

arKitect General terms and conditions

KNOWLEDGE INSIDE GENERAL TERMS AND CONDITIONS

? Unknown Attachment

THESE GENERAL TERMS AND CONDITIONS (the “**Terms and Conditions**”) shall govern the relationship between **KNOWLEDGE INSIDE**, a French limited liability company with registered office located at 7 bis rue Jean Mermoz, 78000 Versailles, France, registered under number 488 446 543 RCS Versailles (hereinafter “**Supplier**”) and any party purchasing applications and services from Supplier (hereinafter referred to as “**Client**”).

Supplier and Client will each be referred to herein as a “**Party**” and collectively as the “**Parties**”.

PREAMBLE

- Supplier designs, develops and markets a highly specific and innovative software known as the “**arKitect Software**”, incorporating proprietary confidential information of Supplier. The arKitect Software is available either in SaaS mode, accessible through the Internet, or in license mode, installed on Client’s servers;
- Supplier also provides various services, together with or in addition to the arKitect Software;
- For purposes of contracting under these Terms and Conditions, it is assumed that Client has made the required checks to ensure that the arKitect Software and the services ordered by Client are suited to its goals and business needs and that Client has received all necessary preliminary information and advice from Supplier relating to the provision of same; in particular, Client agrees that it has had online access to the description and specifications of the arKitect Software at <http://support.k-inside.com> on the page entitled “arKitect x.y.z documentation”;
- Client desires to access and use the arKitect Software and to be provided with certain related services, as set forth in the Purchase Order(s) signed by Client;
- By signing a Purchase Order for the arKitect Software and related services, the Client irrevocably accepts the Terms and Conditions hereof, which shall govern the provision of the arKitect Software and related services, exclusive of any other terms or conditions, including those of Client, and Client agrees to be legally bound by these Terms and Conditions.

SECTION I – GENERAL TERMS

The general terms of this Section I shall always apply to the relationship between Client and Supplier, whether Client has opted for the SaaS Mode (Section II) or for the License Mode (Section III).

ARTICLE 1: Definitions

For purposes of this Agreement, the terms listed below shall have the following meanings:

“**Agreement**”: shall mean collectively these Terms and Conditions, the Specifications and any and all Purchase Orders signed by Client.

“**Applications**”: shall mean the applications, modules and interfaces part of the arKitect Software, as may be amended from time to time during the term of this Agreement, as described in the Specifications, ordered by Client pursuant to the applicable Purchase Order. The Applications are either accessible and usable by Client in SaaS Mode or licensed to Client in License Mode.

“**arKitect Software**”: shall mean the software designed, developed and marketed by Supplier, as described in the Specifications.

“**Authorized Persons**”: shall mean the individuals who are expressly authorized by Supplier to access the Site and use the Applications, all corresponding user names and user accounts being provided to Supplier by the Client in the applicable Purchase Order. Authorized Persons may include Client’s employees working at designated Client facilities, Client’s third-party consultants, outsourcers, contractors and other service providers.

“**Client Affiliate**”: shall mean any entity that is directly or indirectly controlled by Client, or which directly or indirectly controls the Client, or which is directly or indirectly under common control with the Client. The terms “control” and “controlled” shall be construed pursuant to Article L. 233-3 of the French Commercial Code.

"Client Data": shall mean all data, information, text, pictures, and other content related to the products and services of Client's business, that are uploaded or routed by the Client, including any Authorized Persons, when using the Applications in SaaS Mode, and data used, generated as output or stored in connection with such use of the Applications.

"Client Servers": shall mean servers owned or controlled by Client and located within Client facilities, on which the Applications will be installed for use of in License Mode.

"Confidential Information": shall mean trade secrets and any other information that is of value to its owner and is treated as confidential. For example, Confidential Information of Client shall include Client Data and information processed by means of the Applications by any Authorized Person. The Applications and the Services constitute and contain Confidential Information of Supplier.

"Data Center(s)": shall mean any facility(ies) neither owned nor controlled by Supplier and that shall as a rule be used from time to time by Supplier to host the Site and provide the SaaS Services to the Client, consistent with prevailing industry standards for providing web hosting servers services.

"Disclosing Party": shall have the meaning assigned to it in Article 7 hereof.

"Effective Date" shall mean the date of acceptance by Supplier of the Purchase Order.

"Force Majeure": shall have the meaning assigned to it in Article 12.4 hereof.

"ID": shall mean the identifications, access codes and any and all pass-words communicated from time to time by Supplier to Client in order to enable Authorized Persons of Client to access Client Data as hosted on the Site as well as use the Applications in SaaS Mode.

"Internet": worldwide computer and telecommunications interconnected networks, allowing for access to content by the users via servers; each element of these networks belong to public or private entities that cooperate to run them, without any quality obligation.

"License Mode": shall mean the use of the Applications granted to Client, where the Applications are installed on Client Servers.

"Proprietary Rights": shall mean all rights of ownership of any kind and includes copyrights, patents, trademarks, trade secrets and all other intellectual property rights, and the rights to apply for, obtain, hold, and renew any of the foregoing, as well as any know-how that: (i) derives independent actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use; and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Proprietary Rights of Supplier hereunder include the Applications and the Services and all the know-how, technical data or other products or materials furnished to the Client hereunder in connection with the provision of the SaaS Services.

"Purchase Order": shall mean the required document indicating that is a "purchase order" issued by Client to order Applications and Services from Supplier, which shall refer to, and is incorporated by reference into these Terms and Conditions. In order for a Purchase Order to be binding, it shall be duly executed in writing by Client and sent to Supplier, and confirmation of receipt and acceptance by Supplier shall be addressed to Client by mail or e-mail or equivalent.

"Receiving Party": shall have the meaning assigned to it in Article 7 hereof.

"SaaS Mode": shall mean use of the Applications and access to the Client Data granted to Client via the Site.

"SaaS Services": shall mean the web-based software as a service offering of Supplier, which includes a limited license to access and use the Applications via the Site, for the release in effect as of the Effective Date of the Agreement, for the number of Authorized Persons specified in the applicable Purchase Order, access to and processing of the Client Data and technical support, as further defined in the Specifications and Section II hereto.

"Services": shall mean all the professional services required to be provided by Supplier hereunder, as further defined in Article 3.2 of Section I, the Specifications and applicable Purchase Order(s).

"Site": shall mean Supplier's website www.k-inside.com as hosted by the Data Center and used to provide the SaaS Services hereunder, including all tangible equipment (hardware, software, including the Applications) and intangible equipment (codes) and all technology required to access the Applications and deploy the Services.

"Specifications": shall mean the documentation relating to the arKItect Software, the Applications, the SaaS Services and the Services, as available online to Client at <http://support.k-inside.com> on the page entitled "arKItect x.y.z documentation". The Specifications contain system requirements for the installation of arKItect software. The Specifications also contain a link toward the support. The Specifications are incorporated by reference into these Terms and Conditions and form an integral part thereof.

"Terms and Conditions": shall mean these terms and conditions, as accepted by Client in accordance with the terms hereof.

ARTICLE 2: Subject-matter – Ordering Process

The Terms and Conditions are those upon which the Supplier (i) makes available to Client the Applications via the Site in SaaS Mode or (ii)

licenses the Applications to Client in License Mode, and provides the Services to Client, and Client benefits from the Applications and the Services.

The access and use of the Applications and the provision of the Services hereunder is subject to the prior receipt by Supplier of a Purchase Order, duly signed by an authorized signatory of Client, and corresponding payment.

The Purchase Order shall identify the Applications (including the type of use in Saas Mode or License Mode, the number of Authorized Users, etc.) and Services being purchased by Client, the fees for same and any other relevant information.

Client may elect to purchase additional applications or services by Purchase Order from time to time. Such additional purchase shall be governed by these Terms and Conditions.

ARTICLE 3: Applications and Services

3.1. Applications

The Applications that are the subject-matter hereof are described in the Specifications, as may be supplemented or modified in the applicable Purchase Order.

Any customization of the arKitect Software or any Application to Client's specific needs shall be the subject-matter of a separate agreement.

The Parties may elect to modify, discontinue, delete or restrict any aspect or feature of the Applications. All such changes must be mutually agreed to in writing.

Without prejudice to the preceding paragraph, evolutions, supplements, modifications, enhancements and replacements of the Applications over time solely to keep pace with technological advancements and improvements in the methods of delivering the services concerned shall be considered Applications and Services subject to the terms hereof.

3.2. Services

Supplier will provide Client with the Services ordered by Client in the Purchase Order, with respect to the Applications.

All Services shall be performed by trained and competent Supplier personnel, or subcontractors approved by Supplier, in a competent and workmanlike manner in accordance with prevailing industry standards.

The Services are described in the Specifications and the applicable Purchase Order(s) and may consist in assistance, training, hotline, corrective maintenance, evolutionary maintenance, technical maintenance or else.

The Services shall not include any custom development work for Client. Any such work shall be the subject of separate development or services agreement negotiated on a case by case basis and duly executed by the Parties.

The Parties may elect to modify, discontinue, delete or restrict any aspect or feature of the service level clauses included, inter alia, in the Specifications and applicable to Client. All such changes must be mutually agreed to in writing.

ARTICLE 4: Obligations and liabilities of Supplier

Supplier will use its best efforts, skills, knowledge and sound and professional principles and practices in accordance with prevailing industry standards and the state of the art in performing the Agreement.

It is expressly agreed between the Parties that any and all obligations of Supplier under the Agreement shall constitute and be construed as "*obligations de moyen*" under French law, including any service level undertakings provided in the Specifications or the relevant Purchase Order or other contractual documentation between the Parties.

Failure to meet any service level obligations will in no event be deemed to be a breach by Supplier where one of the following condition exists: (i) the failure does not results from a fault by Supplier, (ii) the failure of Client to conform to the Agreement or to carry out any relevant obligation causing such failure, (iii) failure of equipment not provided by or maintained by or within the control of Supplier, or (iv) Force Majeure events.

Client acknowledges and agrees that certain obligations of Supplier hereunder may be dependent on Client providing access to data, information or assistance to Supplier from time to time, and that provision of same may be essential to the performance of its obligations by Supplier hereunder. The Parties agree that any delay or failure by Supplier in its obligations hereunder which is caused by Client's failure to provide timely cooperation as requested by Supplier shall not be deemed a breach of Supplier.

ARTICLE 5: Obligations and liabilities of Client

Client shall at all times cooperate in good faith with Supplier, including by providing Supplier with any information, data, or assistance as may be requested or necessary for Supplier to perform its obligations hereunder.

Client undertakes to comply with the Agreement and all applicable laws and regulations, including trade secret, copyright, trademark, export

control laws and personal data protection laws as the term may be defined in applicable data protection laws or regulations enacted, modified or superseded from time to time during the term of the contractual relation.

Client shall appoint within its organization a technically capable employee who will be in charge of liaising with Supplier for all technical purposes hereunder. Client shall communicate to Supplier the name and details of such main technical interlocutor and shall inform Supplier of any change in this respect.

Client remains at all times fully liable for all acts and omissions of its Authorized Persons under the Agreement, as well as for Client Affiliates and any third party acting under its control or instructions.

ARTICLE 6: Ownership

The arKitect Software, the Applications, the Specifications, the SaaS Services and the Services provided to Client hereunder constitute and/or include Proprietary Rights of Supplier who retain exclusive title to same and retains all rights not expressly granted to Client hereunder.

No title or ownership on the arKitect Software, the Applications, the Specifications, the SaaS Services and the Services the Applications is transferred or assigned to Client by virtue of this Agreement.

The rights specifically granted to Client are restrictively specified in Sections II and III below.

Any evolution, improvements, supplements, modifications, developments enhancements, adaptations, translations and derivative works of the Applications or part thereof or related invention, including those resulting from the execution of this Agreement and any feedback from Client, made during the term of this Agreement or subsequent to it, and any Proprietary Rights thereto, shall remain the exclusive property of Supplier. The provisions of this paragraph shall survive termination of the Agreement.

Subject only to the provisions of Article 12.5 hereof, the Agreement does not grant any Party any license to use in any way any trademark, name or logo of the other Party.

The content of the site <http://support.k-inside.com> shall remain the sole and exclusive property of Supplier, which retains all Proprietary Rights on its structure, content and other elements thereof.

ARTICLE 7: Confidential Information

During the performance of this Agreement, both Parties may disclose certain Confidential Information to the other, and Authorized Persons may put Confidential Information into the computer system while using or maintaining the Applications. For the purposes of this Article 7, the Party making the disclosure of Confidential Information shall be defined as the "**Disclosing Party**" and the party receiving the disclosure of Confidential Information shall be defined as the "**Receiving Party**".

The Receiving Party shall only use Confidential Information in accordance with this Agreement. Neither Party is obligated to disclose any Confidential Information to the other Party except where access to and use of the Applications and the provision of the Services hereunder requires such disclosure. Both Parties acknowledge and agree that the Confidential Information shall remain the sole and exclusive property of the Disclosing Party. Client and its agents may use Supplier's Confidential Information solely for performing the obligations or exercising the rights of Client under this Agreement. The Receiving Party agrees to return to the Disclosing Party, upon request by the Disclosing Party, the Disclosing Party's Confidential Information and all materials developed by or on behalf of the Receiving Party containing or based upon that Confidential Information. The Receiving Party shall require any subsequent recipient of Confidential Information to abide by the restrictions of this Agreement concerning the Confidential Information before disclosing such Confidential Information to such recipient. Subject to the terms set forth herein, the Receiving Party shall protect the Confidential Information of the Disclosing Party with the same degree of protection and care the Receiving Party uses to protect its own Confidential Information. This paragraph shall survive termination of the Agreement.

Nothing in this Article shall prohibit or limit either Party's use of information if the Receiving Party establishes that (i) at the time of disclosure hereunder such information was generally available to the public; (ii) after disclosure hereunder the information becomes generally available to the public, through no act or omission of the Receiving Party; (iii) the information was in Receiving Party's possession prior to the entry into force of the Agreement and was not acquired directly or indirectly from the Disclosing Party; (iv) the information becomes available to the Receiving Party from a third party which is not legally prohibited from disclosing such information, provided such information was not acquired by such third party directly or indirectly from the Disclosing Party; or (v) the information is required by law to be disclosed, provided that, to the extent practicable, the Disclosing Party is first given notice of the required disclosure and an adequate opportunity to seek appropriate legal relief to prevent such disclosure or limit its use and further disclosure.

Neither Party will make, have made, use or sell for any purpose any product or other item using, incorporating or derived from any Proprietary Rights or Confidential Information of the other Party, except as provided hereunder.

If Supplier processes any personal data on Client's behalf when performing its obligations under this Agreement, the Parties record their intention that Client shall be the data controller and Supplier shall be a data processor and in any such case: (a) Client shall ensure that Client is entitled to transfer the relevant personal data to Supplier so that Supplier may lawfully process the personal data in accordance with this Agreement on

Client's behalf; (b) subject always to Supplier's obligations under applicable law, Supplier shall process the personal data only in accordance with the terms of this Agreement; and (c) each Party shall take appropriate technical and organizational measures against unauthorized or unlawful processing of the personal data or its accidental loss, destruction or damage.

ARTICLE 8: Prices – Payment

. Any prices indicated in the Specifications are subject to adjustments and are indicative only. Supplier and Client shall agree on the fees for the Applications, the SaaS Services and the Services on a case by case basis depending on the type of rights granted on the Applications and the specific level of Services to be provided hereunder in the applicable Purchase Order.

All invoices will be made out in euros (€) and indicate the amounts with and without VAT, as required. Client shall pay all invoices within 30 days from the date of the invoice. Late payments shall be subject to penalties at the rate equal to three (3) times the applicable legal interest rate, assessed from the due date through the date of payment, in addition to the fix indemnity of forty (40) euros due in accordance with Article L. 441-6 of the French Commercial Code.

Payments shall be made by wire transfer to the account designated by Supplier in the Purchase Order.

ARTICLE 9: Representations and Warranties – Limitation of Warranty

9.1. Each party represents and warrants to the other, as of the date of entry into force of this Agreement, each such Party has the full right, power and authority to enter into this Agreement.

9.2. Supplier does not warrant that the Applications and/or Services will meet Client's requirements, particular purposes or needs nor that the operation of the Applications or access to the Site or Services will be uninterrupted or error free.

The Applications and Services are provided by Supplier to Client "as is" and, except as expressly stated herein and as far as legally admitted, all warranties with respect to the Applications and the Services, express or implied, are hereby disclaimed and excluded by Supplier, including without limitation any warranty of merchantability, quality, hidden defects or fitness for a particular purpose or use.

The service level clauses set forth in the Specifications and/or the Purchase Order state Client's sole and exclusive remedy for any performance failure of the SaaS Services in terms of levels of service.

9.3. Supplier represents and warrants that it owns, or has the legal right to grant the right of use over the Applications, as such right of use is defined hereunder.

Supplier does not warrant that the Applications, in whole or in part, do not infringe or will not infringe upon any Proprietary Rights of any third-party.

As of the date hereof, Supplier has not received any notice in writing from any third party to the effect that the Applications allegedly infringe on any Proprietary Rights of any third-party, nor has any claim of such infringement been threatened or asserted against Supplier. In the event that any part of the Applications or Services does or is likely to become the subject of an action or a claim of infringement and its use is or may be enjoined, Supplier shall, at its option and own expense (i) procure for Client the right to continue using the affected Applications or Services; or (ii) modify the Applications or Services, so that they become non-infringing and functionally equivalent; or (iii) substitute non-infringing applications or services acceptable to Client and substantially similar to the Applications and Services; or (iv) in the event that Supplier is unable to provide the remedies described in (i), (ii) or (iii), cease providing access or license for the infringing Applications or Services and provide Client a refund of any pre-paid fees for future use of such Applications or Services.

The foregoing warranty is not applicable to the extent that Supplier can show that the infringement arises from (a) written directions or specifications from Client implemented by Supplier at Client's request; (b) modifications to Applications or Services made by Client or any person or entity other than Supplier; (c) the Applications or Services being modified by, combined with, added to, interconnected with or used with any equipment, apparatus, device, data, software or service not supplied or approved by Supplier in writing; (d) unauthorized use of the Applications or Services in combination with any software, hardware, equipment, apparatus, device, data or service not provided or approved by Supplier; or (e) any use of the Applications or Services by Client in breach of the terms of the Agreement.

9.4. The warranties set forth in this Article 9 are exclusive. Supplier does not make any other warranties, express, implied or statutory with respect to the Applications or the Services or any of its obligations hereunder.

ARTICLE 10: Limitation of Liability

Notwithstanding anything to the contrary, Supplier's full and cumulative liability and Client's exclusive remedy under the Agreement for any proven damages that directly result from Supplier's breach in the performance of its obligations under the Agreement shall be limited to an indemnity not exceeding the amounts payable by Client hereunder with respect to the on-going contractual period during which such damage occurred.

In no event shall Supplier be liable for any kind of indirect damages, nor for any loss of profits, loss of turnover, loss of revenue, loss of savings or loss of contracts suffered by Client.

ARTICLE 11: Term and Termination

The term of the Agreement shall be as specified in Section II or Section III below, as applicable.

Either Party may terminate this Agreement as of right in the event that the other Party breached any material obligation under this Agreement and such breach remains uncured thirty (30) days after written notice of such breach is delivered to by one Party to the other in accordance with the provisions of Article 12.1 hereof.

Upon the effective date of termination or expiration of this Agreement:

- (i) all licenses and rights granted to Client hereunder shall immediately terminate and Client shall have no right to continue to access or use the Applications;
- (ii) Supplier shall cease providing the Services and, as the case may be, the SaaS Services;
- (iii) Client shall promptly deliver to Supplier all Confidential Information of Supplier, except information that Supplier explicitly instructs to be destroyed instead of returned; for all information that is destroyed instead of returned, Client shall promptly provide Supplier with a certificate of destruction documenting the date, time, location and method of destruction and bearing the signature of the operator;
- (iv) Client shall pay Supplier all outstanding fees and charges associated with Client's account, for the Applications provided and for the Services performed through the date of termination within ten (10) days after the effective date of termination or within ten (10) days after receipt of an invoice for any subsequent invoiced charges that were not invoiced on the termination date.

The obligations set forth in Articles 6, 7, 9, 10, 12.5 and 12.11 shall survive the expiration or termination of the Agreement in accordance with their terms.

ARTICLE 12: General Provisions

12.1. Notifications

Any notices or other communications required or permitted hereunder shall be sufficiently given if in writing in the English or the French languages and (i) hand delivered against a written acknowledgment of receipt, or (ii) if delivered by any recognized international air courier (i.e., Fedex, DHL), or (iii) if sent by facsimile transmission confirmed by registered mail with acknowledgement of receipt requested, addressed to such other address as the Client shall have prior indicated on the relevant Purchase Order or such other address notified to Supplier in accordance with the provisions of this Article 12.1, and as concerns notifications to Supplier:

- (a) arkitect-support@k-inside.com, or
- (b) KNOWLEDGE INSIDE SAS – Bât. C, 7 rue Jean MERMOZ, 78000 VERSAILLES, FRANCE, or
- (c) fax: +33 (0)1 39 51 90 66, or
- (d) such other address notified to Client in accordance with the provisions of this Article 12.1.

12.2. Assignment

This Agreement may not be assigned or transferred by Client without the prior written consent of Supplier.

12.3. Independent Contractor

Supplier acts at all times as an independent contractor and not an agent, joint venturer, or partner of Client in providing the Applications and performing the Services under this Agreement and shall not be deemed to act as a maître d'oeuvre as construed under French law hereunder.

12.4. Force Majeure

In the event that either Party is unable to perform any of its obligations hereunder, or to enjoy any of its benefits because events of such as fire, natural disaster, actions or decrees of governmental bodies, and any and all events occurring after the entry into force of the agreement which is beyond the control of the Party concerned, irresistible and unpredictable (a "**Force Majeure**" event), the Party who has been so affected shall immediately give written notice to the other Party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under these Terms and Conditions shall be immediately suspended. Delays in delivery due to Force Majeure events shall automatically extend the delivery date for a period equal to the duration of such events. If Supplier's performance hereunder is postponed or extended pursuant to this Article 12.4 for longer than thirty (30) calendar days, Supplier may, by written notice given during the postponement or extension, immediately terminate the agreement without liability or further obligation.

12.5. Non-solicitation – Promotion

During the term of this Agreement, and for a period of six (6) months thereafter Client shall not, directly or indirectly, solicit, recruit, hire or otherwise retain the services of Supplier's employees, subcontractors or consultants.

Supplier may from time to time refer to the arKllect software on publicity material or other professional documentation with the indication that it is

a supplier of such software and services to Client.

12.6. Severability

If any provision of these Terms and Conditions is held to be illegal, invalid or unenforceable under present or future law effective during the term hereof, such provision shall be fully severable and these Terms shall be construed and enforced as if such illegal, invalid or unenforceable provision never comprised a part hereof, and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom. The said provision shall be deemed modified to the fullest extent possible to render it valid and enforceable.

12.7. Waivers

Waivers, to be binding, must be made by in writing, referring to these Terms and Conditions and signed by the party whose right is waived. No waiver of the terms of these Terms and Conditions or failure by either party to exercise any option, right or privilege on any occasion or through a course of dealing shall be construed to be a waiver of the same on any other occasion.

12.8. Headings

The Article and Section headings used in these Terms and Conditions are provided solely for reference and the convenience of the Parties, form no part of these Terms and Conditions and shall not affect its interpretation.

12.9. Modification

Any non-material modifications of these Terms and Conditions, i.e., any modification not affecting an essential obligation of either Party may be posted online at <https://support.k-inside.com>. Supplier will make its best efforts to provide Client with prior notice of any such modifications.

All other modifications must be mutually agreed to in writing between the Parties.

12.10. Languages

These Terms and Conditions have been drawn up in English. A French translation thereof is available upon request. The English version shall prevail unless agreed to the contrary in writing between Supplier and Client.

12.11. Governing Law - Disputes

The Agreement shall be governed by and construed exclusively in accordance with the laws of the France, without regard to principles of conflicts of law. The Parties agree to submit to the exclusive jurisdiction of the Commercial Court of VERSAILLES, FRANCE.

SECTION II – SPECIFIC TERMS AND CONDITIONS APPLICABLE TO SaaS MODE

The provisions of this Section II shall apply, in addition to the terms of Section I, specifically to the use of Applications and access to Client Data granted by Supplier to Client, where the Client has selected the SaaS Mode, as specified in the applicable Purchase Order.

ARTICLE 1: Provision of the SaaS Services

1.1. Infrastructure

Client shall ensure that Client's equipment, computers, software and all other means of Client required to access the Site and the Applications at a distance and work on/with the latter are sufficient and well suited to the task, including any navigators and means of communications and connecting online.

Client is solely responsible for acquiring, servicing, maintaining, securing and updating all such equipment (including long distance phone charges), and for all expenses relating thereto (plus any applicable taxes). Client is likewise solely responsible for maintaining technology and procedures to ensure the security of its link to the Internet and for accepting Supplier's https certificate. In case Client does not accept Supplier's https certificate, Client acknowledges and agrees that it will be provided with a non secure http connection only and that Supplier shall bear no liability in this respect.

Unless expressly agreed to in writing otherwise, in order to allow Client to have access to the SaaS Services via the Site, Supplier will have recourse to the Data Center of its choice. Such Data Center shall be configured consistent with prevailing industry standards.

1.2. Access to the SaaS Services - IDs

Agreement of the Parties with respect to a Purchase Order is a pre-requirement to Client access to the Site and SaaS Services hereunder.

On or before the "go-live" date specified in the applicable Purchase Order, Supplier will complete all tasks required to make the SaaS Services available to Client, including, (i) implementing any interfaces required as per the applicable Purchase Order, (ii) delivering to Client any Proprietary Rights necessary to access the Site and use the Applications, and (iii) allocating a designated account or set of accounts on an internet web server hosted at the Data Center and assigning all required IDs.

Except with the advanced written consent of Supplier, access shall be limited to the Authorized Persons identified and authorized by Client to have access to the SaaS Services. Client may appoint, reassign and remove Authorized Persons from time to time. Additional Authorized Persons can be added by way of Client's issuance of a Purchase Order to Supplier.

Supplier shall at all times know the full identity, user names and user accounts of each Authorized Person. Supplier shall communicate ID to each Authorized Person. Client shall at all times be fully liable for all actions of omissions of its Authorized Persons hereunder as though Client were the author of such act or omission.

Client alone shall be responsible for the use and safeguarding of all IDs that shall be deemed Confidential Information hereunder. Supplier must be informed by Client immediately and in writing of any loss of such elements or parts thereof or information that may lead to unauthorized third parties accessing the Applications. Client alone shall be liable for all consequences, including malfunctioning, arising out of or resulting from the use of ID by persons other than Authorized Persons.

Client shall not and undertakes on behalf of its Authorized Persons that ID shall not be shared or transmitted in violation of the terms hereof. Client shall not and undertakes on behalf of its Authorized Persons not to attempt to permit any person other than an Authorized Person to attempt to access the Site and/or the Applications.

Client understands and agrees that the operation and availability of the systems used for accessing the Site and interacting with the Applications and the Services, including computer networks and the Internet, or to transmit information, whether or not supplied by Client or Supplier, can be unpredictable and may from time to time interfere with or prevent access to and/or use of the Applications and SaaS Services. Supplier shall in no way be responsible for any such interference with or prevention of Client's access and/or use of the SaaS Services.

Supplier shall not under any circumstances be held responsible for situations (i) where Client Data or transmissions are accessed by third parties through illegal or illicit means, or (ii) where Client Data or transmissions are accessed through the exploitation of security gaps, weaknesses or flaws unknown to Supplier at the time. Supplier will promptly report to Client any unauthorized access to Client Data upon discovery by Supplier, and Supplier will use diligent efforts to promptly remedy any breach of security that permitted such unauthorized access. In the event notification to persons included in such Client Data is required, Client shall be solely responsible for any such notifications at its expense.

ARTICLE 2: Utilization Rights

2.1. Utilization right of the Applications and the SaaS Services

With respect to the Applications and SaaS Services and subject to the terms and conditions of the Agreement, Supplier grants to Client, for the Term (as defined below), a personal, non-exclusive, non-transferable, right to use the Applications and to access the SaaS Services, to support up to the total number of Authorized Persons for which Client has paid the associated fees, for Client's internal business purposes.

All rights not expressly granted to Client herein are expressly reserved by Supplier.

The provision of the SaaS Services hereunder does not constitute any form of transfer of Proprietary Rights to the benefit of Client.

If the Purchase Order expressly provides for an evaluation license option to the Applications, then Client shall be granted a worldwide, royalty-free, non-exclusive, personal, non-assignable and temporary right to use and access the Site and the SaaS Services for evaluation purposes only for the evaluation term agreed upon and for the number of Authorized Persons specified in the Purchase Order. Technical support will be provided at no cost during the evaluation term. Notwithstanding the provisions of Section I Article 9, the SaaS Services during the evaluation period shall be provide exclusive of any warranty whatsoever, express or implied, any service level warranty or any indemnity provided herein. Upon expiration of the evaluation term, the Agreement will terminate unless a new Purchase Order is entered into.

2.2. Restrictions

Client's right of use of the Applications is on an "as is" basis. Client shall not directly or indirectly modify or in any way tamper with the Applications.

Client shall not (a) lease, loan, rent, sell, resell, license, sublicense, transfer, assign, distribute, or make the SaaS Services, or any part thereof, available to any third party in any way (except to the Authorized Persons); (b) use the SaaS Services other than for Client's internal business or and those of Client Affiliates; (c) modify or create any derivative product, service or work based upon the Applications or SaaS Services; (d) create any unauthorized Internet "links" to the Applications or SaaS Services or "frame" or "mirror" any content of the Applications or SaaS Services on any other server or wireless or Internet-based device; (e) decompile, reverse engineer or access the Applications or SaaS Services in order to (i) build or create a competitive product or service, (ii) build or create a product or services using similar ideas, features, functions or graphics of the Applications or SaaS Services; or (f) copy any ideas, features, functions or graphics of the Applications or SaaS Services.

2.3. Client Data

Client shall remain the exclusive owner of the Client Data.

Client undertakes to treat, download or transmit via the Applications only Client Data, the use or processing of which does not violate any Proprietary Right of any third party, and does not constitute a criminal offense. Client shall not, nor shall it permit others to abuse or fraudulently use the SaaS Services.

Client hereby grants to Supplier, for the Subscription Term, a personal, non-transferable, non-exclusive, limited license to use, reproduce, store, access and display the Client Data solely for the purpose of performing the SaaS Services and fulfilling Supplier's obligations under the terms hereof.

Supplier reserves the right to internally monitor Client's usage of the SaaS Services solely for the purpose of performing the SaaS Services and fulfilling Supplier's obligations under the terms hereof. Supplier declines any responsibility whatsoever as to the content of any Client Data.

If Supplier becomes aware that any Client Data may be obscene, defamatory or fraudulent, violate any law or regulation or infringe any third party Proprietary Rights, Supplier shall promptly notify Client and Client shall remove such Client Data. If either Party disputes the removal of any Client Data, the Parties shall attempt in good faith to resolve such issue, provided that Supplier reserves the right, subject to reasonable notice, to remove any Client Data at any time from the Data Center or to terminate this Agreement in accordance with Article 8 below.

ARTICLE 3: Obligations and liabilities of Supplier

Supplier will use its best efforts, skills, knowledge and sound and professional principles and practices in accordance with prevailing industry standards and the state of the art in providing and performing the SaaS Services.

In particular, Supplier shall make its best efforts to provide as close to round-the-clock access to the Site and hosted Applications as possible, subject to any limitations or exceptions provided in the Specifications or applicable Purchase Order, and except for routine maintenance performed. Supplier shall make its best efforts to promptly restore all failures of service hereunder and promptly intervene with the Data Center in any appropriate manner if the origin of the failure appears to be the Data Center.

Client acknowledges that neither the Internet nor the Data Center(s) are established or maintained by Supplier and that Supplier has no control over same and cannot be responsible for any discontinuance of operation of the SaaS Services or any part thereof or possible regulations affecting same that may restrict or prohibit the operation of the SaaS Services.

Supplier does not, and cannot, control the flow of data to or from Client's Internet hosts and other portions of the Internet. Such flow depends in large part on the performance of Internet services provided or controlled by third parties. At times, actions or inactions caused by these third parties can produce situations during which Client's connection to the Internet (or portions thereof) may be impaired or disrupted. Although Supplier will use reasonable efforts to take actions it deems appropriate to remedy and avoid such events, Supplier does not guarantee that such disruptions or impairments will not occur or that any actions Supplier takes to mitigate any disruption or impairment will be effective. Accordingly, Supplier disclaims any and all liability resulting from or related to such events.

ARTICLE 4: Obligations and liabilities of Client

Client is responsible for the selection of the SaaS Services to achieve its intended results, Client's use of the Applications and the results obtained by Client with the SaaS Services.

Client shall access the Site and use the Applications and the Services only in compliance with procedures communicated by Supplier. Any processing, transmission, circulation, dissemination, representation or use of information or data by Client via the Applications and the Site shall be the sole responsibility of Client.

In particular, Client undertakes not to transmit via the Applications or through the Site any unsolicited e-mails, advertising message or any other content including unauthorized codes, such as a virus, Trojan horse, worm or any other code or program designed, either automatically or through externally applied controls, to, without limitation, interrupt, destroy, limit or otherwise harm the functionality or performance of any software, hardware, or means of communication.

Client will inform Supplier immediately of any malfunctioning of the Site or the Applications or the Services.

Client undertakes not to tamper with the execution of the SaaS Services and to comply with all requirements, procedures, general rules communicated to it by Supplier hereunder.

Client undertakes not to develop or market the Applications or any competing products.

Client warrants to Supplier that: (a) Client is the owner or authorized licensee of the Client Data, and has secured all necessary licenses, consents, authorizations and waivers for the use of the Content, including all text, pictures, audio, video, logos, trademarks, copyrights and other intellectual property rights contained in, and that may form part of, the Client Data, and there are no conflicting claim(s) with respect to Client's rights thereto; (b) the Client Data and Client's use of the SaaS Services at all times complies with the terms of this Agreement and all applicable law; (c) during the Term, and at all times during Client's use of the SaaS Services, Client shall comply with all laws, rules and regulations relating

to the Client Data used by Client in connection with the SaaS Services; (d) Client shall not use the facilities or capabilities of the SaaS Services to conduct any illegal activity, solicit the performance of any illegal activity, or engage in any other activity which infringes upon the rights of Supplier or any third party.

If Client breaches any of the warranties contained in this Article, Supplier may, in addition to any other rights it may have in law, exercise its right to suspend or terminate Client's access to the SaaS Services and Applications in accordance with Article 7 below.

ARTICLE 5: Invoicing

Unless otherwise set forth in the Purchase Order, Supplier shall invoice Client for the SaaS Services at the "go live" date of the SaaS Services.

The fees for technical support and maintenance Services are included in the fees due for the SaaS Services.

ARTICLE 6: Term

Supplier will provide the SaaS Services to Client during the term mentioned in the applicable Purchase Order (the "Term"), being specified that the Term shall not be less than three (3) months. Upon expiration of the Term, the Parties may agree to continue working together, subject to a new Purchase Order.

Without prejudice to the foregoing, in the case where Client has already started to access and use the Applications and benefit from all or part of the SaaS Services prior to the date of the Effective Date, it is hereby accepted and agreed between Client and Supplier that the Terms and Conditions shall apply retroactively to said provision of SaaS Services and equivalent or related services ab initio, starting from the date of (i) actual access to the SaaS Services; or (ii) the agreement on any documentation exchanged between the Parties for the purchase and sale of SaaS Services, whichever was the earliest.

ARTICLE 7: Suspension and Termination

In addition to the rights of Supplier under Section I Article 11 if any amounts due to be paid under the Agreement are not paid when due remain unpaid for ten (10) calendar days after the receipt by Client of written notice thereof from Supplier, Supplier may, at its option, suspend Client's access to, and cease providing, the SaaS Services until complete payment by Client.

Supplier may suspend, disable or terminate Client's access to the SaaS Services if Supplier has a good-faith reason to believe that Client is using the SaaS Services or Applications in a manner that may cause immediate and ongoing harm to Supplier or to a third party, including actions that violate applicable law. Supplier will use reasonable efforts to immediately notify Client when it becomes aware of such activity by or on behalf of Client, and will either allow Client reasonable time to cease the activity or, if required by the urgency or seriousness of the circumstances, immediately suspend Client's access to the SaaS Services and inform Client as soon as possible thereafter. Notwithstanding the foregoing, Supplier may suspend Client's access to the SaaS Services without notice if it determines in good-faith that immediate action is warranted to prevent harm to Supplier, to the SaaS Services, or to any third party. Supplier will have no liability for suspension or termination of the SaaS Services with or without notice as described above, provided that any such determination was made in good-faith.

Upon termination of this Agreement or expiration of the Term, in addition to the provisions of Section I Article 11: (a) all licenses and rights granted hereunder shall immediately terminate and Client shall have no right to continue to access or use the SaaS Services; (b) Supplier shall return or destroy all Client Data used in connection with or generated by the SaaS Services.

SECTION III – SPECIFIC TERMS AND CONDITIONS APPLICABLE TO LICENSE MODE

The provisions of this Section III shall apply, in addition to the terms of Section I and alternatively to the terms of Section II, specifically to the license of the Applications granted by Supplier to Client, where the Client has selected the License Mode, as specified in the applicable Purchase Order.

ARTICLE 1: License

Supplier grants to Client a personal, non-exclusive, worldwide and non-transferable license to:

- (i) install the Applications on Client Servers; and
- (ii) use the Applications, together with the Specifications, for the total number of licenses Client has purchased from Supplier.

This license is granted for the Term (as defined in Article 7 below), for Client's internal business purposes only.

Except as otherwise set forth on the applicable Purchase Order, Supplier shall provide Client with one (1) machine readable copy of the executable object code of the Applications.

From time to time during the Term, Client may elect to expand the license or to license additional products from Supplier by requesting an additional Purchase Order to be executed by the Parties.

Use of the Applications by Client, Client's Personnel or any other party authorised hereunder shall at no time exceed the total use rights granted in applicable Purchase Orders.

ARTICLE 2: Exclusions

Client shall not:

- (i) copy, in a permanent or temporary way, translate, adapt, arrange or otherwise modify any Application and copy the software resulting from those operations, except to the extent expressly authorized by applicable law; it is specified that Supplier expressly reserves the right to correct errors in the Applications notified by Client and to provide Client, upon written request, with one (1) back-up copy of the Applications as far as such copy is necessary to preserve the use of the Applications;
- (ii) decompile or reverse assemble all or any portion of the Applications, except to the extent and in the circumstances expressly required to be permitted to Client by law. Client shall initially request the required information from Supplier in writing against reimbursement of expenses. Any information obtained through reverse compilation or reverse assembly may not be used for any other purpose than to achieve such interoperability, and may not be shared with any third parties;
- (iii) distribute, disclose, market, rent, lease, loan, sublicense, sell, resell, license, sublicense assign, transfer or make the Applications available to any third party, for free or against consideration, or use the Applications in any service bureau arrangement.

ARTICLE 3: Services

In addition to the license granted on the Applications, Supplier will perform the Services ordered by Client in the applicable Purchase Order.

ARTICLE 4: Obligations and liabilities of Supplier

Supplier will use its best efforts, skills, knowledge and sound and professional principles and practices in accordance with prevailing industry standards and the state of the art in providing and performing the Services.

Supplier shall not be bound by any obligations hereunder where the Applications or the Services are not used by Client in accordance with the terms of the Agreement, including the Specifications.

ARTICLE 5: Obligations and liabilities of Client

Client shall use the Applications and the Services only in compliance with procedures communicated by Supplier.

Client shall be exclusively liable for the use of the Applications, by itself or any of its representatives, agents and co contractors.

ARTICLE 6: Invoicing

Unless otherwise set forth in the Purchase Order, Supplier shall invoice Client for the Applications at the date of delivery (i.e., electronic transfer) by Supplier of the files that are necessary to install the Applications.

Where Client ordered a limited term license, the fees for technical support and maintenance Services will be included in the fees due for the Applications.

All other Services, and all Services where Client ordered an unlimited term license, will be invoiced in addition to the license fees, according to the Purchase Order.

ARTICLE 7: Term

The license granted to Client under this Section III shall be either (i) for a limited period of time as defined in the Purchase Order (the "Term"), or (ii) for the entire duration of the protection for the Applications by copyright.

7.1. Limited Term License

Unless otherwise specified in a Purchase Order or implementation of Article 8 below, the Term of each order for a limited term license shall be of one (1) year. Upon expiration of the Term, the Parties may agree to continue working together, subject to a new Purchase Order.

The Services will be provided by Supplier during the Term.

7.2. Unlimited Term License

Where Client ordered an unlimited term license, the Services will be provided by Supplier for periods of one (1) year starting at the Effective Date. The Parties may agree to continue working together thereafter subject to a new Purchase Order.

ARTICLE 8: Termination

Notwithstanding anything to the contrary contained in Section I, Supplier shall have the right to terminate the license for the Applications granted hereunder as of right by giving written notice of termination to Client if Client fails to pay the specified license fees when due or fails in any other material respect to comply with its obligations regarding the use and protection of the Applications, and such failure to pay or to comply is not remedied within ten (10) days after Client receives written notice thereof from Supplier.

Upon termination of the license for the Applications by Supplier under this Article 8 or in accordance with Section I Article 4, Client shall, within thirty (30) days after the date of termination of the license, and at Supplier's option, either destroy or return to Supplier all copies of the Applications, and certify to Supplier in writing that it has either destroyed or returned all copies of the Applications.

ARTICLE 9: Audit right

Upon reasonable prior written notice to Client, Supplier shall have the right to inspect, examine, and audit Client's compliance with the terms and conditions of license hereunder, including the inspection of the books and records relating to Client's use of the Applications at the locations where the Applications are installed and used. Such audits shall be performed by Supplier or Supplier's representatives during Client's normal business hours at the locations where the Applications are installed and used.

In the event that a compliance audit reveals that Client is using more licenses of the Applications than for which it has paid the relevant fees, Client shall, within ten (10) days after the date of such discovery, make payment to Supplier for such additional licenses.