

## Community X SEEN Terms of Use

Last updated on March 18, 2024

Please read these Terms of Use ("**Terms**") carefully before joining and becoming a part of the Community X SEEN network of creators ("**Community X SEEN**"). Community X SEEN is curated by and is a trading name of Beauty Seen Inc., a New York corporation with offices at 55 Washington Street, Ste 420, Brooklyn, New York 11201 ("**BSI**").

These Terms are applicable to every creator who joins and becomes part of Community X SEEN ("**Member**"), and govern the engagement between BSI and the Member, as well as the Member's use and access to the Community X SEEN website at <https://communityxseen.com/> ("**Website**") and/or any tools, applications, and services associated with Community X SEEN and/or BSI.

By joining Community X SEEN or accessing the Website, in exchange for good and valuable consideration (receipt and sufficiency of which the Member hereby acknowledges), the Member agrees to be bound by these Terms which may be amended from time to time at the sole discretion of BSI. These Terms were last updated on the 'last updated' date indicated above. If we change these Terms we will post the new version on our website and change the 'last updated' date. Please check our website from time-to-time to see if these Terms have been updated.

### 1. DEFINITIONS AND INTERPRETATION

1.1. In these Terms the following words and expressions shall have the following meanings:

- 1.1.1. "**Affiliate**" means any entity that directly or indirectly controls, is controlled by, or is under common control with, BSI. Control for purposes of this definition means the direct or indirect ownership of more than 50% of the voting share of an entity;
- 1.1.2. "**Agreement**" means these Terms and the Sign-Up Form (as defined below), which together comprise the entire agreement between the Parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral;
- 1.1.3. "**Applicable Law**" means all applicable laws, regulations, codes of practice, guidelines, decisions, orders and decrees imposed by law or any competent governmental or quasi-governmental regulatory authority;
- 1.1.4. "**Business Day**" means any day which is not a Saturday, Sunday or federal holiday;
- 1.1.5. "**Client**" means any current, past, or prospective client or customer of: (i) BSI and/or (ii) an Affiliate;
- 1.1.6. "**Confidential Information**" means all content, materials, information, know-how or data of BSI and/or any Affiliate which is disclosed or otherwise comes into a Member's possession directly or indirectly as a result of the Agreement and being of a confidential nature. For the avoidance of doubt, any information relating to a Client that comes into a Member's possession in connection with the Agreement shall constitute Confidential Information;
- 1.1.7. "**Developed Materials**" has the meaning given in paragraph 7.1 of these Terms;
- 1.1.8. "**Disclosure Rules**" means any rules, regulations and/or guidance published or made available by any US or other relevant regulatory bodies concerning a Member's disclosure obligations in connection with a Member's performance under the Agreement, including a Member's obligation to clearly and conspicuously disclose a Member's relationship with BSI and/or any Client in all social media activity in accordance with the Federal Trade Commission Endorsement Guides available at <https://www.ftc.gov/current/title-16/chapter-I/subchapter-B/part-255> as they may be amended from time to time;
- 1.1.9. "**Event of Force Majeure**" means an event beyond the reasonable control of a Party, including, but not limited to, a technical fault, act of God, war, riot, act of terrorism, civil commotion, epidemic, pandemic, malicious damage, accident, fire, flood, storm or strike (other than a strike solely involving the Member's employees), in each case that prevents, hinders or delays the performance of any of the obligations of such Party under the Agreement;
- 1.1.10. "**Image Rights**" means an individual's name (including any alias or professional name), image, voice, photograph, likeness, signature, and approved biographical details;
- 1.1.11. "**Intellectual Property Rights**" means any and all copyrights, designs, trademarks, trade names, insignia, Image Rights, rights in performances, database rights, service marks, patents, trade secrets and all other legal and beneficial intellectual and industrial property rights (whether registered or not) throughout the world, no matter what such rights may be known as in any particular country in the world, and all registrations of, applications for, and renewals and reversions of the same;

- 1.1.12. **"Member Activities"** means any and all activities undertaken or carried out by a Member in connection with their membership in Community X SEEN, including Members' performance under the Agreement;
- 1.1.13. **"Negative Behavior"** means any action or statement by a Member that brings the Member into public disrepute, contempt, scandal or ridicule, or that shocks or offends the community or any group thereof, or that reflects unfavorably on a Client, BSI and/or any Affiliate or that reduces the commercial value of BSI's ownership of the Developed Materials, or a Client's and/or BSI's association with the Member;
- 1.1.14. **"Parties"** means the Member and BSI and **"Party"** means either of them as the context requires;
- 1.1.15. **"Pre-Existing Materials"** has the meaning given in paragraph 7.1 of these Terms;
- 1.1.16. **"Sign-Up Form"** means the online form whereby the Member signs up to Community X SEEN which is available at <https://communityxseen.com/sign-up> and the Website pages following the initial sign-up page.
- 1.1.17. **"Term"** means the term of the Agreement starting on the date when the Member's membership is confirmed by Community X SEEN and remaining in full force and effect until terminated by one of the Parties in accordance with these Terms.
- 1.2. In these Terms (except where the context requires otherwise):
- 1.2.1. references to persons shall include bodies corporate, unincorporated associations, partnerships and individuals;
- 1.2.2. any reference to a paragraph is to a paragraph of these Terms;
- 1.2.3. headings are for the purposes of convenience only and do not form part of and shall not affect the construction of these Terms;
- 1.2.4. references to any statutory provisions or regulations shall be deemed to include any amendment, replacement or re-enactment for the time being in force; and
- 1.2.5. any phrase introduced by the terms "including", "include", "for example" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.3. All of the terms and provisions of these Terms are subject to Applicable Law. In the event of any conflict or inconsistency between the provisions of these Terms and Applicable Law, Applicable Law shall prevail. BSI and/or the Member shall not be in breach of the Agreement as a consequence of any action it takes or omits to take to ensure compliance with Applicable Law.
- 1.4. All consents, approvals, notices, directions and/or instructions which are required to be given or obtained pursuant to the Agreement must be given in writing.

## **2. MEMBERSHIP**

- 2.1. BSI, in its sole discretion, may permit a Member to join Community X Seen and BSI can deny membership for any reason. In joining Community X SEEN, Members become part of a network where they will be offered the opportunity to partner with BSI and Clients on opportunities including (without limitation) nano creator campaigns, content creation projects (including photo and/or content shoots), paid content activities, market research projects (surveys/focus groups), events and talent collaborations. In exchange, BSI requires Members to adhere to certain standards of conduct. The Member understands and agrees that their ongoing participation in Community X SEEN is strictly contingent on the Member's compliance with these Terms and in such a way as to ensure compliance with all Applicable Law.
- 2.2. BSI reserves the right to, and the Member agrees that BSI can in its sole discretion, monitor and review the Member's applicable social media channels, content and activity. If any social media content or activity violates the Agreement, BSI can require the Member to remove or revise such content or activity, and the Member will immediately comply with such requirement.
- 2.3. BSI may, in its sole discretion, terminate or suspend the Member's membership of and/or ability to participate in Community X SEEN at any time and for any reason.

## **3. RESTRICTIONS**

- 3.1. Except as provided in paragraph 3.1.1 and in the next sentence, a Member may not join Community X SEEN unless they are at least 18 years old (and do not live in Alabama, Mississippi or Nebraska). A Member must be at least 19 years old if living in Alabama or Nebraska and at least 21 years old if living in Mississippi to be permitted to join Community X SEEN. No Member may join Community X Seen if they have previously been expelled from Community X SEEN.
- 3.1.1. With BSI's consent and in its sole discretion, a parent or legal guardian may join Community X SEEN as a Member on behalf of its minor child. In that event, the parent or legal guardian is the Member, and such Member will supervise and control all information provided on behalf of the minor child, and such minor child will not provide any information to Seen Group without its parent's or legal guardian's express consent.
- 3.2. Without prejudice to any other termination right under these Terms, BSI can terminate the Agreement with immediate effect,

if the Member: a) posts, shares or publishes any content (or makes any statement) that is inaccurate, misleading, unlawful, offensive, harmful, fraudulent, threatening, libelous, defamatory, obscene, or promotes illegal activity or is considered hate speech, or is in violation of any person or entity's intellectual property rights; or b) does anything which is in any other way inconsistent with the Agreement.

#### **4. REGISTRATION**

- 4.1. As a condition of becoming part of Community X SEEN, including (without limitation) the use of the Website, its tools, applications and services, prospective Members are required to sign up to Community X SEEN via the Sign-Up Form.
- 4.2. Members may not register for more than one Member account, or register for an account on behalf of another person, group or entity. The Member represents that the information provided by the Member in the Sign-Up Form is not inaccurate, misleading, or fraudulent.
- 4.3. In order to participate in some Member Activities, the Member will be required to (i) grant BSI and/or its Affiliates (and/or their subcontractors, representatives or agents) and/or the Client associated with the relevant Member Activity ("**Authorized Parties**") permission to view analytics via brand partnership tools available on the applicable social media platforms by enabling access to the Authorized Parties to specific functions of the Member's social media accounts; and (ii) enable branded content tools and promote the content created by the Member as a paid partnership. The Member acknowledges and agrees that if they do not grant such permission to the Authorized Parties, then they will not be entitled to participate in such Member Activities.

#### **5. DISCLAIMERS**

- 5.1. By joining Community X SEEN, the Member acknowledges and agrees that they are not entitled or guaranteed to receive anything in return, including complimentary products, any other promotions or giveaways promoted on the Website, in emails or on other social media sites and/or payment of any kind ("**Rewards**"). The award of any Rewards is determined solely by BSI and may change at BSI's discretion at any time. BSI reserves the right to postpone, change and/or cancel any Rewards and/or any previously scheduled or running programs at any time.
- 5.2. BSI may from time to time send or cause to be sent gifts or products to Members in its discretion. The provision of such gifts or products is not conditional on the Member providing anything in return (either to BSI, any Affiliate or to a Client). If BSI sends or causes to be sent a gift or product to a Member, BSI is not expressing a requirement for the Member to provide BSI or a Client with social media (or other) coverage in exchange for accepting the gift or product. BSI assumes that the Member's receipt of such gifts or products complies with any anti-bribery or gifting policies which may apply to them. If a Member chooses to share content relating to such gifts or products, the Member must comply with all Applicable Law and Disclosure Rules.
- 5.3. Any items the Member receives as part of a Member Activity (e.g. free products, discounts, prizes, etc.) are NOT FOR RESALE. All products the Member receives from or on behalf of BSI and/or a Client are meant only for the Member's own testing or use, unless otherwise confirmed by BSI in writing. If the Member is unable or unwilling to use a product, they may not pass it along to a third party. In no case is it acceptable for any Member to resell a product received from or on behalf of BSI and/or a Client and/or through Community X SEEN either online or offline. If a Member is found to be exchanging any such products for cash or anything else of value, then, without prejudice to any other termination right under these Terms, BSI shall be entitled to terminate the Agreement with immediate effect.
- 5.4. The Member acknowledges BSI may invite them to engage in specific activities, in each case on the terms and conditions set out in these Terms. By joining Community X SEEN, the Member is not under any obligation to engage in any activity of Community X SEEN. As a result of the Member joining Community X SEEN, BSI is not under any obligation to offer the Member the possibility to engage in any activity promoted by BSI and/or a Client.
- 5.5. The Parties acknowledge and agree that nothing in the Agreement shall render the Member the status of an employee, worker, agent or partner of BSI, any Affiliate and/or of any Client and the Member shall not hold itself out as such unless this has been expressly consented in writing by BSI.
- 5.6. In connection with Member Activities, the Member shall co-operate with the reasonable instructions of representatives of BSI and/or Clients and with any other consultants, suppliers or other third parties engaged or identified by BSI and/or Clients.

#### **6. WARRANTIES AND REPRESENTATIONS**

- 6.1. The Member warrants and undertakes that in connection with any Member Activities:
  - 6.1.1. they will comply with all applicable Disclosure Rules and they will comply with any specific rules and/or guidance that may apply to specific sectors or products.
  - 6.1.2. they will promptly report to BSI any request or demand for any undue financial or other advantage of any kind that they receive;
  - 6.1.3. they have, and will continue to have throughout the Term, full right, title and authority to enter into the Agreement and to grant the rights, accept and perform the obligations imposed on them under the Agreement;
  - 6.1.4. they will attend all appointments and meetings punctually and in a state fit to carry out their obligations and do all things necessary to ensure that their obligations are performed in a professional and efficient manner and not engage in any behavior which results in a delay or a cost to BSI;

- 6.1.5. they will at all times act in good faith towards BSI and Clients and in the best interests of BSI and Clients;
  - 6.1.6. the use by BSI and/or a Client of the Developed Materials and/or any Intellectual Property Rights assigned and/or licensed to BSI and/or a Client pursuant to the Agreement will not infringe the Intellectual Property Rights or any other rights of any third party;
  - 6.1.7. they have not been convicted of any felony or misdemeanor within the past ten (10) years and they are not currently under investigation for any criminal offense;
  - 6.1.8. they will not make any defamatory or derogatory statements or take part in any activities which could be derogatory to the reputation, image or goodwill of BSI, any Affiliate and/or a Client. Without prejudice to the foregoing, in any such event, the Member shall co-operate with, and take such steps as may reasonably be required by BSI so as to minimize the extent of any damage or potential damage to the reputation of BSI and/or a Client (as applicable);
  - 6.1.9. they will not engage in Negative Behavior during the Term of the Agreement;
  - 6.1.10. they will not include in the Developed Materials any product of or any reference to any brands which are competitors of any Client that is applicable to those Developed Materials; and
  - 6.1.11. they will not assign and/or license to a Client or any other third party any Developed Materials without having obtained the prior written approval of BSI.
- 6.2. In addition, BSI makes no representation that the operation of the Website or Community X SEEN will be uninterrupted or error-free, and is not liable for the consequences of any interruptions or errors. BSI may change, restrict, suspend or discontinue access to the Website or Community X SEEN or any part of it at any time for any reason.

## 7. INTELLECTUAL PROPERTY RIGHTS

- 7.1. The Member acknowledges and agrees that, as between the Parties, all Intellectual Property Rights in all content, materials, work products, creative works, designs, recordings, insights, graphical representations or works of a similar nature, produced or created in whole or in part by or on behalf of either the Member or BSI or any Affiliate in connection with any of the Member's Member Activities (the "**Developed Materials**") shall, subject to the ownership rights of any applicable social media platforms, in perpetuity be owned absolutely and exclusively by and vest in BSI, provided that BSI shall not own any Intellectual Property Rights owned by the Member prior to the Member's entry into the Agreement ("**Pre-Existing Materials**"). For the avoidance of doubt, the Pre-Existing Materials include the Member's Image Rights and social media handles.
- 7.2. The Member irrevocably and unconditionally:
- 7.2.1. assigns to BSI all existing and (by present assignment of future rights) all future Intellectual Property Rights in the Developed Materials (whether created before or after the date of the Agreement);
  - 7.2.2. must obtain any assignments of Intellectual Property Rights from any third parties engaged by the Member that are necessary to give effect to paragraph 7.2.1 of these Terms;
  - 7.2.3. must otherwise do and execute (or procure the doing and execution of) each necessary act, document and thing to vest the Intellectual Property Rights referred to in paragraphs 7.2.1 and 7.2.2 of these Terms in BSI; and
  - 7.2.4. waives, and shall procure that anyone engaged by the Member involved in the creation of the Developed Materials shall waive, any moral or similar rights (such as, for example, rights that might arise the Visual Artists Rights Act, 17 U.S.C. § 106A) relating to the Developed Materials.
- 7.3. BSI grants the Member a non-exclusive, revocable, worldwide, fully paid- up, royalty free license to use the Developed Materials solely for the Member's portfolio in perpetuity and organically on the Member's social media channels but not, for the avoidance of doubt, for commercial use. The Member will cease to use the Developed Materials if requested to do so by BSI.
- 7.4. The Member hereby grants BSI a non-exclusive, worldwide, fully paid-up, royalty-free, sub-licensable (subject to the provisions of paragraph 7.5) license to use the Pre-Existing Materials, to the extent they form part of the Developed Materials, during the Term and thereafter in perpetuity (unless otherwise agreed between BSI and the Member): a) in any and all activities associated with any Member Activity; b) in connection with the promotion of Community X SEEN, BSI and/or any Affiliate; and c) for the following "non-paid for" uses: (i) factual references in company reports, materials targeted towards investors, and associated documentation, whether or not available publicly; (ii) advertising and industry awards, exhibitions, competitions and fairs; and (iii) internal communications.
- 7.5. The Member hereby grants to BSI the right to sub-license the use of the Member's Pre-Existing Materials to the extent they form part of the Developed Materials in connection with the promotion by the applicable Client of the applicable Member Activity, provided that (subject to the provisions herein) such sub-licence is for organic use on the applicable Client's social media channels only ("**Permitted Client Use**"). There shall be no restriction on the duration of such sub-licence. Further, there shall be no restriction on the use by the applicable Client of analytics and insights which relate to Member Activities. Any use by a Client of the Member's Pre-Existing Materials beyond Permitted Client Use, will be subject to a separate and additional agreement between BSI and the Member.
- 7.6. The Member acknowledges and agrees that as part of the Member Activities, the Member might post reviews in relation to Client products on third-party websites and platforms that are not owned, controlled or managed by BSI or an Affiliate

("Reviews"). The Member acknowledges and agrees that the terms and conditions of any such third-party websites or platforms may prevail over these Terms in connection with the usage by Clients or other third parties of Reviews.

- 7.7. Notwithstanding the provisions of paragraph 7.5, the Member acknowledges and agrees that these Terms do not place any restrictions on the use by a Client of images or content containing the Member's image that results from the Member's attendance at an event organised or promoted by a Client, even if the Member's attendance at such event is connected to the Member's membership of Community X SEEN.
- 7.8. Without prejudice to the grant of rights contained in this paragraph 7, BSI may at its absolute discretion in connection with a specific Member Activity agree to enter into a separate agreement with the Member, the terms of which may, in connection with that specific Member Activity, prevail over the terms of the Agreement and which may involve the payment of fees to the Member.
- 7.9. The obligations in this paragraph 7 shall survive the expiry or termination of the Agreement (howsoever arising).

## **8. CONFIDENTIALITY**

- 8.1. The Member will keep all Confidential Information confidential at all times and will not disclose Confidential Information to any third party nor use Confidential Information for any purpose other than as permitted by these Terms.
- 8.2. Paragraph 8.1 of these Terms shall not apply to Confidential Information:
  - 8.2.1. to the extent it is required to be disclosed by law or a regulatory authority;
  - 8.2.2. which is required to be disclosed in connection with the implementation and performance of the Agreement provided that such disclosure is made on a need to know basis only;
  - 8.2.3. which the Member obtains from some other person with good legal title thereto;
  - 8.2.4. which is in or comes into the public domain other than through the default or negligence of the Member or which is independently developed by or for the Member; or
  - 8.2.5. which is disclosed to the Member's relevant legal and financial advisers.
- 8.3. The Member shall ensure that any person to whom they disclose Confidential Information pursuant to this paragraph 8 keeps the same information confidential.
- 8.4. The obligations in this paragraph 8 shall survive the expiration or termination of the Agreement (howsoever arising).

## **9. DATA PROTECTION**

- 9.1. In connection with the Member's membership of Community X SEEN, each Party shall, at its own expense, ensure that it complies with the requirements of all legislation and regulatory requirements in force from time to time relating to the use of personal data, including (without limitation) any federal or state data protection legislation from time to time in force. BSI will process the Member's personal data in accordance with: a) the principles of its privacy notice available here: <https://communityxseen.com/legal/privacy-notice-us>, b) our [Cookies Policy](#), and c) the Agreement.

## **10. LIABILITY AND INDEMNITIES**

- 10.1. Nothing in this Agreement shall exclude or restrict either Party's liability for fraud or fraudulent misrepresentation, for death or personal injury resulting from the gross negligence of that Party or of its employees or officers, or for any other liability, which cannot be excluded or restricted by law.
- 10.2. The Member shall fully and effectively defend, indemnify, keep indemnified and hold harmless BSI, its Affiliates, Clients (where applicable) and their respective directors, officers, employees, agents, representatives, sub-contractors and any of them, from and against any and all losses, damages, liabilities, penalties, suits, judgments and expenses (including, without limitation, reasonable legal expenses) to the extent resulting from or out of the Member's breach of any of the representations, undertakings or warranties provided by the Member under the Agreement.
- 10.3. The Member is responsible for paying any applicable taxes, withholdings, and other fees due in connection with compensation received under the Agreement. BSI will not withhold any taxes from amounts it pays to the Member. To the extent that BSI has paid or is obliged by law or by any decision of a competent tax authority to pay any amount on account of taxes owed by the Member, the Member will on demand fully and effectively defend, indemnify, keep indemnified and hold harmless BSI, its Affiliates and Clients (where applicable) for any such amount and any interest, fines or penalties payable in connection therewith.
- 10.4. SUBJECT TO PARAGRAPH 10.1 ABOVE AND THE LAST SENTENCE OF THIS PARAGRAPH, IN NO EVENT WILL BSI, ITS AFFILIATES OR ITS CLIENTS OR ITS OR THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENT, REPRESENTATIVES OR SUB-CONTRACTORS BE LIABLE FOR ANY DAMAGES WHATSOEVER, WHETHER FORESEEABLE OR NOT (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS, OR CONSEQUENTIAL OR SPECIAL DAMAGES), ARISING OUT OF OR IN CONNECTION WITH THE USE BY THE MEMBER OF ANY SERVICE, PRODUCT, ITEM OR GOOD (IN EACH CASE WHETHER SUPPLIED/PROVIDED BY OR ON BEHALF OF BSI, ITS AFFILIATES, OR ANY CLIENT, OR OTHERWISE) OR ANY DAMAGES OR SETTLEMENT PAYMENTS REQUIRED OR MADE BY THE MEMBER ARISING OUT OF OR IN CONNECTION WITH

THE USE BY THE MEMBER OF ANY SERVICE, PRODUCT, ITEM OR GOOD (IN EACH CASE WHETHER SUPPLIED/PROVIDED BY OR ON BEHALF OF BSI, ITS AFFILIATES, OR ANY CLIENT, OR OTHERWISE). IN NO EVENT WILL BSI'S LIABILITY TO A MEMBER UNDER THIS AGREEMENT, FOR ANY REASON, EXCEED THE GREATER OF: (1) THE TOTAL FEES PAID BY BSI TO THE MEMBER UNDER THE AGREEMENT DURING THE SIX (6) MONTH PERIOD BEFORE THE EVENTS GIVING RISE TO A CLAIM BY THE MEMBER OCCUR; OR (2) THE SUM OF ONE THOUSAND DOLLARS. SUBJECT TO PARAGRAPH 10.1 ABOVE, IN NO EVENT SHALL THE TOTAL CUMULATIVE LIABILITY OF BSI, ITS AFFILIATES AND ITS CLIENTS AND ITS AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES AND SUB-CONTRACTORS TO YOU IN DIRECT DAMAGES IN ANY CONSECUTIVE TWELVE (12) MONTH PERIOD EXCEED ONE HUNDRED US DOLLARS (USD \$100).

10.5. The obligations in this paragraph 10 shall survive the expiration or termination of the Agreement (howsoever arising).

## **11. FORCE MAJEURE**

11.1. If either BSI or the Member is prevented, hindered or delayed from or in performing any or all of its obligations under the Agreement by an Event of Force Majeure, then:

11.1.1. as soon as reasonably practicable after the commencement of the Event of Force Majeure, that Party shall notify the other Party in writing of the nature and extent of the circumstances giving rise to the Event of Force Majeure, the date of commencement of the Event of Force Majeure and the effects of the Event of Force Majeure on its ability to perform its obligations under the Agreement;

11.1.2. that Party shall use all reasonable efforts to mitigate the effects of the Event of Force Majeure upon the performance of its obligations under the Agreement;

11.1.3. subject to complying with paragraphs 11.1.1 and 11.1.2 of these Terms, that Party's obligations under the Agreement (including, in the case of BSI, any payment obligations) shall be suspended and that Party shall have no liability in respect of the performance of such obligations for so long as the Event of Force Majeure continues and to the extent only that the Party is so prevented, hindered or delayed; and

11.1.4. immediately after the cessation of the Event of Force Majeure (and except where the Agreement has been terminated in accordance with paragraph 11.3), that Party shall notify the other Party in writing of the cessation of the Event of Force Majeure and shall resume performance of its obligations under the Agreement.

11.2. BSI shall not be required to make any payment of fees during any period where the Member has been unable to perform as a result of an Event of Force Majeure.

11.3. Neither Party shall be liable to the other under the Agreement for any loss, damage, costs, expenses or other claims for compensation arising as a direct or indirect result of non-performance of the Agreement due to an Event of Force Majeure.

## **12. TERMINATION**

12.1. BSI may terminate the Agreement immediately for any reason (including for convenience) by giving written notice to the Member at any time.

12.2. The Member may terminate the Agreement immediately for any reason (including for convenience) by giving written notice to BSI at any time other than during the period of any Member Activities for which the Member has signed up.

12.3. If BSI breaches any of its obligations under the Agreement, the Member's rights and remedies shall, subject to paragraph 10.4, be limited to the right, if any, to seek to obtain damages at law and the Member shall not have any right in such event to rescind any of the rights granted to BSI pursuant to the Agreement or to enjoin or restrain the development, production, promotion or exploitation of any of the rights granted to BSI.

12.4. Expiration or termination of the Agreement for any reason shall not affect or prejudice any rights or liabilities which have accrued as at the date of termination or any provision expressly stated to survive, or implicitly surviving, termination.

12.5. Upon expiration or termination of the Agreement for any reason:

12.5.1. each Party shall promptly return to the other all of the property of the other within its possession;

12.5.2. the Parties shall make mutually acceptable reciprocal arrangements with respect to the return or disposal of Confidential Information.

## **13. NOTICES**

13.1. Any notice given by a party under this Agreement shall be given by email. Notices shall be sent to the following email addresses: (1) in the case of BSI: [community@seengroup.com](mailto:community@seengroup.com) and [legal@thecasbah.net](mailto:legal@thecasbah.net); (2) in the case of the Member, the email address provided in the Sign-Up Form. Notices are deemed received on confirmation of sending by the sending party's email application to the correct email address.

## **14. MISCELLANEOUS**

14.1. The Agreement will govern the entire contractual relationship between the Parties in relation to its subject matter to the exclusion of any other terms that the Member seeks to impose or incorporate, or which are implied by trade, custom,

practice or course of dealing. No variation of these Terms shall be effective unless in writing and signed by or on behalf of a duly authorized representative of each Party.

- 14.2. If any provision of these Terms shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of these Terms and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect.
- 14.3. BSI shall be entitled to sub-license, assign, transfer, or otherwise deal with any of its rights or obligations under these Terms without the prior consent of the Member. Any sub-license, assignment, transfer, or other dealing regarding any of the rights or obligations under these Terms by the Member without BSI's prior written consent shall be void and of no effect. These Terms shall be binding on the Parties and their respective successors and assigns.
- 14.4. No exercise or failure to exercise or delay by either Party in exercising any right, power or remedy under these Terms shall constitute a waiver by that Party of any such other right power or remedy.
- 14.5. These Terms shall not make either Party the agent of the other, or create an employment, partnership, joint venture or similar relationship between the Parties, and neither Party shall have the power to obligate or bind the other Party in any manner whatsoever. In all respects, each Party shall act at all times as an independent contractor for all purposes of these Terms.
- 14.6. Each Party at its own cost agrees to do, execute and perform such further deeds, documents, assurances, acts and things as may be required to give effect to the terms, intent and purposes of these Terms.
- 14.7. The Agreement is intended solely for the benefit of the parties hereto and their respective successors and permitted assigns, and it is not intended to confer third-party beneficiary rights upon any other person. Notwithstanding the foregoing, the Member acknowledges that Affiliates are express third-party beneficiaries to the Agreement and that all obligations owed by the Member under the Agreement are owed to, and may be enforced by, both BSI and Affiliates, and any and all rights granted to BSI under the Agreement shall be exercisable by both BSI and/or Affiliates.

## **15. GOVERNING LAW AND JURISDICTION**

- 15.1. The Agreement and any matters or disputes in any way relating to it must be construed in accordance with and governed by the laws of the State of New York, without regard to its conflicts of laws or principles. The state and federal courts located in New York County, New York will have exclusive jurisdiction of any disputes arising under or in any way relating to the Agreement and the parties irrevocably consent to the jurisdiction of the state and federal courts located in New York County, New York for all such disputes. Each Party irrevocably consents to the personal jurisdiction of such courts for all such disputes. Nothing in this Agreement will confer personal jurisdiction over any Affiliate and/or Client in any court in the United States.