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## ACL Terms & Conditions

This Engage Hosted Service Agreement ("Agreement") made and entered by and between Amino Communications Ltd., having its principal place of business at 1010 Cambourne Business Park, Cambourne, Cambridge, CB23 6DP, United Kingdom ("Amino") and the company ("Customer") is effective on the latter of the date relevant quotation, order and/or order acknowledgement to which this Agreement is appended or linked ("Effective Date")

## RECITALS

1. Customer has purchased from Amino some or all of the services described on the latter of the relevant quotation, order and/or order acknowledgement to which this Agreement is appended or linked; and
2. Customer wishes to have Amino provide support for those of the hosted services identified on the latter of the relevant quotation, order and/or order acknowledgement to which this Agreement is appended or linked (the "Services") which it has purchased, pursuant to the terms and conditions of this Agreement;

NOW, THEREFORE, the parties agree as follows:

### 1. Definitions

"Access Credentials" means any user name, identification number, password, license or security key, security token, PIN or other security code, method, technology or device used, alone or in combination, to verify an individual's identity and authorization to access and use the Hosted Services.

"Authorized User" means each of the individuals authorized to use the Services pursuant to Section 3.1 and the other terms and conditions of this Agreement.

"Customer Data" means information, data and other content, in any form or medium, that is collected, downloaded or otherwise received, directly or indirectly from Customer by or through the Services or that incorporates or is derived from the Processing of such information, data or content by or through the Services.

"Customer Systems" means the Customer's information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Customer or through the use of third-party services.

"Documentation" means any manuals, instructions or other documents or materials that Amino provides or makes available to Customer in any form or medium and which describe the functionality, components, features or requirements of the Services or Amino Materials, including any aspect of the installation, configuration, integration, operation, use, support or maintenance thereof.

"Disabling Device" means any software, hardware or other technology, device or means used by Amino or its designee to disable Customer's access to or use of the Services

automatically with the passage of time or under the positive control of Amino or its designee.

"Amino Materials" means the Service Software, Documentation and Amino systems and any and all other information, data, documents, materials, works and other content, devices, methods, processes, hardware, software and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans or reports, that are provided or used by Amino in connection with the Services or otherwise comprise or relate to the Services or Amino systems.

"Intellectual Property Rights" means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

"Losses" means any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance.

"Process" means to take any action or perform any operation or set of operations that the Services are capable of taking or performing on any data, information or other content.

"Processing" and "Processed" have correlative meanings.

"Service Software" means the Amino software application or applications and any third-party or other software, and all new versions, updates, revisions, improvements and modifications of the foregoing, that Amino provides as part of the Services.

## 2. Services

2.1. **Services.** Subject to and conditioned on Customer's compliance with the terms and conditions of this Agreement, during the Term, Amino shall use commercially reasonable efforts to provide to Customer the Services purchased by Customer in accordance with the terms and conditions of this Agreement, including to host, manage, operate and maintain the Service Software for remote electronic access and use by Customer ("Hosted Services") in substantial conformity with the description on the latter of the relevant quotation, order and/or order acknowledgement to which this Agreement is appended or linked ("Specifications"). Times when the Hosted Service may not be available to Customer include:

- (a) Scheduled downtime;
- (b) Service downtime or degradation due to a Force Majeure Event, or failure by a third party cloud service provider;
- (c) any other circumstances beyond Amino's reasonable control, including Customer's use of Third Party Materials, misuse of the Hosted Services, or use of the Services other than in compliance with the express terms of this Agreement; and
- (d) any suspension or termination of Customer's access to or use of the Hosted Services as permitted by this Agreement.

2.2. **Service and System Control.** Except as otherwise expressly provided in this Agreement, as between the parties:

- (a) Amino has and will retain sole control over the operation, provision, maintenance and management of the Services and Amino Materials;
- (b) Customer has and will retain sole control over the operation, maintenance and management of, and all access to and use of, the Customer Systems, and sole responsibility for all access to and use of the Services and Amino Materials by any Person by or through the Customer Systems or any other means controlled by Customer or any Authorized User.

2.3. **Changes.** Amino reserves the right, in its sole discretion, to make any changes to the Services, the Hosted Services, and Amino Materials that it deems necessary or useful to:

- (a) maintain or enhance
  - (i) the quality or delivery of Amino's services,
  - (ii) the competitive strength of or market for Amino's services or (iii) the Services' cost efficiency or performance; or
- (b) to comply with applicable Law.

2.4. **Suspension or Termination of Services.** Amino may, directly or indirectly, and by use of a Disabling Device or any other lawful means, suspend, terminate or otherwise deny Customer's or any other Person's access to or use of all or any part of the Services or Amino Materials, without incurring any resulting obligation or liability, if:

- (a) Amino receives a judicial or other governmental demand or order, subpoena or law enforcement request that expressly or by reasonable implication requires Amino to do so; or
- (b) Amino believes, in its reasonable discretion, that:
  - (i) Customer or has failed to comply with, any material term of this Agreement, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any material instruction or requirement of the Specifications;
  - (ii) Customer is, has been, or is likely to be involved in any fraudulent, misleading or unlawful activities relating to or in connection with any of the Services; or
  - (iii) this Agreement expires or is terminated. This Section 2.4 does not limit any of Amino's other rights or remedies, whether at law, in equity or under this Agreement.

### 3. **Authorization and Customer Restrictions**

3.1. **Authorization.** Subject to and conditioned on Customer's payment of the Fees and compliance and performance in accordance with all other terms and conditions of this Agreement, Amino hereby authorizes Customer to access and use, solely in the Territory and during the Term, the Services and such Amino Materials as Amino may supply or make available to Customer solely for the use of the Services, and the conditions and limitations set forth in this Agreement. This authorization is non-exclusive and non-transferable.

3.2. **Reservation of Rights.** Nothing in this Agreement grants any right, title or interest in or to (including any license under) any Intellectual Property Rights in or relating to, the Services, Amino Materials or materials of third parties incorporated therein or used by Amino in delivering the Services ("Third Party Materials"), whether expressly, by implication, estoppel or otherwise. All right, title and interest in and to the Services, the Amino Materials and the Third Party Materials are and will remain with Amino and the respective rights holders in the Third Party Materials.

3.3. **Authorization Limitations and Restrictions.** Customer shall not, and shall not permit any other Person to, access or use the Services or Amino Materials except as expressly permitted by this Agreement and, in the case of Third-Party Materials, the applicable third-party agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as this Agreement expressly permits:

- (a) copy, modify or create derivative works or improvements of the Services or Amino Materials;
- (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any Services or Amino Materials to any Person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service;
- (c) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Services or Amino Materials, in whole or in part;
- (d) bypass or breach any security device or protection used by the Services or Amino Materials or access or use the Services or Amino Materials, other than by an Authorized User through the use of his or her own then valid Access Credentials;
- (e) input, upload, transmit or otherwise provide to or through the Services or Amino Systems, any information or materials that are unlawful or injurious, or contain, transmit or activate any harmful code;
- (f) damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Services, Amino Systems or Amino's provision of services to any third party, in whole or in part;
- (g) remove, delete, alter or obscure any trademarks, Specifications, Documentation, license, warranties or disclaimers, or any copyright, trademark, patent or other intellectual property or proprietary rights notices from any Services or Amino Materials, including any copy thereof;
- (h) access or use the Services or Amino Materials in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right or other right of any third party, or that violates any applicable Law; or
- (i) otherwise access or use the Services or Amino Materials beyond the scope of the authorization granted under Section 3.1.

3.4. **Service Use.** The latter of the relevant quotation, order and/or order acknowledgement to which this Agreement is appended or linked sets forth a schedule of

Fees for designated levels of Service usage, beginning with the Fees payable by Customer for the levels of Service usage in effect as of the Effective Date.

#### 4. Support and Maintenance

4.1. **Support.** Provided that Customer has entered into and maintains during the Term, a separate agreement with Amino (the Amino Support and Maintenance Agreement), then during the Term of this Agreement, Amino will make available to Customer a URL (the 'Support Website') for Customer to obtain support for the Services as described herein. The Support Website is monitored during business hours, 9:00am to 5:00pm, Monday through Friday, excluding legal holidays. The Support Website can be used to notify Amino of problems associated with the Services. Customer may obtain support only by making reference to the Support Website or other means of contact provided by Amino for the purpose. Customer acknowledges that support pursuant to this Agreement is provided solely in respect of the Services, and does not extend to the resolution of issues with the devices under management of the Services.

4.2 **Maintenance.** During the term of this Agreement, Amino will provide updates to the Services ("Updates"). All Updates shall be subject to the terms and conditions of this Agreement. Updates will be provided on an as-available basis and include

- (a) bug fixes and
- (b) maintenance releases.

Updates do not include:

- (a) platform extensions including product extensions to
  - (i) different hardware platforms;
  - (ii) different accessories;
  - (iii) different operating system platforms; and
- (b) new functions such as
  - (i) new functionality;
  - (ii) new applications; and
  - (iii) new support and diagnosis tools.

4.3. **Unauthorized Modifications.** Amino assumes no responsibility for the correctness of, performance of, or any resulting incompatibilities with, current or future releases of the Services if the Customer has made changes to the system hardware/software configuration or modifications which changes affect the performance of the Services and were made without prior notification and written approval by Amino. Amino assumes no responsibility for the operation or performance of any Customer-written or third-party application.

4.4. **Exclusions.** Maintenance Services does not include any of the following:

- (a) custom programming services;
- (b) on-site support, including installation of hardware or software;

- (c) training;
- (d) remedial support;
- (e) support for non-Amino problems or software; or
- (f) any activity set forth in Article 5 of this Agreement.

## 5. Time and Materials Services

5.1. **Additional Support.** Requests for Support beyond what is included in Section 4.1 will be billed on a time and materials basis. Fees for Additional Support, if any and where applicable, are contained in the latter of the relevant quotation, order and/or order acknowledgement to which this Agreement is appended or linked.

5.2. **Training.** Amino offers a number of Training options that can be tailored to the needs of Customer. Fees for Training will be provided on request.

## 6. Confidentiality

Each party may now possess or may in the future possess information relating to the other's business, plans, customers, technology and or products, including without limitation, information relating to the Services ("Confidential Information"). Each party shall use the other's Confidential Information only as contemplated by this Agreement and shall use its best efforts to maintain the secrecy of the other's Confidential Information; provided, however, that any party hereto may disclose to any other party any information which is

- (a) already publicly known, without fault of such party,
- (b) discovered or created independently of any involvement with such party,
- (c) learned by means of a communication that does not involve the breach of a confidentiality obligation or
- (d) compelled to be disclosed by government or court order. Any drawings, data, designs, software programs or other technical information supplied by Amino to Customer in connection with the sale of the Products are not included in the sale of the Products to Customer, shall remain Amino's property and shall at all times be held in confidence by Customer. Such information shall not be reproduced or disclosed to others without Amino's prior written consent.

## 7. Data Backup and Security

7.1. The Amino Services do not include data backup. Therefore Customer must maintain regular data backups or redundant data archives. AMINO HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION OR RECOVERY OF CUSTOMER DATA. In the event of any loss, destruction, damage or corruption of Customer Data caused by the Amino Systems or Services, Amino, as its sole obligation and liability and as Customer's sole remedy, will use commercially reasonable efforts to restore the Customer Data from the then most current backup of such Customer Data available to Amino.

### 7.2. Security

(a) **Access and Security.** Customer shall employ all physical, administrative and technical controls, screening and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the Hosted Services; and (b) control the content and use of Customer Data, including the uploading or other provision of Customer Data for Processing by the Hosted Services.

(b) **Data Breach Procedures.** Amino shall implement reasonable procedures in case of a data breach.

(c) **Prohibited Data.** Customer acknowledges that the Services are not designed with security and access management for Processing the following categories of information: (a) Personal Information; (b) data that is classified and or used on the U.S. Munitions list, including software and technical data; (c) articles, services and related technical data designated as defense articles or defense services; (d) ITAR (International Traffic in Arms Regulations) related data; and/or (e) any other material that would otherwise be unlawful, (each of the foregoing, "Prohibited Data"). Customer shall not, and shall not permit any Authorized User or other Person to, provide any Prohibited Data to, or Process any Prohibited Data through, the Services, the Amino Systems or any Amino Personnel. Customer is solely responsible for reviewing all Customer Data and shall ensure that no Customer Data constitutes or contains any Prohibited Data.

(d) **Customer Control and Responsibility.** Customer has and will retain sole responsibility for:

- (i) all Customer Data, including its content and use;
- (ii) all information, instructions and materials provided by or on behalf of Customer or any Authorized User in connection with the Services;
- (iii) Customer's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems) and networks, whether operated directly by Customer or through the use of third-party services ("Customer Systems");
- (iv) the security and use of Customer's and its Authorized Users' Access Credentials; and (e) all access to and use of the Services and Amino Materials directly or indirectly by or through the Customer Systems or its or its Authorized Users' Access Credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions and actions based on, such access or use.

## 8. Access

Provision of the Services and support and maintenance therefor is conditioned upon provision by Customer to Amino of reasonable appropriate access to the system(s) accessing the services, including, but not limited to, passwords, system data, file transfer capabilities, and remote log-in-capabilities. Amino will maintain security of the system and use such access only for the purposes of this Agreement and will comply with Customer's security procedures provided to Amino in writing. Information accessed by Amino agents or employees as a result of accessing Customer's system shall be deemed Confidential Information pursuant to the terms of this Agreement.



## 9. Problem Reporting and Tracking Procedures

Customer may obtain support only by making reference to the authorized Agreement number. The Support Website is provided for problem reporting outside of normal business hours.

## 10. Fees and Payment

10.1. Fees for Maintenance Services provided under this Agreement are contained in the latter of the relevant quotation, order and/or order acknowledgement to which this Agreement is appended or linked.

10.2. Services fees will be invoiced quarterly at the end of each quarter. Fees other than for Services shall be billed either monthly or annually as incurred.

10.3. Customer agrees to pay all undisputed invoices which shall be due and payable within thirty (30) days of the date of the invoice. A service charge of 1.5% per month or the lawful prevailing rate, whichever is lower, will be applied to all invoices which are past due. Such charges shall apply from the date Customer is notified that the amount is past due.

## 11. Intellectual Property Rights

11.1. **Services and Amino Materials.** All right, title and interest in and to the Services and Amino Materials, including all Intellectual Property Rights therein, are and will remain with Amino and the respective rights holders in the Third-Party Materials. Customer has no right, license or authorization with respect to any of the Services or Amino Materials (including Third- Party Materials) except as expressly set forth in Section 3.1 or the applicable third-party license, in each case subject to Section 3.3 All other rights in and to the Services and Amino Materials (including Third- Party Materials) are expressly reserved by Amino and the respective third-party licensors. In furtherance of the foregoing, Customer hereby unconditionally and irrevocably grants to Amino an assignment of all right, title and interest in and to the data resulting from Amino's delivery of the Services ("Resultant Data"), including all Intellectual Property Rights relating thereto.

11.2. **Customer Data.** As between Customer and Amino, Customer is and will remain the sole and exclusive owner of all right, title and interest in and to all Customer Data, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in Section 11.3.

11.3. **Consent to Use Customer Data.** Customer hereby irrevocably grants all such rights and permissions in or relating to Customer Data: (a) to Amino, its subcontractors and the Amino Personnel as are necessary or useful to perform the Services; and (b) to Amino as are necessary or useful to enforce this Agreement and exercise its rights and perform its obligations hereunder.

## 12. Disclaimer of Warranty; Exclusion of Liability

AMINO MAKES AND CUSTOMER RECEIVES NO WARRANTY EXPRESS OR IMPLIED AND THERE IS EXPRESSLY EXCLUDED ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE MAINTENANCE FEES AND OTHER CHARGES WHICH AMINO IS CHARGING UNDER THIS AGREEMENT DO NOT INCLUDE ANY CONSIDERATION FOR ASSUMPTION BY AMINO OF THE RISK OF CUSTOMER'S CONSEQUENTIAL, SPECIAL,



INDIRECT, INCIDENTAL, EXEMPLARY, ENHANCED OR PUNITIVE DAMAGES OR OF UNLIMITED DIRECT DAMAGES. ACCORDINGLY, AMINO SHALL HAVE NO LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT FOR CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, ENHANCED OR PUNITIVE DAMAGES, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER FURTHER AGREES THAT, EXCEPT FOR WILLFUL MISCONDUCT, AMINO WILL NOT BE LIABLE FOR ANY LOST PROFITS, LOSS OF DATA, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY CLAIM OR DEMAND AGAINST CUSTOMER BY ANY OTHER PARTY. EXCEPT IN THE CASE OF ITS WILFUL MISCONDUCT, IN NO EVENT SHALL AMINO BE LIABLE HEREUNDER TO CUSTOMER FOR CUMULATIVE DIRECT DAMAGES IN ANY AMOUNT GREATER THAN THAT PAID BY CUSTOMER TO AMINO UNDER THIS AGREEMENT AS A MAINTENANCE FEE FOR THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE ACCRUAL OF THE CAUSE OF ACTION.

### 13. Taxes

Customer shall, in addition to the other amounts payable under this Agreement, pay all sales and other taxes, national, state, or otherwise, however designated, which are levied or imposed by reason of transactions contemplated by this Agreement, except those which arise as a result of income, including withholding taxes or similar deductions. Without limiting the foregoing, Customer shall promptly pay to Amino an amount equal to any such items actually paid, or required to be collected or paid by Amino.

### 14. Indemnification

14.1. **Indemnification.** Customer shall indemnify, defend and hold harmless Amino and its Affiliates, and each of its and their respective officers, directors, employees, agents, successors and assigns (each, an "Amino Indemnitee") from and against any and all Losses incurred by such Indemnitee in connection with any claim, suit, action or proceeding (each, an "Action") by a third party (other than an Affiliate of an Amino Indemnitee) that arise out of or relate to any:

- (a) Customer Data, including any Processing of Customer Data by or on behalf of Amino in accordance with this Agreement;
- (b) any other materials or information (including any documents, data, specifications, software, content or technology) provided by or on behalf of Customer or, including Amino's compliance with any specifications or directions provided by or on behalf of Customer to the extent prepared without any contribution by Amino;
- (c) allegation of facts that, if true, would constitute Customer's breach of any of its representations, warranties, covenants or obligations under this Agreement; or
- (d) negligence or more culpable act or omission (including recklessness or wilful misconduct) by Customer, or any party on behalf of Customer, in connection with this Agreement.

14.2. **Indemnification Procedure.** Amino shall promptly notify the Customer in writing of any Action for which it believes it is entitled to be indemnified pursuant to Section 14.1. Customer shall immediately take control of the defense and investigation of such Action,

at the Customer's sole cost and expense, and Amino shall cooperate with Customer. Amino may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

## **15. General**

15.1. Each party acknowledges that it is bound by the terms of this Agreement and further agrees that it is the complete and exclusive statement of the Agreement between the parties, which supersedes and merges all prior proposals, understandings and all other Agreement with respect to software maintenance, oral and written, between the parties relating to this Agreement. This Agreement may not be modified or altered except by a written instrument duly executed by both parties.

15.2. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.

15.3. With the exception of Amino's payment claims, neither party may assign, without the prior written consent of the other, its rights, duties or obligations under this Agreement to any other person or entity, in whole or in part.

15.4. The waiver or failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further right hereunder.

15.5. This Agreement shall be binding upon and inure to the benefit of the parties' respective successors and permitted assigns. Neither party may assign this Agreement and/or any of its rights and/or obligations hereunder without the prior written consent of the other party and any such attempted assignment shall be void, except that either party may assign this Agreement and/or any of its rights and/or obligations hereunder, upon written notice to the other party to another entity in the event of that party's merger or consolidation with another entity, without the consent of the other party, provided that the assignee is capable of fulfilling and intends to fulfill the obligations of the assigning party under this Agreement. Each party may terminate this Agreement in case there is a change of control of the other party, but shall not be entitled to any refund whatsoever and all amounts owing shall be immediately paid.

15.6. This Agreement shall be governed in all respects by the laws of England. The United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement. If any dispute arises with respect to the unauthorized use of Confidential Information, or a party's intellectual property, or with respect to acts or omissions of Customer relating to the Services which, in Amino's judgment, negatively impacts its reputation or products or services, the injured party may seek any available remedy at law or equity, including injunctive relief, from any court of competent jurisdiction, in addition to its right to arbitration as provided herein.

15.7. Any notice pertaining to Agreement shall be in writing and shall be delivered by mail, first class postage prepaid, by facsimile, by email or by overnight or express courier service. Any notice shall be deemed delivered upon five (5) days after deposit in the Mail, upon electronic confirmation of facsimile receipt or email delivery, or one (1) day after delivery by overnight or express courier service.

15.8. Neither party shall be liable for, or be considered to be in breach or default under this Agreement on account of any delay or failure to perform hereunder, excepting all obligations to make payments hereunder, as a result of any cause or condition beyond such party's reasonable control ("Force Majeure Event") including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of law or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, or national or regional shortage of adequate power or telecommunications or transportation.

15.9. Any claim arising under or in connection with this Agreement and not pursued by any party hereto in writing within two (2) years after the cause of action first accrued shall be deemed waived by such party and forfeited. The forfeiture period shall start only when the claimant has obtained knowledge (or due to gross negligence failed to obtain knowledge of the circumstances resulting in the claim. The applicable statutory rules concerning the start of the statute of limitations remain unaffected.

## **16. Term and Termination**

16.1. The term of this Agreement shall commence upon the Effective Date and shall continue until the following 31st December, and shall thereafter be renewed automatically for successive periods of one (1) year unless either party gives notice at least 30 days prior to such renewal ("Term").

16.2. This Agreement may be terminated by either party:

- (a) upon a default of the other party, such default being incapable of cure or remaining uncured for thirty (30) days from the date of written notice from the non-defaulting party to the other specifying such default; or
- (b) upon the bankruptcy or insolvency of the other part