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- 11.03 Disclaimer of Agency. This Agreement is not intended to create a relationship such as a partnership, franchise, joint venture, agency, or employment relationship. Neither party may act in a manner that expresses or implies a relationship other than that of independent contractor, nor bind the other party. Neither party shall make any representations or warranties of any kind on behalf of the other party. No exclusive rights of any kind are granted under this Agreement.
- 11.04 Assignment. This Agreement may not be assigned or transferred, or its rights or obligations assigned or delegated, by Licensee, in whole or in part, including by way of merger or reorganization (regardless of whether Licensee is the surviving entity), acquisition or otherwise, without the prior written consent of Scoreloop. Any assignment made in violation of this Section 11.4 shall be void. Scoreloop may freely assign or transfer this Agreement and/or subcontract or delegate obligations hereunder in its sole discretion without the need for consent.
- 11.05 Waiver; Severability. Any waiver or failure to exercise promptly any right under this Agreement will not create a continuing waiver or any expectation of non-enforcement. If any of the provisions of this Agreement are held to be in violation of applicable law, void, or unenforceable in any jurisdiction, then such provisions are herewith waived,

amended or reformed to the extent necessary for the Agreement to be otherwise enforceable in such jurisdiction. However, if in Scoreloop's reasonable judgment deletion or amendment of any provisions of the Agreement by operation of this Section 11.5 unreasonably compromises the rights or increases the liabilities of Scoreloop or its licensors, Scoreloop may terminate this Agreement immediately upon written notice.

- 11.06 Construction. This Agreement will be fairly interpreted in accordance with its terms and without any strict construction in favor of or against either party. Any reference contained herein to a section of this Agreement shall be meant to refer to all subsections of such section. The terms "includes" and "including" shall not be construed to imply any limitation. This Agreement is in the English language only, which language shall be controlling in all respects, and all versions of this Agreement in any other language shall be for accommodation only and shall not be binding on the parties to this Agreement. All communications and notices made or given pursuant to this Agreement shall be in the English language. Except as expressly noted, this Agreement confers no third party rights and creates no third party beneficiaries of any kind.
- 11.07 Governing Law; Exclusive Forum.
- 11.07.1 The Subject Matter and all related disputes (including tort as well as contract claims, and whether pre-contractual or extra-contractual) shall be governed by the laws of the following jurisdictions, depending on the Licensee's place of domicile or residence: (a) the State of California, USA, if Licensee resides in the United States, Canada, or Mexico; or (b) Japan, if licensee resides in Japan, China, Taiwan, Korea, or other Southeast Asian country where all official languages are written or based on an ideographic script (e.g., Hanzi, Kanji, Hanja, or Hangul or Kana); or (c) Germany, if Licensee resides in any country not described above. The choice of law rules of any jurisdiction, the United Nations Convention on Contracts for the International Sale of Goods, and the American Law Institute's *Principles of the Law of Software Contracts* shall not apply and neither party shall invoke any of the foregoing in any proceeding between the parties.
- 11.07.2 Any disputes between or claims brought by one of the parties arising out of or related to Subject Matter (including tort as well as contract claims, and whether pre-contractual or extra-contractual, as well as the arbitrability of any disputes) shall be referred to and finally settled by binding arbitration before the International Court of Arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce ("ICC") in effect at the time of arbitration except as inconsistent with this Section 11.7.2. The place of arbitration shall be (a) San Francisco, California, if California law applies in accordance with Section 11.7.1 above; (b) Tokyo, Japan, if Japan law applies; and (c) Munich, Germany, in all other cases. Arbitration shall be conducted by three (3) independent arbitrators. Each party shall select one arbitrator within thirty (30) days from receipt of the arbitration notice, and the third shall be selected by mutual agreement of the two party-appointed arbitrators or, in default of agreement within another thirty (30) days, by the ICC. The arbitral proceedings shall be conducted and all arbitration-related documents shall be written in the English language. The arbitrators shall apply the law specified in Section 11.7.1 above. All awards may if necessary be enforced by any court having jurisdiction. The existence of any dispute between the parties, the existence or details of the arbitration proceeding, and all related documents, materials, evidence, judgments and awards therein, shall be kept confidential. Except as required by law, no party shall make any public announcements with respect to the proceeding or the award, except as required to enforce same. The parties agree that by entering into this Agreement, the parties hereby waive the right to a trial by jury and agree to only bring claims in an individual capacity and not as a plaintiff or class member in any purported class or representative proceeding. Notwithstanding the foregoing, nothing in this Section 11.7 shall preclude the right and ability of either party to file and maintain at any time an action for recovery of injunctive or provisional relief in any court of competent jurisdiction under the laws applicable thereto.
- 11.08 Complete Understanding. This Agreement is the parties' entire agreement relating to its subject matter. It supersedes all prior or contemporaneous oral or written communications, proposals, negotiations, understandings, representations and warranties and prevails over any conflicting or additional terms of any quote, order or other communication between the parties relating to its subject matter. Except as otherwise provided in this Agreement, this Agreement may only be modified by a writing signed by both parties' authorized representatives.
- 11.09 Notices. Scoreloop may send all written notices to Licensee required by this Agreement to any persons and addresses known to Scoreloop, and via any available communication medium (including email). Written notices to Scoreloop shall be sent to: Scoreloop AG, Brecherspitzstr. 8, Munich 81541 Germany, Attn: Legal Affairs and via email to legal@scoreloop.com.