

Unbridled Software As A Service Agreement

By clicking the box on this Site or signing this agreement to indicate your acceptance and through your use of this Software, you agree to the following Terms and Conditions of this **Software as a Service Agreement** (the “Agreement”) between you (“Client”) and ILA Design Group, LLC, of 6222 Richmond Ave Suite 470 Houston, TX 77057, a Limited Liability Company (“Vendor”).

WHEREAS, Vendor is in the business of supplying software applications and diamond supply services to companies in the diamonds and precious and semi-precious stones (“stones”) and jewelry sale industry, including, Vendor web service/extension (collectively, “Web Service”) that facilitates the sale of Vendor stones and jewelry via the Client’s website to the Client’s customers;

WHEREAS, Client is an individual or a company that desires the use of Vendor’s software application (the “Unbridled Diamond Service”), products and services;

WHEREAS, Client desires to have Vendor provide Cloud Hosting of the Web Service; and

WHEREAS, Vendor and Client desire to enter into this Agreement defining their respective rights and responsibilities and memorializing the terms and conditions pursuant to which Vendor will provide to Client the Services for a fee.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the parties intending to be legally bound hereby agree as follows:

Definitions

- a. **“SaaS”** is an acronym for “Software As A Service” and means the combined hosting and support services provided in this Agreement.

- b. **“SaaS Materials”** shall mean the written materials relating to the operation and use of the Vendor Software including, but not limited to, user manuals, user guides, technical manuals, release notes, and online help files regarding use of the Vendor Software provided as part of the Service, and any other materials prepared in connection with any Vendor Software modification, correction, or enhancement, and shall include any updated versions of SaaS Materials as may be provided by Vendor from time to time (1) in the course of providing the Service; (2) as part of an online tutorials or help files provided with the Service; or (3) in the course of providing web seminars in which Client or Client’s Users enroll.
- c. **“Cloud Hosting”** means the provision of products and services in a hosted, virtualized environment, accessible via the internet.
- d. **“Vendor Software”** means Vendor proprietary software applications and user interfaces as defined in Schedule A and made available to Client by Vendor as part of the Service. Vendor Software may contain third-party components licensed to Vendor.
- e. **“Client Data”** means all data, files, including hypertext markup language files, documents, audio and visual information, graphics, scripts, programs, applets or servlets that Client creates, installs, uploads to or transfers in or through the Service or provides in the course of using the Service, excluding identification and other information provided by Client relative to Client Users.
- f. **“Electronic Communications”** shall mean any transfer of signs, signals, text, images, sounds, data or intelligence of any nature transmitted in whole or part electronically to or from the Service.
- g. **“Service”** shall mean the software and infrastructure in a hosted environment provided and maintained by Vendor to which Client is being granted access under this Agreement via a web site or another designated IP address. Service or Services includes Product Support Services and Application Support Services described in this Agreement.
- h. **“Term”** means any Initial Term and/or Renewal Term as defined in Section 6 of this Agreement.
- i. **“Third Party Products”** means application software products provided by third party vendors, including operating system and application software with which the Vendor Software interfaces and which provides certain functionality essential to the operation of the Vendor Software. Third Party Products are licensed to Vendor for incorporation and use in the hosted environment as part of the Service as set forth in the Statement of Work. For the sake of clarity, the term Third-Party Products does not refer to third-party software components, if any, incorporated into Vendor Software.
- j. **“User(s)”** means Client’s employees, representatives, consultants, contractors, agents, or customers who are authorized to use the Service and have been supplied user identifications and passwords by Client or on Client’s behalf.

1 PROVISION OF SERVICES; SERVICE DESCRIPTION

In consideration of the fees paid by Client under this Agreement, Vendor agrees to provide Client access to the Service.

Vendor provides prebuilt widgets to quickly integrate the Unbridaled Diamond Service into different ecommerce platforms, websites, and applications. The Unbridaled Diamond Service web service has an API that the Client can use to build their own custom implementation if they choose to do so. However, the Client is only expressly permitted to use the API to sell Unbridaled Diamond Service stones and jewelry (“merchandise”) directly to the Client’s retail customers and not to create any separate business by the Client. Additionally, the Client is only allowed to use the Unbridaled Diamond Service on one unique ecommerce site. Any other use of the API by the Client other than to sell Unbridaled Diamond Service merchandise directly to the Client’s retail customers, including but not limited to the development of any separate independent business by the Client or use of the Unbridaled Diamond Service on an unauthorized ecommerce site, is expressly prohibited and shall result in a violation of this Agreement and Vendor’s intellectual property rights.

The Unbridaled Diamond Service web service provides the Client’s customers with the ability to order stones and jewelry directly from Unbridaled Diamond Service via the Client’s website. The Unbridaled Diamond Service utilizes an algorithm, which compares the wholesale and retail prices of similar items sold through the Diamond Boutique and automatically sets wholesale and retail prices for the merchandise sold to the Client’s customers.

The order will be placed by the Client’s Customer and, if the stone and/or jewelry plus stone is available, the Vendor will ship the stone and/or stone plus jewelry to the Client who will then provide it to the Customer for the set retail price.

2 IMPLEMENTATION

Vendor will implement the infrastructure to provide Client the Services described in this Agreement.

This implementation is contingent on:

- (i) the Vendor Software having been installed and accepted by Client
- (ii) Client providing all data required by Vendor in order to implement the infrastructure; and
- (iii) Client providing their internal infrastructure and connectivity needed to access the Services.

3 LICENSE GRANTS

Subject to the terms and conditions of this Agreement, Vendor grants to Client during the Term of this Agreement the non-transferable, non-exclusive worldwide right to permit Users to (a) use the Service, including the Base Components thereof, (b)

display and print Client Data, and (c) use the SaaS Materials solely in connection with the Service, all solely for Client's own internal business operations. For purpose of this license grant, "Client" shall include any outsourced or other third-party consultants or similar personnel supporting Client as part of its typical business practices, acting under Client's direction and for whom Client is fully responsible hereunder. Client acknowledges and agrees that the license granted is not a concurrent user license and that the rights granted to Client in this Agreement are subject to all of the following agreements and restrictions: (i) Client shall not license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose or otherwise commercially exploit or make the Service or the SaaS Materials available to any third party other than an authorized User; (ii) Client shall not modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the Service, including without limitation the Vendor Software and or SaaS Materials that are provided as a part thereof, or access the Service or SaaS Materials in order to build a similar or competitive product or service; (iii) Client shall not create Internet "links" to the Service or "frame" or "mirror" any part of the Service, including any content contained in the Service, on any other server or device; (iv) except as expressly stated herein, no part of the Service or SaaS Materials may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording, or other means; (v) Client agrees to make every reasonable effort to prevent unauthorized third parties from accessing the Service; (vi) Client acknowledges and agrees that Vendor or its Third Party Vendors shall own all right, title and interest in and to all intellectual property rights in the Service and the SaaS Materials and any suggestions, enhancement requests, feedback, or recommendations provided by Client or its Users relating to the Service or the SaaS Materials, including all unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, know-how and other trade secret rights, and all other intellectual property rights, derivatives or improvements thereof; (vii) unauthorized use, resale or commercial exploitation of any part of the Service or SaaS Materials in any way is expressly prohibited; (viii) Client does not acquire any rights in the Service or SaaS Materials, express or implied, other than those expressly granted in this Agreement and all rights not expressly granted to Client are reserved by Vendor and Third Party Vendors; and (ix) this Agreement is not a sale and does not convey any rights of ownership in or related to the Service, Vendor Software, Third Party Products, or SaaS Materials to Client.

4 LICENSES FROM CLIENT

Subject to the terms and conditions of this Agreement, Client grants to Vendor and its Third-Party Vendors the non-exclusive, non-transferable worldwide right to copy, store, record, transmit, display, view, print or otherwise use (a) Client Data solely to the extent necessary to provide the Service and SaaS Materials to Client, and (b) any trademarks that Client provides Vendor for the purpose of including them in Client's user interface of the Service ("Client Trademarks"). Client acknowledges and agrees that Client Data and information regarding Client and Client's Users that is provided to Vendor and its Third-Party Vendors in connection with this Agreement may be (a) processed by Vendor and its Third-Party Vendors to the extent necessary to provide the Service and (b)

transferred outside of the country or any other jurisdiction where Client and Client's Users are located. In addition, Client acknowledges and agrees that it is Client's obligation to inform Client's Users and Customers of the processing of Client Data and information regarding Client and Client's Users pursuant to this Agreement and to ensure that such Users and Clients have given any necessary consent to such processing as required by all applicable data protection legislation. Client shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and copyright of all Client Data and information regarding Client and Client's Users. Client agrees that the license to the Client Data shall survive termination of this Agreement solely for the purpose of storing backup Client Data in accordance with the terms of this Agreement.

By providing Client with the Services, Vendor does not acquire any right, title and/or interest in the content material (including but not limited to text, Client-provided software, scripts, trademarks, logos, HTML coding, domain names, links, graphics, audio, video, and any data) that Client makes available for use by Users by means of the Services (collectively "Content"). Except as expressly set forth in the Schedules as being the responsibility of Vendor, Client is solely responsible for all Content.

5 PROPRIETARY RIGHTS

Client acknowledges and agrees that the Service and any necessary software used in connection with the Service contain proprietary and confidential information that is protected by applicable intellectual property and other laws. Client further acknowledges and agrees that the content or information presented to the Client through the Service may be protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws. Except where expressly provided otherwise by Vendor, nothing in the Service, the SaaS Materials, or the Agreement shall be construed to confer any license to any of Vendor's (or its third-party manufacturer's, author's, developer's, vendor's, service provider's and Client's) ("Third Party Vendors"), intellectual property rights. Vendor reserves the right to subcontract any or all services provided hereunder to third parties.

6 LICENSE FEE, TERM AND PAYMENT

The initial term ("Initial Term") of this Agreement will commence on the Effective Date and will terminate on the anniversary of the Effective Date. Each 12 month period after the Effective Date will be defined as a "Service Year" and each month after the Effective Date will be defined as the "Service Month", e.g. Months 1-12 will constitute Service Year 1, Month 2 will constitute Service Month 2, and months 13-24 will constitute Service Year 2, etc.). Following the expiration of the Initial Term, the Agreement shall automatically renew based on the Initial Term. Either party may provide thirty (30) days' written notice to the other party of its intent to cancel the Agreement which will cancel the Unbridal Diamond Service once the paid Term is expired. Additionally, the Initial Term may be renewed (a "Renewal Term") upon mutual agreement of the parties in writing. The set monthly fees shall depend upon the option selected by the Client in the checkout process and each option shall separately entitle the Client to utilize the Unbridaled

Diamond Service for a set number of unique products, as stated during the checkout process. The fees and corresponding products to which they will entitle the Client are stated in the checkout process. In addition to any remedies Vendor may have pursuant to this Agreement or at law for non-payment, delinquency in payment may result in a delay or suspension of the right to use the Service. In the event Vendor incurs any costs (including reasonable attorney's fees) from efforts collecting overdue fees from Client, Client agrees to pay such costs. Client further agrees to pay all foreign, federal, states, and local taxes, if applicable, to Client's access to, use, or receipt of the Service.

The monthly recurring charges shown during the checkout process do not include additional development services, which may be requested at the Client's discretion to customize the SaaS product for the Client's particular specifications.

7 JEWELRY TRIALS AND SALES THROUGH UNBRIDALED

The following terms and conditions shall apply to Clients' use of Vendor's jewelry trial and memo program through Vendor's Unbridaled Diamond Service.

In exchange for the fees paid for the plans that include jewelry from Vendor, Vendor shall provide the Client with access to Vendor's Unbridaled Diamond Service and store website. The Client shall receive access to a set number of different jewelry designs in a set number of colors (white, rose, and gold) based upon the different plan that is selected by the Client. The Client shall receive replicas of all such jewelry that their customers may try on. The following terms and conditions shall apply to the Jewelry Trial:

7.1 Jewelry

All jewelry designs provided by Vendor or its partnerships are protected under copyright and trade secret law and any unauthorized duplication of such designs is prohibited and will result in legal liability. Any jewelry designs provided by the Client are property of the Client's and are protected under the Client's copyright and trademarks.

All items that are in the possession of the Client that are included in the Unbridaled plan at the time of the termination of this Agreement must be returned no later than seven days following the termination of this Agreement. If any merchandise, stones, jewelry, or replicas that are included in the Unbridaled plan, are not returned at the termination of this Agreement, the greater value of either the total value of the merchandise, stones, jewelry, and replicas or \$5,000 will be charged to the payment method on file. If

Client owes Vendor payment upon any merchandise, such merchandise must be fully paid for as agreed upon and may not be returned in lieu of payment.

Any damaged replica jewelry will be charged \$50 per piece of damaged replica jewelry.

Unbridaled does offer White Labeling on specific jewelry designs, where the Vendor can brand Unbridaled's or Unbridaled's partners designs as the Vendor's own brand. Any white labeled designs are protected under copyright and trade secret law and any unauthorized duplication of such designs is prohibited and will result in legal liability.

Client will adhere to any minimum retail pricing set by Vendor or it's partnerships, but Client may set the retail price above any minimum pricing at their own discretion.

Any jewelry from the Unbridaled program that is on the Client's website must be removed immediately once a paid plan is terminated or a free trial is over and Client does not enroll in a paid plan, and may only be present when the Client is enrolled in a current paid plan.

7.2 Memo Program

All Clients that receive merchandise on memo shall have five days from the date the merchandise is received to return any merchandise that is memoed to them. After five days, Client can request an extension to be approved by Vendor. If the merchandise has yet to be returned by whichever date is the latest of either five days from the date the Client receives the memo merchandise or the extended return date set by the Vendor, the Client will be charged for the merchandise through the payment method on file.

All shipping charges to and from the Client shall be the sole responsibility of the Client, including obtaining any insurance that may be necessary.

Vendor reserves the right to cap the number of jewelry and diamond pieces and the total value of memoed merchandise during each month period.

8 Sale of Stones

Stones sold through Vendor and/or the Unbridled Diamond Service may indicate that they are available even though they are not actually physically in stock as inventory levels may not be reflecting in real-time. Client agrees to indemnify Vendor for such occurrences and waive any and all liability that Vendor may have for the prompt delivery of stones sold through Vendor and/or the Unbridled Diamond Service. However, in such instances, Vendor will put forth its best efforts to find a stone equivalent to the value of the ordered stone or better.

9 TERMS OF SERVICE

9.1 Service Extensions or Updates

Client further agrees that, unless explicitly stated otherwise, any new features that augment or enhance the Service, and or any new service subsequently purchased by Client pursuant to an amendment accepted by Vendor referencing this Agreement will be subject to this Agreement.

9.2 Client Must Have Internet Access

In order to use the Service, Client must have or must obtain access to the World Wide Web, either directly or through devices that access Web-based Content. Client must also provide all equipment necessary to make (and maintain) such connection to the World Wide Web.

9.3 Email and Notices

Client agrees to provide Vendor with Client's e-mail address (es), and to accept emails (or other Electronic Communications) from Vendor at the e-mail address Client specifies. Client further agrees the Vendor may provide any and all required notices including legal notices to Client through either e-mail (or other electronic transmission), or by mail or express delivery service in accordance with Section 14.

9.4 *Passwords, Access, and Notification*

Client acknowledges and agrees that Client is prohibited from sharing passwords and or user names with any unauthorized users. Client will be responsible for the confidentiality and use of Client's (including its employees') passwords and usernames. Client will also be responsible for all Electronic Communications, including those containing business information, account registration, account holder information, financial information, Client Data, and all other data of any kind contained within emails or otherwise entered electronically through the Service or under Client's account. Vendor will act as though any Electronic Communications it receives under Client's passwords, Username, and/or account number will have been sent by Client. Client agrees to notify Vendor if Client becomes aware of any loss or theft or unauthorized use of any of Client's passwords, usernames, and/or account number. The foregoing shall also apply to any Purchase Order Forms submitted by the Client for jewelry or stones.

9.5 *Client's Responsibilities*

Client agrees to comply with all applicable local, state, national and foreign laws, treaties, regulations and conventions in connection with its use of the Service, including without limitation those related to data privacy, international communications, and the exportation of technical or personal data. Client will ensure that any use of the Service by Client's Users is in accordance with the terms of this Agreement. Client agree to notify Vendor immediately of any unauthorized use of any password or account or any other known or suspected breach of security or any known or suspected distribution of Client Data.

In addition to its responsibilities in this Agreement, Client is responsible for all Client responsibilities indicated in the Schedules attached hereto or entered into pursuant hereto and all other responsibilities not designated as responsibilities of Vendor.

Client is solely responsible for obtaining all licenses and permissions necessary related to the Content, including without limitation licenses for any third-party software included in the Content.

Client shall not resell the Services directly or indirectly to third parties.

9.6 *Transmission of Data*

Client understands that the technical processing and transmission of Client's Electronic Communications is fundamentally necessary to Client's use of the Service. Client expressly consents to Vendor's interception and storage of Electronic Communications and/or Client Data, and Client acknowledges and understands that Client's Electronic Communications will involve transmission over the internet, and over various networks, only part of which may be owned and/or operated by Vendor. Client acknowledges and understands that changes to Client's Electronic Communications may occur in order to conform and adapt such data to the technical requirements of connecting networks or devices. Client further understands that Electronic Communications may be accessed by unauthorized parties when communicated across the Internet, network communications facilities, telephone, or other electronic means. Client agrees that Vendor is not responsible for any Electronic Communications and/or Client Data which are lost, altered, intercepted or stored without authorizations during the transmission of any data whatsoever across networks not owned and/or operated by Vendor.

9.7 *Confidential Information*

Each party may have access to information that is confidential to the other party ("Confidential Information"). For purposes of this Agreement, Confidential Information shall include any information that is clearly identified in writing at the time of disclosure as confidential as well as any information that, based on the circumstances under which it was disclosed, a reasonable person would believe to be confidential. Client's Confidential Information shall include, but not be limited to, Client Data. A party's Confidential Information shall not include information that (i) is or becomes a part of the public domain through no act or omission of the other party; (ii) was in the other party's lawful possession prior to the disclosure without any obligation of confidentiality and had not been obtained by the other party either directly or indirectly from the disclosing party; (iii) is lawfully disclosed to the other party by a third party without restriction on disclosure; (iv) is independently developed by the other party without use of or reference to the other party's Confidential Information, as established by written records. The parties agree to use commercially reasonable efforts not to make each other's Confidential Information available in any form to any third party. Notwithstanding the foregoing, Client acknowledges and agrees that Vendor may disclose Client's Confidential Information to its Third-Party Vendors solely to the extent necessary to provide products or services under this Agreement. This Section will not be construed to prohibit disclosure of Confidential Information to the extent that such disclosure is required by law or valid order of a court or other governmental authority; provided, however, that a party who has been subpoenaed or otherwise compelled by a valid law or court order to disclose Confidential Information (the "Responding Party") shall first have given sufficient and prompt written notice to the other party of the receipt of any subpoena or other request for such disclosure, so as to permit such party an opportunity to obtain a protective order or take other appropriate action. The Responding Party will cooperate in the other party's efforts to obtain a protective order or other reasonable assurance that confidential treatment will be afforded the Confidential Information. If the Responding Party is compelled

as a matter of law to disclose the Confidential Information, it may disclose to the party compelling the disclosure only that part of the Confidential Information as is required by law to be disclosed.

Notwithstanding anything to the contrary in this Agreement, Content is not included in Confidential Information as defined above. To the extent Vendor has any access to Content in the course of providing the Services, Vendor's entire obligation to keep Content confidential is stated in this Section below. Vendor shall not, intentionally (i) access Client's Content or (ii) disclose Client's Content to any third party, except to the extent: (a) Client makes its Content publicly available, (b) as necessary for Vendor to provide, or obtain third-party supplier support for, the Services or to provide information requested by Client, or (c) as specifically authorized by Client in writing. Vendor's obligation to protect Content from unauthorized use, access or disclosure is: (i) to provide the Security Services specifically set forth in this Agreement and (ii) maintain and enforce the then-current standard Vendor security policies and standards applicable to the Services as practiced at the service locations from which Vendor is providing the Services to Client.

The obligations in this Section shall not apply to the recipient of Confidential Information and/or Vendor with respect to Content to the extent disclosure of Confidential Information or Content is required to comply with laws or respond to requests by a regulatory or judicial body and/or as otherwise required for legal process. In the event that any such disclosure is required, the recipient, and/or Vendor with respect to Content, reserves the right to charge the other party on a time-and-materials basis for recipient's/Vendor's reasonable efforts related to its compliance and response, including, if applicable, reasonable attorney's fees.

10 SUSPENSION/TERMINATION

10.1 Suspension for Delinquent Account

Vendor reserves the right to suspend Client's access and/or use of the Service for any account for which any payment is due but remains unpaid after thirty days written notice of such delinquency. Client agrees that Vendor shall not be liable to Client, or to any third party, for any suspension of the Service resulting from Client's non-payment of the fees as described in this Section.

10.2 Suspension for Ongoing Harm

Client agrees that Vendor may, with reasonably contemporaneous telephonic or electronic mail notice to Client, suspend Client's access to the Service if Vendor reasonably concludes that Client's use of the Service is causing immediate and ongoing harm to Vendor or others. Vendor will use commercially reasonable efforts to resolve the issues causing the suspension of Service. Client agrees that Vendor will not be liable to Client or to any third party for any suspension of the Service under such circumstances as described in this Section.

10.3 *In the Event of a Breach*

- A. Either party may terminate this Agreement upon sixty (60) days' written notice to the other party in the event of a breach of any material obligation under this Agreement, provided that the alleged breach is not cured during the sixty (60) day notice period. Upon termination or expiration of this Agreement, Client shall have no rights to continue use of the Service.
- B. Client may cancel this Agreement, to be effective at the end of the then current Term, by providing Vendor with at least thirty (30) days' prior written notice

10.4 *Handling of Client Data in the Event of Termination*

Client acknowledges and agrees that following termination of this Agreement, Client shall return all SaaS Materials (except that it may retain a copy for archival purposes or as otherwise provided in this Agreement) to Vendor and Vendor may immediately deactivate Client's account. Furthermore, unless otherwise agreed-upon by the Parties in writing, Vendor shall remove or overwrite all applicable Content from Vendor's systems following the effective date of termination or cancellation, in accordance with Vendor's standard procedures. Prior to any such deletion or destruction, however, Vendor shall either (1) grant Client reasonable access to the Service for the sole purpose of Client retrieving Client Data or (2) transfer all Client Data to other media for delivery to Client. Client agrees that Vendor shall not be liable to Client or to any third party for any termination of Client access to the Service or deletion of Client Data, provided that Vendor is in compliance with the terms of this Section. Notwithstanding the foregoing, nothing shall preclude Vendor from maintaining one copy of Client Data if required by law.

11 MODIFICATION/DISCONTINUATION/MAINTENANCE

11.1 *Modification to or Discontinuation of the Service*

Vendor reserves the right at any time and from time to time to modify, temporarily or permanently, the Service (or any part thereof), provided such modification does not diminish the functionality of the Service to the Client on which the Client materially relies. Notwithstanding the foregoing, except for routinely scheduled down time, or as otherwise provided in this Agreement, Vendor shall use commercially reasonable efforts to notify Client prior to any such modification; further, Vendor shall consider the Client's validation needs and requirements in connection with any modification of the Service. Client acknowledges that Vendor reserves the right to discontinue offering the Service at the conclusion of Client's then current Term. Client agrees that Vendor will not be liable to Client or any third party for any modification or discontinuance of the Service as described in this Section 9.

11.2 *Maintenance*

In order to perform maintenance, including infrastructure and application upgrades, there may be scheduled down time. Vendor further reserves the right on approximately a quarterly basis to issue new releases in which Vendor adds functionality to the Service. Client acknowledges that these periodic major releases can take several hours to complete (up to eight hours). The time necessary to provide such periodic releases shall not be counted in any System Availability calculations. In the event that Vendor, in its sole discretion, determines that any unscheduled maintenance is necessary, Vendor will use commercially reasonable efforts to notify Client as soon as it becomes aware of such need.

12 **DISCLAIMER OF WARRANTIES**

Vendor does not represent that client's use of the service will be secure, timely, uninterrupted or error free, or that the service will meet client requirements or that all errors in the service and/or documentation will be corrected or that the system that makes the service available will be free of viruses or other harmful components or the service will operate in combination with other hardware, software, systems or data not provided by vendor or the operation of the services will be secure or that vendor and its third party vendors will be able to prevent third parties from accessing client data or client's confidential information, or any errors will be corrected or any stored client data will be accurate or reliable. The service is provided to client on an "as is" and "as available" basis, and is for commercial use only. client assumes all responsibility for determining whether the service or the information generated thereby is accurate or sufficient for the client's purpose.

13 **LIMITATIONS OF LIABILITY**

13.1 *No Consequential Damages*

Neither party shall be liable to the other party for exemplary, punitive, special, incidental, indirect or consequential damages including without limitation, interruption of business, lost profits, lost or corrupted data or content, lost revenue arising out of this agreement (including without limitation the service, the use of the service or the inability to use service), even if the party has been advised of the possibility of such damages.

13.2 *Direct Damage Limitations*

- 13.2.1.1 In no event shall the aggregate liability of vendor or any third party vendors arising out of or in connection with this agreement, including any license, use, or other employment of the service, whether such liability arises from any claim based on breach or repudiation of contract, breach of warranty, tort, or otherwise, exceed the total amounts actually paid by Client

in the six (6) month period immediately preceding the event giving rise to such claim. There shall be only one aggregate liability cap under this agreement even if there are multiple claims; each claim shall reduce the amount available in the aggregate liability cap.

- 13.2.1.2 Vendor shall not be liable for any damages resulting from the loss or corruption of any data or content whether resulting from delays, non-deliveries, misdeliveries, service interruptions or otherwise.

14 EXCLUSIONS

The limitations of liability set forth in sections 11.1 and 11.2 shall not apply with respect to: (i) damages to persons and/or tangible property occasioned by the willful misconduct or gross negligence of a party, (ii) breaches by Client of license terms applicable to Vendor provided software and third party products as set forth in section 2 above, (iii) Client's unauthorized use of Vendor's or third party vendor's intellectual property, materials or assets; (iv) damages incurred as a result of a breach by a party of its obligations under section 7.7 that result in the disclosure of confidential information of the other party, or (v) claims that are the subject of indemnification pursuant to section 13 (which are subject to the limits, if any contained therein). Damages as limited by this section 12 are client's sole and exclusive remedy if another remedy is provided and such remedy is deemed to fail of its essential purpose.

15 INDEMNIFICATION

15.1 *Personal Injury and Property Damage*

Each party (the "**Indemnifying Party**") agrees to defend at its expense and indemnify and hold harmless the other party and its affiliates, directors, officers, employees, agents, successors and assigns (each an "**Indemnified Party**"), in accordance with the procedures described in this Section, from and against any and all losses, costs, damages, liabilities and expenses including without limitation, reasonable legal fees and expenses paid to or for the benefit of an unaffiliated third party (collectively, "**Losses**") arising from or in connection with any such third party claim for: (i) the death or bodily injury of any person caused by the negligence or willful misconduct of the Indemnifying Party; or (ii) the damage, loss or destruction of any real or tangible personal property caused by the negligence or willful misconduct of the Indemnifying Party.

15.2 *Infringement*

Vendor will indemnify, defend and hold harmless Client for Losses Client incurs as a direct result of any unaffiliated third party claim based on any claim that the Service infringes any U.S. copyright, trademark or trade secret, except to the extent resulting from (i)

Client's modification of the Service or combination by Client the Services with other products or services if the Service would not have been infringing but for such combination or modification, (ii) Client's use of the Service in a manner not authorized herein or for which it was not designed, (iii) Client's failure to use an updated non-infringing version of the applicable intellectual property to the extent Client was notified that the update cured an infringement, (iv) changes to the Service made by Vendor at the direction of the Client or (v) Client Data.

15.3 *Client's Indemnity*

Client shall defend and indemnify Vendor and its Third-Party Vendors against any and all Losses incurred by Vendor and its Third-Party Vendors arising out of or in connection with a claim by a third party (i) alleging that the Client Data or the Client Trademarks, or any use thereof, infringes the rights of, or has caused harm to, a third party, or (ii) arising out of Client's breach.

Client will indemnify, defend and hold harmless Vendor, its affiliates, successors, and assigns, including the applicable officers, directors, employees, and agents thereof for damages, costs and attorneys' fees Vendor incurs from any unaffiliated third-party claim arising from Client's Content or Client's or any end user's use of the Services.

15.4 *Indemnification Procedures*

The party seeking indemnification shall give prompt notice of the claim and will tender the defense; provided, however, that such party's failure to provide notification shall not affect the indemnifying party's indemnification obligations except to the extent that the failure to notify delays or prejudices the indemnifying party's ability to defend the applicable claim. The indemnifying party shall conduct the defense and shall have control of the litigation, and the indemnified party shall cooperate in defending against the claim. The indemnified party shall have the right, at any time and at its own expense, to participate in the defense of the claim with counsel of its own choosing. The indemnifying party shall not make any settlement of the claim that results in any liability or imposes any obligation on the indemnified party without the prior written consent of the indemnified party. If the indemnifying party fails to (i) respond to the notice of a claim, or (ii) assume the defense of a claim, the party seeking indemnification shall have the right to defend the claim in such manner as it may deem appropriate, at the reasonable cost, expense, and risk of the indemnifying party, and the indemnifying shall promptly reimburse the indemnified party for all such costs and expenses.

16 NOTICES

Except as otherwise provided in Section 7.3 above, any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be (a) delivered in person, (b) sent by registered or certified mail return receipt requested, (c) sent by overnight courier, (d) sent by facsimile (with a hard copy mailed on the same date), (e) by email whose receipt is acknowledged by an

officer of the receiving Party. If to Vendor, a notice shall be forwarded to ILA Design Group, LLC, of 6222 Richmond Ave Suite 470 Houston, TX 77057 and if to Client, a notice shall be forwarded to Client at the address provided on the signature page herein. Notices shall be considered to have been given at the time of actual delivery in person, five business days after posting if by mail, one business day if by overnight courier service, or upon receipt of machine confirmation of successful transmission by facsimile or email as described herein.

17 Survival

The following provisions shall survive any termination of this Agreement: Sections 5, 7.7, 11, 12, 13, 14, 15, 19, 20 and 21.

18 NO ASSIGNMENT

Client may not assign this Agreement without the prior written approval of Vendor. Any purported assignment in violation of this section shall be void.

19 FORCE MAJEURE

Neither party will be liable to the other for any failure or delay in the performance of such party's non-monetary obligations due to causes beyond its control, such as failure or delay caused, directly or indirectly, by fire, flood, earthquakes, other elements of nature, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, epidemics, communications line or power failures, or governmental laws, court orders, and regulations imposed after the fact.

20 SECURITY AND SECURITY POLICIES

Except to the extent caused by Vendor's failure to provide Security Services, Vendor is not responsible for (i) unauthorized access to Client's Content, or (ii) damages arising out of unauthorized access.

21 RETURN POLICY

Client has ten (10) days to return Vendor merchandise following the date that the Client receives and signs for the merchandise.

Vendor jewelry that is set with a Vendor stone sold via the Web Service that is returned within the allotted time will incur a \$75USD restocking fee unless otherwise stated.

All returned merchandise must be in its original condition with its tags attached. Items showing signs of wear or those that have been altered, resized, or damaged in any way cannot be accepted for return. Sale items, special orders (which do not include different ring sizes), custom jewelry, and engraved items are final sale and cannot be returned.

When a certified diamond is purchased and set in jewelry or purchased by itself, an accompanying diamond certificate will accompany the diamond. These certificates cost money to replace, so Vendor reasonably requires each diamond certificate to be included with each returned diamond. There is a \$150USD replacement fee if the certificates are not included in the return.

22 CANCELED ORDERS

Client may at time have to cancel an order that was received by the Web Service but the order was not shipped or received by the Client. Client has forty eight (48) hours from the time the Web Service receives the order to cancel the order without incurring restocking fees. After forty eight (48) hours the Client will incur the \$75USD restocking fee for Vendor merchandise.

23 SHIPMENTS

Any and all shipping charges are the Client's responsibility. Insured second day shipping shall be itemized on the Invoice to the Client. Any jewelry shipment with or without stones will incur a shipping fee that is not waivable.

Once the insured shipment is received and signed for, the Client is responsible for the full value of the shipment. If any Vendor merchandise is returned, the Vendor merchandise shall remain the Client's sole and complete responsibility until the item is received for and signed for by Vendor.

Client must notify Vendor within 24 hours of receipt if there are any damages in Vendor merchandise, that were not already noted, in written form via email with detailed images of the damages including images of any packaging such as, but not limited to, the shipping box, containers, and jewelry boxes. Vendor or Vendor partners shall be responsible for refunding or replacing any merchandise that has manufacturing defects or is damaged during shipping where shipping is defined from the time the merchandise is in transit from Vendor up until the merchandise is delivered to the Client's shipping location. Vendor is not liable for damage or loss incurred after the package is delivered.

If Vendor merchandise is returned, the full value of the merchandise shall remain the Client's responsibility until the entirety of the merchandise is returned and actually received by Vendor.

24 GENERAL PROVISIONS

Once any Vendor stone is handled by the Client in any way, including but not limited to the Client setting or attempting to set the stone in any of the Client's jewelry any warranty for the stone, whether implied or express, shall be invalidated.

Should the merchandise be damaged in shipment or should the Client notice a defect in any of the merchandise that was not previously disclosed to the Client, the Client must immediately notify the Vendor of the damaged goods or the defective merchandise so the Vendor may investigate and submit any claims to insurance that may be necessary. The Vendor must receive the returned merchandise to conduct its investigation, and until the returned merchandise is received and signed for by the Vendor, it shall remain the complete and sole responsibility of the Client.

Any action related to this Agreement will be governed by Texas law and controlling U.S. federal law. No choice of law rules of any jurisdiction will apply. Any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Service shall be first submitted to mediation and then arbitration should mediation not be successful. This Agreement is subject to the exclusive jurisdiction of the state and federal courts located in Houston, Texas. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect.

25 ELECTRONIC SIGNATURE

The Client's electronic signature and agreement to all these Terms is provided to Vendor by the Client checking the applicable box on the Vendor's website signifying the Client's agreement to these Terms. Client's electronic signature, including, without limitation, "click-through" acceptance of this Agreement through a website maintained by or on behalf of the Vendor, is the same as, and shall have the same force and effect as, Client's manual signature. Any such procedures and delivery may be effected by a third party engaged by the Vendor to provide administrative services relating to this Agreement.

IN WITNESS WHEREOF, this Agreement is duly executed by an authorized representative of both parties as of the Effective Date.

VENDOR

Vikas Sodhani
ILA Design Group LLC
6222 Richmond Ave Suite 470
Houston, TX 77057

CLIENT

Full Name: _____

Signature: _____

Date: _____

Client Mailing Address:

Business Name: _____

Street Address: _____

Street Address: _____

City: _____

State: _____

Zip: _____

Phone Number: _____