

## SUBSCRIPTION TERMS AND CONDITIONS

These Subscription Terms and Conditions (the "Terms") together with the Order Form (as defined below) form a legal agreement (the "Agreement") between Eyevation Ltd., (the "Company", "Eyelevation", "we" or "us") and the entity listed in the Order Form signed by the parties ("Customer", "you", "your"). By signing the Order Form, connecting to, accessing, or using the Services (as defined below), you acknowledge that you have read and understood these Terms, along with any other terms and policies referenced herein. Customer agrees to be bound by the Agreement and to comply with all laws and regulations that apply to Customer's use of the Services and agrees that this Agreement constitutes a binding and enforceable legal contract between the Company and Customer. In the event that there is any conflict between the provisions of the Order Form and these Terms, the provisions of the Order Form shall take precedence.

ATTENTION - PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THE SERVICES. IF YOU DO NOT AGREE TO THIS AGREEMENT, PLEASE DO NOT ENTER, CONNECT TO, ACCESS OR USE THE SERVICES IN ANY MANNER.

CUSTOMER (AND ANY AUTHORIZED USER ON ITS BEHALF) HEREBY REPRESENTS, AGREES AND ACKNOWLEDGES THAT (I) THE AUTHORIZED USER HAS BEEN DESIGNATED BY THE CUSTOMER AND HAS FULL LEGAL AUTHORITY TO USE AND REGISTER TO THE SERVICES AND BIND THE CUSTOMER TO THIS AGREEMENT; AND (II) THIS AGREEMENT CONSTITUTES A BINDING CONTRACT BETWEEN CUSTOMER AND EYELEVATION.

CUSTOMER HEREBY REPRESENTS AND WARRANTS THAT THE AUTHORIZED USER'S ACCESS AND USE OF THE SERVICES ARE PERFORMED UNDER CUSTOMER'S AUTHORIZATION AND SHALL INURE TO THE BENEFIT OR LIABILITY OF THE CUSTOMER.

### 1. The Services

1.1. **The Services.** Eyevation developed and operates a proprietary firearms training system, intended to improve shooting training and comprising of hardware components, as detailed below and related embedded software/algorithms (in object code form only) (the "VCAT SYSTEM") and related on-line and software features. Each VCAT System comprises of: (i) one headset: XR/VR headset with eye tracker sensor (Pico Neo 3 Pro Eye or similar), including two (2) controllers, and (ii) one handset: handgun replica (to be integrated with one controller or other method of integration), as well as the Eyevation Dashboard (defined below) and other related software components, through which Eyevation provides its customers and their End Users (as defined below) with a real-time performance analysis and highly personalized feedback (the VCAT Systems and related services, hereafter the "Services").

### 2. Registration And User Account

2.1. **Account Registration.** In order to use the Services, Customer must register and open an account (the "Authorized User Account") through the Eyevation website or as otherwise directed by Eyevation, using log-in or other identity credentials as may be made available by Eyevation (e.g. name, email and password). The number and/or type of Authorized Users (as defined below) may be designated by the parties in the Order Form. Customer will designate the individuals who are authorized to use or access the Services on behalf of Customer under the Authorized User Account

("Authorized Users"). Such Authorized User Accounts may hold and delegate, through the use of Eyevation's Dashboard (as defined below), different roles and permissions, such as, (as may be made available by Eyevation at its discretion from time to time) without limitation, allowing certain view and configuration permissions, making payments and placing orders for the Services, etc. All such actions shall be managed through the Eyevation Dashboard and subject to the roles and permissions made available by the Company from time to time (the "Eyevation's Dashboard").

2.2. Customer is authorized to enable individuals using the Customer's Site for firearms shooting practice, to access and use the Service through the permitted VCAT System ("End User"). The Customer Site is identified by the Parties in the applicable Order Form.

In order to use the Services, each End User will be required to register and open an End User account ("End User Account"), in accordance with and subject to the Company's End User terms and conditions (the "EULA"), as may be presented during registration, account setup, via QR code, or by any other method determined at Company's sole discretion. As part of an End User Account registration, the End User may be required to provide certain personal information (such as End User's name, address, geographic location, e-mail address and any such other information). In connection with the End User use of the Services the Company will collect additional personal information related to the End User and End User use of the Services, all in accordance with Section 10 hereunder.

**3. Account Security.** Customer is responsible for maintaining the confidentiality of the login credentials (e-mail and password or any other access method implemented by Eyevation) of its Authorized Users Accounts and for all activities that occur under such Authorized Users Accounts. We reserve the right to temporarily suspend any Authorized User Account or End User Account, if we determine that Customer, End User, or anyone on their behalf is abusing such account or in the event such suspension is required to limit or prevent damages that may result from violation of this Agreement. Eyevation will endeavor to ensure that such suspension will be to the minimum extent and duration needed to prevent or diminish harm and to the extent practicable Customer shall be expressly notified about the suspension of the Services.

#### **4. Subscription**

- 4.1. The type and scope of the permitted use of the Services are determined in an Order Form ("Subscription") and for periodic Subscriptions the Order Form shall specify the contemplated period of the Subscription (the "Subscription Period"). If Customer wishes to extend the Subscription or increase its scope, purchase of additional Subscriptions and capacity is required.
- 4.2. **Customer Subscription.** Subject to payment of the Subscription fees pursuant to the applicable Order Form, and unless otherwise agreed in writing between Customer and Eyevation, Customer is hereby granted a limited, non-exclusive, non-assignable, non-tradeable, non-sub-licensable, revocable (in accordance with the terms hereof) right to use and access the VCAT Systems, solely on a subscription training-as-a-service basis, during the Subscription Period, only for the purpose of receiving and utilizing the Services, all solely according to the terms in the relevant Order Form and these Terms. Except as stated above, no other rights in the VCAT System or the Services are granted.
- 4.3. Eyevation may make available to Customer instructions, user guides, manuals and release notes that describe the technical operation or use of the VCAT Systems ("Documentation") for Customer's internal use of the Services in the scope of the Subscription. Unless the Documentation is separately referred to herein, all references in this Agreement to the VCAT System and/or Services shall include the Documentation.

#### **5. Use Restrictions and Obligations**

- 5.1.1. Prior to the use of the Services by any End User, Customer represents and warrants that it will

ensure that each End User shall: (i) create an End User Account; (ii) accept and agrees to the EULA; and (iii) access and use the Services solely through their End User Account. **Customer shall not enable or assist the use of the Services in a manner that avoids or attempts to avoid the required account registration, access restrictions and subscription scope and limitations. Customer shall not solicit, circumvent, and shall not permit, or otherwise cause any End User, to act in violation of this Section 5.4.1 or the EULA. In the event of any non-compliance, Company reserves the right to suspend, disable, or terminate the Authorized User Account and/or any End User Account.**

- 5.1.2. Customer may not and shall not permit any person, and/or any third party to (i) copy, modify, distribute, publicly display, transfer or create derivative works of, adapt, emulate, translate, reverse engineer, compile, decompile, disassemble or reproduce the VCAT Systems or any part thereof, for any purpose, (ii) remove or delete any or all copyright notices, restrictions and signs indicating proprietary rights of Eyevation and/or its licensors, including copyright mark [©] or trademark [® or ™] contained in or accompanying the VCAT System or Services, (iii) transmit, distribute, display, use as a services bureau or otherwise make available through or in connection with the Services any content, including any Authorized User or End User Data (as defined below), in a manner which infringes third party rights, including intellectual property rights and privacy rights, or which may contain any unlawful content; (iv) transmit or otherwise make available in connection with use of the Services any malware or any other computer code, file, or program that may or is intended to damage or hijack the operation of any hardware, software, data, or telecommunications equipment, or any other actually or potentially harmful, disruptive, or invasive code or component; (v) interfere with or disrupt the operation of the Services, or the servers or networks that host them or make the Services available; (vi) access and/or use any part of the VCAT System or Services in order to build a competitive product or service; (vii) publish or disclose to any third party any quality, performance or benchmark test

analyses relating to the VCAT Systems or Services; or (viii) bypass any measures which are used to prevent, control or restrict access to the Services and/or certain functionalities therein.

- 5.1.3. The VCAT System may be used solely indoors within an enclosed structure and should not be operated nor stored or left outdoors. Direct exposure to sunlight will cause damage to the VR headset display.
- 5.1.4. The Customer may not, under any circumstances, disassemble, open, modify, or attempt to repair the handgun replica or any other component of the VCAT System. In the event of any suspected defect, the Customer must contact the Company. Any prohibited use as set forth in Section 5.1.3 and in this Section 5.1.4 shall not be covered under the Company's warranty or service obligations, and the Customer shall bear all costs associated with repairing the VCAT System and any related expenses.

## 5.2. Safety

- 5.2.1. The VCAT Systems involve the use of a device that resembles a handgun. It has been designed in accordance with international standards to prevent mis-identification with a real firearm.
- 5.2.2. The VCAT Systems also include a wearable headset, and virtual equipment which may cause Authorized User and/or End Users to become disoriented, and may also inhibit Authorized Users and/or End Users knowledge and understanding of their surroundings. Customer will ensure the environment where the VCAT Systems are used is free from obstruction and that Authorized User and/or End Users and any spectators are supervised at all times. Customer accepts all liability for its and its Authorized Users and/or End Users' use of the VCAT Systems and any harm, damage or liability that arises as a result. Customer is solely responsible for ensuring that all applicable laws and regulations are complied with in the acquisition and use of any audio, video or images by Customer or from any third party.
- 5.2.3. Customer (and not Eyevation) is responsible for using the VCAT Systems according to the Documentation in this Agreement in a manner that ensures the safety of Authorized Users and/or End Users during their use of the VCAT Systems and for the safety of those in the proximity of an Authorized User and/or End

User using the VCAT System. Customer is solely responsible for all use of the VCAT Systems in its Site and should exercise caution when using the VCAT Systems and/or making the VCAT Systems available for use by End User. Customer will constantly monitor and supervise all use of the VCAT Systems to ensure the Authorized User, End Users and bystanders are safe and secure. It is hereby emphasized that the VCAT Systems are not intended for use with live weapon and it Customer's responsibility to ensure at all times that no live weapon shall be used in connection with the VCAT Systems

- 5.2.4. Customer must never modify, nor allow others to modify the device in any way, including without limitation to paint it or to remove features that help to prevent confusion such as the colored barrel tip, or use it in such a way that it could be construed as Customer brandishing a firearm. The device is not a firearm and does not incorporate any actual firearm parts.
- 5.2.5. Customer will ensure all Authorized Users and/or End Users received proper training with respect to the use of the VCAT Systems and that appropriate warnings and safety precautions are used and provided to Authorized Users and/or End Users, particularly with respect to the handgun device provided as part of the VCAT System.
- 5.2.6. Customer shall notify Company immediately of any actual or suspected violation of the terms of Section 5 and of any actual or suspected infringement or unauthorized use of the VCAT Systems, that Customer becomes aware of.

- 5.3. **Age Requirement and Supervision.** The VCAT System, including all hardware, software, data, and services provided under the Agreement, is intended solely for responsible adult use (18 years and older). Access to and use of the VCAT System by children or minors is generally not permitted, except under the direct ongoing and close supervision of an adult guardian who is responsible for monitoring usage and ensuring safety, and under the full responsibility of such adult. Customer agrees to restrict access to the VCAT System by minors and to ensure that should such use is intended, (a) the direct consent of the applicable legal guardian of the minor is obtained in advance and (b) ongoing and direct supervision of any minor's use is maintained at all times to ensure the responsible, safe, and proper operation of the VCAT System. The Company accepts no liability for use of the VCAT System by minors or for any

consequences arising from failure to adhere to this policy.

## 6. Delivery, Handling and Usage

- 6.1. Deployment, commissioning and installation of the VCAT Systems shall be performed by Company (or anyone on its behalf) at the Site, in accordance with the timeframes detailed in the Order Form. Upon completion of the deployment, Company shall inform Customer that the VCAT Systems are deployed and ready for use and shall grant Customer the login information ("System Readiness").
- 6.2. The first Subscription Period shall commence upon System Readiness.
- 6.3. Following System Readiness, Customer shall routinely maintain, operate, and use the VCAT Systems in a careful and proper manner in compliance with the applicable operations manual and instructions for use of the VCAT Systems as supplied by Company. The VCAT Systems shall be used only at the Site and may not be removed from the Site, without the prior written consent of Company. Customer must safeguard and protect the VCAT Systems from possible damage until they are returned to and in Company's possession. If there is any damage to the hardware beyond normal wear which is not covered by Support Services (as defined below) or if the VCAT Systems are lost or stolen, Customer will be liable for the full costs of repair or replacement.
- 6.4. Customer will hold, throughout the Term and a customary run-off period, sufficient insurance to adequately cover the VCAT Systems while in possession or control of Customer, and to cover both Customer and any persons using the VCAT Systems while in Customer's Site.

## 7. Training

- 7.1. Customer shall only assign instructors to provide training on the VCAT Systems if such instructors are properly trained, either following completion of an Eyevation training course or on a train the trainer basis.
  - 7.2. As part of the Subscription Plan (as set forth in the Order Form) purchased by the Customer, Eyevation shall provide one initial training session for up to such number of Customer's instructors as set out in the Order Form (if set) under the guidance of an Eyevation expert instructor.
  - 7.3. Any additional training required by Customer shall be provided by Eyevation at the then-applicable rates or as otherwise quoted in the Order Form.
8. **Return of the VCAT Systems upon termination or expiration.**

- 8.1. No later than 14 days from the expiration or termination of this Agreement for any reason whatsoever, Customer shall return to Eyevation, in accordance with Eyevation's written instructions, all VCAT Systems in Customer's possession in good working condition, ordinary wear and tear excepted
- 8.2. Without derogating from any other remedies available to Company hereunder or under applicable law, Customer is responsible (including for reimbursement of Company for the costs or repair) for any damage to the VCAT Systems subscribed to by Customer which is Customer's responsibility under this Agreement and for any VCAT System which is not returned to Company in good working condition.
- 8.3. For non-returned products - Customer will pay Company an amount of US\$100 per each VCAT System, per each day of delay in the ability of Company to remove any VCAT System from the Site.
- 8.4. For products returned in a faulty/damaged status - It is agreed and understood that the full cost of a new hardware component in an amount of (a) US\$ 5,000 for new each XR/VR headset with eye tracker sensor (Pico Neo 3 Pro Eye or similar), and/or (b) US\$ 500 for new handgun replica (such prices may be updated from time to time to reflect then prevailing price of such new items).

## 9. Intellectual Property

- 9.1. **Customer Intellectual Property.** All Authorized User Data (as defined below) is and shall at all times remain the property of Customer. Unless specifically authorized in this Agreement or in writing by the Customer, and then only to the extent so authorized, Eyevation shall not use the Authorized User Data in any manner whatsoever.
- 9.2. **Eyelevation Intellectual Property.** Any proprietary and intellectual property rights, title, and interests in and to the VCAT Systems and in the Services including any enhancements, improvements or other modifications made to or derived from the VCAT Systems and from the Services, Documentation, and Eyevation's trademarks all whether or not registered and/or capable of being registered, and any and all Feedback as defined herein, but excluding any Authorized User Data (collectively, the "**Eyelevation Properties**"), are owned and/or licensed to Eyevation or its affiliates or licensors and are subject to copyright and other applicable intellectual property

rights under Federal and state United States law, foreign laws and international conventions.

**9.3. Feedback.** In the event that Customer, Authorized User, End User or any Authorized User provide Eyevation with any suggestions, comments or other feedback relating to Eyevation's Services (collectively, "**Feedback**"), such Feedback is provided 'As Is' and is deemed as the sole and exclusive property of Eyevation and Customer hereby irrevocably waives any moral rights Customer may have in such Feedback.

## 10. Data - Permitted Use and Restrictions

**10.1. Authorized User and End User Data.** In the scope of the provision of the Services, information and certain personal information associated with the Authorized Users concerning their use of the VCAT System ("**Authorized User Data**") and certain personal information associated with the End Users concerning their use of the VCAT Systems ("**End User Data**"), which, with respect to the latter, may include biometric personal data (i.e., iris or retina scan), shall be collected, stored, or otherwise processed by Company all in accordance with Company's Privacy Policy available at: [https://www.vcat.pro/\\_files/ugd/08365b\\_c06ddf0d636a444ea90da6206196f9de.pdf](https://www.vcat.pro/_files/ugd/08365b_c06ddf0d636a444ea90da6206196f9de.pdf) End User Data may be subject to additional terms and conditions under the EULA. As between the parties, the Company is the controller of the End User Data, and such End User data shall be deemed the Intellectual Property and Confidential Information of the Company. Customer's (and Customer's Authorized Users) access to the End User Data is expressly restricted and prohibited, with the sole exception of portions of such End User Data which are displayed via the Eyevation Dashboard.

**10.2. Use of Authorized User Data.** Customer hereby grants Eyevation a non-exclusive, non-assignable, non-transferable license to use Authorized User Data for the purpose of providing Customer and End Users with the Services.

**10.3. Unidentified Information.** Without derogating from the foregoing, Customer hereby grants Eyevation a perpetual, irrevocable, non-exclusive, worldwide, royalty-free right and license to use Authorized User Data in an aggregated and de-identified manner that cannot be understood to be related to Customer, for the purpose of developing, improving or enhancing the Eyevation products and services (or any part thereof).

**10.4. Receipt of Approvals.** Customer hereby agrees and represents that Customer has and will at all times during the Term maintain all permissions and consents required to provide Authorized User Data and the End User Data to Eyevation for Eyevation's use in accordance herewith.

## 11. Confidentiality

Either party (a "**Disclosing Party**") may disclose or make available to the other party (a "**Receiving Party**") certain information regarding its technology, operations and business ("**Confidential Information**"). Receiving Party agrees to use best reasonable industry measures to protect the confidentiality and not disclose the Confidential Information to any third party or use any Confidential Information except as required to provide or use of the Services or the VCAT System in the scope of the parties' engagement hereunder. Confidential Information shall not include information that Receiving Party can show by written evidence (a) was already lawfully known to or independently developed by Receiving Party without access to or use of Confidential Information, (b) was received by Receiving Party from any third party without restrictions, (c) is publicly and generally available, free of confidentiality restrictions. Receiving Party shall not be prevented from disclosing Confidential Information pursuant to a binding court order or similar binding legal requirement for disclosure, provided that, unless otherwise prohibited by applicable law, Receiving Party provides Disclosing Party with prompt notice of such requirement and cooperate in order to minimize such requirement. Receiving Party shall restrict disclosure of Confidential Information to those of its employees and authorized service providers with a reasonable need to know such information and which are bound by written confidentiality obligations no less restrictive than those set out herein. Receiving Party shall in any event remain liable for any actions or omissions performed by its employees and authorized service providers, as if performed by Receiving Party.

## 12. Fees; Order form

**12.1.** Purchase from Eyevation of Services and other services made available hereunder by Eyevation, may be done by the parties' mutual execution of a purchase order, quote or other written instrument (an "**Order Form**"). An Order Form may specify and include, among others, the fees payable in consideration for the Services and other services made available hereunder by Eyevation ("**Fees**"), the scope of such services, number of VCAT Systems, Subscription plan, Subscription Period, and additional payment and billing terms.

**12.2.** Unless otherwise set forth in the applicable Order Form, Customer shall pay the amount of Subscription and

services fees due to Eyevation, added with any applicable VAT or sales taxes as set forth in the relevant Order Form . All Fees, Order Forms and Subscriptions, shall be non-cancellable and the sums paid non-refundable except in the case of termination of this Agreement by Customer for breach by Eyevation (pursuant to the terms of this Agreement) in which case Customer shall be entitled to a refund of prepaid fees for Services not rendered due to such termination on a prorated basis from the termination date. Customer is responsible for payment of any taxes resulting from the payment to Eyevation hereunder except for Eyevation income tax that is charged directly from Eyevation.

### **13. Maintenance and Support**

13.1. As may be indicated in the applicable Order Form, subject to payment of the Fees, Eyevation shall provide its standard support and maintenance services in accordance with the Service Level Agreement that the company shall e-mail by request ("**Support Services**"). If Customer desires to receive enhanced support services that exceed the Support Services, such enhanced support services shall be governed by a separate enhanced support services agreement and fees to be agreed upon in writing between the parties hereto.

13.2. During the Term, Customer shall promptly notify Company of any non-conformity and/or failure of the VCAT Systems or part thereof, and/or any damage thereto.

13.3. Customer shall provide Company's technical personnel with remote and if required by them, physical access to the VCAT Systems. The Support Services shall not apply if the VCAT Systems or any part thereof (a) have been repaired, altered or replaced not by the Company, (b) have been subject to misuse, abuse or mishandling, unusual physical, electrical or electromagnetic stress, unauthorized use, negligence, accident, (including fire, water, explosion, smoke, vandalism, etc.), fluctuations in electrical power, (c) stored in inadequate or unreasonable conditions, (d) operated contrary to Company's instructions and manuals or other Documentation, or (e) Customer's failure to implement, or to allow Company or its agents to implement, any corrections or modifications to the VCAT Systems made available to Customer by Company (or its suppliers).

### **14. Warranty; Disclaimers**

14.1. **Limited Product Warranty.** Eyevation warrants, for Customer's benefit alone, that the Services as provided

by Eyevation, if operated in accordance with the Documentation, Eyevation's written directions and with this Agreement, shall (i) be free from material defects in design and construction, (ii) substantially comply with the specifications outlined in the Documentation, and that Support Services ordered hereunder, will be performed in a professional and workmanlike manner and by personnel that has the necessary skills and training to perform such services.

14.2. Eyevation warrants that it has the requisite authority to execute, deliver, and perform its obligations under this Agreement and that doing so will not violate any preexisting contracts or agreements. Eyevation warrants that the use of the Services and the Support Services in accordance herewith, will not result in significant service interruptions or degradation of Customer's systems.

14.3. IT IS AGREED AND ACKNOWLEDGED THAT EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN SECTION 14.1 ABOVE, THE SERVICES INCLUDING WITHOUT LIMITATION ANY DOCUMENTATION, CONTENT, MATERIALS, DATA AND INFORMATION MADE AVAILABLE THERETHROUGH OR RELATED THERETO, ARE PROVIDED ON AN "**AS IS**" BASIS, AND EYEVATION DISCLAIMS AND MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED OR STATUTORY INCLUDING ANY WARRANTY AS TO THE USE, PERFORMANCE, ACCURACY, FITNESS FOR PURPOSE, OR RESULTS OF THE VCAT SYSTEM OR SERVICES.

14.4. **Exclusive Remedies.** For any partial or complete unavailability of the Services in breach of the warranties contained in Section 14.1, Customer's exclusive remedy, and Eyevation's entire and sole liability under this Agreement, shall be to comply and perform in accordance with the Support Services; provided that (i) Customer has fully paid all applicable undisputed Fees, and (ii) Customer has reported in writing to Eyevation the claimed failure as soon as reasonably possible from discovery. Eyevation will have no obligation or liability under this Section 14 if the Services have been: (i) altered, modified, or serviced other than by Eyevation, on Eyevation behalf or with Eyevation's written approval; (ii) used in a manner other than as permitted hereunder or as specified in the Documentation; or (iii) if Customer violated the restrictions set forth under Section 5 hereto.

### **15. Indemnification**

**15.1. Infringement Indemnification.** Eyeviation shall defend, indemnify and hold harmless Customer at Eyeviation's sole cost and expense, for any third party finally awarded claim, suit, expenses, damages, or proceeding brought against Customer that the VCAT System or Services, as delivered by Eyeviation, infringe any third party patent, copyright or other intellectual property right (a "Claim"). Customer will give Eyeviation written notice promptly upon becoming aware of such Claim or threat of Claim, and allow Eyeviation to assume full control of the diligent defense and settlement of such Claim, provided that Eyeviation shall not enter into any settlement of a Claim which requires Customer to admit any wrongdoing or that otherwise does not relieve Customer of all liabilities directly associated with such Claim without Customer's written consent, which consent shall not be unreasonably withheld.

**15.2. Limitations on Indemnity Obligations.** Eyeviation shall have no liability for any claim based upon: (i) modification of the Services by or on behalf of Customer or anyone other than Eyeviation, if the claim would not have arisen but for such modification; (ii) the combination, operation or use by Customer of the Services furnished under this Agreement with software hardware or any other component not furnished or expressly approved for such combination, operation or use by Eyeviation, if the claim would not have arisen but for such combination, operation or use; (iii) Customer's use of the Services in a manner other than as permitted hereunder or as specified in the Documentation; or (iv) Customer's violation of the restrictions set forth under Section 5.

**15.3. Remedies.** Without in any way limiting Eyeviation's obligations to indemnify and defend Customer under Section 15.1, in the event of a Claim, Eyeviation may, at its option and expense, either: (i) obtain for Customer the right to continue to use the Services; (ii) replace the Services with a product with substantially equivalent functionality; or (iii) modify the Services so that it becomes non-infringing, while maintaining substantially equivalent functionality. If (i), (ii) or (iii) above are not commercially practical, then Eyeviation shall be entitled to terminate this Agreement and any relevant Order Form. In such event, Eyeviation shall give Customer a refund of prepaid fees on a prorated basis from the date the Services became unavailable for Customer's use and.

**15.4.** Customer shall defend Eyeviation at customer's sole cost and expense, for any claim, suit, expenses, damages, or proceeding brought against Eyeviation by a third party

resulting from, arising out of or relating to Customer's breach of this Agreement or its use or End Users' use, of the VCAT System ("A Claim Against Eyeviation"). Customer will pay the amount of any final judgment or court approved settlement of such Claim Against Eyeviation awarded by a court of competent jurisdiction against Eyeviation. Eyeviation will give Customer written notice promptly upon becoming aware of such Claim Against Eyeviation or threat of Claim Against Eyeviation, and allow Customer to assume full control of the diligent defense and settlement of such Claim Against Eyeviation, provided that Customer shall not enter into any settlement of a Claim Against Eyeviation which requires Eyeviation to admit any wrongdoing or that otherwise does not relieve Eyeviation of all liabilities directly associated with such Claim Against Eyeviation without Eyeviation's written consent, which consent shall not be unreasonably withheld.

## **16. Limitation of Liability**

**16.1. EXCEPT WITH RESPECT TO DAMAGES ARISING FROM EITHER PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS HEREUNDER, AND EXCEPT WHERE PROHIBITED BY LAW, IN NO EVENT SHALL EITHER PARTY AND/OR ANY OF ITS AFFILIATES BE LIABLE FOR ANY INDIRECT DAMAGES INCLUDING WITHOUT LIMITATION, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND.**

**16.2. EXCEPT WITH RESPECT TO (A) EITHER PARTY'S LIABILITY (i) CAUSED BY ITS BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER SECTION 11, (ii) ARISING FROM AN INDEMNIFIABLE CLAIM UNDER SECTION 15, (iii) ARISING FROM ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; OR (B) CUSTOMER'S LIABILITY ARISING FROM BREACH OF SECTION 5 HEREUNDER, EITHER PARTY'S LIABILITY IN CONNECTION WITH THIS AGREEMENT, SHALL IN NO EVENT EXCEED THE FEES PAID BY CUSTOMER TO EYEVIACTION HEREUNDER DURING THE TWELVE 12 MONTHS PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH THE CAUSE OF ACTION AROSE.**

**16.3. THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS IN THIS SECTION 16 SHALL APPLY TO ALL CLAIMS FOR DAMAGES, WHETHER BASED IN AN ACTION OF CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, TORT, OR OTHERWISE. EACH PARTY HEREBY ACKNOWLEDGES AND AGREES THAT THESE LIMITATIONS OF LIABILITY WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY, AND EVEN IF**

EITHER OF THE PARTIES AND/OR ANY OF ITS AFFILIATES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITIES AND/OR DAMAGES.

## 17. Term and Termination.

- 17.1. This Agreement shall enter into effect upon the Effective Date of the applicable Order Form, and unless terminated earlier in accordance with the terms hereof or any terms of termination expressly set forth and agreed upon between the parties in an Order Form, it shall continue until there are no Subscriptions in effect (the "Term"). Except as otherwise provided in an Order, either party may terminate this Agreement and any applicable Order Form if the other party breaches its terms and such breach is not cured within fourteen (14) days of the terminating Party's written notice of such breach. Sections 5, 9, 11, 14, 16, 17 and 18 will survive any termination or expiration of this Agreement and any Order Form.
- 17.2. Upon termination or expiration of this Agreement and/or of the applicable Order Form: (i) Customer will discontinue any and all use of the VCAT Systems and all licenses and rights granted to Customer under the Agreement shall forthwith terminate and expire; (ii) Eyeviation may remotely disable or deactivate any components of the VCAT Systems and Customer shall ensure and cooperate with Eyeviation to ensure Eyeviation may take the actions required in connection with such disable or deactivation; and (iii) the Authorized User Account will, at Eyeviation's option, be deleted, along with any content in the account may be deleted. Eyeviation shall not be responsible for the loss of any content; (iv) all amount and payments for the use of the VCAT Systems and all licenses and rights granted hereunder prior to the date of termination shall become immediately due and payable. We may publish additional guidelines regarding the treatment of lapsed Subscriptions. Either party shall promptly return to the other party and (or, if return of material is not feasible) purge its systems from any Confidential Information of the other party that it holds or has access to, and certify of the same in writing.

## 18. General

- 18.1. **Entire Agreement.** This Agreement, including any Order Forms issued and executed hereunder constitute the entire agreement between the parties hereto and supersedes all previous agreements or representations, written or oral, with respect to the subject matter hereof.
- 18.2. **Relationship of the Parties.** This Agreement does not, and shall not be construed to create any partnership, joint venture, employer-employee, agency, or franchisor-franchisee relationship between the parties hereto.
- 18.3. **Governing Law and Jurisdiction.** Any claim relating to the use of the Services will be governed by and interpreted in accordance with the laws of the State of Israel without reference to its conflict-of-laws principles. Any dispute arising out of or related to your use of the Services will be brought in, and either Party hereby consents to the exclusive jurisdiction and venue of the competent courts of Tel Aviv, Israel.
- 18.4. **Assignment.** Neither Party may assign, sublicense or otherwise transfer any or all of your rights or obligations under this Agreement, without the other Party's prior express written consent. For the avoidance of doubt, each Party may assign this Agreement to another entity (except that Customer may not assign this Agreement or any rights or obligations hereunder to a competitor of Eyeviation), in connection with a merger, acquisition, or sale of all or substantially all of its assets or shares, provided that such assigning Party provides prompt written notice of such assignment to the other Party.
- 18.5. **Severability.** If any provision of this Agreement is found to be unlawful, void, or for any reason unenforceable, then that provision will be deemed severable from these Terms and will not affect the validity and enforceability of any remaining provision.
- 18.6. **No Waiver.** No waiver by either party of any breach or default hereunder will be deemed to be a waiver of any preceding or subsequent breach or default.
- 18.7. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall together constitute one and the same instrument.