subscriber shall retain copies of, and hold sole responsibility for retaining and backing up, all Submissions other than Comments.

5.3   Protecting Passwords. The Subscriber shall maintain username(s) and password(s) associated with access to the System in confidence, and refrain from disclosing this information to unauthorized persons. Toybox will provide persons with the Subscriber's access credentials with all applicable rights and privileges that it provides to Users. Access credentials are personal to a User, and a User is not permitted to share his or her credentials with others.

5.4   Transaction Volumes. Toybox structures the System in reliance on projected volumes of Comments and Web Pages. Toybox shall be entitled reasonably to postpone (or decline) processing Comments if they exceed reasonably projected volumes.

6   Support and Maintenance.

6.1   Standard Support Services. If the Subscriber has not selected Premium Support, then Toybox shall, using commercially reasonable efforts and commercially reasonable response and resolution times: (i) provide the Subscriber with helpdesk technical support during Business Days from 9am to 5pm, Eastern ("**Helpdesk Support**"); and (ii) correct material errors and bugs reported by the Subscriber, all in accordance with its standard practices ("**Error Corrections**" and, together with Helpdesk Support, "**Standard Support**").

6.2   Premium Support Services. If the Subscriber has chosen "**Premium Support**" on the Order Form, Toybox shall, using commercially reasonable efforts: (i) provide such Premium Support, , as specified on Schedule 1, and (ii) meet or exceed the associated service levels specified on Schedule 1 ("**Premium Support**").

6.3   System Availability. Toybox shall use commercially reasonable efforts to make the System available to the Subscriber without material interruption,

subject to reasonable downtime for maintenance and error corrections. Where practical, Toybox will notify the Subscriber in advance of scheduled downtime of significance. It is agreed and understood that Toybox's uptime commitment shall not apply, for example, where downtime is cause, in whole or in part, by: (i) User error or failure to comply with Online Documentation or Toybox's response to a Subscriber Request; (ii) a failure or malfunction of software or equipment owned or controlled by the Subscriber, its clients, Users, or any third party, or otherwise beyond Toybox's network edge; (iii) unavailability arising from Subscriber Request; and (iv) other reasons outside of Toybox's reasonable control.

6.4   Support Requests. Users shall submit support requests via email at: support@toyboxsystems.com. Toybox will open a support ticket, track the request, and provide reasonable updates as to a resolution, subject to applicable enhanced services specified on Schedule 1 with respect to Premium Support.

6.4.1   Subscriber Requests. The Subscriber acknowledges the difficulties involved in parsing unstructured data for purposes of identifying support requests. Accordingly, the Subscriber agrees (i) to submit all support requests via the Subscriber Portal, and (ii) to submit to the Subscriber Portal the data that constitutes or concerns the support request in such a manner as to: (a) complete all required fields; (b) provide data in the specified format; and (c) otherwise comply with data entry process(es) that govern the submission of support requests to the System.   The term "**Subscriber Request**" means a support request that meets each of the criteria set out above in this Section 6.4.1 (Subscriber Requests).

6.4.2   Toybox Response. In responding to a Subscriber Request, where necessary, Toybox will (i) assign a severity level to the Support Request; (ii) assign a unique identifier to the Support Request (each a "**Ticket No.**"), and (iii) communicate to the Subscriber the Ticket No. and the assigned severity level. The term "**Toybox Response**" means a response from Toybox, to a Subscriber Request, that meets each of the criteria set out above in this Section 6.4.2 (Toybox Response).

6.5   Feature Requests. Certain support requests are more accurately viewed as requests for additional features for the System. Where appropriate and in its discretion, Toybox is entitled to treat a User request as a feature request (and not a support request) and to add the request to its roadmap (or reject the request), as it sees fit.

6.6   Additional Training. Toybox has designed the System for intuitive use, to minimize (or eliminate) the need for specific training. If the Subscriber determines that its Users desire specific training on the System, Toybox shall be available to provide such training, if reasonable, under separate, mutually agreeable terms and conditions.

7   Subscription License; Ownership.

7.1   Subscription License to System. Subject to the terms and conditions of this Agreement, Toybox hereby grants the Subscriber, under Toybox's Intellectual Property Rights and during the Term, a nonexclusive, non-sublicenseable, non-transferable subscription license to access and use the System, and to permit its Team Members and Guests to access and use the System, solely for the purposes permitted under this Agreement. The Subscriber shall be limited to cloud-based access to an instance of the System that resides in object code form on servers controlled by Toybox; (ii) the access shall be via a browser approved by Toybox; and (iii) the System shall in all respects be the current version generally made available by Toybox to its subscribers.

7.2   Limitations on Subscriber Use. By way of clarifying example as to conduct that is not permitted under the above licenses, the Subscriber shall use the System solely for its internal purposes and the internal purposes of its clients with respect to Projects, and expressly shall not: (i) use the System to act as a service bureau or otherwise permit unauthorized third parties to obtain services under this Agreement; (ii) seek to modify, decompile, disassemble, or reverse engineer the System (or any of its components); or (iii) use the System for purposes of building a competitive product or service.

7.3   License to Toybox to Perform Services. The Subscriber hereby grants to Toybox, during the Term and under its Intellectual Property Rights, a nonexclusive license to access and use Comments and other information provided by Subscriber and its Users, solely for purposes of providing services to the Subscriber under this Agreement.

7.4   Ownership. Except for the subscription license granted in this Section 7 (Subscription License; Grant of Rights and Ownership), as between the Parties, Toybox is and shall remain sole owner of all right, title and interest in and to the System and its components, including all Intellectual Property Rights embodied therein, and any improvements or modifications thereto.

7.5   Feedback. The term "**Feedback**" means suggestions, ideas, feature requests, and recommendations by Users relating to the System or other elements of Toybox's business. This Agreement places no obligations on the Subscriber or its Users to provide Toybox with Feedback. To the extent the

Subscriber or its Users choose to provide Feedback to Toybox, the Subscriber (on its own behalf and on behalf of its Users) hereby grants to Toybox a nonexclusive, perpetual, irrevocable, paid-up license to copy, modify, distribute, and otherwise use and exploit such Feedback.

7.6   No Implied Rights. There shall be no licenses or rights implied under this Agreement or based on any course of conduct.

8   Marketing and Promotion.

8.1   Press Release. The Parties shall prepare a joint press release on or before the Effective Date, and both Parties shall be free to use such press release (and quotations and other content from this press release) as it sees fit in connection with their marketing efforts.

8.2   Use of Subscriber Marks. Subscriber grants Toybox a limited non-exclusive, non-transferable permission to display the trademark and/or logo designated by Subscriber for such purpose (the "**Subscriber Mark**") on its website and its marketing materials to indicate that Subscriber is or intends to be a user of the System.

8.3   Use of Toybox Marks. As of the Effective Date, Subscriber shall post on its website, in a commercially reasonable location and format, the trademark and/or logo designated by Toybox for such purpose (the "**Toybox Mark**"), and shall indicate that Subscriber is a user, or intends to become a user, of the Services. Toybox grants Subscriber a limited non-exclusive, non-transferable permission to display the Toybox Mark on its website and in its marketing materials for such purposes.

8.4   Brand Standards. In order to preserve the inherent value of the Toybox Marks and Subscriber Marks, respectively, each Party shall maintain a level of the quality of products and services offered at least as high as immediately prior to the Effective Date (the "**Quality Standard**"). Toybox acknowledges that, as between the Parties, Subscriber is the sole and exclusive owner the Subscriber Marks and all goodwill associated with the Subscriber Marks, and that any goodwill created by this Agreement under the Subscriber Marks shall inure solely and exclusively to Subscriber. Subscriber similarly acknowledges that, as between the Parties, Toybox is the sole and exclusive owner the Toybox Marks and all goodwill associated with the Toybox Marks, and that any goodwill created by this Agreement under the Toybox Marks shall inure solely and exclusively to Toybox.

8.5   Additional Activities. The Order Form will set out any additional marketing and promotional activities to which the Parties have agreed ("**Additional Marketing Activities**"). Additional Marketing Activities may include, for example, collaboration on white papers of mutual interest and benefit. Each Party agrees to use commercially reasonable efforts to complete tasks (if any) assigned to it with respect to Additional Marketing Activities.

9   Fees and Payment. The Subscriber shall pay to Toybox the fees specified in the Order Form (the "**Fees**"), in the manner set out in this Section 9 (Fees and Payment).

9.1   Fees. Toybox offers a monthly subscription as well as an annual subscription, as follows:

9.1.1   Monthly Subscription. Where the Subscriber has a monthly subscription, Toybox will invoice the Subscriber for applicable Fees on a monthly basis, within fifteen (15) days of the close of the month at issue. If the Subscriber has selected a monthly subscription, and if the Effective Date does not fall on the first day of the month, Toybox will pro rate Fees for the starting month, in a manner proportionate to the number of days left, after the Effective Date, in such starting month..

9.1.2   Annual Subscription. Where the Subscriber has an annual subscription, Toybox will invoice the Subscriber for the annual fee within fifteen (15) days of the Effective Date.

9.2   Payment Terms. The Subscriber shall pay invoices in full (without deduction, set-off or counterclaim) within thirty (30) days of its receipt of an invoice. Past due amounts shall bear a late payment charge, until paid, at the rate of 1.5% per month or the maximum amount permitted by law, whichever is less. Fees are non-refundable, except in the case of a termination under Section 18.2 (Termination for Cause) due to fault by Toybox.

9.3   Taxes. All payments required by this Agreement are exclusive of federal, state, local and foreign taxes, duties, tariffs, levies, withholdings and similar assessments (including without limitation, sales taxes, use taxes and value added taxes), and the Subscriber agrees to bear and be responsible for the payment of all such charges, excluding taxes based upon Toybox's net income. All amounts due hereunder shall be grossed-up for any withholding taxes imposed by any foreign government.

10   Confidentiality. This Section governs the protections for Confidential Information that one Party (the "**Disclosing Party**") provides to the other (the "**Receiving Party**") under this Agreement.

10.1   Scope. Subject to Section 10.2 (Exceptions), the term "**Confidential Information**" means information

the Disclosing Party provides to, or that the Receiving Party accesses from the Disclosing Party that meets one of the following two criteria: the Information either (i) is identified by a "CONFIDENTIAL" legend or similar legend of the Disclosing Party, or (ii) is obtained under circumstances such that the Receiving Party knew or reasonably should have known that the Information should be treated as confidential to the Disclosing Party. Subject to Section 10.2 (Exceptions), "Confidential Information" includes the terms of this Agreement, inventions, specifications, drawings, models, samples, reports, plans, financial information, work-in-progress, forecasts, computer programs or documentation, and all other technical, financial, intellectual or business information or data. By way of example and not limitation, Confidential Information of Toybox includes the System and the User Documentation.

10.2 Exceptions. The Parties' obligations of confidentiality and non-use shall not apply where the Receiving Party shows that the information (that would otherwise qualify as Confidential Information): (i) is or after the Effective Date becomes publicly available or part of the public domain through no wrongful act, fault or negligence on the part of the Receiving Party; (ii) was in the possession of the Receiving Party at the time of the Receiving Party's receipt of the Confidential Information, and was not otherwise subject to an existing agreement of confidentiality; (iii) is received from a Third Party without restriction and without breach of any obligation of confidentiality to the Disclosing Party; or (iv) was independently developed by the Receiving Party without reliance on the Disclosing Party's Confidential Information.

10.3 Confidentiality. The Receiving Party shall not access, use or disclose any of the Disclosing Party's Confidential Information except as expressly permitted under this Agreement. The Receiving Party shall protect the Disclosing Party's Confidential Information with the same level of care it uses for its own Confidential Information of like nature; provided, however, that the Receiving Party shall at a minimum use reasonable care to protect the Disclosing Party's Confidential Information. A Receiving Party shall be entitled to disclose the Disclosing Party's Confidential Information to its employees and (i) in the case of Toybox, to service providers engaged by Toybox for purposes of providing services and (ii) in the case of the Subscriber, to its Users (collectively, "**Authorized Individuals**"); provided that each such Authorized Individual (a) has a need to know the Confidential Information for the purposes of this Agreement and (b) has been apprised of and agrees to the

restrictions in this Agreement. Each Party shall be responsible for any breach of confidentiality by its Authorized Individuals.

10.4 Compelled Disclosure. Nothing herein shall prevent a Receiving Party from disclosing Confidential Information as necessary pursuant to any court order, lawful requirement of a governmental agency or when disclosure is required by operation of law (including disclosures pursuant to any applicable securities laws and regulations); provided, however, that prior to any such disclosure, the Receiving Party shall use reasonable efforts to (a) promptly notify the Disclosing Party in writing of such requirement to disclose and (b) reasonably cooperate with the Disclosing Party, at the Disclosing Party's expense, in protecting against or minimizing such disclosure, or in obtaining a protective order.

10.5 General Skills and Knowledge. For the avoidance of doubt, and due to the specialized nature of Toybox's services and the limited pool of individuals qualified in this subject matter, it is agreed and understood that the provisions of this Section 10 (Confidentiality) do not apply to Residual Knowledge (if any) of Toybox personnel or to the use and improvement of other general skills and knowledge such personnel. The term "**Residual Knowledge**" means Confidential Information in non-tangible form that is retained in the unaided memory of persons who have had rightful access to such information.

11 Privacy and Security. Toybox shall use commercially reasonable efforts to safeguard the privacy and security of Comments, and shall employ for this purpose information security controls consistent with accepted practice in the industry. Toybox's Privacy Policy[1] is located at _____, and Toybox will comply with this Privacy Policy in all material respects, to the extent it receives personal information (as defined in the Privacy Policy) from the Subscriber or its Users (collectively, "**Subscriber-Related Personal Information**"). The Subscriber acknowledges that Toybox does not collect personal information via the System for its own account, and Toybox acts solely as a processor (and not a controller) with respect to Subscriber-Related Personal Information.

12 Acceptable Use Policy. The Subscriber and its Team Members and Guests shall not use the System (i) in a way prohibited by applicable law; (ii) to violate the legal rights of others; (iii) to attempt to gain or to gain unauthorized access to or disrupt any third party service, device, data, account or network; (iv) to distribute spam or malware; or (v) in a way that could materially harm the functionality or

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[1] Note to Draft: Toybox will be posting version 2 of its Privacy Policy shortly. ETA for posting is 6/11/19.

performance of the System (the "**AUP**").

13 **System Statistics**. Toybox monitors a variety of metrics, statistics, and patterns with respect to Users' access to, use of, and activities concerning, the System (collectively "**System Stats**"). System Stats include (i) keyword frequencies and patterns; (ii) preferred functions; (iii) Comment counts, in stand-alone, raw form as well as when placed in the context of other System Stats; (iv) Comment lifecycle; (v) Submissions characteristics; and (vi) other uses, activities, patterns, and observable events associated with the System. Toybox uses System Stats to (i) improve the performance of the System, (ii) troubleshoot, (iii) develop and pilot different or new System features; and (iv) for other business purposes. The Subscriber acknowledges and does not object to Toybox's use of System Stats.

14 **Representations and Warranties.**

  14.1 **Mutual Representations and Warranties**. Each Party represents and warrants: (i) that it is duly organized, validly existing and in good standing, and is qualified and/or licensed to do business in all jurisdictions to the extent necessary to carry out its obligations under this Agreement; (ii) its execution, delivery and performance of this Agreement will not violate or constitute a default under any agreement of such Party; and (iii) it has the full right, power, and authority to enter into and be bound by the terms and conditions of this Agreement and to perform its obligations under this Agreement

  14.2 **Subscriber Representations and Warranties.** The Subscriber represents and warrants that it owns or holds necessary rights with respect (i) to the Submissions; and (ii) to other Subscriber resources used in accordance with the terms and conditions of this Agreement.

  14.3 **Toybox Representations and Warranties.** Toybox represents and warrants to the Subscriber (i) that services it performs under this Agreement will be performed by qualified personnel, in accordance with accepted industry practice; (ii) that applicable System software will be scanned using commercially available virus scanning and removal software in accordance with accepted industry practice and frequency; (iii) that the System will perform substantially in accordance with accepted industry practice and standards; and (iv) that the System, when used in accordance with the terms and conditions of this Agreement (including the AUP) will not infringe the Intellectual Property Rights of third parties.

  14.4 **Disclaimers.** EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION 14 (Representations and Warranties), THE SYSTEM AND ALL TOYBOX PERFORMANCE OBLIGATIONS ARE PROVIDED "AS IS"

WITHOUT WARRANTY OF ANY KIND. TOYBOX DOES NOT WARRANT (A) THAT THE SYSTEM OR TOYBOX PERFORMANCE OBLIGATIONS WILL MEET SUBSCRIBER'S REQUIREMENTS OR RESULT IN ANY DESIRED OUTCOME, OR (B) THAT THE SYSTEM'S OPERATION OR THE DELIVERY OF SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. TO THE FULLEST EXTENT PERMITTED BY LAW, TOYBOX HEREBY DISCLAIMS (FOR ITSELF, ITS SERVICE PROVIDERS AND ITS LICENSORS) ALL OTHER REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE SYSTEM AND PERFORMANCE OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, QUIET ENJOYMENT, ACCURACY, INTEGRATION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND ALL WARRANTIES ARISING FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

15 **Indemnification.**

  15.1 **Indemnification by the Subscriber.** The Subscriber agrees to defend Toybox from and against any demand, suit, action or other claim by a third party that is related to or arises from Comments or the web pages (including the content thereof) its submits to the System (each a "**Subscriber-Related Claim**"), and to indemnify Toybox for settlement amounts or damages, liabilities, costs and expenses (including reasonable attorneys' fees) awarded and arising out of any such the Subscriber-Related Claim.

  15.2 **Indemnification by Toybox.** Toybox agrees to defend the Subscriber against any demand, suit, action or other claim by a third party that the Service misappropriates or infringes the Intellectual Property Rights of such third party (each a "**Toybox-Related Claim**"), and to indemnify the Subscriber for settlement amounts or damages, liabilities, costs and expenses (including reasonable attorneys' fees) awarded and arising out of any such Toybox-Related Claim. Toybox shall be entitled, at its option, to modify the System (or associated services under this Agreement) to resolve such third Party infringement claims, provided such modifications do not materially degrade the features or performance of the System. If Toybox is unable at reasonable effort or expense to make such modifications, then Toybox shall be entitled to terminate this Agreement without further liability to the Subscriber, and the effect of such termination shall be as set out in Section 18.4 (Effect of Termination or Expiration). The foregoing states the entire liability of Toybox, and the Subscriber's exclusive remedy, with respect to actual or alleged violation of third party Intellectual Property Rights by the System or other

performance by or deliverable from Toybox under this Agreement.

15.3 Conditions. The indemnifying Party's obligations hereunder are conditioned on (i) the Party seeking indemnification providing prompt written notice thereof and reasonable cooperation, information, and assistance in connection therewith (at the indemnifying Party's expense) and (ii) the indemnifying Party having sole control and authority to defend, settle or compromise such claim. The indemnified Party may participate in the defense at its sole cost and expense. The indemnifying Party will not enter into any settlement that adversely affects the indemnified Party's rights or interest without its prior written approval, not to be unreasonably withheld. The indemnifying Party shall not be responsible for any settlement it does not approve in writing.

16 Limitations on Remedies.

16.1 Consequential Damages Waiver. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS; LOSS OF DATA; LOSS OR INTERRUPTION OF USE; COST TO PROCURE SUBSTITUTE TECHNOLOGIES, GOODS OR SERVICES; OR OTHER ECONOMIC LOSS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

16.2 Limitation of Liability. IN NO EVENT WILL THE LIABILITY OF TOYBOX, IN THE AGGREGATE, EXCEED THE TOTAL AMOUNT OF PAYMENTS PAID OR DUE TO TOYBOX UNDER THIS AGREEMENT. THESE LIMITATIONS ARE INDEPENDENT FROM ALL OTHER PROVISIONS OF THIS AGREEMENT AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF ANY REMEDY PROVIDED HEREIN.

17 Term. This Agreement shall take effect on the Effective Date and, unless terminated earlier in accordance with Section 18 (Termination), shall continue in force for the Contract Duration specified in the Order Form (the "**Term**"). Upon successful completion of the Term, the Parties will discuss in good faith a continuation of their Subscription Relationship under either this Agreement or other mutually agreeable terms and conditions.

18 Termination.

18.1 Subscriber Termination for Convenience. The Subscriber shall be entitled to terminate this Agreement for convenience before expiration of the Term, upon reasonable notice to Toybox.

18.2 Termination for Cause. Either Party shall be entitled to terminate this Agreement for material breach by the other, upon providing notice to the other Party (a "**Notice of Breach**") and a thirty (30) day period to cure, commencing on such Party's receipt of this notice (the "**Cure Period**"). In the event the Party in breach does not effect a cure within the Cure Period, this Agreement shall be deemed terminated as of the date of the Notice of Breach.

18.3 Insolvency. Either Party shall be entitled to terminate this Agreement immediately upon written notice, if the other Party makes any assignment for the benefit of creditors, or a receiver, trustee in bankruptcy or similar officer is appointed to take charge of any or all of the other Party's property, or the other Party seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding or such a proceeding is instituted against the other Party and is not dismissed within 90 days, or the other Party becomes insolvent or, without a successor, dissolves, liquidates or otherwise fails to operate in the ordinary course.

18.4 Effect of Termination or Expiration.

18.4.1 Cessation of Services; Certain Licenses. Upon termination or expiration of this Agreement, (i) Toybox shall cease making the System available to the Subscriber or its Users, and all licenses and access permissions to Subscriber (and its Users) under this Agreement shall end.

18.4.2 Destruction of Confidential Information. Unless otherwise expressly permitted under this Agreement, promptly after termination or expiration of this Agreement, each Party shall (i) either (a) return the other Party's Confidential Information, or (b) permanently destroy such Confidential Information, and erase it from storage media; and (ii) destroy all information, records and materials developed from the other Party's Confidential Information ("**Derived Information**"). Upon request, a Party shall certify in writing to the destruction of such Confidential Information and Derived Information.

18.4.3 No Effect on Prior Obligations. Expiration or termination of this Agreement shall not affect any obligation which accrued prior to such expiration or termination, and the Subscriber shall promptly remit to Toybox all unpaid Fees according to the terms of this Agreement.

18.5 Survival. The following shall survive the termination or expiration of this Agreement for whatever reason or cause: Section 7.4 (Ownership); Section 7.5 (Feedback); Section 7.6 (No Implied Rights); Section 10 (Confidentiality); Section 13 (Analytics); Section 15 (Indemnification); Section 16 (Limitations on Remedies);

Section 18.5 (Survival); and Section 19.5 (Governing Law; Exclusive Jurisdiction).

19 General Provisions.

19.1 Trial Accounts. For certain users, who wish to conduct a trial of the System, on mutual agreement Toybox will provision a trial account with specified features (each a "**Trial Account**"). Users of Trial Accounts are obligated to accept these Terms and Conditions, and these Terms and Conditions shall apply to Trial Accounts in the same manner they apply to Subscriber Accounts, Team Member Accounts, Guest Accounts, and Public-User Accounts, respectively.

19.2 Entire Agreement. This Agreement constitutes the entire agreement, and supersedes all prior negotiations, understandings or agreements (oral or written), between the Parties regarding the subject matter of this Agreement (and all past dealing or industry custom). No modification to this Agreement will be effective unless in writing and signed by the Party against which enforcement is sought.

19.3 No Waiver. The failure of either Party to enforce its rights under this Agreement at any time for any period will not be construed as a waiver of such rights, and the exercise of one right or remedy will not be deemed a waiver of any other right or remedy.

19.4 Unenforceability. If any provision of this Agreement is determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

19.5 Governing Law; Exclusive Jurisdiction. The Parties agree that any disputes or disagreements arising out of or relating to this Agreement or its interpretation shall be governed by and construed in accordance with the laws of the State of New York, without regard to its conflicts of law provisions, and shall be subject to the exclusive jurisdiction of and venue in the state or federal courts located in the State of New York, in the judicial district in which Toybox resides. Both Parties consent to the jurisdiction of such courts and the laying of venue in such judicial district with respect to any such action.

19.6 Force Majeure. Neither Party shall be liable for a failure or delay in the performance of its obligations under this Agreement due to strikes (except with respect to its own labor force), shortages, riots, insurrection, acts of God, war, governmental action, power or connectivity interruptions, or other causes beyond the reasonable control of such Party.

19.7 Notices. All notices under this Agreement will be in writing, in English and delivered to the Parties at their respective addresses set out immediately below. Notices will be deemed to have been duly given (i) when received, if personally delivered; (ii) when receipt is electronically confirmed, if transmitted by facsimile; (iii) upon transmission if sent by email to the email address set out below; (iii) the day after being sent, if sent for next day delivery by recognized overnight delivery service; or (iv) upon receipt, if sent by certified or registered mail, return receipt requested.

If to Subscriber:	
Contact Name:	
Mailing Address:	
Email Address:	

If to Toybox:	
Contact Name:	Brendan Mahony
Mailing Address:	256 Vanderbilt, Ave #1R Brooklyn, NY 11205
Email Address:	brendan@toyboxsystems.com

19.8 Order of Precedence. The Order Form shall control over the Terms and Conditions; provided, however, that the Order Form will not control over a legal provision unless it identifies the term by section.

19.9 Assignment. This Agreement may not be assigned, in whole or in part, by either Party without the other Party's written consent; provided, however, such consent is not needed (i) for Toybox to subcontract performance of all or any part of the Service, or (ii) for either Party to assign this Agreement to any successor to all or substantially all of its business that concerns this Agreement (whether by sale of assets or equity, merger, consolidation or otherwise). This Agreement shall be binding upon, and inure to the benefit of, the successors, representatives and permitted assigns of the Parties hereto.

19.10 Independent Contractors. The Parties shall be independent contractors under this Agreement, and nothing herein will constitute either Party as the employer, employee, agent or representative of the other Party, or both Parties as joint venturers or partners for any purpose.