

## TERMS OF SERVICE FOR BUSINESS-TO-BUSINESS PLATFORM

These terms and conditions govern the access to and use of the Business-to-Business (“**B2B**”) Platform ([dash.sofax.com](https://dash.sofax.com)) by the Stakeholder and constitute an agreement between the Stakeholder and SofaX (each a “**Party**”; collectively, “**Parties**”). By using the B2B Platform, you as a Stakeholder agree to be bound by the following terms and conditions and the general terms of service published on the SofaX website ([www.sofax.com](https://www.sofax.com)) (collectively, the “**Agreement**”). SofaX reserves the right, at its sole discretion, to amend, modify or revise this Agreement at any time without prior notice. The amended, modified or revised Agreement shall become effective and binding on the Stakeholder as soon as it has been published on the SofaX Platform. It is the Stakeholder’s responsibility to check the SofaX Platform for the updated Agreement. Your continued usage of the Services signifies your acceptance of any such amendments, modifications or revisions.

### 1. DEFINITIONS AND INTERPRETATIONS

1.1. The following terms shall have the meanings set out below:

- (a) **Affiliate** means any entity that is directly or indirectly controlled by, or controlling, a Party, or any affiliate or subsidiary thereof;
- (b) **B2B Platform** means an internal administrative webpage or application, or other web services or interfaces provided by SofaX that allows the Stakeholder to manage, among other things, its Content Material and other associated products and services listing, including but not limited to their details and information thereof;
- (c) **Confidential Information** means any document, material, or information proprietary to a Party that is disclosed to the other Party, whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and/or the circumstances of disclosure. Notwithstanding the foregoing, Confidential Information shall not include any information that:
  - (i) was publicly known and made generally available before the time of disclosure by the Discloser;
  - (ii) becomes publicly known and made generally available after disclosure by the Discloser to the Recipient through no action or inaction of the Recipient;
  - (iii) is already in the lawful possession of the Recipient at the time of disclosure;

- (iv) is obtained by the Recipient from a third party without a breach of that third party's obligations of confidentiality;
  - (v) is independently developed by the Recipient without use of or reference to the Discloser's Confidential Information; or
  - (vi) is disclosed by the Recipient pursuant to the Discloser's written approval;
- (d) **Content Material** means the product information, text, images and any other relevant and/or legally required information relating to the Products and/or Services, including but not limited to the trademarks and other Intellectual Property Rights-related materials of the Stakeholder or a relevant third party;
- (e) **Customers** means a third party who purchases Products and/or Services from the Stakeholder using the services on the SofaX Platform;
- (f) **Customised Virtual Models** means Stakeholder's Virtual Showroom, Stakeholder's Virtual Products and Stakeholder's Virtual Showroom Pro;
- (g) **Discloser** means the disclosing Party of the Confidential Information;
- (h) **Force Majeure** means any event or cause beyond a Party's reasonable control, including but not limited to:
- (i) act of God, explosion, flood, tempest, fire or accident;
  - (ii) war or threat of war, sabotage, insurrection, civil disturbance or requisition, act of terrorism or civil unrest;
  - (iii) Acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
  - (iv) import or export regulations or embargoes;
  - (v) interruption of traffic, strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of SofaX or a third party); and
  - (vi) health epidemics declared by the World Health Organization;
- (i) **Intellectual Property Rights** means all copyrights, moral rights, trademarks, service marks, design rights, rights in or relating to databases, rights in or relating to confidential information, rights in relation to domain names, and any other intellectual property rights (registered or unregistered) throughout the world;

- (j) **Laws** means all legislation, statutes, rules, ordinances, regulations, guidelines, by-laws, codes and judicial precedents or authorities of Malaysia;
- (k) **Personal Data** means any personal information, including but not limited to those pertaining to SofaX employees, agents, consultants and Customers, as defined by applicable personal data protection Laws;
- (l) **Products** means one or more items offered for sale by the Stakeholder, including but not limited to fixtures, fittings, layout designs, drawings, paintings, and copyrighted images;
- (m) **Recipient** means the party receiving Confidential Information;
- (n) **Services** means any services offered for sale by the Stakeholder;
- (o) **SofaX Services** means the services specified in Section 2.1 of this Agreement that are provided by SofaX;
- (p) **SofaX Platform** means any applicable platform operated and made available by SofaX, including but not limited to the SofaX mobile application, SofaX web application, SofaX website, and B2B Platform;
- (q) **Stakeholder's Virtual Products** means Virtual Products rendered using Content Materials provided by the Stakeholder;
- (r) **Stakeholder's Virtual Showroom** means Virtual Houses designed by the Stakeholder using a combination of Virtual Products (including the Stakeholder's Virtual Products) and/or Virtual Props available on the SofaX Platform;
- (s) **Stakeholder's Virtual Showroom Pro** means the Stakeholder's Virtual Showroom with enhanced visual quality through SofaX's advanced 3D rendering techniques;
- (t) **Virtual** means pertaining to virtual reality;
- (u) **Virtual Houses** means 3D models of houses modeled based on floor plans, with a virtual walkthrough feature that can be used in a virtual environment;
- (v) **Virtual Models** means Virtual Showroom, Virtual Products, Virtual Houses, Virtual Showroom Pro and Virtual Props;
- (w) **Virtual Products** means 3D models of Products that can be used in a virtual environment;
- (x) **Virtual Props** means 3D models of decorative props that can be used in a virtual environment;

- (y) **Virtual Showroom** means Virtual Houses with specific interior designs using a combination of Virtual Products and/or Virtual Props available on the SofaX Platform; and
- (z) **Virtual Showroom Pro** means Virtual Showroom with enhanced visual quality through SofaX's advanced 3D rendering techniques.

## **2. SERVICES BY SOFAX**

2.1. The SofaX Services consist of:

- (a) providing access to the SofaX Platform for the following purposes:
  - (i) allowing Stakeholders to list and display their profiles and Products and/or Services, including but not limited to Stakeholder's Virtual Products, Stakeholder's Virtual Showroom, and Stakeholder's Virtual Showroom Pro; and/or
  - (ii) providing other ancillary services;
- (b) providing Stakeholders with potential Customer leads; and
- (c) providing any other additional services, including but not limited to the rendering of Virtual Products, Virtual Houses and/or Virtual Showroom Pro, and making available inspiring photo postings.

2.2. The SofaX Platform is a platform that allows Stakeholders to list their Products and/or Services. SofaX does not take part in the actual transaction between the Stakeholder and the Customers. The Stakeholder is solely responsible and liable for all transactions involving its Products and/or Services, including but not limited to ensuring that the sale is legally authorised, the Products and/or Services are accurately described and properly packaged, shipped and insured, applicable warranties are provided and all other sale and after sale obligations, whether by law or trade.

## **3. SOFAX'S RIGHTS & OBLIGATIONS**

3.1. Notwithstanding any provision in this Agreement, SofaX shall have the right, at its sole and absolute discretion, to amend, delay, suspend, or remove the listing of, or to refuse to list any or all of the Stakeholder's Products or Services, including but not limited to the Stakeholder's Virtual Products, Stakeholder's Virtual Showroom, and Stakeholder's Virtual Showroom Pro, or to deactivate the account(s) of the Stakeholder.

#### **4. STAKEHOLDER'S RIGHTS & OBLIGATIONS**

4.1. SofaX shall list and display the Stakeholder's Products and/or Services, including but not limited to the Stakeholder's Virtual Products, Stakeholder's Virtual Showroom and Stakeholder's Virtual Showroom Pro, on behalf of the Stakeholder. The Stakeholder shall provide SofaX with all relevant and related information and Content Materials, including but not limited to its Products' and/or Services' names, descriptions, prices and images, and its logo, locations, operation hours and company identity for the purpose of listing the Stakeholder's Products and/or Services. If the Stakeholder fails to provide SofaX with the relevant Content Materials, SofaX may use any available Content Materials. The Stakeholder shall notify SofaX in writing within three (3) business days if there are any changes or corrections to the Content Materials published on the SofaX Platform. Notwithstanding the foregoing, the Stakeholder shall be solely responsible and liable for the listings of the Stakeholder's Products and/or Services.

4.2. **General Undertakings:** The Stakeholder undertakes, represents, and warrants that it will:

- (a) obtain all necessary rights, licences, permits, or approvals required for the offer and advertising of the Products and/or Services on or through the SofaX Platform prior to their listing and will provide SofaX with copies of these documents upon request. The Stakeholder shall immediately notify SofaX in writing of any change or violation of such rights, licences, permits, or approvals;
- (b) ensure that the listing price for any Products and/or Services offered to Customers through the SofaX Platform will not exceed the price offered by the Stakeholder outside the SofaX Platform for the same product in like or lesser quantities under similar terms and conditions. Where a lower price is offered, the Products and/or Services listed on the SofaX Platform shall benefit from that lower price;
- (c) give SofaX written notice of any requirement or provision of any contract that may conflict with any requirement or provision of the Agreement; and
- (d) ensure that any person filling-in or signing any document or operating the B2B Platform account on behalf of the Stakeholder has full power and authority to do so on behalf of the Stakeholder; and
- (e) comply with all applicable Laws.

4.3. **Negative Covenant:** The Stakeholder undertakes, represents, and warrants that it will not, directly or indirectly:

- (a) publish or make SofaX to publish on the SofaX Platform any materials that contain pornographic materials or political or religious content or disclose any personally identifying information or private

information about minors or any third parties without their consent or the parent's or guardian's consent or advocate, promote, or otherwise encourage violence against any governments, organisations, groups, or individuals or activities that lead to cruelty towards animals;

- (b) conduct activities such as gambling, sweepstakes, raffles, and lotteries or participate in any activities related to so-called pyramid or Ponzi schemes or any other illegal, immoral, or antisocial activities through the SofaX Platform;
- (c) input or upload on the SofaX Platform any material that is not directly connected with the Products and/or Services or permit the use of the Stakeholder's account or offer "free space" or other access to the account to third parties;
- (d) access content and information that concerns any party other than the Stakeholder, transmit unsolicited commercial or bulk email, interfere with the proper working of the SofaX Platform, transmit any viruses, Trojan horses or other harmful code, or attempt to bypass any mechanism used to detect or prevent such activities;
- (e) enrol or offer to enrol Customers in any scheme or program other than as strictly required for warranty purposes;
- (f) open multiple shops on the SofaX Platform without SofaX's prior approval;
- (g) duplicate stock-keeping units on the SofaX Platform;
- (h) create liability for SofaX (and its Affiliates, directors, employees, contractors, agents, subcontractors, etc.) or expose it to undue risk or engage in activities that SofaX, in its sole discretion, determines to be harmful to SofaX's operations, reputation or goodwill;
- (i) infringe any Intellectual Property Rights; or
- (j) violates any Laws.

4.4. **Undertaking in relation to the Products and/or Services:** The Stakeholder undertakes, represents and warrants that:

- (a) the Products and/or Services are of merchantable quality, fit for their purpose, free from defects, and strictly conform to their listed specifications;
- (b) the Products and/or Services and their offer for sale are not prohibited and are in compliance with the Laws, including all minimum age, marking and labelling requirements, product warranties, specifications and performance criteria;

- (c) it has full, unencumbered title to the Products and any materials incorporated in the Products and all the Products are supplied free of liens, charges, or other security interests;
- (d) it will provide the Products and/or Services with all legally required documentation, including warranty cards, warranty information, and invoices, and update the same when legally required; and
- (e) it will not, directly or indirectly, sell counterfeit, "replica", and name-brand "knock-off" products or products violating any Intellectual Property Rights.

## **5. PERMITTED PRODUCTS AND SERVICES**

- 5.1. The Stakeholder shall only offer for sale Products and/or Services that are relevant to the SofaX Platform and legally permitted. The Stakeholder is solely responsible for all matters related to the Products and/or Services, including but not limited to merchantability, fitness for purpose, satisfactory quality, refunds, exchanges, and all other warranties thereof.

## **6. USE OF TOOLS**

- 6.1. The Stakeholder's use of the SofaX Services and SofaX Platform, including the selection of its username and store name, must not be unlawful, inaccurate, misleading, false, fraudulent, defamatory, trade libellous, or otherwise unsuitable or inappropriate. Any login credentials and account identification issued by SofaX to the Stakeholder may be used only during the period that the Stakeholder is permitted to use the SofaX Platform, and for the purpose of managing the Stakeholder's catalogue of Products and/or Services listed on the SofaX Platform, including but not limited to updating information about the Products and/or Services (e.g. prices). The Stakeholder may not share the login credentials and account identification with any person other than employees of the Stakeholder. The Stakeholder is solely responsible for accessing and using its account on the SofaX Platform.
- 6.2. The availability of the SofaX Services and SofaX Platform is subject to:
  - (a) the availability of resources, including but not limited to resources under the control of SofaX and the availability of a suitable network infrastructure at the time the relevant service is requested or delivered;
  - (b) where applicable, the geographic and technical capability of communication networks and other delivery systems at the time the relevant services are requested or delivered;

- (c) provisioning time that may be required by SofaX to provide the relevant services; and
  - (d) the Stakeholder satisfying the technical requirements for using the SofaX Platform from time to time.
- 6.3. The Stakeholder shall not engage, directly or indirectly, in any fraudulent, inappropriate or unlawful activities in connection with the SofaX Services or SofaX Platform, including but not limited to:
- (a) generating fraudulent, repetitive or otherwise invalid clicks, impressions, queries or other interactions, whether through the use of automated applications or otherwise;
  - (b) collecting any user information, indexing or caching any portion of the SofaX Platform, whether through the use of automated applications or otherwise;
  - (c) targeting communications of any kind on the basis of the intended recipient being a user of the SofaX Platform;
  - (d) interfering with the proper working of the SofaX Platform, SofaX Services, or SofaX's other systems;
  - (e) transmitting any viruses, Trojan horses or other harmful code; or
  - (f) attempting to bypass any mechanism SofaX uses to detect or prevent such activities.

## **7. CONTENT MATERIALS & INTELLECTUAL PROPERTY RIGHTS**

- 7.1. The Stakeholder represents and warrants that:
- (a) it has lawful rights with respect to the use of all Intellectual Property Rights provided by the Stakeholder to SofaX under this Agreement;
  - (b) all information and Content Materials provided by the Stakeholder under this Agreement, including in relation to the listing of the Products and/or Services, are accurate, current, complete, and not misleading or otherwise deceptive;
  - (c) all Content Materials and Intellectual Property Rights provided by the Stakeholder under this Agreement do not violate any third party's Intellectual Property Rights and satisfy all legal requirements; and
  - (d) the Stakeholder is not aware of any claims made by any third party with regard to any alleged or actual Intellectual Property Right infringement or other claim, demand, or action in relation to the Content Material provided by the Stakeholder or the advertising,

publishing, promotion, manufacture, sale, distribution or use of the Products and/or Services.

- 7.2. The Stakeholder grants SofaX a royalty-free, non-exclusive, worldwide, unconditional, transferrable, perpetual and irrevocable right and license to use, reproduce, perform, display, store, publish, distribute, adapt, modify, reformat, create derivative works of, and otherwise commercially and non-commercially exploit in any manner, any and all of the Content Materials and any other content and materials provided by the Stakeholder and to sublicense the foregoing rights to SofaX's Affiliates, provided that SofaX will not alter any third-party trademarks.
- 7.3. All 3D models rendered by SofaX, including but not limited to Virtual Models and all the Intellectual Property Rights thereof, using the Content Materials and any other content and materials provided by the Stakeholder or otherwise, are owned by SofaX. The Virtual Models are and shall remain the sole and exclusive property of SofaX.
- 7.4. All customised 3D models displayed on the SofaX Platform, including but not limited to Customised Virtual Models and all the Intellectual Property Rights thereof, are owned by SofaX. Without limiting the foregoing, the Stakeholder hereby assigns to SofaX all of its rights, title, and interest in and to all Customized Virtual Models. The Customized Virtual Models are and shall remain the sole and exclusive property of SofaX. If for any reason the Stakeholder is prevented or restricted from assigning any rights in the Customized Virtual Models to SofaX, the Stakeholder grants SofaX an exclusive, perpetual, worldwide, unconditional, royalty-free, irrevocable license enabling SofaX to fully utilise the Customized Virtual Models and any component thereof, for any purpose and in any manner whatsoever.
- 7.5. All Intellectual Property Rights in and to any work or material in any form or medium as may be created, authored, developed or otherwise produced by SofaX using the Content Materials or any other content and materials provided by the Stakeholder under this Agreement shall be vested solely and entirely in SofaX. For the avoidance of doubt, the Stakeholder shall provide any such assistance as may be required by SofaX or its Affiliates to substantiate and perfect SofaX's or SofaX's Affiliates' ownership, right, interest, and title to the said Intellectual Property Rights.
- 7.6. SofaX has no obligation to verify the accuracy, completeness, and legality of the Content Materials or any other content and materials provided by the Stakeholder.
- 7.7. SofaX retains the right to determine the use, placement, structure, appearance, design, functionality, and all other aspects of the Content Materials and all other content and materials provided by the Stakeholder on the SofaX Platform.
- 7.8. All Intellectual Property Rights related to the SofaX Services and SofaX Platform are owned by SofaX. This Agreement does not grant the

Stakeholder any Intellectual Property Rights in any tangible or intangible property, such as software (e.g. the SofaX Platform, the Virtual Models, the Customized Virtual Models, and any application programming interfaces) and data (e.g. Personal Data and data related to sales, performance, Customer, and SofaX Platform) used, obtained, or created under this Agreement, unless stated otherwise. If the Stakeholder accrues any such rights for any reason, the Stakeholder must assign, dispose or transfer (and effect the transfer of) the full and exclusive ownership of all such rights to SofaX or any other party designated by SofaX, free of charge, or for a nominal fee. The Stakeholder can use or process any such Intellectual Property Rights only for the purpose of the executing the Agreement, cannot claim any Intellectual Property Rights, sell, assign, license, distribute, publish, lease or otherwise commercially exploit such software and data, and must immediately cease such use or processing upon the termination of the Agreement or as required by SofaX at any time.

- 7.9. Neither Party will attempt to register any distinctive trademarks or domain names that are confusingly similar to those of the other Party.
- 7.10. The Stakeholder cannot directly or indirectly participate in any actions involving the reverse engineering, reverse compiling, decompiling or otherwise deriving the underlying source code or structure or sequence of any SofaX solution or technologies, or deleting or altering author attributes or copyright notices.

## **8. CONFIDENTIAL INFORMATION**

- 8.1. Both Parties are obligated to maintain the confidentiality of all Confidential Information. The Parties shall not disclose any Confidential Information to any third party without obtaining the written consent of the other Party, except to its Affiliates, employees, and/or agents who have agreed in writing to keep the Confidential Information confidential and on a need-to-know basis. Any disclosure of Confidential Information by the employees or agencies hired by either Party shall be deemed disclosure by that Party and will be held liable for a breach of this Agreement.
- 8.2. The Recipient may disclose Confidential Information if required by law provided that reasonable notice and the opportunity to seek confidential treatment, a protective order or similar remedies or relief prior to disclosure have been given to the Discloser.
- 8.3. Except for any copy required to be kept by the Recipient for legal or regulatory reasons, the Recipient shall, at any time upon request from the Discloser or upon the end of any relationship between the parties, at the Discloser's option, either return to the Discloser or destroy all Confidential Information in its possession or control together with all information and documentation containing, comprising or relating in any way to the Confidential Information, and certify that all copies of the Confidential Information have been so returned or destroyed, as the case may be.

8.4. This Section shall survive the termination of this Agreement.

## **9. PERSONAL DATA**

9.1. The Stakeholder shall use and process Personal Data:

- (a) solely for the purpose of this Agreement and not disclose it to third parties;
- (b) in accordance with the applicable personal data protection Laws; and
- (c) in such manner that ensures SofaX remains in compliance with the applicable personal data protection Laws.

9.2. The Stakeholder represents, warrants, and covenants that it will not:

- (a) enhance a file or list in connection with Personal Data, particularly involving personally identifiable information of Customers, owned by the Stakeholder, or any third party; and
- (b) resell, broker, or disclose any Personal Data, particularly involving personally identifiable information of Customers, to any third party, in whole or in part, for any purpose, unless required by applicable law or competent authorities.

9.3. The Stakeholder shall implement sufficient security measures to ensure that the Personal Data is securely kept and maintained as required by the applicable personal data protection Laws. The Stakeholder shall also subject itself to the necessary audits undertaken by SofaX to ensure compliance with this obligation. The Stakeholder shall immediately inform SofaX of any Personal Data incident that it becomes aware of.

9.4. This Section shall survive the termination of this Agreement.

## **10. TERMINATION**

10.1. Either Party may unilaterally terminate this Agreement without cause by providing three (3) months' prior written notice to the other Party.

10.2. SofaX has the right to unilaterally and immediately terminate this Agreement by providing the Stakeholder with a written notice upon the occurrence of any of the following:

- (a) repeated bad reviews or complaints in relation to the Stakeholder's quality or standard of Services or Products;

- (b) the Stakeholder being in breach of any provision of the Agreement and failing to remedy the same within fourteen (14) days from being notified;
  - (c) the Stakeholder being in breach of any applicable Laws relating to its obligations or responsibilities under this Agreement; or
  - (d) commission or investigation of any unlawful, illegal and/or fraudulent act by the Stakeholder; or
  - (e) non-payment by the Stakeholder for SofaX Services.
- 10.3. Either Party may, upon giving written notice to the other Party, immediately terminate this Agreement if the other Party:
- (a) terminates or suspends its business;
  - (b) enters into bankruptcy or insolvency proceedings or other analogous proceedings; or
  - (c) becomes subject to any Laws or restrictions that prevent the other Party from performing its obligations under this Agreement.
- 10.4. The termination of this Agreement shall not relieve or limit the Parties from their obligations, responsibilities and liabilities accruing prior to such termination.

## **11. REPRESENTATIONS AND WARRANTIES**

- 11.1. The SofaX Services and SofaX Platform are provided on an "as is" basis. Unless otherwise stated, SofaX makes no representations or warranties of any kind, express or implied, including but not limited to:
- (a) the implied warranties of merchantability, fitness for a particular purpose, title, and non-infringement;
  - (b) that the SofaX Services or SofaX Platform will meet the Stakeholder's requirements or always be available, accessible, uninterrupted, timely, secure, or operate without error;
  - (c) that the information, content, materials, or products included on the SofaX Platform will be as represented by SofaX, or that SofaX or the Customers will perform as promised;
  - (d) any implied warranties arising from course of dealing or usage of trade; and

- (e) any obligation, liability, right, claim, or remedy in tort, unless arising from acts of fraud, negligence, or wilful misconduct by SofaX.

11.2. The Stakeholder undertakes and warrants that all its representations, warranties, and undertakings in the Agreement shall be fulfilled, remain true and correct at all times, and subsist for as long as necessary to give effect to each and every one of them in accordance with this Agreement. In the event of any of them becoming unfulfilled, untrue, or incorrect, the Stakeholder shall promptly inform SofaX of the same and rectify the situation.

## **12. LIMITATION OF LIABILITY AND INDEMNITY**

12.1. Any information or materials provided by SofaX through or in connection with the SofaX Platform and SofaX Services may contain inaccuracies, errors or omissions. SofaX reserves the right to correct such inaccuracies, errors or omissions to the fullest extent permitted by the Laws, and excludes liability relating thereto.

12.2. The Stakeholder shall indemnify, hold harmless and, at SofaX's option, defend SofaX and each of its respective Affiliates, officers, employees, directors and agents from and against any and all liens, damages, losses, liabilities, obligations, penalties, fines, claims, litigation, demands, defences, judgements, suits, proceedings, costs, disbursements or expenses of any kind or nature whatsoever, including but not limited to third party claims, reasonable attorney's fees, consultants' fees, experts' fees and other litigation costs, arising from or related to:

- (a) the SofaX Platform and SofaX Services, including but not limited to the hosting, operation, management and administration thereof;
- (b) the transactions between the Stakeholder and Customers;
- (c) any actual or alleged breach of the Stakeholder's undertakings, representations, warranties or obligations under this Agreement;
- (d) any incorrect, misleading or erroneous information provided to SofaX or any third party relating to or in connection with the SofaX Platform or SofaX Services;
- (e) any non-compliance by the Stakeholder with any applicable Laws, including losses incurred by SofaX or its sub-contractors regarding carriage or prohibited Products and/or Services;
- (f) any actual or alleged infringement of any Intellectual Property Rights, particularly arising from those provided by the Stakeholder;

- (g) the collection, payment or failure to collect or pay taxes by the Stakeholder;
  - (h) any security or personal data incidents that the Stakeholder is directly or indirectly responsible for;
  - (i) any violation of the Agreement by the Stakeholder;
  - (j) the negligence, gross negligence, bad faith or intentional or wilful misconduct of Stakeholder or its subcontractors (whether or not approved by Stakeholder);
  - (k) any other matters that may be attributable to the Stakeholder, including but not limited to those related to the Stakeholder's Products and/or Services and the Content Materials thereof; or
  - (l) any other matters beyond SofaX's control.
- 12.3. If SofaX reasonably determines that any indemnified claim may adversely affect SofaX, SofaX may take control of the defences at the expense of the Stakeholder. The Stakeholder shall not consent to the entry of any judgment or enter into any settlement of a claim against SofaX without the prior written consent of SofaX.
- 12.4. Notwithstanding any terms and conditions herein, we shall not be liable for any loss of profit, goodwill, business opportunity, anticipated savings or for any indirect or consequential loss or damage that may be suffered by you, whether caused by us or otherwise.
- 12.5. To the fullest extent permitted by the Laws, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of SofaX and its Affiliates and their respective officers, directors, partners, employees and contractors, to the Stakeholder and anyone claiming by or through the Stakeholder, for any and all liens, damages, losses, liabilities, obligations, penalties, fines, fees, claims, litigation, demands, defences, judgements, suits, proceedings, costs, disbursements or expenses of any kind or any nature whatsoever, including attorneys' fees and costs and expert-witness fees, resulting from or in any way related to the Agreement from any cause or causes will not exceed the amount that SofaX is entitled to receive from the Stakeholder for the month preceding the date the liability arose.

### **13. ELECTRONIC COMMUNICATIONS**

- 13.1. The communications between Parties will be conducted using electronic means. For contractual purposes, the Stakeholder:
- (a) consents to receive communications from us in electronic form; and

- (b) agrees that all terms and conditions, agreements, notices, disclosures, and other communications that we provide to you electronically will satisfy any legal requirements that such communications would satisfy if they were in hardcopy writing.

#### **14. ASSIGNMENT**

- 14.1. The Stakeholder cannot assign, transfer or subcontract all or part of its rights and/or obligations deriving from the Agreement, without the prior written consent of SofaX. SofaX may assign, transfer or subcontract all or part of its rights and/or obligations deriving from the Agreement.

#### **15. FORCE MAJEURE**

- 15.1. No Party will be liable to the other or be deemed to be in breach of the Agreement by reason of any delay or failure to perform any of its obligations due to an event of Force Majeure. Upon the occurrence of any event of Force Majeure, SofaX may, at its option, fully or partially suspend delivery or performance of its obligations hereunder while such event or circumstance continues.

#### **16. WAIVER**

- 16.1. The failure of a Party to exercise its rights in case of breach of contract by the other Party will not be considered a waiver of its rights under the Agreement or under the Laws.

#### **17. SEVERABILITY**

- 17.1. If any term, condition, or provision of this Agreement is held to be invalid, unlawful, or unenforceable to any extent, the invalid term, condition, or provision will be severed from the remaining terms, conditions, and provisions of this Agreement, which will continue to be valid and enforceable to the fullest extent permitted by law. The tribunal will preserve, as far as possible, the original intention of the Parties with respect to the severed term, condition, or provision.

#### **18. SURVIVAL**

- 18.1. Following the term of this Agreement, any and all provisions set forth herein which, by their very nature, are intended to survive any expiration or termination hereof, shall survive, including but not limited to the provisions respecting confidentiality, representations & warranties, indemnifications, limitations on liability, ownership, and accrued payment obligations.

## **19. RELATIONSHIP OF PARTIES**

19.1. The Stakeholder and SofaX are independent contractors, and nothing in the Agreement will create any partnership, joint venture, agency, franchise, sales representative relationship or exclusivity between the Parties. The Agreement will not cause the establishment of any employment relationship between the Parties or with any person who provides services to either. The Stakeholder will have no authority to make or accept any offers or representations on behalf of SofaX.

## **20. THIRD PARTY RIGHTS**

20.1. The Agreement and all the representations, warranties, covenants, conditions, and provisions hereof are intended to be and are for the sole and exclusive benefit of SofaX and the Stakeholder. Other than as regards the rights of Customers against the Stakeholder, nothing in the Agreement, express or implied, will be construed as conferring upon any other person or entity any legal or equitable right, benefit, or remedy of any nature.

## **21. GOVERNING LAW AND DISPUTE RESOLUTION**

21.1. This Agreement shall be governed by and construed in accordance with the Laws, without regard to the principles of conflict of laws. Any dispute, controversy or claim arising out of or relating to this Agreement shall be referred to and finally resolved by arbitration administered by the Asian International Arbitration Centre located in Kuala Lumpur, Malaysia, in accordance with the Arbitration Rules of the Asian International Arbitration Centre for the time being in force, which rules are deemed to be incorporated by reference in this Section. The seat of arbitration shall be Kuala Lumpur, Malaysia. The Tribunal shall consist of one arbitrator. The language of the arbitration shall be English.

## **22. ENTIRE AGREEMENT**

22.1. This Agreement represents the entire agreement and understanding between the Parties regarding the subject matter. If any provision of this Agreement is deemed void or invalid, that fact shall not affect any other provision, and the remainder of the Agreement shall be deemed modified to the extent necessary to make it valid and enforceable, in accordance with the Laws. Failure by either Party to enforce any provision of this Agreement shall not be construed as a waiver of the right to enforce that or any other provision in the future. The Agreement shall apply to the relationship between the Parties in addition to any specific terms agreed upon herein.