

GENERAL TERMS AND CONDITIONS

These General Terms and Conditions (“GTC”), together with the applicable Order Forms, constitute a binding agreement between the THEO Technologies group entity specified in the relevant Order Form (“Supplier”), and the client contracting entity specified in the relevant Order Form (“Company”).

GENERAL

These GTC apply to the Company’s use of any of the Solutions and the Services provision, unless a specific provision is expressly designated herein as applicable only to a particular Solution or Services category. The Company’s access to and use of a particular Solution may be additionally subject to Solution-specific terms and conditions, specified in the relevant Order Form, additionally to be accepted by the Company to be able to access and use such Solution.

Solutions will be purchased pursuant to Order Forms, governed by these GTC by reference. By entering into an Order Form, the Company is deemed to have accepted the GTC.

In the event of a conflict between the GTC and an Order Form, the Order Form will govern.

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

Agreement means the GTC and specific Order Form combined, as amended or extended from time to time by the Parties according to the terms (t)herein.

Affiliate means with respect to a Party, any other person directly or indirectly controlling, controlled by or under common control with such Party. For the purposes of this definition, the term “control” 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 Law 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 anti-corruption laws, anti-terrorism and money laundering laws, import and export control laws, economic sanction and anti-boycott laws, data privacy laws, safety and security laws, staff and labour laws.

Confidential Information means any written, oral or visual information of a 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 the content of an Agreement, samples and information relating to the Solution and Services specifications, the Solutions, any source and object code, all commercial, scientific and technical matters, inventions and trade secrets, intellectual property and Intellectual Property Rights and any patentable technical or other information, 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.

Documentation means such documentation as ordinarily made available by Supplier to its customers to facilitate the use of the Solution, which may include general documentation regarding the Solution descriptions, the features and compatibility of the Solution, including user manuals and operational instructions for the Solution.

Fee has the meaning ascribed to it in Clause 4.1.

Force Majeure has the meaning ascribed to it in Clause 13.6.

Intellectual Property Rights means any and all existing and future, registered or unregistered, intellectual property and other proprietary rights, including moral rights, copyrights, patents, utility models, all rights of whatsoever nature in computer software and data, database rights, rights in digital data, trade and service marks, trade names, service and product names, rights in logos and get-up, inventions and discoveries, Confidential Information, model and design rights, as well as know-how and trade secret rights, and all intangible rights, privileges, and all rights of a similar nature 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 include rights to any enhancements, customization, modifications, derivative work and new inventions, developments, improvements or updates and upgrades thereof, of any kind.

Managed Infrastructure means the hardware and software, including hardware, software, servers, networks and technology installed within the hosted environment, through which the SaaS Solution and support Services are provided, excluding any hardware, software or telecommunication networks outside of the scope of the Supplier’s span of control (such as, but not limited to, the software or hardware the Company requires to remotely access the SaaS Solution or support Services, the internet and the telecommunications networks used by the Company to connect to the Managed Infrastructure).

Order Form means an order form entered into between the Company and the Supplier and governed by these GTC by reference, for the purchasing by the Company of Software licenses and/or SaaS subscriptions and related support Services.

SaaS means the Supplier proprietary software as a service solution to which the Company may be granted a subscription as specified in an Order Form. SaaS includes any Update and Upgrades to the extent agreed in accordance with the Upgrades definition.

Services shall mean any service offering agreed by the Parties pursuant to this Agreement as specified in a Statement of Work or Order Form, which may include Solution-related maintenance and support Services, SaaS, consulting and integration services, or other professional services. Services only comprise those services expressly stipulated to be in scope, excluding any implied services.

Software means the Supplier’s proprietary downloadable software (in object code and source code form, except that for the purpose of any Software licenses granted to the Company, “Software” shall mean the Software in object code form only) as may be licensed to the Company as specified in an Order Form. Software includes any Update and Upgrades to the extent agreed in accordance with the Upgrades definition.

Solution means the Software and/or SaaS, as applicable.

Statement of Work means a statement of work entered into between the Parties and governed by these GTC by reference, for the purchasing by the Company of Services (other than Solution maintenance and support Services and SaaS).

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.

Term means the term of an Agreement (Initial Term and Renewal Terms (as defined in Clause 11.2.) combined) in relation to a particular Solution, in accordance with these GTC.

Updates means all updates, modifications and releases of new versions of a Solution 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 or made available to Company at Supplier’s discretion.

Upgrades shall mean all modifications, new features, enhancements, releases of new or customized versions of a Solution 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 the Agreement, are to be separately agreed between the Parties and are subject to additional agreed charges.

1.2. Interpretation

In these GTC (unless the context requires otherwise):

- a) Words importing the singular include the plural, words importing a particular gender include the other genders and words importing persons include bodies corporate and incorporate; and in each case *vice versa*;
- b) The headings and captions contained in these GTC are for convenience only and will not affect the meaning, construction or interpretation of the GTC;
- c) Whenever the words “include(s)”, “including”, “in particular”, or “particularly” or similar are used in the GTC, the enumeration that follows will be deemed to be non-exhaustive.

2. SOLUTIONS

2.1. Software license – SaaS subscription

The Supplier grants to the Company, and the Company accepts from the Supplier, the Software license and/or SaaS subscription as specified in the Order Form. Software licenses and SaaS subscriptions granted are personal (non-transferable, non-assignable, without the right to sublicense), limited, and non-exclusive, for use of the Solution in accordance with its Documentation, for the Company’s business purposes as expressly permitted in the Order Form.

In the event of a SaaS subscription, the Company will not be granted a copy of the software underlying the SaaS Solution. The Software license and SaaS subscription include the right to use the Documentation for the purposes of the license and subscription. Any use not expressly stipulated to be in scope of the Solution user rights granted to the Company requires the prior written consent of the Supplier which (if granted, at its discretion) it can make subject to additional or deviating terms and conditions and the payment of additional charges by the Company. All Software licenses granted are object code licenses (notwithstanding any contrary or conflicting provisions in the GTC or Order Form).

Company will not: (a) modify, create any derivative work of, or incorporate the Solution or any portion thereof into any other product or service (unless expressly agreed in writing between the Parties); (b) copy, rent, lease, sell, transfer, distribute, sublicense, disclose or otherwise make available any part of the Solution or Service (unless expressly agreed in writing between the Parties); (c) use the Solution or Service for any illegal purpose or in violation of any Applicable Law or contractual obligation; (d) bypass user authentication or try to gain unauthorized access to the Solution or Service; (e) share passwords or authentication credentials for the Solution or Service with another person or legal entity; (f) transmit viruses, worms or other software agents through the Solution or Service; (g) use the Solution or Service in a such a way that it impacts the stability of Supplier’s servers or the operation or performance of the Solution or Service.

The Company grants to the Supplier a limited, non-exclusive license to use and distribute any content used by the Company within the Solution or Services for the purposes of the Services provision.

2.2. Reverse Engineering and Modifications

Unless otherwise agreed by the Parties in writing, and except to the extent such restriction is prohibited by Applicable Law, Company shall not under any circumstances (attempt), or cause or permit others to (attempt to) modify, adapt, port, merge, decompile, disassemble, reverse engineer, decipher, or decrypt the Solution or otherwise discover the source code or any other parts of the mechanisms and algorithms used by the Solution, or remove restrictions or create derivative works of (any part of) the Solution.

3. SOLUTIONS, SERVICES AND DOCUMENTATION

3.1. Solutions and Services scope

Supplier shall provide the Software licenses and perform the Services expressly agreed to be in scope of an Order Form or Statement of Work, in accordance with the terms and conditions of the Agreement. There are no implied products or services and any changes to the agreed scope will be subject to a change request.

3.2. Documentation

The Supplier shall make the Documentation available to the Company on its website <http://www.theoplayer.com> (or as otherwise communicated from time to time). Company may not use the Solutions or Services for any purpose, function or feature not described in the Documentation and Order Form or Statement of Work.

3.3. Support

General documentation regarding the minimal technical requirements, the suitability, the integration, the features, and compatibility of the Solutions will be made available on the Supplier’s website.

Except for the support Services expressly defined in the Agreement, the Supplier has no obligation to provide any maintenance, support or training to

Company. Such services, if within the Supplier’s offering, may be separately purchased by Company, subject to additional fees.

4. FEES AND PAYMENT TERMS

4.1. Fees

4.1.1 The Company shall pay to the Supplier all fees as specified in the Agreement or otherwise agreed between the Parties in writing, which may include Software license fees, SaaS subscription fees, Services fees or other charges for the performance of the Services and delivery of Software licenses under the Agreement (the “Fee”). All Fees indicated and agreed by the Parties are exclusive of applicable Taxes, and do not include any travel and living expenses incurred by Supplier in performing the Agreement. Where reasonably possible, such expenses shall be subject to the Company’s consent (not to be unreasonably delayed or withheld) and shall be evidenced by receipts.

4.1.2 The Supplier shall provide fully purchased functionality of the Solutions if Company has paid the Fees in accordance with the Agreement.

4.1.3 Supplier may adjust the structure and amount of the applicable Fee:

- a) annually, both upon renewal or extension of the then-current Term of the Agreement, and upon expiry of a twelve-month period within the Term, without any additional formalities being required, on the basis of (i) the Belgian Consumer Price Index (if the Agreement is entered into by a Belgian Supplier entity), or (ii) the All Items Consumer Price Index for All Urban Consumers (CPI-U) (if the Agreement is entered into by a US Supplier entity);
- b) at any time, in case Parties have agreed to a specific Upgrade of the Service; or
- c) as agreed between the Parties, in the event of a change in circumstances of an economic nature, unforeseeable at the time of the conclusion of the Agreement and foreign to Supplier, which would have the effect of upsetting the economic basis of the commercial relationship existing between the Parties to the point of making it seriously prejudicial and/or difficult for Supplier to perform its obligations hereunder, in which case the Parties, upon Supplier’s request, undertake to renegotiate the financial conditions in a spirit of cooperation and fairness with a view to returning to a position of equilibrium comparable to that which existed before the occurrence of this change in circumstances.

Any adjustment of the 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 Fees payable by Company shall be adjusted upwards with the amount of the withholding Taxes such that the net amount received by Supplier shall not be less than such payments would have been in the absence of such withholding. Company shall notify Supplier in writing and in advance of any withholding tax.

4.2. Invoicing and Payment

4.2.1. The invoices will be sent electronically to Company’s billing e-mail address specified in the Order Form or Statement of Work (subject to timely notification of changes). If the Company requires a PO to be referenced on the invoice, the Company must timely provide such PO information to the Supplier so as to avoid delaying invoicing under the agreed invoicing schedule. If the Company fails to meet this obligation, Supplier may issue its invoices in line with the contractually agreed invoicing schedule without such PO reference, which invoices shall be payable as set forth herein.

4.2.2. Unless agreed otherwise in the Order Form or Statement of Work, undisputed invoices must be paid within thirty (30) days from receipt. If the Company disputes any portion of an invoice, it must notify Supplier without undue delay and in any event within the payment term of the nature of any such dispute and the amount involved, failure of which shall result in the invoice being deemed accepted. The undisputed portion of the invoice shall be paid as set forth herein.

4.2.3 In the event of any undisputed, past due invoices which are not paid within ten (10) days from the date of a payment default notice by Supplier:

- a) Any overdue invoiced amount shall automatically be subject to an interest of one percent per month or the maximum permissible rate under Applicable Law, whichever is the highest, and the Company shall also pay the extrajudicial recovery expenses and legal costs incurred by Supplier as a result of the late payment;
- b) The Supplier may immediately suspend its obligations and the Company’s rights hereunder (including the activation and delivery of the

Solutions and Services) without prior notice until full payment of all amounts due; and

- c) The Supplier may, upon reasonable doubts regarding the creditworthiness of the Company, request Company to deliver, upon first demand, such guarantees and securities which the Supplier deems appropriate to ensure proper execution of the Company's payment commitments.

4.3. Monitoring

For the purposes of reporting, invoicing, royalty payment, security, service quality and quality of experience, and analytical purposes only, Supplier may monitor the usage and quality of the Solutions and Services.

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.

5.2. To the maximum extent legally permitted, Supplier disclaims all warranties, express or implied, statutory or otherwise, in respect of the Solutions, the Documentation, any Services, third-party software or services, and the Agreement in general, including any warranties of merchantability, fitness for purpose, quality, compatibility, title and non-infringement. Supplier does not warrant that the Solutions or Services will function without interruption, will be error-free or that all errors will be corrected.

5.3. Supplier may, at its discretion, make changes or updates to the Solutions, Managed Infrastructure, the Documentation, and support Services from time to time, in particular to reflect changes in technology, industry practices, and patterns of systems use, provided such changes or updates do not significantly reduce the contractually agreed functionality.

The Supplier's undertaking to provide the Services, and any associated warranties as may be set out in the Agreement, are conditional on the Company timely putting in place and maintaining all hardware, software, systems and network connectivity needed to connect to and use the Services, including in accordance with the system specifications and minimum requirements as may be specified in the Documentation or as otherwise communicated by the Supplier from time to time (provided the Supplier has granted the Company a reasonable time to implement any changes to such requirements). The Supplier shall not be responsible for any delays or additional fees and costs resulting from the Company's failure to timely meet the above requirement.

5.4. Company confirms and warrants that it has all necessary rights, licenses and consents to (provide) access (to) the content used with the Solutions and Services. Company will not make available content that: (a) violates any Applicable Law or infringes 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; (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 is, or is reasonably to be considered, 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 Applicable Law or under contractual relationships; (h) contains any information or content that Company knows is not correct and current. Supplier assumes no responsibility and cannot be held liable for any content that the Company makes available in/over the Solution or Service. Company is solely responsible for such content and shall defend and indemnify the Supplier against any third-party claims based on a breach of this Clause by the Company.

5.5. If Supplier will process personal data in connection with providing the Solutions and Services to Company, then the Parties will execute documents required under Applicable Law, such as data processing addenda and the appropriate Standard Contractual Clauses of the Regulation (EU) 2016/679 (General Data Protection Regulation).

6. INTELLECTUAL PROPERTY

6.1. Nothing contained within an Agreement constitutes a transfer of any Intellectual Property Rights from one Party to the other Party and each Party acknowledges that no right, title, or interest, including the Intellectual Property Rights, of a Party is granted to the other Party, except for the limited licenses as expressly stated in the Agreement. Neither Party shall contest or claim the other Party's Intellectual Property Rights, or will try to obtain, register or apply for any Intellectual Property Rights or other rights, names, or designations (confusingly similar to those) owned by the other Party

anywhere in the world. Neither Party shall do anything that might exhaust, misrepresent, change, encumber or otherwise compromise the ownership or Intellectual Property Rights of the other Party or its licensors under the Agreement.

6.2. Supplier exclusively owns all rights, title and interests, including all Intellectual Property Rights, in, generated by, or provided with respect to the Solutions, the Documentation, or the Services, including in any results generated by the aforementioned or resulting from the Solution or Services performance (including Updates and Upgrades, but excluding Company content), whether specific to Company or Company's customers, or generic, in connection with the Supplier's business, whether arising during, before or after the termination of an Agreement, which rights shall at all times solely remain with, or be automatically transferred to, Supplier, and if not so automatically transferred by operation of law, the Company hereby assigns all such rights, title and interest to the Supplier, at no cost to the latter. For this purpose, Supplier shall also have the right to file and prosecute at its own expenses any Intellectual Property Rights application in respect of the same, in any country, region or jurisdiction in the world in its own name. Company will not take any action to remove or obliterate any trademarks, notices or references to the Supplier or the Solution product name or website from the Solutions or Services.

7. THIRD PARTY SERVICES

7.1. Company may choose to use third-party services and products not provided by the Supplier ("Third-Party Services") with the Solution or Service. Company agrees that the use of such Third-Party Services is governed solely by the terms of such Third-Party Services. Supplier does not warrant or support Third-Party Services. Supplier assumes no responsibility for the Third-Party Services or any disclosure, modification or deletion of data by the Third-Party Services. Supplier shall have no responsibility or liability for, and Company is not relieved from any obligations under an Agreement or entitled to any refund, credit, or other compensation, due to any unavailability, non-performance or underperformance of the Third-Party Services, or any change in the ability of Supplier to interoperate with the Third-Party Services. Supplier shall maintain and make available a list of third-party software that may be provided in connection with the Services. For the avoidance of doubt, Supplier is not a sub-licensor of such third-party software and the above disclaimer in respect of Third-Party Services equally applies to such third-party software.

7.2. Supplier shall have no responsibility or obligation for payment of royalties or any other compensation to third parties with respect to the use of the Solution or Service by Company or its customers, viewers, or listeners for playing media content or in connection with Third-Party Services.

8. INDEMNIFICATION

8.1. Subject to Clause 9, Supplier shall defend Company from and against all third-party claims and actions brought against the Company to the extent resulting from an infringement of a third party's copyright or trade secret caused by the use of the Solutions and shall indemnify the Company against all actual direct damages, costs, expenses, and reasonable attorneys' fees as awarded by a competent court of final instance or as agreed by the Supplier in a settlement either with Company's approval or which settlement fully releases the Company from any liability in respect of the claim in accordance with the terms of the Agreement. Such indemnity undertaking is contingent on the following: (i) Company will give Supplier prompt written notice of any such claims, (ii) Company grants Supplier sole control of the defence and settlement of the claim and cooperates with Supplier in this respect, at Supplier's request and expense, and (iii) Company makes no admission as to the Supplier's responsibility in respect of the claim nor does Company agree to any settlement in respect of such a claim without Supplier's prior written consent. Company shall pay any costs and damages caused by its failure to comply with the obligations as set out above. Supplier shall not be liable for any settlement or any transactions agreed with regards to such (alleged) infringements without the prior written consent of Supplier. Company may employ its own counsel, at its own option and expense, without interference in the proceedings.

8.2. Such obligation of Supplier to indemnify Company does not exist if and to the extent such infringement is attributable to: (i) an alteration or modification of the Solution other than by Supplier if the infringement would not have occurred but for such alteration or modification; (ii) a modification of the Solution as requested by Company in accordance with its specifications; (iii) the use of the Solution in combination with any non-Supplier product or service, if the infringement would not have arisen but for such combination; (iv) the unauthorized use of the Solution; (v) circumstances where the Solution predominantly or alone would not be the subject of the infringement claim; (vi) Company's failure to use the most

recent version of the Solution or Service made available by the Supplier, or to integrate or install the provided Updates of the Solution that would have avoided or cured the infringement; (vii) Company continuing to use the Solution after being informed of the (alleged) infringement; or (viii) the Solution incorporating documents, materials, data, content or other information provided by or on behalf of the Company. Supplier provides no indemnity in respect of the foregoing and Company will reimburse Supplier for any costs or damages resulting from these actions or omissions.

8.3. In order to eliminate or avoid the infringement, Supplier may at its option and expense a) replace the (alleged) infringing part with a non-infringing part; b) obtain the necessary rights from relevant third parties to allow the Company to continue using the Solution as permitted under the Agreement; or c) terminate the (affected portion of the) Agreement with immediate effect and refund any pre-paid portion of the corresponding Fee on a prorated basis, covering the period after the actual termination.

8.4. The Supplier's indemnity undertaking as set out above shall be the sole and exclusive remedy of Company under this Agreement in respect of an (alleged) infringement by the Solution of any third-party rights and related claims.

9. LIMITATION OF LIABILITY

9.1. To the maximum extent legally permitted, Supplier will not have any liability to Company for any harm or damage arising out of or in connection with any free access to the Solutions or Services (if applicable, at the Supplier's discretion).

9.2. To the maximum extent legally permitted, a Party's total aggregate liability under an Agreement, whether in contract (including under any indemnity or warranty), in tort (including negligence and product liability), under statute or otherwise, shall be limited to the amount of the average yearly Fees paid under such Agreement in respect of the Solution that is the subject of the liability.

9.3. To the maximum extent legally permitted, neither Party shall be liable under an Agreement, whether in contract, in tort (including negligence), under a warranty or indemnity, under statute or otherwise, for any indirect, punitive, incidental or consequential damages, lost revenue (other than any termination compensation as may be specified in Clause 12), lost profit, interruption of use, lost or corrupted data, costs of procuring substitute products or services, Third-Party Services and third-party claims (other than any indemnity undertakings to the extent expressly set out in these GTC), provided information (other than as expressly stipulated in respect of Company content), wasted management time, loss of use of computer systems and related equipment, computer failure and malfunctions, downtime costs, opportunity loss, loss of anticipated savings, or reputational damage, 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.

9.4. The Supplier shall provide the SaaS solution through the Managed Infrastructure and does not control, nor accept any responsibility in relation to, any event occurring outside of, or any software, hardware, network or other infrastructure component outside of, the scope of the Managed Infrastructure. The Supplier shall not provide for any Company-side hardware or software, or services (including programming or training), or hardware or software not expressly defined in the Agreement to be a Supplier responsibility.

10. CONFIDENTIALITY

10.1. 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 relating to its activity which it has received or obtained in the framework of the Agreement. The receiving Party will protect the disclosing Party's Confidential Information 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 to an Affiliate of the receiving Party or to its or its Affiliates' employees, contractors, consultants, officers, directors, professional advisers, investors and insurers (jointly "Representatives") 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 (as reasonably determined by the latter). The receiving Party shall be responsible for a breach of confidentiality hereunder by its Representatives. The disclosing Party retains all right, title, and interest to its Confidential Information.

10.2. The confidentiality undertakings 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, or subsequently falls into the public domain, through no fault of the receiving Party; or
- b) at the time of disclosure, has been made available to the receiving Party by, or is subsequently obtained from, in each case without confidentiality restriction, 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 Law, a court order, or to comply with governmental regulations. To the extent legally permitted, the receiving Party shall provide prior written notice of such disclosure to the disclosing Party and take reasonable and lawful actions to avoid and/or minimize the degree of such disclosure and will afford the disclosing Party as much notice as possible of such disclosure to allow the disclosing Party to do likewise.

10.3. If the receiving Party violates or threatens to violate its confidentiality 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.

11. TERM

11.1. These GTC shall remain in force indefinitely, and may be terminated by either Party at any time on giving at least ninety (90) days' prior written notice. In the event the GTC are terminated, no new Order Forms can be entered into; however, termination of the GTC shall not automatically result in the termination of any then current Order Forms, which shall remain in force and governed by the GTC until separately terminated as permitted hereunder.

11.2. Order Forms are entered into for such fixed term as specified in the Order Form, which term may differ depending on the Solution in scope (if multiple Solutions are covered by the same Order Form) (the "Initial Term"). Upon expiry of the Initial Term, the Order Forms shall automatically renew for successive 12-month periods (or as otherwise specified in the Order Form) (each a "Renewal Term") unless terminated by either Party on giving at least ninety (90) days (or as otherwise stipulated in the Order Form) written notice prior to the expiry of the then current term (Initial Term or Renewal Term), i.e. termination becoming effective upon expiry of the Initial Term or Renewal Term (as applicable). Except as expressly stipulated above, to avoid Order Form renewal, Order Forms may not be terminated early for convenience, the Order Form term being a fixed, committed term.

12. TERMINATION AND SUSPENSION

12.1. Without prejudice to any other rights to which it may be entitled:

- a) either Party may, without termination penalty or liability, with immediate effect by written notice, terminate the GTC or affected (portion of the) Order Form, for cause:
 - i) if the other Party commits a material breach of any of the terms of the Agreement and (if such a breach is remediable) fails to remedy that breach within thirty (30) calendar days of that Party being notified in writing of the breach; or
 - ii) 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.
- b) Supplier may, without termination penalty or liability, with immediate effect by written notice, terminate the GTC or affected (portion of the) Order Form, for cause in the event the Parties fail to renegotiate the financial conditions to a mutually acceptable level under clause 4.1.3 (c), within a reasonable period from the Supplier's request under said clause.

12.2. In case of a termination, regardless of the ground for termination, all rights granted to the Company under the Agreement shall forthwith terminate and immediately revert to the Supplier, and the Supplier's obligations shall terminate. Unless otherwise agreed, all use of the Solutions

and Services shall be discontinued. Each Party shall promptly return any property and delete any remaining information of the other Party, unless otherwise required by Applicable Law. In instances where a Party may terminate for cause, it may alternatively, at its option, suspend the relevant Agreement until the underlying cause has been remedied.

12.3. Termination of an Order Form for any reason will not affect accrued rights or liabilities, or any contractual provisions that expressly or by their nature are intended to survive termination. Neither Party shall 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.

12.4. If (a portion of) an Order Form is terminated by Company for cause (Clause 12.1), a prorated refund of any applicable prepaid Fee in respect of such terminated (portion of an) Order Form, covering the period after the actual termination, shall apply. In case the Supplier has terminated (a portion of) an Order Form for cause pursuant to Clause 12.1(a) or (b), or if the Company terminates (a portion of) an Order Form other than as expressly permitted hereunder, no refund of the prepaid Fees will apply, and Fees for the full committed Term (Initial Term and/or Renewal Term) will remain payable by the Company and will become payable upon such early termination.

12.5. The Supplier may suspend Services provision without liability (i) as strictly required in the event it were to become legally compelled to do so (including in order to comply with a legal, regulatory, law enforcement or other governmental request). In such event, the Supplier shall notify the Company without undue delay to the extent legally permitted; and (ii) for the purposes of scheduled (as per the terms of the applicable SLA) and emergency (including in the event of the security of the Managed Infrastructure being compromised) maintenance (will be communicated to the Company without undue delay, and upfront to the extent reasonably practicable) on the Managed Infrastructure.

13. MISCELLANEOUS PROVISIONS

13.1. Each Order Form, when duly signed by the Parties, shall be deemed to be a separate Agreement between the Parties incorporating these GTC. The Order Form and GTC combined (including their annexes, if any) will constitute the entire agreement and understanding between the Parties regarding the subject matter of the Agreement, superseding all prior oral or written agreements, representations or understandings between the Parties relating to the same. Any other conflicting or additional terms and conditions (e.g. as included in a Company purchase order), shall be void and are hereby expressly refused and rejected, even if Supplier does not refuse or reject such terms and conditions on a case by case basis. No statement, representation, warranty, covenant or agreement of any kind not expressly set forth in the Agreement shall affect, or be used to interpret, change or restrict, the express terms and conditions of the Agreement. Notwithstanding the foregoing, in the event the Supplier publishes a new version of these GTC on its website, such new version shall automatically replace the then applicable GTC version, including with respect to then current Order Forms, it being agreed that any such changes may not result in a unilateral change to essential Agreement elements or financial terms without reasonable valid grounds. In the event of a conflict between the GTC and an Order Form, the Order Form will govern. In the event of a conflict between the GTC or an Order Form and their respective annexes, the annexes will prevail.

13.2. Personnel: Either Party is responsible for all activities conducted by, and compliance with the terms of the Agreement by, its and its Affiliates' personnel, employees, agents, and subcontractors that they may engage for the performance of its obligations or exercise of its rights under the Agreement.

13.3. 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.

13.4. No Implied Rights: Other than the limited licenses expressly granted 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 any Affiliate or which are controlled or licensable by the other Party or any Affiliate, or to any Confidential Information received from the other Party.

13.5. Marketing: Unless otherwise agreed by the Parties in the Order Form and solely to identify the Parties' business relationship under the

Agreement, each Party hereby grants to the other Party the right, at no cost, to refer to its name, trademarks and logo in marketing and publicity materials, in the form as used and agreed by the Parties in the Agreement and in accordance with the Party's trademark guidelines and instructions as communicated from time to time (which may include such information being made available on the other Party's webpage). Any other use requires a prior written approval, which shall not unreasonably be withheld. The Company acknowledges and agrees that its rejection of the above will result in a Fee increase.

13.6. 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 the 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 reasonable endeavours to minimize such effect and to comply with the respective obligations herein contained as nearly as may be in their original form.

13.7. 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.

13.8. 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.

13.9. Assignment: The 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, provided that any assignment to a competitor of the other Party shall be void unless with such Party's prior written consent which it may deny in its sole discretion. 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 (as reasonably determined by the latter). 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.

13.10. Waivers: No failure or delay by any Party in exercising any right or remedy 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 such right or remedy, or the exercise of any other right or remedy.

13.11. No Solicitation: In order to protect the commercial interests of the Supplier, Company may not, during the term of the Agreement and for twelve months thereafter, directly or indirectly, without the prior written consent of the Supplier: a) induce or attempt to induce any employee, agent, or consultant of the Supplier or its Affiliates to leave the employment of the Supplier or its Affiliates; or hire any such employee, agent or consultant in any business or capacity; b) actively request any specific customer of Supplier or its Affiliates to withdraw, curtail, or cancel its business with the Supplier or its Affiliates; c) in competition with the Supplier engage or contract any customer or prospect of the Supplier or its Affiliates. 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 to the maximum extent permitted by Applicable Law.

13.12. Severability: If any provision of the Agreement or of any of the documents referenced 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.

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

13.14. Dispute Resolution: Parties shall endeavour in good faith to resolve any dispute arising out of this Agreement by amicable resolution 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.

14. GOVERNING LAW AND JURISDICTION

14.1. US Supplier Entity: The Agreement is governed by and must be construed and interpreted in accordance with the laws of New York without giving 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 decision shall be binding and enforceable upon the Parties worldwide.

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

14.3. In the event of any proceeding or litigation arising out of this Agreement, the prevailing Party shall be entitled to recover from the non-prevailing Party its reasonable documented 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 the Company's incorporation, if it deems it necessary for the enforceability of the payments by Company under the Agreement.