

## **TERMS OF USE**

Effective Date: May 24th, 2019

**PLEASE READ THIS AGREEMENT CAREFULLY. IT SETS FORTH THE LEGALLY BINDING TERMS AND CONDITIONS FOR YOUR USE OF PACIFIC VISIONS, SUCH AS YOUR GRANTS AND WAIVERS OF RIGHTS, THE LIMITATIONS OF THE APP PARTIES' LIABILITY, YOUR INDEMNITY OF US, AND ARBITRATION OF CERTAIN DISPUTES.**

### **Introduction and Overview**

Welcome! You have arrived at the Pacific Visions Mixby, which is owned and operated by Long Beach Aquarium of the Pacific (“**Aquarium**”) and is hosted through the Mixby mobile application (“**Mixby App**”), which is owned and operated by Artifact Technologies Inc. (“**ArtTech**”) (collectively, Aquarium and ArtTech are the “**App Parties**”). These Terms govern your use of the Mixby App and the Pacific Visions Mixby (“**Pacific Visions**”). It also applies to your use of all features, widgets, plug-ins, applications, content, downloads and/or other services that the App Parties own and control and make available through Pacific Visions. By using the Mixby App to access Pacific Visions, you acknowledge and accept Aquarium’s [Privacy Policy](#) and ArtTech’s [Privacy Policy](#) and consent to the collection and use of your data in accordance therewith. By interacting with and/or using the Mixby App and/or Pacific Visions, you signify your assent and agreement to these Terms. If you do not agree to these Terms, you must not use the Mixby App or Pacific Visions.

You agree that Aquarium is solely responsible for the content of, operation of, and your experience using, Pacific Visions and you agree that any questions, inquiries, legal notices, or other disputes you have related to Pacific Visions will be exclusively directed to Aquarium and agree that ArtTech is not responsible for the content or operation of Pacific Visions. Except as specifically provided under these Terms, you agree to completely release ArtTech from any liability in relation to your questions, inquiries, legal notices, or other disputes (including any disputes as described in **Section C** regarding Pacific Visions.

In some instances, both these Terms and separate guidelines, rules, or terms of use setting forth additional or different terms and/or conditions will apply to your use of Pacific Visions or to a service offered via Pacific Visions (in each such instance, and collectively “**Additional Terms**”). To the extent there is a conflict between these Terms and any Additional Terms, these Terms, as related to ArtTech, will control unless ArtTech’s Additional Terms expressly state otherwise.

Each time you access and/or use the Mixby App and/or Pacific Visions, you agree to be bound by and comply with these Terms and any applicable Additional Terms then posted (subject to Section D.1. Therefore, ***do not use the Mixby App and/or Pacific Visions if you do not agree***. The business realities associated with operating the Mixby App and Pacific Visions are such that, without the conditions that are set forth in these Terms – such as your grants and waivers of rights, the limitations on App Parties’ liability, your indemnity of App Parties, and the App Parties’ arbitration of certain disputes – the App Parties would not make Pacific Visions available to you. If you are under the age of majority in your jurisdiction of residence, you may use Pacific Visions only with involvement of a parent or guardian who agrees to these Terms and to be responsible for your use and your parent or guardian must set up your Mixby App account in their own name.

### **Full Details of Terms of Use**

#### **A. RIGHTS AND RESPONSIBILITIES TERMS**

## 1. SERVICE CONTENT, OWNERSHIP, LIMITED LICENSE, AND RIGHTS OF OTHERS

a. **Content.** Pacific Visions contains a variety of: (i) materials and other items relating to App Parties and their services, and similar items from licensors and other third parties, including all layout, information, articles, posts, text, data, files, images, scripts, designs, graphics, button icons, instructions, illustrations, photographs, audio clips, music, sounds, pictures, videos, advertising copy, URLs, technology, software, interactive features, the “look and feel” of Pacific Visions, and the compilation, assembly, and arrangement of the materials of Pacific Visions and any and all copyrightable material (including source and object code); (ii) trademarks, logos, trade names, trade dress, service marks, and trade identities of various parties, including those of the App Parties (collectively, “**Trademarks**”); and (iii) other forms of intellectual property (all of the foregoing, collectively “**Content**”).

b. **Ownership.** Pacific Visions and the Content are owned or controlled by the App Parties and licensors and certain other third parties. All right, title, and interest in and to the Content available via Pacific Visions is the property of the App Parties or licensors or certain other third parties, and is protected by U.S. and international copyright, trademark, trade dress, patent and/or other intellectual property and other rights and laws to the fullest extent possible. Aquarium owns the copyright in the selection, compilation, assembly, arrangement, and enhancement of the Content on Pacific Visions, excluding the Mixby App, in which case the copyright in the selection, compilation, assembly, arrangement, and enhancement of the Content on the Mixby App is owned by ArtTech.

c. **Limited License.** Subject to your strict compliance with these Terms and the Additional Terms, the App Parties grant you a limited, non-exclusive, revocable, non-assignable, personal, and non-transferable license to (i) download and copy (a single download and storage), display, view, use, play the Content on a mobile phone or other wireless device, or other Internet-enabled device (each, a “**Device**”), and/or keep one copy of the Content (excluding source and object code in raw form or otherwise) as it is displayed to you, in each case for your personal, non-commercial use only, and (ii) to use certain Content that the App Parties may from time to time make available on Pacific Visions explicitly for your use as part of your UGC (defined below) (“**App Parties Licensed Elements**”), but only for such purposes as may be explicitly stated at the time that the App Parties Licensed Elements are made available on Pacific Visions; but the App Parties and licensors and certain other third parties, as the case may be, retain ownership of their respective App Parties Licensed Elements. The foregoing limited license (i) does not give you any ownership of, or any other intellectual property interest in, any Content, and (ii) may be immediately suspended or terminated for any reason, in the App Parties’ sole discretion, and without advance notice or liability. In some instances, the App Parties may permit you to have greater access to and use of Content and/or App Parties Licensed Elements, subject to certain Additional Terms. Your breach of any of these Terms or Additional Terms automatically terminates this license.

d. **Rights of Others.** In using Pacific Visions, you must respect the intellectual property and other rights of the App Parties and others. Your unauthorized use of Content may violate copyright, trademark, privacy, publicity, communications, and other laws, and any such use may result in your personal liability, including potential criminal liability. The App Parties respect the intellectual property rights of others. If you believe that your work has been infringed by means of an improper posting or distribution of it via Pacific Visions, then please see Procedure for Alleging Copyright Infringement Section C.1 and Procedure for Alleging Infringement of Other Intellectual Property Section C.2 below.

e. **Reservation of All Rights Not Granted As To Content and Service.** These Terms and any applicable Additional Terms include only narrow, limited grants of rights to Content and to use and access Pacific Visions. No right or license may be construed, under any legal theory, by implication, estoppel, industry custom, or otherwise. All rights not expressly granted to you are reserved by the App Parties and its licensors and other third parties. *Any unauthorized use of any Content or Pacific Visions and/or the Mixby App for any purpose is prohibited.*

## 2. CONTENT YOU SUBMIT AND COMMUNITY USAGE RULES

### a. User-Generated Content.

(i) **General.** Aquarium may now or in the future offer users of Pacific Visions the opportunity to create, build, post, upload, display, publish, distribute, transmit, broadcast, or otherwise make available on or submit through Pacific Visions, or on or in response to the Aquarium's pages or posts on any third party platforms or in connection with any of Aquarium promotions by any media or manner, or otherwise submitted to Aquarium (e.g., on Aquarium Facebook or other social media pages, in response to Aquarium tweets, through an Aquarium sweepstakes or contest, or by sending it to us) (collectively, "submit") messages, text, illustrations, files, images, graphics, photos, comments, responses, sounds, music, videos, information, content, ratings, reviews, data, questions, suggestions, personally identifiable information, or other information or materials and the ideas contained therein, including without limitation your submissions to your Profile Page (defined below) (collectively, but excluding any Content and/or App Parties Licensed Elements included therein, "**User-Generated Content**" or "**UGC**"). You may potentially be able to submit UGC through your profile, forums, blogs, message boards, social networking environments, content creation tools, gameplay, social communities, contact tools, email, and other communications functionality. Subject to the rights and license you grant in these Terms, you retain whatever legally cognizable right, title, and interest that you have in your UGC.

(ii) **Non-Confidentiality of Your UGC.** Except as otherwise described in Aquarium's posted [Privacy Policy](#) or any Additional Terms, you agree that, notwithstanding your retained ownership interests (a) your UGC will be treated as non-confidential and non-proprietary by Aquarium – regardless of whether you mark them "confidential," "proprietary," or the like – and will not be returned, and (b) as permitted by applicable law, or as explicitly stated in Aquarium's Privacy Policy or applicable Additional Terms, Aquarium does not assume any obligation of any kind to you or any third party with respect to your UGC. Upon Aquarium's request, you will provide documentation necessary to authenticate rights to such content and verify your compliance with these Terms or any applicable Additional Terms. You acknowledge that the Internet and mobile communications, and digital storage, may be insecure and subject to breaches of security so that your UGC is submitted at your own risk and you agree to hold Aquarium harmless with respect thereto.

In your communications with Aquarium, please keep in mind that it does not seek any unsolicited ideas or materials for services, or even suggested improvements to services, including, without limitation, ideas, concepts, inventions, or designs for music, websites, apps, books, scripts, screenplays, motion pictures, television shows, theatrical productions, software or otherwise (collectively, "**Unsolicited Ideas and Materials**"). Any Unsolicited Ideas and Materials you submit are deemed UGC and licensed to Aquarium as set forth below. In addition, Aquarium retains all of the rights held by members of the general public with regard to your Unsolicited Ideas and Materials. Aquarium's receipt of your Unsolicited Ideas and Materials is not an admission by Aquarium of their novelty, priority, or originality, and it does not impair Aquarium's right to contest existing or future intellectual property rights relating to your Unsolicited Ideas and Materials.

**(iii) License to Aquarium of Your UGC.** Except as otherwise described in any applicable Additional Terms (such as a contest official rules), which specifically govern the submission of your UGC, or as explicitly set forth in Aquarium's [Privacy Policy](#) or applicable Additional Terms, you hereby grant to Aquarium, and you agree to grant to Aquarium, the non-exclusive, unrestricted, unconditional, unlimited, worldwide, irrevocable, perpetual, and cost-free right and license to use, copy, record, distribute, reproduce, disclose, sell, re-sell, sublicense (through multiple levels), display, publicly perform, transmit, publish, broadcast, translate, make derivative works of, and otherwise use and exploit in any manner whatsoever, all or any portion of your UGC (and derivative works thereof), for any purpose whatsoever in all formats, on or through any means or medium now known or hereafter developed, and with any technology or devices now known or hereafter developed, and to advertise, market, and promote the same. Without limitation, as permitted by applicable law, the granted rights include the right to: (a) configure, host, index, cache, archive, store, digitize, compress, optimize, modify, reformat, edit, adapt, publish in searchable format, and remove such UGC and combine same with other materials, and (b) use any ideas, concepts, know-how, or techniques contained in any UGC for any purposes whatsoever, including developing, producing, and marketing services. You understand that in exercising such rights metadata, notices and content may be removed or altered, including copyright management information, and you consent thereto and represent and warrant you have all necessary authority to do so. As permitted by applicable law, to further effect the rights and license that you grant to Aquarium to your UGC, you also hereby grant to Aquarium, and agree to grant to Aquarium, the unconditional, perpetual, irrevocable right to use and exploit your name, persona, and likeness in connection with any UGC, and that of any other person depicted in or otherwise included in your UGC, without any obligation or remuneration to you or any other party. As permitted by applicable law, you hereby waive, and you agree to waive, any moral rights (including attribution and integrity) that you may have in any UGC, even if it is altered or changed in a manner not agreeable to you. To the extent not waivable, you irrevocably agree not to exercise such rights (if any) in a manner that interferes with any exercise of the granted rights. You understand that you will not receive any fees, sums, consideration, or remuneration for any of the rights granted in this Section A.2(a)(iii).

**(iv) Aquarium's Exclusive Right to Manage Pacific Visions.** Aquarium may, but will not have any obligation to, review, monitor, display, post, store, maintain, accept, or otherwise make use of, any of your UGC, and Aquarium may, in its sole discretion, reject, delete, move, re-format, remove or refuse to post or otherwise make use of UGC without notice or any liability to you or any third party in connection with Aquarium's operation of UGC venues in an appropriate manner, such as to enhance accessibility of UGC, address copyright infringement and protect Users from harmful UGC. Without limitation, Aquarium may, but do not commit to, do so to address content that comes to its attention that it believes is offensive, obscene, lewd, lascivious, filthy, violent, harassing, threatening, abusive, illegal or otherwise objectionable or inappropriate, or to enforce the rights of third parties or these Terms or any applicable Additional Terms, including, without limitation, the content restrictions set forth below in the Rules. Such UGC submitted by you or others need not be maintained on Pacific Visions by Aquarium for any period of time and, as permitted by applicable law and subject to the explicit terms of Aquarium's [Privacy Policy](#) or applicable Additional Terms, you will not have the right, once submitted, to access, archive, maintain, or otherwise use such UGC on Pacific Visions or elsewhere, except that California minors have certain rights to have certain content about them that they have themselves posted on Pacific Visions prospectively removed from public display. See section D(2)(i) for more information.

(v) **Representations and Warranties Related to Your UGC.** Each time you submit any UGC, you represent and warrant that you are at least the age of majority in the jurisdiction in which you reside and are the parent or legal guardian, or have all proper consents from the parent or legal guardian, of any minor who is depicted in or contributed to any UGC you submit, and that, as to that UGC, (a) you are the sole author and owner of the intellectual property and other rights to the UGC, or you have a lawful right to submit the UGC and grant Aquarium the rights to it that you are granting by these Terms and any applicable Additional Terms, all without any Aquarium obligation to obtain consent of any third party and without creating any obligation or liability of Aquarium; (b) the UGC is accurate; (c) the UGC does not and, as to Aquarium’s permitted uses and exploitation set forth in these Terms and any applicable Additional Terms, will not infringe any intellectual property or other right of any third party; and (d) the UGC will not violate these Terms (including the Rules) or any applicable Additional Terms, or cause injury or harm to any person.

(vi) **Enforcement.** Aquarium has no obligation to monitor or enforce your intellectual property rights to your UGC, but you grant Aquarium the right to protect and enforce Aquarium’s rights to your UGC, including by bringing and controlling actions in your name and on your behalf (at Aquarium’s cost and expense, to which you hereby consent and irrevocably appoint Aquarium as your attorney-in-fact, with the power of substitution and delegation, which appointment is coupled with an interest).

b. **Community Usage Rules.** Aquarium’s Community Usage Rules (“**Rules**”) explain the conduct that is expected of members of Pacific Visions’ online communities (“**Communities**”).

(i) **Nature of Rules.** Your participation in the Communities is subject to all of the Terms, including these Rules:

- **Your UGC.** All of your UGC either must be original with you or you must have all necessary rights in it from third parties in order to permit you to comply with these Terms and any applicable Additional Terms. Your UGC should not contain any visible logos, phrases, or trademarks that belong to third parties. Do not use any UGC that belongs to other people and pass it off as your own; this includes any content that you might have found elsewhere on the Internet. If anyone contributes to your UGC or has any rights to your UGC, or if anyone appears or is referred to in the UGC, then you must also have their permission to submit such UGC to Aquarium. (For example, if someone has taken a picture of you and your friend, and you submit that photo to Aquarium as your UGC, then you must obtain your friend’s and the photographer’s permission to do so.)
- **Speaking of Photos: No Pictures, Videos, or Images of Anyone Other Than You and Your Friends and Family.** If you choose to submit photos to Pacific Visions, link to embedded videos, or include other images of real people, then make sure they are of you or of you and someone you know – and only if you have their express permission to submit it.
- **Act Appropriately.** All of your Pacific Visions activities must be venue appropriate, as determined by us. Be respectful of others’ opinions and comments so Aquarium can continue to build Communities for everyone to enjoy. If you think your UGC might offend someone or be embarrassing to someone, then chances are it probably will and it doesn’t belong on Pacific Visions. Cursing, harassing, stalking, insulting comments, personal attacks, gossip, and similar actions are prohibited. Your UGC must not threaten, abuse, or harm others, and it must not include any negative comments that are connected to race, national origin, gender, sexual orientation, religion, or physical handicap. Your

UGC must not be defamatory, slanderous, indecent, obscene, pornographic, or sexually explicit. Your UGC must not exploit children under the age of 18.

- **Do Not Use for Commercial or Political Purposes.** Your UGC must not advertise or promote a service or other commercial activity, or a politician, public servant, or law.
- **Do Not Use to Solicit or Send Unwanted Communications.** Do not harvest or collect email addresses or other contact information of others from Pacific Visions by electronic or other means for the purposes of sending unsolicited emails or other unsolicited communications. Do not solicit personal information from anyone or solicit passwords or personally identifying information for commercial or unlawful purposes. This also includes not uploading, posting, transmitting, sharing or otherwise making available any unsolicited or unauthorized advertising, solicitations, promotional materials, “junk mail,” “spam,” “chain letters,” “pyramid schemes,” or any other form of solicitation.
- **Do Not Use for Inappropriate Purposes.** Your UGC must not promote any infringing, illegal, or other similarly inappropriate activity.
- **Be Honest and Do Not Misrepresent Yourself or Your UGC.** Do not impersonate any other person, user, or company, and do not submit UGC that you believe may be false, fraudulent, deceptive, inaccurate, or misleading, or that misrepresents your identity or affiliation with a person or company. In the event you receive anything in consideration from Aquarium with respect to your UGC (*e.g.*, coupons, sweepstakes entries, etc.) you represent you will include disclosure of the receipt of this consideration clearly and conspicuously as part of the UGC and include any other disclosures Aquarium may require.
- **Others Can See.** Aquarium hopes that you will use the Communities to exchange information and content and have venue appropriate discussions with other members. However, please remember that the Communities are public or semi-public and UGC that you submit on Pacific Visions within a Community may be accessible and viewable by other users. Do not submit personally identifying information (*e.g.*, first and last name together, password, phone number, address, credit card number, medical information, email address, or other personally identifiable information or contact information) on Community spaces and otherwise take care when disclosing this type of information to others.
- **Don’t Share Other People’s Personal Information.** Your UGC should not reveal another person’s address, phone number, email address, social security number, credit card number, medical information, financial information, or any other information that may be used to track, contact, or impersonate that individual, unless, and in the form and by the method, specifically requested by Aquarium (*e.g.*, an email address to send an email invite to a friend).
- **Don’t Damage Pacific Visions or Anyone’s Computers or Other Devices.** Your UGC must not submit viruses, Trojan horses, spyware, or any other technologies or malicious code that could impact the operation of Pacific Visions or any computer or other Device.

If you submit UGC that Aquarium reasonably believes violates these Rules, then Aquarium may take any legally available action that it deems appropriate, in its sole discretion. However, Aquarium is not obligated to take any action not required by applicable law. Aquarium may require, at any time, proof of the permissions referred to above in a form acceptable to us. Failure to provide such proof may lead to, among other things, the UGC in question being removed from Pacific Visions.

(ii) **Your Interactions With Other Users; Disputes.** You are solely responsible for your interaction with other users of Pacific Visions, whether online or offline. Aquarium is not responsible or liable for the conduct or content of any user. Aquarium reserves the right, but have no obligation, to monitor or become involved in disputes between you and other users. Exercise common sense and your best judgment in your interactions with others (*e.g.*, when you submit any personal or other information) and in all of your other online activities. If you send any message related to Aquarium to your friends, using a tool Aquarium provides on Pacific Visions or otherwise, you will only do so to the extent you have permission from them to send communications of such nature and you will comply with all applicable law related to such communications, including without limitation disclosing any incentives or consideration you may be receiving from Aquarium related thereto (*e.g.*, benefits to you when friends redeem promotional codes you give them).

c. **Alerting the App Parties of Violations.** If you discover any content that violates these Terms, then you may report it to [sayhey@artifacttech.com](mailto:sayhey@artifacttech.com). For alleged infringements of intellectual property rights, see **Procedure for Alleging Copyright Infringement** and Procedure for Alleging Infringement of Other Intellectual Property, below.

### **3. PACIFIC VISIONS AND CONTENT USE RESTRICTIONS**

a. **Pacific Visions Use Restrictions.** You agree that you will not: (i) Pacific Visions for any political or commercial purpose (including, without limitation, for purposes of advertising, soliciting funds, and selling products); (ii) use any meta tags or any other “hidden text” utilizing any Trademarks; (iii) engage in any activities through or in connection with Pacific Visions that seek to attempt to or do harm any individuals or entities or are unlawful, offensive, obscene, lewd, lascivious, filthy, violent, threatening, harassing, or abusive, or that violate any right of any third party, or are otherwise objectionable to the App Parties; (iv) reverse engineer, decompile, disassemble, reverse assemble, or modify any Pacific Visions source or object code or any software, other services, or processes accessible through any portion of Pacific Visions; (v) engage in any activity that interferes with a user’s access to Pacific Visions or the proper operation of Pacific Visions, or otherwise causes harm to Pacific Visions, the App Parties, or other users of Pacific Visions; (vi) interfere with or circumvent any security feature of Pacific Visions or any feature that restricts or enforces limitations on use of or access to Pacific Visions, the Content, or the UGC; (vii) harvest or otherwise collect or store any information (including personally identifiable information about other users of Pacific Visions, including email addresses, without the express consent of such users); (viii) attempt to gain unauthorized access to Pacific Visions, other computer systems or networks connected to Pacific Visions, through password mining or any other means; or (ix) otherwise violate these Terms or any applicable Additional Terms.

You agree that in conjunction with your use of Pacific Visions’ location or GPS features, you will maintain safe and appropriate contact with other users and other people in the real world. You will not harass, threaten, or otherwise violate the legal rights of others. You will not trespass, or in any manner attempt to gain access to, any property or location where you do not have a right or permission to be. You will not engage in any activity that may result in injury, death, property damage, nuisance, or other liability of any kind. If you have a dispute with any third party relating to your use of Pacific Visions, you release the App Parties from all claims, demands, and damages (actual and consequential) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with such disputes.

b. **Content Use Restrictions.** Without limiting the restrictions in Section A(3)(a) above or in any applicable Additional Terms, you also agree that, in using Pacific Visions, you: (i) will not monitor, gather, copy, or distribute the Content (except as may be a result of standard search engine activity or use of a standard browser) on Pacific Visions by using any robot, rover, “bot”, spider, scraper, crawler, spyware, engine, device, software, extraction tool, or any other automatic device, utility, or manual process of any kind; (ii) will not frame or utilize framing techniques to enclose any such Content (including any images, text, or page layout); (iii) will keep intact all Trademark, copyright, and other intellectual property notices contained in such Content; (iv) will not use such Content in a manner that suggests an unauthorized association with any of the App Parties’ or App Parties’ licensors’ products, services, or brands; (v) will not make any modifications to such Content (other than to the extent of your permitted use of the App Parties Licensed Elements, if applicable); (vi) will not copy, modify, reproduce, archive, sell, lease, rent, exchange, create derivative works from, publish by hard copy or electronic means, publicly perform, display, disseminate, distribute, broadcast, retransmit, circulate or transfer to any third party or on any third-party application or website, or otherwise use or exploit such Content in any way for any purpose except as specifically permitted by these Terms or any applicable Additional Terms or with the prior written consent of an officer of Aquarium or, in the case of Content from a licensor, the owner of the Content; and (vii) will not insert any code to manipulate such Content in any way that adversely affects any user experience of Pacific Visions.

c. **Availability of Pacific Visions and Content.** The App Parties may immediately suspend or terminate the availability of Pacific Visions and Content (and any elements and features of them), in whole or in part, for any reason, in the App Parties’ sole discretion, and without advance notice or liability.

#### **4. LINKS BY YOU TO PACIFIC VISIONS**

The App Parties grant you a limited, non-exclusive, revocable, non-assignable, personal, and non-transferable license to create hyperlinks to Pacific Visions, so long as: (a) the links only incorporate text, and do not use any Trademarks, (b) the links and the content on your website do not suggest any affiliation with App Parties or cause any other confusion, and (c) the links and the content on your website do not portray the App Parties or their services in a false, misleading, derogatory, or otherwise offensive matter, and do not contain content that is unlawful, offensive, obscene, lewd, lascivious, filthy, violent, threatening, harassing, or abusive, or that violate any right of any third party or are otherwise objectionable to the App Parties. The App Parties reserve the right to suspend or prohibit linking to Pacific Visions for any reason, in its sole discretion, without advance notice or any liability of any kind to you or any third party.

#### **B. ACCOUNTS AND FEATURES TERMS**

##### **1. ACCOUNTS, PROFILES AND SOCIAL FEATURES**

a. **Accounts.** In order to access or use some (or potentially all) of the features on Pacific Visions, you must first register an account with ArtTech on the Mixby App. Your Mixby App account registration is governed by ArtTech’s [Privacy Policy](#), and you consent to ArtTech’s practices with respect to the Mixby App and your account thereon as set forth in such privacy policy. Without limiting the generality of the forgoing, you consent to ArtTech’s sharing of your Mixby App account and other data in connection with your use of Pacific Visions. To the extent the Aquarium obtains information related to your account registration, you consent to the



Aquarium's resulting collection, use, disclosure and management of your personal information as described in Aquarium's [Privacy Policy](#).

You must also create a Pacific Visions Profile Page (defined below) account, which is governed by Aquarium's [Privacy Policy](#), to which you consent by creating a Profile Page. If you register an account with ArtTech (for the Mixby App) or with Pacific Visions (for access to Pacific Visions and its features such as your Profile Page), you agree that: (i) you will maintain true, accurate, current, and complete account information about yourself, including on your Profile Page, continuously and promptly to keep it accurate, current, and complete when interacting with Pacific Visions; (ii) you are solely responsible for all activities that occur in Pacific Visions under your account, password, and username – whether or not you authorized the activity; (iii) you are solely responsible for maintaining the confidentiality of your password and for restricting access to your Device so that others may not access any password protected portion of Pacific Visions using your name, username, or password; (iv) you will immediately notify Aquarium of any unauthorized use of your account, password, or username, or any other breach of security that occurs on Pacific Visions, but accept that the App Parties are not responsible for thereafter stopping or preventing unauthorized use; and (vi) you will not sell, transfer, or assign your account or any account rights on Pacific Visions.

The App Parties will not be liable for any loss or damage (of any kind and under any legal theory) to you or any third party arising from your inability or failure for any reason to comply with any of the foregoing obligations.

If any information that you provide, or if the App Parties have reasonable grounds to suspect that any information that you provide, is false, inaccurate, outdated, incomplete, or violates these Terms, any applicable Additional Terms, or any applicable law, then the App Parties may suspend your access to Pacific Visions.

b. **Profiles.** In relation to your account registration with Pacific Visions, you may set up a private, semi-private and/or public profile page(s) ("**Profile Page(s)**") that allows you to provide and/or display UGC about you. Profile Pages are governed by Aquarium's [Privacy Policy](#). The App Parties assume no responsibility or liability for users' profile material.

If any information that you provide in your Mixby App account or your Pacific Visions Profile Page(s) is false, inaccurate, outdated, incomplete, or violates these Terms, any applicable Additional Terms, or any applicable law, then the App Parties may suspend your access to the Mixby App and/or Pacific Visions.

c. **Social Features.** Pacific Visions may contain content that is not supplied by the App Parties, but is rather supplied by a third-party social media service. For example, when you sign up or log into your Pacific Visions account, you may do so through a third-party social media service (e.g. Facebook). Pacific Visions may also contain features that allow you to interact with third-party social media services, such as "liking" or "sharing" Pacific Visions content on or through a third-party social media service (e.g. Facebook, Twitter). These third parties and their services may or may not have their own published privacy policies. Be sure to review any third party's available privacy policies and terms before using these features or otherwise interacting with third-party services or other locations you link to from Pacific Visions, and exercise caution in connection with them. The App Parties are not responsible for the availability, completeness or accuracy of such third parties' policies or notices.

## **2. THIRD-PARTY SERVICES; ADVERTISEMENTS; DEALINGS WITH THIRD PARTIES**

a. **Third-Party Content and Sites; Advertisements.** Pacific Visions may contain or may interact with or otherwise be associated with third-party platforms, services, plug-ins, applications, ads, tools and/or other content, and/or links to third-party websites or other services that are not owned, controlled or operated by the App Parties (collectively, “**Third-Party Services**”), including services operated by advertisers, licensors, licensees, e-commerce partners and certain other third parties who may have business relationships with the App Parties. The App Parties may also host their content, apps and tools on Third-Party Services. The App Parties may have no control over the content, operations, policies, terms, or other elements of Third-Party Services, and the App Parties do not assume any obligation to review any Third-Party Services. The App Parties do not necessarily endorse, approve, or sponsor any Third-Party Services, or any third-party content, advertising, information, materials, products, services, or other items. Furthermore, the App Parties are not responsible for the quality or delivery of the products or services offered, accessed, obtained by or advertised at such Third-Party Services. Some Third-Party Services may impose fees for access to their resources through Pacific Visions and/or your Account and you are responsible for all such fees. Finally, as permitted by applicable law, the App Parties will under no circumstances be liable for any direct, indirect, incidental or special loss or other damage, whether arising from negligence, breach of contract, defamation, infringement of copyright or other intellectual property rights, caused by the exhibition, distribution or exploitation of any information or content contained within these Third-Party Services. Any activities you engage in connection with any of the same are subject to the privacy and other policies, terms and conditions of use, and rules issued by the operator of the Third-Party Services. The App Parties disclaim all liability in connection therewith, as permitted by applicable law.

b. **Dealings with Third Parties.** Any interactions, correspondence, transactions, and other dealings that you have with any third parties found on or through Pacific Visions (including on or via Third Party-Services or advertisements) are solely between you and the third party (including issues related to the content of third-party advertisements, payments, delivery of goods, warranties, privacy and data security, and the like). For more information about the implications of activating these Third Party-Services and the App Parties’ use, storage and disclosure of information related to you and your use of such services within Pacific Visions (including your friend lists and the like), please see Aquarium’s [Privacy Policy](#) and ArtTech’s [Privacy Policy](#). As permitted by applicable law, you hereby agree to indemnify the App Parties against all claims, injury and/or damages including, without limitation, attorneys’ fees, that arise out of your use of any Third Party-Service, including without limitation from any material that you post on any forum or social networking site in connection with the App Parties and/or any other claim related to your use of social media.

As permitted by applicable law, you hereby grant Aquarium an irrevocable perpetual license to use, reproduce, edit, create derivative works from, distribute, display, copy, transmit or otherwise use in any way, commercially or otherwise, any material that you post to any social networking site or other Third-Party Service in connection with Aquarium or Pacific Visions.

If you are accessing or using Pacific Visions through Apple, Android, or any other platform, these are Third-Party Services. If you access Pacific Visions via an Apple mobile application, the following apply as Additional Terms and conditions that are applicable to you and are incorporated into the Terms by this reference.

#### **TERMS APPLICABLE FOR APPLE IOS.**

- (i) To the extent that you are accessing Pacific Visions through an Apple mobile application, you acknowledge that these Terms are entered into between you and the App Parties and, that Apple, Inc. (“**Apple**”) is not a party to these Terms other than as third-party beneficiary as contemplated below.
- (ii) The license granted to you by the App Parties under the Terms is subject to the permitted Usage Rules set forth in the App Store Terms of Use (see: <http://www.apple.com/legal/itunes/us/terms.html>) and any third-party terms of agreement applicable to Pacific Visions.
- (iii) You acknowledge that the App Parties, and not Apple, is responsible for providing Pacific Visions and Content thereof.
- (iv) You acknowledge that Apple has no obligation whatsoever to furnish any maintenance or any support services to you with respect to Pacific Visions.
- (v) To the maximum extent not prohibited by applicable law, Apple will have no other warranty obligation whatsoever with respect to Pacific Visions.
- (vi) Notwithstanding anything to the contrary herein, and subject to the terms and conditions of the Terms, you acknowledge that, solely as between Apple and the App Parties, the Aquarium, and not Apple is responsible for addressing any claims you may have relating to Pacific Visions, or your possession and/or use thereof, including, but not limited, to: (i) product liability claims; (ii) any claim that Pacific Visions fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.
- (vii) Further, you agree that if Pacific Visions, or your possession and use of Pacific Visions, infringes on a third party’s intellectual property rights, you will not hold Apple responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claims.
- (viii) You acknowledge and agree that Apple, and Apple’s subsidiaries, are third-party beneficiaries of the Terms, and that, upon your acceptance of the terms and conditions of the Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce the Terms against you as a third-party beneficiary thereof.
- (ix) When using Pacific Visions, you agree to comply with any and all third-party terms that are applicable to any platform, website, technology or service that interacts with Pacific Visions.
- (x) Your use of real time route guidance on Pacific Visions (if any) is at your sole risk. Location data may not be accurate.

### **3. WIRELESS, MESSAGING, AND LOCATION-BASED FEATURES**

a. **Wireless Features.** Pacific Visions may offer certain features and services via your wireless Device. Features and services may include the ability to access Pacific Visions’ features, upload content to Pacific Visions, receive messages from Pacific Visions, and download applications to your wireless Device (collectively, “**Wireless Features**”). You agree to receive communications the App Parties may send through Wireless Features for which you are registered. Further, the App Parties may collect information related to your use of the Wireless Features. If you have registered via Pacific Visions for Wireless Features, then you agree to notify Aquarium of any changes to your wireless contact information (including phone number) and update your accounts on Pacific Visions to reflect the changes. If Pacific Visions includes

push notifications or other mobile communication capability, you hereby approve the App Parties' delivery of electronic communications directly to your mobile Device. These notifications, including badge, alert or pop-up messages, may be delivered to your Device even when Pacific Visions is running in the background. You may have the ability, and it is your responsibility, to adjust the notifications you do, or do not, receive via your Device through your Device and/or App settings. Standard message, data and other fees may be charged by your carrier, and carriers may deduct charges from pre-paid amounts or data allowances, for which you are responsible. Your carrier may prohibit or restrict certain Wireless Features and certain Wireless Features may be incompatible with your carrier or wireless Device. Contact your carrier with questions regarding these issues.

**b. Email Messages.** You may cancel or modify the App Parties' email marketing communications you receive from the App Parties by following the instructions contained within the App Parties' promotional emails. This will not affect subsequent subscriptions and if your opt-out is limited to certain types of emails the opt-out will be so limited. Please note that the App Parties reserve the right to send you certain communications relating to your account or use of Pacific Visions, such as administrative and service announcements and these transactional account messages may be unaffected if you choose to opt-out from receiving the App Parties' marketing communications.

**c. Location-Based Features.** If GPS, geo-location or other location-based features are enabled on your Device, you acknowledge that your Device location may be tracked and may be shared with others consistent with Aquarium's [Privacy Policy](#) and ArtTech's [Privacy Policy](#). Some Devices and platforms may allow disabling some, but not all, location-based features or managing such preferences. Typically, your proximity or connection to wi-fi, Bluetooth and other networks may still be tracked when location services are turned off on Device settings. You can terminate Device location tracking via a mobile app by uninstalling the application. Territory geo-filtering maybe required in connection with use of some Service features due, for instance, to Content territory restrictions. The location-based services offered in connection with Pacific Visions are for individual use only and should not be used or relied on in any situation in which the failure or inaccuracy of use of the location-based services could lead directly to death, personal injury, or physical or property damage. Use location-based services at your own risk as location data may not be accurate.

#### **4. NOTICES, QUESTIONS, AND CUSTOMER SERVICE**

You agree that: (1) the App Parties may give you notices of new, revised or changed terms and other important matters by prominently posting notice on the home page of Pacific Visions, or in another reasonable manner; and (2) the App Parties may contact you by mail or email sent to the address provided by you. You agree to promptly notify Aquarium if you change your contact information. All legal notices must be sent to [aquariumofpacific@lbaop.org](mailto:aquariumofpacific@lbaop.org) or 100 Aquarium Way, Long Beach, California 90802.

If you have a question regarding using Pacific Visions, you may contact Aquarium Customer Support by sending an email to [aquariumofpacific@lbaop.org](mailto:aquariumofpacific@lbaop.org) or calling (562) 590-3100. You acknowledge that the provision of customer support is at Aquarium's sole discretion and that Aquarium has no obligation to provide you with customer support of any kind.

#### **C. INFRINGEMENT AND DISPUTE TERMS**

##### **1. PROCEDURE FOR ALLEGING COPYRIGHT INFRINGEMENT**

**a. DMCA Notice.** Aquarium asks users to respect the intellectual property rights of others. It is Aquarium's policy to respond appropriately to clear notices of alleged copyright infringement, as set forth more fully below. In Aquarium's sole discretion, Aquarium may remove content that may be infringing on another person's intellectual property rights with or without notice to the potential infringer. In accordance with the U.S. Digital Millennium Copyright Act ("DMCA") and other applicable law, Aquarium has adopted a policy of terminating, in appropriate circumstances, users who are deemed to be repeat infringers.

b. If Aquarium removes or disables access in response to a DMCA Copyright Infringement Notice, Aquarium will make a good faith attempt to contact the owner or administrator of the affected content so that they may make a counter-notification. If you own a copyright in a work (or represent such a copyright owner) and believe that your (or such owner's) copyright in that work has been infringed by an improper posting or distribution of it via Pacific Visions, then you may send Aquarium a written notice that includes all of the following:

- (i) a legend or subject line that says: "DMCA Copyright Infringement Notice";
- (ii) a description of the copyrighted work that you claim has been infringed or, if multiple copyrighted works are covered by a single notification, a representative list of such works;
- (iii) a description of where the material that you claim is infringing or is the subject of infringing activity is located that is reasonably sufficient to permit Aquarium to locate the material (please include the full URL of the page(s) on Pacific Visions on which the material appears);
- (iv) your full name, address, telephone number, and email address;
- (v) a statement by you that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law;
- (vi) a statement by you, made under penalty of perjury, that all the information in your notice is accurate, and that you are the copyright owner (or, if you are not the copyright owner, then your statement must indicate that you are authorized to act on the behalf of the owner of an exclusive right that is allegedly infringed); and
- (vii) your electronic or physical signature.

Aquarium will only respond to DMCA Notices that it receives by mail or email at the addresses below:

By Mail: 100 Aquarium Way  
Long Beach, California 90802

By Email: [aquariumofpacific@lbaop.org](mailto:aquariumofpacific@lbaop.org)

For more information call: (562) 590-3100

It is often difficult to determine if your copyright has been infringed. Aquarium may elect to not respond to DMCA Notices that do not substantially comply with all of the foregoing requirements, and Aquarium may elect to remove allegedly infringing material that comes to its attention via notices that do not substantially comply with the DMCA.

Please note that the DMCA provides that any person who knowingly materially misrepresents that material or activity is infringing may be subject to liability.

Aquarium may send the information that you provide in your notice to the person who provided the allegedly infringing work. That person may elect to send Aquarium a DMCA Counter-Notification.

Without limiting Aquarium's other rights, Aquarium may, in appropriate circumstances, terminate a repeat infringer's access to Pacific Visions and any other website owned or operated by Aquarium.

c. **Counter-Notification.** If access on Pacific Visions to a work that you submitted to Aquarium is disabled or the work is removed as a result of a DMCA Copyright Infringement Notice, and if you believe that the disabled access or removal is the result of mistake or misidentification, then you may send Aquarium a DMCA Counter-Notification to the addresses above. Your DMCA Counter-Notification should contain the following information:

- (i) a legend or subject line that says: “DMCA Counter-Notification”;
- (ii) a description of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled (please include the full URL of the page(s) on Pacific Visions from which the material was removed or access to it disabled);
- (iii) a statement under penalty of perjury that you have a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled;
- (iv) your full name, address, telephone number, email address, and the username of your Account;
- (v) a statement that you consent to the jurisdiction of the Federal District Court for the judicial district in which your address is located (or, if the address is located outside the U.S.A., to the jurisdiction of the United States District Court for the Central District of California), and that you will accept service of process from the person who provided DMCA notification to Aquarium or an agent of such person; and
- (vi) your electronic or physical signature.

Please note that the DMCA provides that any person who knowingly materially misrepresents that material or activity was removed or disabled by mistake or misidentification may be subject to liability.

If Aquarium receive a DMCA Counter-Notification, then Aquarium may replace the material that Aquarium removed (or stop disabling access to it) in not less than ten (10) and not more than fourteen (14) business days following receipt of the DMCA Counter-Notification. However, Aquarium will not do this if Aquarium first receives notice at the addresses above that the party who sent Aquarium the DMCA Copyright Infringement Notice has filed a lawsuit asking a court for an order restraining the person who provided the material from engaging in infringing activity relating to the material on Pacific Visions. You should also be aware that Aquarium may forward the Counter-Notification to the party who sent Aquarium the DMCA Copyright Infringement Notice.

## **2. PROCEDURE FOR ALLEGING INFRINGEMENT OF OTHER INTELLECTUAL PROPERTY**

If you own intellectual property other than copyrights and believe that your intellectual property has been infringed by an improper posting or distribution of it via Pacific Visions, then you may send Aquarium a written notice to the addresses set forth above that includes all of the following:

- (a) a legend or subject line that says: “Intellectual Property Infringement Notice”;
- (b) a description of the intellectual property that you claim has been infringed;
- (c) a description of where the material that you claim is infringing or is the subject of infringing activity is located that is reasonably sufficient to permit Aquarium to locate the material (please include the URL of Pacific Visions on which the material appears);
- (d) your full name, address, telephone number, and email address;
- (e) a statement by you that you have a good faith belief that use of the material in the manner complained of is not authorized by the owner of the intellectual property, its agent, or the law;

- (f) a statement by you, made under penalty of perjury, that all the information in your notice is accurate, and that you are the owner of the intellectual property at issue (or, if you are not the owner, then your statement must indicate that you are authorized to act on the behalf of the owner of the intellectual property that is allegedly infringed); and
- (g) your electronic or physical signature.

Aquarium will act on such notices in Aquarium's sole discretion, as permitted by applicable law. Any user of Pacific Visions that fails to respond satisfactorily to Aquarium with regard to any such notice is subject to suspension or termination. Aquarium may send the information that you provide in your notice to the person who provided the allegedly infringing material.

### **3. DISPUTE RESOLUTION**

Certain portions of this Section are deemed to be a "written agreement to arbitrate" pursuant to the Federal Arbitration Act. Except for claims that ArtTech has not treated your Mixby App account information consistent with the ArtTech [Privacy Policy](#) ("**Permitted ArtTech Claims**"), you agree that as between ArtTech and Aquarium you will look solely to Aquarium with respect to any claims and disputes related to Pacific Visions. You and the App Parties agree that this Section is intended to satisfy the "writing" requirement of the Federal Arbitration Act. This Section can only be amended by mutual agreement.

a. **First – Try to Resolve Disputes.** If any controversy, allegation, or claim arises out of or relates to Pacific Visions, excluding Permitted ArtTech Claims, including without limitation, the Content, your UGC, these Terms, or any Additional Terms, the Aquarium’s privacy practices related to Pacific Visions and offers made on and transactions and communications conducted through Pacific Visions (collectively, “**Aquarium Dispute**”), or to any of the Aquarium’s actual or alleged intellectual property rights (an “**Aquarium Excluded Dispute**”), then you and the Aquarium agree to send a written notice to the other providing a reasonable description of the Aquarium Dispute or Aquarium Excluded Dispute, along with a proposed resolution of it. The Aquarium’s notice to you will be sent to you based on the most recent contact information that you provide the Aquarium. But if no such information exists or if such information is not current, then the Aquarium have no obligation under this Section C.3(a). Your notice to the Aquarium must be sent to: Aquarium of the Pacific, 100 Aquarium Way, Long Beach, California 90802, (Attn: Legal Department). Subject to Section C.3(c), for a period of sixty (60) days from the date of receipt of notice from the other party, the Aquarium and you will engage in a dialogue in order to attempt to resolve the Aquarium Dispute or Aquarium Excluded Dispute, though nothing will require either you or the Aquarium to resolve the Aquarium Dispute or Aquarium Excluded Dispute on terms with respect to which you and the Aquarium, in each of the Aquarium’s sole discretion, are not comfortable.

If any controversy, allegation, or claim arises out of or relates to Permitted ArtTech Claims, or your release of any and all other claims against ArtTech, or these Terms, including without limitation this Section C.3 (“**ArtTech Dispute**”) then you and the ArtTech agree to send a written notice to the other providing a reasonable description of the ArtTech Dispute along with a proposed resolution of it. ArtTech’s notice to you will be sent to you based on the most recent contact information that you provide the ArtTech. But if no such information exists or if such information is not current, then ArtTech has no obligation under this Section C.3(a). Your notice to the ArtTech must be sent to: PO BOX 99527 Seattle, WA. 98139 (Attn: Legal Department). Subject to Section C.3(c), for a period of sixty (60) days from the date of receipt of notice from the other party, the App Parties and you will engage in a dialogue in order to attempt to resolve the ArtTech Dispute, though nothing will require either you or the ArtTech to resolve the ArtTech Dispute on terms with respect to which you and the ArtTech, in each of ArtTech’s sole discretion, are not comfortable.

b. **Binding Arbitration.** If an App Party cannot resolve an Aquarium Dispute or ArtTech Dispute as set forth in Section C.3(a) (or agree to arbitration in writing with respect to an Aquarium Excluded Dispute) within sixty (60) days of receipt of the notice, then, subject to Section C.3(c) and as permitted by applicable law, ANY AND ALL AQUARIUM DISPUTES OR ARTTECH DISPUTES ARISING BETWEEN YOU AND THE SUCH APP PARTY (WHETHER BASED IN CONTRACT, STATUTE, REGULATION, ORDINANCE, TORT – INCLUDING, BUT NOT LIMITED TO FRAUD, ANY OTHER INTENTIONAL TORT, OR NEGLIGENCE – COMMON LAW, CONSTITUTIONAL PROVISION, RESPONDEAT SUPERIOR, AGENCY OR ANY OTHER LEGAL OR EQUITABLE THEORY), WHETHER ARISING BEFORE OR AFTER THE EFFECTIVE DATE OF THESE TERMS, MUST BE RESOLVED BY FINAL AND BINDING ARBITRATION. THIS INCLUDES ANY AND ALL AQUARIUM DISPUTES OR ARTTECH DISPUTES BASED ON ANY SERVICE OR ADVERTISING CONNECTED TO THE PROVISION OR USE OF PACIFIC VISIONS. The Federal Arbitration Act, not state law, shall govern the arbitrability of all Aquarium Disputes or ArtTech Disputes between the respective App Party and you regarding these Terms (and any Additional Terms) and Pacific Visions. The App Parties and you agree, however, that Washington state or federal law shall apply to and govern, as appropriate, any and all claims or causes of action, remedies, and damages arising between you and the App Parties, whether arising or stated



in contract, statute, common law, or any other legal theory, without regard to Washington's choice of law principles that might apply other laws.

Aquarium Disputes or ArtTech Disputes will be resolved solely by binding arbitration in accordance with the then-current consumer Arbitration Rules of the American Arbitration Association ("AAA"). If a party properly submits the Aquarium Dispute or ArtTech Dispute to the AAA for formal arbitration and the AAA is unwilling to arbitrate the Aquarium Dispute or ArtTech Dispute then either party can elect to have the arbitration administered by the Judicial Arbitration and Mediation Services Inc. ("JAMS") using JAMS' streamlined Arbitration Rules and Procedures, or by any other arbitration administration service that you and an officer or legal representative of the applicable App Party(ies)'s consent to in writing. If an in-person arbitration hearing is required, then it will be conducted in the "metropolitan statistical area" (as defined by the U.S. Census Bureau) where you are a resident at the time the Aquarium Dispute or ArtTech Dispute is submitted to arbitration. You and the applicable App Party(ies) will pay the administrative and arbitrator's fees and other costs in accordance with the applicable arbitration rules; but if applicable arbitration rules or laws require the applicable App Party(ies) to pay a greater portion or all of such fees and costs in order for this Section C.3 to be enforceable, then the applicable App Party(ies) will have the right to elect to pay the fees and costs and proceed to arbitration. The arbitrator will apply applicable law and the provisions of these Terms and any Additional Terms, will be bound by these Terms and any Additional Terms, will determine any Aquarium Dispute or ArtTech Dispute according to the applicable law and facts based upon the record and no other basis, and will issue a reasoned award only in favor of the individual party seeking relief and only to the extent to provide relief warranted by that party's individual claim. This arbitration provision shall survive termination of these Terms or Pacific Visions.

**c. Injunctive Relief.** The foregoing provisions of this Section C.3 will not apply to any legal action taken by the App Parties or you to seek an injunction or other equitable relief in connection with, any potential loss, cost, or damage (or any potential loss, cost, or damage) relating to Pacific Visions, any Content, your breach of these Terms of applicable Additional Terms and/or the App Parties' intellectual property rights (including such the App Parties may claim that may be in dispute), the App Parties' operations, and/or the App Parties' services; provided however, your rights are subject to Waiver of Certain Injunctive or Other Equitable Relief Section C(7)

**d. No Class Action Matters and Jury Waiver.** Aquarium Disputes or ArtTech Disputes will be arbitrated only on an individual basis and will not be joined or consolidated with any other arbitrations or other proceedings that involve any claim or controversy of any other party. YOU AND THE APP PARTIES AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. There shall be no right or authority for any Aquarium Dispute, Aquarium Excluded Dispute, or ArtTech Dispute to be determined on a class action basis or on any basis involving Aquarium Disputes, Excluded Disputes, or ArtTech Disputes brought to a purported representative capacity on behalf of the general public, or other persons or entities similarly situated. But if, for any reason, any court with competent jurisdiction holds that this restriction is unconscionable or unenforceable, then the applicable App Party(ies)'s agreement in Section C. 3(b) to arbitrate will not apply and the Aquarium Dispute or ArtTech Dispute must be brought exclusively in court pursuant to Section C.3(f). As permitted by applicable law, the parties each waive any right to trial by jury.

e. **Venue.** Except to the extent that arbitration is required in Section C.3(b), and except as to the enforcement of any arbitration decision or award, to the extent permitted by applicable law, any action or proceeding relating to any Aquarium Dispute or Aquarium Excluded Dispute may only be instituted in state or Federal court in Long Beach, Los Angeles County, California. Accordingly, you and Aquarium consent to the exclusive personal jurisdiction and venue of such courts for such matters.

Except to the extent that arbitration is required in Section C.3(b), and except as to the enforcement of any arbitration decision or award, to the extent permitted by applicable law, any action or proceeding relating to any ArtTech Dispute may only be instituted in state or Federal court in Seattle, Washington. Accordingly, you and ArtTech consent to the exclusive personal jurisdiction and venue of such courts for such matters.

f. **Small Claims Matters Are Excluded From Arbitration Requirement.** Notwithstanding the foregoing, either of the App Parties may bring qualifying claim of Aquarium Disputes or ArtTech Disputes (but not Aquarium Excluded Disputes) in small claims court, subject to Section C.3(d) and (e).

#### **4. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES**

AS PERMITTED BY APPLICABLE LAW, PACIFIC VISIONS, AND THE MIXBY APP, IS PROVIDED ON AN “AS IS”, “AS AVAILABLE”, AND “WITH ALL FAULTS” BASIS AND YOUR ACCESS TO AND USE OF PACIFIC VISIONS, AND THE MIXBY APP, IS AT YOUR SOLE RISK. Therefore, to the fullest extent permissible by applicable law, the App Parties and their direct and indirect parents, subsidiaries, affiliates and each of their respective employees, directors, members, managers, shareholders, agents, vendors, licensors, licensees, contractors, customers, successors, and assigns hereby disclaim and make no representations, warranties, endorsements, or promises, express or implied, in connection with, or otherwise directly or indirectly related to, Pacific Visions, and the Mixby App (including the Content and the UGC), including without limitation:

- (a) the functions, features, or any other elements on, or made accessible through, Pacific Visions or the Mixby App;
- (b) any Content, services, or instructions offered, referenced, or linked through Pacific Visions or the Mixby App;
- (c) security associated with your Account, UGC, or other data or information;
- (d) whether Pacific Visions, or the Mixby App, or the servers that make Pacific Visions, or the Mixby App, available are free from any harmful components (including viruses, Trojan horses, and other technologies that could adversely impact your Device);
- (e) whether the information (including any instructions) on Pacific Visions, or the Mixby App, is accurate, complete, correct, adequate, useful, timely, or reliable;
- (f) whether any defects to or errors on Pacific Visions, or the Mixby App, will be repaired or corrected;
- (g) whether Pacific Visions, or the Mixby App, will be compatible with any other specific hardware, software or service;
- (h) whether your access to Pacific Visions, or the Mixby App, will be uninterrupted;
- (i) whether Pacific Visions, or the Mixby App, will be available at any particular time or location; and
- (j) whether your use of Pacific Visions, or the Mixby App, is lawful in any particular jurisdiction.

EXCEPT FOR ANY SPECIFIC WARRANTIES PROVIDED HEREIN OR IN ADDITIONAL TERMS PROVIDED BY THE APPLICABLE APP PARTY, AS PERMITTED BY APPLICABLE LAW, APP PARTIES HEREBY FURTHER DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, TITLE, CUSTOM, TRADE, QUIET ENJOYMENT, SYSTEM INTEGRATION, AND FREEDOM FROM COMPUTER VIRUS.

## **5. LIMITATIONS OF THE APP PARTIES' LIABILITY**

AS PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES WILL ANY APP PARTIES BE RESPONSIBLE OR LIABLE FOR ANY LOSS OR DAMAGES, for any indirect, economic, exemplary, special, punitive, incidental, or consequential losses or damages of any kind, including without limitation loss of profits, in connection with, or otherwise directly or indirectly related to Pacific Visions (including the Content and the UGC), including without limitation:

- (a) your use of or inability to use Pacific Visions, or the performance of Pacific Visions;
- (b) any action taken in connection with an investigation by Aquarium Parties or law enforcement authorities regarding your access to or use of Pacific Visions;
- (c) any action taken in connection with copyright or other intellectual property owners or other rights owners;
- (d) any actions taken by third parties in relation to your or a third party's use of Pacific Visions, including any damages resulting from your or a third party's use of the Pacific Visions' location features;
- (d) any errors or omissions in Pacific Visions' technical operation or security or any compromise or loss of your user-generated content or other data or information; or
- (e) any damage to any user's computer, hardware, software, modem, or other equipment or technology, including damage from any security breach or from any virus, bugs, tampering, fraud, error, omission, interruption, defect, delay in operation or transmission, computer line, or network failure or any other technical or other malfunction, including losses or damages in the form of lost profits, loss of goodwill, loss of data, work stoppage, accuracy of results, or equipment failure or malfunction.

As permitted by applicable law, the foregoing limitations of liability will apply even if any of the foregoing events or circumstances were foreseeable and even if the App Parties were advised of or should have known of the possibility of such losses or damages, regardless of whether you bring an action based in contract, negligence, strict liability, or tort (including whether caused, in whole or in part, by negligence, acts of god, telecommunications failure, or destruction of Pacific Visions).

Except for the Permitted ArtTech Claims, you agree to bring any claims or redress arising under or related to these Terms or Pacific Visions solely to Aquarium, and hereby release and agree to release ArtTech from all known and unknown, or unanticipated, claims arising out of your use of Pacific Visions and you hereby waive all rights under California Civil Code Section 1542, or for any other law of similar effect that limits the release of claims, which states as follows: "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her, would have materially affected his or her settlement with the debtor or released party."

**EXCEPT AS MAY BE PROVIDED IN ANY APPLICABLE ADDITIONAL TERMS, AS PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL THE APP PARTIES' TOTAL**

**LIABILITY TO YOU, FOR ALL POSSIBLE DAMAGES, LOSSES, AND CAUSES OF ACTION IN CONNECTION WITH YOUR ACCESS TO AND USE OF PACIFIC VISIONS AND YOUR RIGHTS UNDER THESE TERMS, EXCEED AN AMOUNT EQUAL TO THE AMOUNT YOU HAVE PAID THE APP PARTIES IN CONNECTION WITH THE TRANSACTION(S) THAT UNDERLIE THE CLAIM(S); PROVIDED, HOWEVER, THIS PROVISION WILL NOT APPLY IF A COURT OR TRIBUNAL WITH APPLICABLE JURISDICTION FINDS SUCH TO BE UNCONSCIONABLE.**

## **6. WAIVER OF CERTAIN INJUNCTIVE OR OTHER EQUITABLE RELIEF**

AS PERMITTED BY APPLICABLE LAW, IF YOU CLAIM THAT YOU HAVE INCURRED ANY LOSS, DAMAGES, OR INJURIES IN CONNECTION WITH YOUR USE OF PACIFIC VISIONS, THEN THE LOSSES, DAMAGES, AND INJURIES WILL NOT BE DEEMED IRREPARABLE OR SUFFICIENT TO ENTITLE YOU TO AN INJUNCTION OR TO OTHER EQUITABLE RELIEF THAT MAY INTERFERE WITH OR PREVENT THE DEVELOPMENT OR EXPLOITATION OF ANY WEBSITE, APPLICATION, CONTENT, UGC, SERVICE, OR INTELLECTUAL PROPERTY OWNED, LICENSED, USED OR CONTROLLED BY THE APP PARTIES (INCLUDING YOUR LICENSED UGC) OR A LICENSOR OF THE APP PARTIES. HOWEVER, SUCH SHALL NOT LIMIT YOUR ABILITY TO SEEK OTHER EQUITABLE RELIEF, SUBJECT TO THESE TERMS AND ANY APPLICABLE ADDITIONAL TERMS.

## **7. INDEMNITY**

As permitted by applicable law, you agree to, and you hereby, defend (if the App Parties request), indemnify, and hold the App Parties harmless from and against any and all claims, damages, losses, costs, investigations, liabilities, judgments, fines, penalties, settlements, interest, and expenses (including attorneys' fees) that directly or indirectly arise from or are related to any claim, suit, action, demand, or proceeding made or brought against an App Party, or on account of the investigation, defense, or settlement thereof, arising out of or in connection with, whether occurring heretofore or hereafter: (i) your UGC; (ii) your use of Pacific Visions and your activities in connection with Pacific Visions; (iii) your breach or alleged breach of these Terms or any applicable Additional Terms; (iv) your violation or alleged violation of any laws, rules, regulations, codes, statutes, ordinances, or orders of any governmental or quasi-governmental authorities in connection with your use of Pacific Visions or your activities in connection with Pacific Visions; (v) information or material transmitted through your Device, even if not submitted by you, that infringes, violates, or misappropriates any copyright, trademark, trade secret, trade dress, patent, publicity, privacy, or other right of any person or entity; (vi) any misrepresentation made by you; and (vii) an App Party's use of the information that you submit to an App Party (including your UGC) subject to Aquarium's [Privacy Policy](#) or ArtTech's [Privacy Policy](#) and applicable Additional Terms ("Claims and Losses"). You will cooperate as fully required by an App Party in the defense of any Claim and Losses. Notwithstanding the foregoing, the App Parties retain the exclusive right to settle, compromise, and pay any and all Claims and Losses. The App Parties reserve the right to assume the exclusive defense and control of any Claims and Losses. You will not settle any Claims and Losses without, in each instance, the prior written consent of an officer of an App Party. This section is not intended to limit any causes of action against an App Party that you may have that are not waivable under applicable law.

## **D. STANDARD TERMS AND CONDITIONS**

### **1. UPDATES TO TERMS.**

These Terms (or if applicable Additional Terms), in the form posted at the time of your use of the applicable services to which it applies, shall govern such use (including transactions entered during such use). AS PACIFIC VISIONS EVOLVES, THE TERMS AND CONDITIONS UNDER WHICH THE APP PARTIES OFFER PACIFIC VISIONS MAY PROSPECTIVELY BE MODIFIED AND THE APP PARTIES MAY CEASE OFFERING PACIFIC VISIONS UNDER THE TERMS OR APPLICABLE ADDITIONAL TERMS FOR WHICH THEY WERE PREVIOUSLY OFFERED. ACCORDINGLY, EACH TIME YOU SIGN IN TO OR OTHERWISE USE PACIFIC VISIONS YOU ARE ENTERING INTO A NEW AGREEMENT WITH THE APP PARTIES ON THE THEN APPLICABLE TERMS AND CONDITIONS AND YOU AGREE THAT THE APP PARTIES MAY NOTIFY YOU OF NEW TERMS BY POSTING THEM ON PACIFIC VISIONS (OR IN ANY OTHER REASONABLE MANNER OF NOTICE WHICH THE APP PARTIES ELECT), AND THAT YOUR USE OF PACIFIC VISIONS AFTER SUCH NOTICE CONSTITUTES YOUR GOING FORWARD AGREEMENT TO THE NEW TERMS FOR YOUR NEW USE AND TRANSACTIONS. Therefore, you should review the posted Terms, and any applicable Additional Terms, each time you use Pacific Visions (at least prior to each transaction or submission). Any new Terms or Additional Terms will be effective as to new use and transactions as of the time that the App Parties post them, or such later date as may be specified in them or in other notice to you. However, the Terms (and any applicable Additional Terms) that applied when you previously used Pacific Visions will continue to apply to such prior use and any specific term to which the App Parties previously committed to apply those terms (if applicable) (i.e., changes and additions are prospective only) unless mutually agreed. In the event any notice to you of new, revised or additional terms is determined by a tribunal to be insufficient, the prior agreement shall continue until sufficient notice to establish a new agreement occurs. You can reject any new, revised or additional terms by discontinuing use of Pacific Visions and related services.

## **2. GENERAL PROVISIONS**

- a. **App Parties' Consent or Approval.** As to any provision in these Terms, or applicable Additional Terms, that grants the App Parties a right of consent or approval, or permits the App Parties to exercise a right in its "sole discretion," the App Parties may exercise that right in its sole and absolute discretion. No App Party consent or approval may be deemed to have been granted by an App Party without being in writing and signed by an officer of a respective App Party.
- b. **Applicable Law.** These Terms and any applicable Additional Terms will be governed by and construed in accordance with the laws of the State of Washington, without regard to its conflicts of law provisions that might apply the laws of another jurisdiction.
- c. **Operation of Service; Availability Services; International Issues.** The App Parties control and operate Pacific Visions from their U.S.-based offices in the U.S.A., and the App Parties make no representation that Pacific Visions is appropriate or available for use beyond the U.S.A. If you use Pacific Visions from other locations, you are doing so on your own initiative and are responsible for compliance with applicable local laws regarding your online conduct and acceptable content, if and to the extent local laws apply. Pacific Visions may describe services that are available only in the U.S.A. (or only parts of it) and are not available worldwide. The App Parties reserve the right to limit the availability of Pacific Visions and/or the provision of any content, program, service, or other feature described or available on Pacific Visions to any person, entity, geographic area, or jurisdiction, at any time and in the App Parties' sole discretion, and to limit the quantities of any content, program, service, or other feature that the App Parties provide.

**d. Export Controls.** Software related to or made available by Pacific Visions may be subject to export controls of the U.S.A. that prohibit software from Pacific Visions from being downloaded, exported, or re-exported (i) into (or to a national or resident of) any country or other jurisdiction to which the U.S.A. has embargoed (e.g. Cuba, North Korea, Iran, Sudan, and Syria), or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders, or (iii) to anyone on the U.S. Department of Commerce's Bureau of Industry and Security Entities List as published in the Export Administration Regulations. You are responsible for complying with all applicable trade regulations and laws both foreign and domestic. Except as authorized by U.S law, you agree and warrant not to export or re-export the software to any county, or to any person, entity, or end-user subject to U.S. export controls or sanctions, including, without limitation, as set forth in subsections (i) – (iii) above.

**e. Severability; Interpretation.** If any provision of these Terms, or any Additional Terms, is for any reason deemed invalid, unlawful, void, or unenforceable by a court or arbitrator of competent jurisdiction, then that provision will be deemed severable from these Terms or the Additional Terms, and the invalidity of the provision will not affect the validity or enforceability of the remainder of these Terms or the applicable Additional Terms (which will remain in full force and effect). To the extent not prohibited by applicable law, you agree to waive, and you hereby waive, any applicable statutory and common law that may permit a contract to be construed against its drafter. Wherever the word "including" is used in these Terms or any applicable Additional Terms, the word will be deemed to mean "including, without limitation." The summaries of provisions and section headings are provided for convenience only and shall not limit the full Terms.

**f. Electronic Communications and Contracting.** When you communicate with the App Parties electronically, such as via email and text message, you consent to receive communications from the App Parties electronically. The App Parties will try to promptly respond to all inquiries, but the App Parties are not obligated to do so. You agree that all agreements, notices, disclosures, and other communications that the App Parties provide to you electronically satisfy any legal requirement that such communications be in writing. You agree that any time you electronically transact, agree or consent via Pacific Visions it is intended to be an electronic signature which binds you as if you had signed on paper. You agree that your use of Pacific Visions, other than to read the Terms (or Additional Terms) and Privacy Policy, constitutes agreement to the Terms, and any applicable Additional Terms, then posted without further action by you.

**g. Investigations; Cooperation with Law Enforcement; Termination; Survival.** You agree that the App Parties shall, as permitted by applicable law, have the right, without limitation and without any obligation, to: (i) investigate any suspected breaches of security or information technology or other systems or networks, (ii) investigate any suspected breaches of these Terms and any applicable Additional Terms or any potential harm to users or third parties, (iii) use any information obtained by the App Parties in accordance with the Aquarium [Privacy Policy](#) and the ArtTech [Privacy Policy](#) in connection with reviewing law enforcement databases or complying with applicable laws and use and/or disclose any information obtained by the App Parties to comply with law enforcement requests or legal requirements, (iv) involve and cooperate with law enforcement authorities in connection with any of the foregoing matters, (v) prosecute violators of these Terms and any applicable Additional Terms, and (vi) discontinue Pacific Visions, in whole or in part, or, except as may be expressly set forth in any applicable Additional Terms, suspend or terminate your access to it, in whole or in part, including any user Accounts or registrations, at any time, without notice, for any reason and without any obligation to you or any

third party. Any suspension or termination will not affect your obligations to Aquarium under these Terms or any applicable Additional Terms. Upon suspension or termination of your access to Pacific Visions, or upon notice from Aquarium, all rights granted to you under these Terms or any Additional Terms will cease immediately, and you agree that you will immediately discontinue use of Pacific Visions. The provisions of these Terms and any applicable Additional Terms, which by their nature should survive your suspension or termination will survive, including the rights and licenses you grant to the App Parties in these Terms, as well as the indemnities, releases, disclaimers, and limitations on liability and the provisions regarding jurisdiction, choice of law, no class action, jury waiver, and mandatory arbitration.

h. **Assignment.** The App Parties may assign its rights and obligations under these Terms and any applicable Additional Terms, in whole or in part, to any party at any time without any notice. These Terms and any applicable Additional Terms may not be assigned by you, and you may not delegate your duties under them, without the prior written consent of an officer of an App Party.

i. **Complete Agreement; No Waiver.** These Terms, and any applicable Additional Terms, reflect the App Parties' complete agreement regarding Pacific Visions and supersede any prior agreements, representations, warranties, assurances or discussion related to Pacific Visions. Except as expressly set forth in these Terms or any applicable Additional Terms, (i) no failure or delay by you or the App Parties in exercising any of rights, powers, or remedies under will operate as a waiver of that or any other right, power, or remedy, and (ii) no waiver or modification of any term of these Terms, or applicable Additional Terms, will be effective unless in writing and signed by the party against whom the waiver or modification is sought to be enforced.

**j. California Consumer Rights and Notices.**

California residents can obtain information on Aquarium's and ArtTech's privacy practices, including how they comply with the California Shine the Light Act in the Aquarium's [Privacy Policy](#) and ArtTech's [Privacy Policy](#).

Any California residents under the age of eighteen (18) who have registered to use Pacific Visions, and who have publicly posted content or information on Pacific Visions, can request that their posting (but not third-party posts) be removed from public view on Pacific Visions by contacting Aquarium at the email at [aquariumofpacific@lbaop.org](mailto:aquariumofpacific@lbaop.org) or sending Aquarium a letter at 100 Aquarium Way, Long Beach, California 90802 making such a request, stating that they personally posted such content or information and detailing where the content or information is posted. Aquarium will make reasonable, good faith efforts to remove the post from prospective public view or anonymize it so the minor cannot be individually identified. This removal process cannot ensure complete or comprehensive removal. For instance, third-parties may have republished the post and archived copies of it may be stored by search engines and others that Aquarium does not control.

**k. Devices and Connectivity.**

The App Parties do not warrant that the software provided by the App Parties to utilize Pacific Visions or any other software used in connection with Pacific Visions will be compatible with other third-party software nor do the App Parties warrant that operation of Pacific Visions and the associated software will not damage or disrupt other software or hardware. You are responsible for obtaining and maintaining all Devices and other equipment and software, and all internet service provider, mobile service, and other services needed for your access to and use of Pacific Visions and you will be responsible for all charges

related to them. You further agree to look solely to the entity that manufactured and/or sold you the Device for any issues related to the Device and its compatibility with Pacific Visions and/or the App Parties' software.

By using Pacific Visions, you agree that the App Parties may change, alter, or modify the settings or configurations on your Device in order to allow for or optimize your use of Pacific Visions (e.g., save content, access data, enable services, etc.). **For instance, Pacific Visions may access and read accounts, data and/or content on your Device, add content to your Device, and change settings of your Device, for reasons such as showing you the location of things or people near you; saving Pacific Visions images, sound files and writing usage logs to the Device; sending Facebook and Twitter messages you initiate; sending and receiving data needed for operations; and to provide you notice when you are not connected to a network. You consent to these activities by installing Pacific Visions or otherwise using Pacific Visions. Your Device settings may enable you to disable, change or limit some of these activities, and you can disable Pacific Visions by uninstalling it.**

You must be connected to the Internet for the entire time you are using Pacific Visions, the cost and provisions of which is your responsibility. The quality of the display of the Content may vary from Device to Device, and may be affected by a variety of factors, such as your Device, your location, the bandwidth available through and/or speed of your Internet connection. The App Parties make no representations or warranties about the quality of the Pacific Visions experience on your Device or the ability of any Device to access or display the Content. In order to stream or download Content, your equipment must meet certain system requirements, including but not limited to having high-speed Internet access. You may not download or stream Content if you are located outside any designated territory and you will not try to circumvent territory restrictions (such as by using a proxy server). Please review any restrictions that may be posted from time to time and which shall be Additional Terms.

Any issues related to Pacific Visions and/or the Aquarium software, including any system requirements, are covered and limited by this Agreement. Please refer to the Disclaimer of Representations and Warranties and Limitations of Liability provisions set forth in these Terms at Section C.5.

**//End Terms of Use//**