

## GENERAL TERMS AND CONDITIONS (“GTC”)

The following General Terms and Conditions apply to all Services and Software provided under the Agreement by Supplier, unless otherwise explicitly agreed by the Parties in writing in the Agreement or otherwise after its execution.

### 1. DEFINITIONS

In addition to the terms defined elsewhere in the Agreement all capitalized terms have the meaning as set out below in these General Terms and Conditions:

**Agreement** means the terms and conditions as agreed and signed by the Parties including all applicable order forms, Annexes and these GTCs, as amended or extended from time to time by the Parties according to the terms herein.

**Affiliate** means with respect to any Party, any other person directly or indirectly controlling, controlled by or under common control with such relevant Party. For the purposes of this definition, the term “control” as applied to any Party, means the possession, directly or indirectly, of power, factual or by law, to exercise a decisive influence on the designation of the majority of the directors of a company, or on its management or policy through ownership, voting share, by contract, or otherwise. Notably, there is legal control when it results from the possession of the majority of the voting rights linked to the shares of the controlled company.

**Applicable Laws** means all applicable federal, regional and local laws, case law, international laws, regulatory constraints and any rule, judgment, court order, instructions or measures of a public or administrative authority, judicial authority or governmental approvals including, but not limited to, anti-corruption laws, anti-terrorism and money laundering laws, import and export control laws, economic sanction and anti-boycotting laws, data privacy laws, safety and security laws, staff and labour laws.

**Business Day** means a day on which banks are generally open for business where the Services are performed.

**Confidential Information** means any written, oral or visual information of a non-public, confidential or proprietary nature, disclosed by the disclosing Party to the receiving Party whether of commercial, financial or technical nature, customer-, supplier-, product- or production-related or otherwise, including, but not limited to, the content of the Agreement, samples and information relating to, specifications, Software, any source and object code, all commercial, scientific and technical matters, inventions and trade secrets, Intellectual Property Rights and any patentable technical or other information which is not in the public domain including information comprising or relating to concepts, discoveries, data, designs, formulas, ideas, reports and data analyses, patent applications, process designs, process models, materials and ideas.

**Impression** means playing a given video or audio source without exchanging such video or audio source with another video or audio source. For the avoidance of doubt, pausing and playing, or seeking in the same video or audio source is considered as the same Impression. If the content contains ads, these will not be counted towards the Impression count. Except when the content only contains ads, then these will be counted towards the Impression count.

**Intellectual Property Rights** means any and all existing and future, registered or unregistered, intellectual property and proprietary rights, including but not limited to moral rights, works of authorship, copyrights, patents, utility models, all rights of whatsoever nature in computer software and data, database rights, digital data, trade and service marks, trade names, service and product names, rights in logos and get-up, inventions and discoveries, Confidential Information, model & design rights, as well as know-how and trade secret rights, records, documents, papers and all intangible rights, privileges, any other works and applications and all forms of protection of a similar nature or allied to any of the foregoing, in every case in any part of the world, and including all granted registrations and all applications for registration, all renewals, reversions or extensions, the right to sue for damages for past infringement and all forms of protection of a similar nature which may subsist anywhere in the world. Intellectual Property Rights shall contain any enhancements, customization, modifications, derivative work and new inventions, developments, improvements or updates and upgrades thereof, of any kind.

**Services** shall mean any service offering agreed by the Parties pursuant to this Agreement as may be specified in further detail in a statement of work,

purchase order or otherwise as provided by Supplier to the Company, including but not limited to, consulting and integration services, professional services, maintenance services, related deliverables and documentation.

**SDK** means a software development kit which is a set of software development tools that allows the creation of applications for a certain software package, video service platforms, software framework, or similar development platform.

**Software** shall mean, programs, routines, symbolic languages and other operating information in the form of object or source code that a) control the functioning of hardware or other software and direct its operation; and b) which is created, developed, owned or branded by Supplier, including but not limited to THEOplayer and related SDKs or internet platforms. For the avoidance of doubt, Software includes any Update and Upgrades.

**Taxes** means any value-added tax (VAT), sales tax, income tax, consumption tax or any other similar applicable tax, duty, fee, levy or other governmental charge, customs duties and other levies.

**THEOplayer** means a set of SDKs for various platforms written and developed by the Supplier that provides support for playback and related functionalities for HTTP Live streaming (HLS) or MPEG-DASH streams including any related software, source and object code, deliverables, technology and related resources and relevant Documentation provided and/or created, made or developed in connection with this Agreement.

**Updates** means all updates, modifications and releases of new versions of the Software containing improvements, corrections, minor modifications, maintenance releases, bug fixes, patches, or the like that have been publicly announced by the Supplier on its website or that are otherwise provided to Company as part of the integration plan.

**Upgrades** shall mean all modifications, new features, enhancements, releases of new or customized versions of the Software and similar developments of it which have not been announced already as Updates by Supplier on its website and/or are specifically designed for or requested by Company. Such Upgrades are not within the scope of this Agreement, unless otherwise explicitly agreed by the Parties and may be subject to additional agreed charges.

### 2. LICENSE

#### 2.1. Scope of License

The Supplier grants to the Company, and the Company accepts from the Supplier the right to use the Software to the extent as defined in the Agreement or otherwise in writing (“License”). Any other use requires the prior written consent of the Supplier.

Unless otherwise agreed by the Parties in connection with this Agreement, Company shall not otherwise without prior written consent of Supplier: a) modify, create any derivative work of, or incorporate into any other product Supplier’s Software or any portion thereof; b) market, transfer, disclose rent, lease, lend, sell, copy, redistribute or sublicense the Software by itself or with other unauthorized software to any other third-party or in combination with third-party products.

#### 2.2. Reverse Engineering and Modifications

Unless agreed by Parties in writing or unless the enforcement of this provision is prohibited by Applicable Laws, Company shall not under any circumstances attempt, or knowingly cause or permit others to attempt to modify, adapt, port, merge, decompile, disassemble, reverse engineer, decipher, decrypt or otherwise discover the source code or any other parts of the mechanisms and algorithms used by the Software nor remove restrictions or create derivative works of the Software or of any part of the Software. Unless otherwise explicitly agreed by the Parties, the Company may not alter, modify, adapt, port or merge the Software or any part thereof.

### 3. SERVICES

#### 3.1. Scope

Supplier shall comply with all Applicable Laws and shall perform all Services within the scope as agreed by the Parties in accordance with the terms and conditions of the Agreement and its Documentation. Except as an otherwise

agreed by the Parties in writing, the Supplier shall be fully responsible for the preparation, planning and provision of Services and provide all expertise, skills, tools, appointment of sufficient and qualified personnel, the resources, facilities, management, labour, equipment used and necessary for the performance of the Services.

**3.2. Documentation**

The Supplier shall make available to the Company general documentation regarding its Service descriptions and the minimum technical requirements, the suitability, the integration, the features and compatibility of the Software including user manuals and operational instructions on its website <http://www.theoplayer.com> (“**Documentation**”). Supplier shall maintain and provide a list with third-party standard software that may be provided in connection with the Software. For the avoidance of doubt, Supplier is not a sub licensor of such third-party standard software. Supplier refers Company to applicable attribution files and license terms disclosures and pertinent terms of the third-party standard software publisher which apply directly to Company. However, Parties will ensure their compliance with such relevant licensing terms.

**4. FEES AND INVOICING**

**4.1. Fees**

4.1.1 The Company shall pay to the Supplier all fees as defined and structured in the Agreement or otherwise by the Parties in writing, which may include License Fees, Service Fees or other charges for the performance of Service and delivery of Software under the Agreement (the **Fee**). All Fees indicated and agreed by the Parties are Taxes exclusive and do not include any travel and living expenses.

4.1.2 In case of advanced payments, the Supplier shall provide full functionality of the Software and Service, if Company has paid the Fees in accordance with the Agreement.

4.1.3 Considering the fair market value of the Software, Supplier may adjust the structure and amount of the applicable License Fee:

- a) at the end of a contractual Term, in case of any renewal or extension of the then current Term of the Agreement subject to a yearly reevaluation of the License Fee by Supplier and as agreed by the Parties;
- b) at any time, in case Parties have agreed a specific Upgrade of the Software;
- c) except for the first four (4) months after activation of the Software, at any time, upon one (1) month prior written notice and provided Supplier demonstrates extraordinary changes on the market of more than four (4) % (“Price Alignment”) including but not limited to, a specific cost component increase, currency fluctuation, higher or additional royalty commitments, provided such Price Alignment is proportionate to such additional costs. If a Price Alignment results in an increase by more than thirty (30) % of the then applicable License Fee, Company is entitled to terminate this Agreement for cause with the effective date of such Price Alignment.
- d) any adjustment of the License Fee shall not be retroactive.

4.1.4 Each Party shall comply with its obligations under applicable tax laws. The Company may provide Supplier with a valid tax exemption certificate authorized by the appropriate taxing authority. Any applicable Taxes will appear as separate items on the invoice. If mandatory Applicable Law requires the Company to withhold any Taxes on payments under this Agreement, the gross amount of the payable Fees by Company shall be adjusted upwards with the amount of the withholding Taxes. Company shall notify Supplier in writing and in advance of any withholding tax.

**4.2. Invoicing and Late Payment**

4.2.1 The invoices will be electronically sent to Company’ billing email address. Alternatively, Parties may agree to send the invoices per mail. 4.2.2 Invoices will be sent to the billing address as defined in the Agreement. Unless agreed otherwise, invoices must be paid and disputed within thirty (30) days from receipt and deemed to be accepted thereafter.

4.2.3 Notwithstanding the foregoing, in case of a (partial) late payment of an invoice and additional prior written ten (10) days reminder and warning notice by Supplier:

- a) Any overdue invoiced amount shall be subject to an interest of one percent per month or the maximum permissible rate under Applicable

Laws, whichever is the highest and extra-legal recovery expenses and legal costs cause by the late payment;

- b) any other invoiced amount to the Company shall become immediately due without prior notice by Supplier;
- c) the Supplier may immediately suspend the activation of the Software, the License and related Services without prior notice until full payment of all amounts due;
- d) the Supplier may upon reasonable grounds regarding the creditworthiness of the Company request from Company guaranties and securities on first demand which it deems appropriate in view of the good execution of the Company’s payment commitments.

**4.3. Reporting**

For reporting, invoicing and analytical purposes only, Supplier may measure the usage of the Software or alternatively require Company to issue reports as determined in the Agreement. If Parties have agreed that Company shall issue reports and in order to verify the correctness of such reports, Company agrees to permit its books and records to be examined maximum once every year during regular business hours upon prior written notice by Supplier. All relevant reports and records shall be kept accessible for Supplier for at least three (3) years after termination of the Agreement, or for a longer period if required by law. If the audit reveals an underpayment of more than five (5) % Company shall bear the cost of that audit, including any travel costs.

**5. WARRANTIES AND DISCLAIMER**

5.1. Each Party warrants and represents to have the legal right and authority to enter into and perform its obligations under the Agreement and to perform its obligation under the Agreement in accordance with all Applicable Laws and the terms and conditions of the Agreement.

5.2. Software: During the Term of the Agreement the Supplier warrants that the Software shall be provided without material defects and works in accordance with the minimum technical requirements provided by the Supplier to the Company in accordance with its Documentation. The Supplier does not provide any warranty as to quality, suitability, features, compatibility of the Software other than as mentioned in such general Documentation. Supplier represents that it does not intentionally provide the Software with any open source software that is known to be illegal or prohibited.

5.3. Services: During the Term of the Agreement the Supplier warrants that it provides its Service with reasonable care and skill, in a loyal, diligent and professional manner, in good faith and in accordance with the applicable Service descriptions. Used and rendered Services which are not disputed or rejected in writing by the Company within ten (10) Business Day after the Services have been delivered, shall be considered to have been fully accepted. Unless otherwise agreed by the Parties, after acceptance Supplier shall no longer be held liable for any deficiencies or lack of conformity.

5.4. In the event of a warranty claim, the sole recourse consists of a repair or a replacement of relevant Software elements or libraries and/or the re-performance of the applicable Services. In case, the warranty claim cannot be rectified by Supplier within reasonable time, Company may terminate the applicable Software or Services and Supplier shall proportionally refund Company for the period the Software or Services could not be used by Company, provided Company has promptly informed Supplier of such non-compliance with this warranty.

5.5. Company confirms and warrants that it has all necessary rights, licenses and consents to provide, receive, access to the content used with the Services. Company will not make available content that: (a) violates any law or infringe any rights of any third party; (b) may create a risk of harm, loss, physical or mental injury, emotional distress, death, disability, disfigurement, or physical or mental illness to Company or to any other person; (c) may create a risk of any other loss or damage to any person or property; (d) may constitute or contribute to a crime or tort; (e) contains any information or content that Supplier deems to be unlawful, harmful, abusive, racially or ethnically offensive, defamatory, infringing, invasive of personal privacy or publicity rights, harassing, humiliating to other people (publicly or otherwise), libelous, threatening, profane, obscene, or otherwise objectionable; (f) contains any information or content that is illegal; (g) contains any information or content that Company does not have a right to make available under any law or under contractual relationships; (h) contains any information or content that Company knows is not correct and current. Supplier takes not responsibility and assumes no liability for any content that

the Company makes available over the Service. Company is solely responsible for the content it makes available on the Service

**5.6.** THESE WARRANTIES ARE COMPANY'S EXCLUSIVE WARRANTIES AND SHALL REPLACE ANY OTHER WARRANTIES, EXPRESS OR IMPLIED. SUPPLIER PROVIDES ITS CONSULTANCY SERVICES IN THE FORM OF RECOMMENDATIONS. SUPPLIER DOES NOT WARRANT THE CORRECTION OF ALL DEFECTS AND DOES NOT PROVIDE ANY WARRANTY REGARDING THE ERROR-FREE OR UNINTERRUPTED OPERATION OF THE SOFTWARE. THIS AGREEMENT DOES NOT PROVIDE ANY REPRESENTATION OR WARRANTY OR LIABILITY AS TO ANY THIRD-PARTY SOFTWARE. EXCEPT FOR THE EXPRESS WARRANTIES UNDER THIS PROVISION, SUPPLIER MAKES NO FURTHER REPRESENTATION OR OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE SERVICES, THE SOFTWARE, TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON- INFRINGEMENT OR ITS ACCURACY.

## **6. INTELLECTUAL PROPERTY**

**6.1.** Nothing contained within the Agreement constitutes a transfer of any Intellectual Property Rights from one Party to the other Party and each Party acknowledges that no right, entitlement, or interest in the Intellectual Property Rights of a Party is extended to or conveyed to the other Party, except as expressly stated in the Agreement. Neither Party shall have the right to contest, claim or will undertake or try to obtain, register or apply for any Intellectual Property Rights or other rights, names, or designations owned by the other Party anywhere in the world. Neither Party shall do anything that might exhaust, misrepresent, change or otherwise compromise the ownership or Intellectual Proprietary Rights of the other Party or its suppliers under this Agreement.

**6.2.** Unless otherwise explicitly agreed by the Parties in writing, Supplier exclusively owns all rights, title and interests in all worldwide Intellectual Property Rights generated or provided with respect to the Software and Documentation or in the performance of the Services including its results under the Agreement, either specific to Company, Company's customers or in general in connection with the Agreement or arising out of the business relationship between the Parties, either during, before or after the termination of the Agreement, which shall at all times solely remain or be automatically transferred to Supplier through assignment, entitlement or otherwise, including the entire right, title and interest. For this purpose, Supplier shall also have the right to file and prosecute at its own expenses any patent application on the same above, in any country, region or jurisdiction in the world in its own name or on behalf of Company, as the case may be. Company will not take any action to remove trademarks or reference to the Software product name or website from the Software.

## **7. INDEMNIFICATION**

**7.1.** Supplier shall defend Company from and against all claims and actions brought against the Company, its officers, directors, employees, agents and successors and pay for all actual direct damages, costs, expenses, and reasonable attorney fees that a court awards or as agreed in a settlement with Supplier's approval resulting from or arising out of an infringement of any patent, copyright and trademark of any third-party caused by the use of the Software, provided that Company will give Supplier prompt notice in writing of any such claims, permits Supplier to control the defence or settlement of it and cooperates with Supplier in this respect. Company shall pay any additional costs and damages caused by its failure to comply with the obligations as set out here before. Supplier shall not be liable for settlement, related amount or any transactions agreed with regards to such infringements without the prior written consent of Supplier. Company may employ its own counsel, at its own option and expense without interference of the proceedings.

**7.2.** Such obligation of Supplier to indemnify Company does not exist if and to the extent such infringement is attributable to and caused by Company, in particular if such claim results from: (i) an alteration or modification of the Software by Company not in alignment with the Agreement and without the authorization of Supplier and the claim would not have been occurred but for such alteration or modification; or (ii) a modification of the Software as requested by Company in accordance with its specifications; (iii) the use of the Software in combination with any other product of Company or a third-party, not provided or approved by Supplier; (iv) circumstances where the Software predominantly or alone would not be the subject of the infringement claim; (v) Company's failure to install the provided Updates of the Software

that would have avoided the infringement; or (vi) where Company continues using the Software after being informed of the alleged infringing activity. Supplier provides no warranty and Company will reimburse Supplier for any costs or damages resulting from these actions.

**7.3.** In order to eliminate or avoid the infringement, Supplier may at its expense a) replace the infringing part with a non-infringing part; or b) obtain the necessary rights from relevant third parties; or c) terminate the Agreement with immediate effect and refund the Fee on a prorated basis.

**7.4.** Supplier shall have no responsibility or obligation for payment of royalties or any other compensation to third parties, if any, with respect to the use of the Software by Company or its customers, viewers, listeners for playing media content or in connection with third-party products.

**7.5.** Any claim of Company in connection with such infringement above shall be the sole exclusive remedy of Company under this Agreement.

## **8. LIMITATION OF LIABILITY**

**8.1.** Subject to the limitation set forth in this Clause (Limitation of Liability) hereafter, either Party agrees to indemnify the other Party, against all losses, damage, costs or liability, including taxes and social security contributions, interest, penalties, reasonable costs and expenses, which the other Party may incur as a result of an act, omission or breach by that Party of any of its obligations under the Agreement. For the avoidance of doubt, under no circumstance shall a Party be liable to the other Party to the extent the claims, non-performance, damages, liability or errors a) are due to an improper use, act, omission or failure of the other Party or a breach of the other Party's obligations under the Agreement; or b) were caused through circumstances not attributable to that Party's fault.

**8.2.** The Parties total aggregate liability to the other Party or to any third-party, whether in contract (including under any indemnity or warranty), in tort (including negligence) under a warranty, under statute or otherwise, under or in connection with the Agreement shall be limited to the amount of the average yearly Fees as agreed by the Parties.

**8.3.** Notwithstanding any other provision of the Agreement, neither Party shall be liable vis-à-vis the other Party or to any third-party, whether in contract, in tort (including negligence), under a warranty or indemnity, under statute or otherwise, under or in connection with the Agreement for any indirect, punitive, incidental or consequential damages, lost revenue, lost profit, interruption of use, lost or corrupted data, costs of procurement for substitution of products or services, third-party software and claims, provided information, wasted management time, loss of use of computer systems and related equipment, computer failure and malfunctions, downtime costs, however caused, arising out of the Agreement or the termination thereof even if a) the Party has been advised of the possibility of such damages; or b) the damages were foreseeable.

**8.4.** The provisions of this Clause (Limitation of Liability) shall not apply to the extent restricted or prevented by mandatory Applicable Law that cannot be amended or excluded by contractual waiver, such as deliberate acts and fraud.

## **9. CONFIDENTIALITY**

**9.1.** The receiving Party agrees to use the Confidential Information only in connection with the Agreement and undertakes that for the duration of the Agreement as well as for five (5) years thereafter, it will keep confidential and will not use for its own purposes nor without the prior written consent of the disclosing Party divulge to any third-party any Confidential Information of the disclosing Party or its activity it has received or obtained in the framework of the Agreement using at least the same degree of care that the receiving Party employs to protect its own Confidential Information, but never less than a reasonable standard. Trade secrets of a Party shall be subject to the confidentiality obligations of this Agreement at all times so long as the trade secrets remain trade secrets under Applicable Law. The disclosure within its enterprise to another Affiliate of the receiving Party or to its contractors, consultants, investors and insurers with a "need to know" for the purpose of implementing the Agreement does not require the prior written consent of the disclosing Party, provided that any of these third-parties is subject to appropriate confidentiality obligations and may not be a competitor of the disclosing Party. The disclosing Party retains all right, title, and interest to its Confidential Information.

**9.2.** The provisions of this Clause (Confidentiality) shall not apply to any Confidential Information of the disclosing Party that:



- a) at the time of disclosure, is generally known to the public through no fault of the receiving Party; or
- b) at the time of disclosure, has been made available to the receiving Party by a third-party having the lawful rights to do so without breaching any such obligation of non-use or confidentiality; or
- c) is proven by the receiving Party to have been independently developed by the receiving Party without making use of the Confidential Information of the disclosing Party; or
- d) the receiving Party is required to disclose in compliance with Applicable Laws, or to comply with governmental regulations. The receiving Party shall provide prior written notice of such disclosure to the disclosing Party and takes reasonable and lawful actions to avoid and/or minimize the degree of such disclosure and affords the disclosing Party as much notice as possible of such disclosure to allow the disclosing Party to do likewise.

**9.3.** If the receiving Party violates or threatens to violate its confidential obligations, the disclosing Party shall be entitled to seek injunctive relief without the need to post bond, in addition to any other available legal or equitable remedies.

**10. TERM**

The Agreement shall commence and expire as agreed by the Parties in writing, unless it was terminated before in accordance with its terms.

**11. TERMINATION AND SUSPENSION**

**11.1.** Without prejudice to any other rights to which it may be entitled, either Party may, without penalty or liability, terminate or temporarily suspend this Agreement, the Software or Services, or any part thereof for cause in writing with immediate effect in accordance with Applicable Law using a signed letter and without court authorization, including but not limited to the following reasons:

- a) if the other Party commits any material breach of any of the terms of the Agreement and (if such a breach is remediable) fails to remedy that breach within fifteen (15) calendar days of that Party being notified in writing of the breach; whereby the following, non-exhaustive list of events will be considered as a material breach: (i) Supplier fails substantially and repeatedly to provide its Service in accordance with the agreed warranty, support terms or agreed Service Level; (ii) the Company fails to comply with Clause 4 GTC (Fees); (iii) the Company uses the Software in contravention with the scope of the License; or
- b) if the other Party files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law or if an order is made or a resolution is passed for the winding up of the other Party or any similar or analogous action in consequence of debt;
- c) or extraordinary circumstances, unforeseen by the Parties, which would make this Agreement resulting in an illegal action of a Party; or which substantially affect and disturb the cost structure or the initial economic value of the Agreement in an unreasonable manner so that an adherence to the contract would be unreasonable or unfair, however, provided the good faith negotiations of the Parties to adjust the Agreement have failed.

**11.2.** In case of a termination, all rights granted to the Company under the Agreement shall forthwith terminate and immediately revert to the Supplier. Unless otherwise agreed, all use of the Software shall be discontinued. Each Party shall promptly return any property and delete any remaining information of the other Party, unless otherwise required by Applicable Laws.

**11.3.** Termination of the Agreement for any reason will not affect accrued rights, indemnities, existing and due commitments prior termination until their fulfilment or any contractual provision that by their nature are intended to survive termination. Any Party hereto shall not be released from any obligation which, at the time of such termination, has already become due to the other Party and termination shall not preclude either Party from pursuing any rights and remedies it may have hereunder or at law or in equity with respect to any breach of the Agreement.

**11.4.** If the Agreement is terminated by Company for cause, a prorated refund of the applicable prepaid Fee shall apply with respect to the period it was paid for. For the avoidance of doubt, in case the termination for cause was solely based on Supplier's material failure to provide its Services subject

to the agreed Service Level such refund shall be Company's sole and exclusive remedy. In case the Supplier has terminated the Agreement for cause no refund of the prepaid Fees will apply.

**11.5.** In case of termination of the Agreement by Supplier due to a material breach by Company, all unpaid Fees shall become immediately collectible, and the Supplier shall be entitled, in addition to any other remedies available to it, to take all necessary steps to collect such amounts, together with all costs, indemnities, compensations, damages, fees and expenses incurred by the Supplier.

**12. MISCELLANEOUS PROVISIONS**

**12.1. Order Form:** Parties may use a purchase order for the purpose of entering into a specific business transaction with commercial terms as agreed by Parties, in the format as provided by Supplier, either via document, email, the internet or in any other way and format the Parties may agree. The Supplier shall review the purchase order submitted and duly signed by Company within due time for acceptance. Supplier may accept such purchase order through a documented and authorized confirmation without the need of signing it. Without such confirmation, the purchase order is considered to be void, unless otherwise agreed by the Parties. Each purchase order shall be deemed to be a separate agreement between the Parties incorporating these General Terms and Conditions. Any other conflicting terms and conditions on such purchase order, not explicitly signed by the Parties, shall be void.

**12.2. Personnel:** Either Party is responsible for all activities conducted and compliance by its personnel, employees, agents, subcontractors and Affiliates that they may engage for the performance of its obligations under the Agreement.

**12.3. Independent Contractors:** Both Parties are independent contractors under the Agreement. Consequently, nothing in the Agreement is intended or may be construed so as to establish a partnership or joint venture between the Parties and neither Party shall have the authority (actual or apparent) to bind the other Party.

**12.4. No Implied Rights:** Other than expressly provided for in the Agreement, nothing in the Agreement grants or shall be construed to grant to any Party any further or implied right or license to any Intellectual Property right or application therefore (including but not limited to patent applications or patents) which are held by or in the name of the other Party or which are controlled by the other Party, or to any Confidential Information received from the other Party.

**12.5. Marketing:** Unless otherwise agreed by the Parties in the Agreement and solely to identify each other's business relationship, each Party hereby grants the right to the other Party to refer to the Party's name, trademarks and logo in the form as used and agreed by the Parties in the Agreement and in accordance with the Party's trademark guidelines and instruction of the other Party's webpage, in marketing and publicity materials. Any other use requires a prior written approval, which shall not unreasonably be withheld.

**12.6. Force Majeure:** Except for payment obligations, neither Party shall be held in breach of its obligations hereunder to the extent only that due performance or observance of such obligation is prevented or delayed by any cause beyond reasonable control of such Party ("Force Majeure"), including, but not limited to, war and other hostilities, civil commotion, accident, epidemics and pandemics, trade disputes, strikes or lock-outs, floods, fire, explosion, terror attacks, acts or restraints of government imposition or restrictions of imports or exports or any other cause not within the control of the Party concerned. The Party concerned shall forthwith notify the other Party of the nature and effect of such event and both Parties shall, where the same is practicable, use every reasonable endeavour to minimize such effect and to comply with the respective obligation herein contained as nearly as may be in their original form.

**12.7. Costs:** Save as otherwise provided in the Agreement, each Party bears its own costs relating to the negotiation, preparation and execution and implementation by it of the Agreement and of all other ancillary documents.

**12.8. Notices:** All notices or other communication required or permitted to be given in writing under the Agreement must be given in the English language by email (confirmed by registered mail or express courier service), to the addresses listed in the Agreement or such other addresses as the Parties may have designated to each other by notice given in accordance with the Agreement.

**12.9. Assignment:** This Agreement and any right or obligation thereunder is binding upon and inures for the benefit of the successors of the Parties but

may not be assigned or otherwise transferred in whole or in part to a third person without the prior written consent of the other Party, which shall not unreasonably be withheld. Such prior consent is not required for the assignment to an Affiliate or investors by way of a performance security or in case of a merger or acquisition by a third party who is not a direct competitor from the same industry of the non-assigning Party. Payment of receivables under the Agreement may be assigned for the purpose of debt collection or factoring without prior consent but require a written notification to the other Party.

**12.10. Waivers:** No failure or delay by any Party in exercising any right or remedy provided by law or pursuant to the Agreement will impair such right or remedy or be construed as a waiver of it and will not preclude its exercise at any subsequent time and no single or partial exercise of any such right or remedy will preclude any further exercise of it or the exercise of any other remedy.

**12.11. No Solicitation:** In order to protect the commercial interests of the Supplier, Company may not during the term of the Agreement directly or indirectly, without the prior written consent of the Supplier: a) induce or attempt to induce any employee, agent, consultant or employee or agent of the Supplier to leave the employment of the Supplier; or hire any such employee, agent or (former) employee or consultant in any business or capacity; b) actively request any specific customer of Supplier to withdraw, curtail, or cancel its business with the Supplier; c) in competition with the Supplier engage or contract any direct customer or prospect of the Supplier, except for any products and services that are different from the Software and Services provided under this Agreement. This restriction is geographically limited to the countries where Supplier conducts or has the intention to conduct its business. This restriction survives the termination of the Agreement for a maximum period as permitted by Applicable Law, but no less than for two (2) years.

**12.12. Severability:** If any provision of the Agreement or of any of the documents contemplated in it is held to be invalid or unenforceable, then such provision will (so far as it is invalid or unenforceable) have no effect and will be deemed not to be included in the Agreement or the relevant document, but without invalidating any of the remaining provisions of the Agreement or that document. The Parties must then use all reasonable endeavours to replace the invalid or unenforceable provision by a valid and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid or unenforceable provision.

**12.13. Reproduction:** Any reproduction of this Agreement made by reliable means, such as photocopy, PDF, or facsimile, is considered to be an original.

**12.14. Dispute Resolution:** At all times, Parties shall endeavour in good faith to resolve any dispute and matter arising out of this Agreement by amicable solutions and good faith negotiations. For such purpose, either Party may upon prior written notice within reasonable time request an extraordinary meeting of Parties' relevant management team members, in order to discuss an amicable resolution.

### **13. GOVERNING LAW AND JURISDICTION**

**13.1. US Supplier Entity:** The Agreement is governed by and must be construed, interpreted in accordance with the laws of New York without given effect to the conflict of law principles thereof. The courts of New York City in Manhattan have exclusive jurisdiction over any dispute, legal action and proceedings arising out of or related to the Agreement, including its termination, which shall be binding and enforceable upon the Parties worldwide.

**13.2. Belgian Supplier Entity:** The Agreement is governed by and must be construed, interpreted in accordance with the laws of Belgium without given effect to the conflict of law principles thereof. The courts of Brussels have exclusive jurisdiction over any dispute, legal action and proceedings arising out of or related to the Agreement, including its termination, which shall be binding and enforceable upon the Parties worldwide.

**13.3.** In the event of any proceeding or litigation arising out of this Agreement, the prevailing Party shall be entitled to recover from the nonprevailing Party its legal fees, court fees and related costs to the extent and in ratio of its success. Notwithstanding the foregoing, Supplier may bring legal actions against the Company in the country of incorporation, if it deems necessary for the enforceability of the payments by Company under the Agreement.