

## MASTER LICENSE AGREEMENT – SAAS/MCA SOLUTIONS

### (“Agreement”)

**THIS AGREEMENT** is between MK Systems USA Inc. whose principal place of business is at 1900 North Grant Street, Suite 610, Denver, Colorado 80203 USA for and on behalf of itself and its Affiliates (“Supplier”), and the legal entity identified at the end of this document (“You”), each a “Party”, together the “Parties”.

By placing an Order, You hereby agree that the terms of this Agreement together with any applicable Services Schedule shall apply to and govern Your purchase of Supplier’s defined SaaS (software as-a-service) and MCA (managed cloud application) Solutions range of products and services including associated Software and Services. The applicable Services Schedule shall be determined by the Solution and/or associated Software and Services purchased (e.g. if You purchase the MK.IO Platform then the terms of the MK.IO Platform Services Schedule shall also apply). In the event of a conflict or ambiguity between the terms of this Agreement, the Services Schedule and an Order, the order of precedence to resolve that conflict shall be, in order of priority: the Order, any agreed amendments, the applicable Services Schedule, this Agreement, and any other document therein.

Any other terms and conditions set out or referred to in a purchase order or any other document or communication are hereby excluded. Any variation to the scope or terms of this Agreement, any Services Schedule or an Order shall only take effect if agreed in writing and signed by both Supplier and You.

BY PLACING AN ORDER YOU ACKNOWLEDGE AND AGREE: (1) THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT AND THE TERMS OF THE ORDER (INCLUDING WHERE RELEVANT THE APPLICABLE SERVICES SCHEDULE); (2) THAT YOU AGREE TO BE BOUND BY EACH AND EVERY TERM OF THIS AGREEMENT; AND (3) IF YOU ARE ENTERING INTO THIS AGREEMENT AND/OR AN ORDER ON BEHALF OF A COMPANY, THAT YOU HAVE THE POWER AND AUTHORITY TO DO SO AND TO BIND SUCH COMPANY.

IF YOU DO NOT AGREE TO ANY OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MAY NOT USE ANY SOLUTIONS OR ASSOCIATED SOFTWARE AND SERVICES PROVIDED BY THE SUPPLIER.

### I. DEFINITIONS

I.1 In this Agreement the following terms shall have the following meanings:

**Agreement:** this Master License Agreement;

**Affiliates:** a company (i) controlling; (ii) controlled by; or (iii) under common control with Supplier;

**Authorized Users:** those persons (whether Your employees, agents, contractors or customers) who are permitted to use the Solution;

**AI or Artificial Intelligence:** means the ability of a machine-based system to apply analysis and logic-based techniques to data in order to solve problems and/or perform tasks (and to improve each of the aforesaid as more data is analyzed), and may include deep learning and generative AI (being AI that relies on mathematical models created by identifying and optimizing patterns from data to generate AI Output);

**AI Output:** any text, graphics, video, image, audio, data or other materials generated by any AI feature of the Solution from Content during the normal and proper use of the Solution by You and/or Your Authorized Users;

**Confidential Information:** information that is proprietary or confidential to a party and is either clearly labelled as such or otherwise identified as being confidential;

**Content:** any text, graphics, video, images, audio or any other media, information, material or content (including metadata and Customer Data) that You introduce into or make available through or transfer or transmit over or using the Solution;

**Customer Data:** any data whether text, drawings, diagrams, images or other information (including personal data) that is inputted to, collected by and/or stored by or within, and/or AI Output generated by, the Solution during the normal and proper use of the Solution by You and/or Your Authorized

Users;

**IPR:** patents, trademarks, service marks or business names, registered designs, copyrights, design rights, utility models, topography rights, applications to register any of the aforementioned rights, trade secrets, know-how and rights of confidence and any other intellectual or industrial property rights of any nature whatsoever in any part of the world;

**Metered Consumption:** where payment for a Solution is based on actual monthly metered usage (e.g. number of channels, live events, Authorized Users, or storage, capacity, throughput, or other usage variable) calculated in accordance with the fees and pricing set out in an Order or Services Schedule, and may be paid in advance (pre-paid) and/or paid in arrears (pay-as-you-go), and may be subject to Usage Quotas;

**Order:** if purchasing online or via a web-based “click to buy” process, accepting an offer from the Supplier by taking a required step to confirm the purchase (e.g. by clicking an offer acceptance button that states “Accept Offer”, “Place Order”, “Activate”, “Subscribe”, etc.), or taking such other steps as may otherwise be stipulated by Supplier to complete the purchase of a Solution (and associated Software or Service); or, if other purchase method used, a written quote or proposal from the Supplier confirmed by an associated purchase order, and/or a Services Schedule or other document accepted in writing by Supplier;

**Permitted Purpose:** unless stated otherwise in the Services Schedule, the installation, configuration, access or use, for normal business purposes, of the Solution or Software for the purpose identified in, and subject to any restrictions contained in, the Services Schedule (including without limitation restrictions on the numbers of Authorized Users, storage capacity, channels or copies), and in the absence of an explicit purpose, limited to the storage, processing, packaging and delivery of Content;

**Services:** those professional services specified in the Services Schedule as either being included in a purchase or that are available for purchase separately, which may include maintenance and support services, systems integration, installation, commissioning and training, and updates and upgrades to a Solution or Software, the terms of which are more particularly described in the service level agreement (“SLA”) applicable to the Solution purchased (as referred to in an applicable Services Schedule);

**Services Schedule:** any document so entitled containing terms and conditions applicable to a specific Solution, Software and/or associated Services;

**Software:** any computer program, firmware or other software products owned or distributed by Supplier and made available to You under the terms of this Agreement and any applicable Services Schedule as part of a Solution, including, but not limited to, any related components, application programming interfaces, associated media, printed materials, online or electronic documentation, and any updates, maintenance releases, bug fixes, corrections, enhancements, or other modifications thereto;

**Solution(s):** Supplier’s range of as-a-service solutions, as determined from time to time by Supplier, being any distinct, subscription-based, hosted, maintained, supported and/or operated on-demand solution (which may incorporate Software and/or Services and/or Third Party Products) made available by Supplier pursuant to this Agreement and applicable Services Schedule;

**Specifications:** the technical specifications relating to the Solution and/or Software as made available by Supplier and as referred to in the Services Schedule;

**Subscription Term:** the term of an Order (and the licenses therein) as more particularly described in Section 9.2 below;

**Territory:** unless stated otherwise in the applicable Services Schedule, means the country in which You (being the legal entity that completes an Order) is located; and

**Third Party Products:** software or other products and services not created or produced by Supplier that are included as part of or incorporated into the Solution (and which may be separately branded);

**Usage Management:** the monitoring, auditing and management of Your use of a Solution and/or associated Software;

**Usage Quota(s):** a fixed amount of Metered Consumption, if/where specified in an Order or Services Schedule, which may be (i) “soft-capped” meaning it can be exceeded subject to payment of the additional fees set out in the Order, or (ii) “hard-capped” meaning it cannot be exceeded without Supplier’s consent per Section 3.4.

## **2. RIGHT TO USE; LICENSE; INTELLECTUAL PROPERTY RIGHTS**

**2.1 Title.** IPR in the Solutions and Software shall at all times remain the exclusive property of Supplier or its Affiliates. All IPR arising in connection with the provision of any Services shall, except to the extent that it comprises or incorporates IPR supplied by You, vest in and be owned by Supplier (or its Affiliates) absolutely, and You shall acquire no right, title or interest therein.

**2.2 Third Party Products.** Third Party Products (and/or Software therein) may be subject to separate terms and conditions as identified by Supplier in relevant product/service specifications or via its website (or where relevant, contained in any “box” or “digital” license supplied with such Third Party Products), and You acknowledge and agree that such terms (which may contain product specific rights and/or obligations such as usage restrictions, product specific warranties, limitations of liability, indemnification) shall apply to and govern Your use of the Third Party Products in preference to the terms of this Agreement.

**2.3 Rights And License To Use.** Subject to the terms of this Agreement and applicable Services Schedule (including payment of applicable fees), Supplier grants (and where applicable to Third Party Products, shall procure the grant) to You (and Your Authorized Users) from the Order date and for the Subscription Term, a limited, non-exclusive, non-assignable, non-transferable (i) right to access and use the purchased Solution in the Territory for the Permitted Purpose in accordance with the terms of this Agreement and applicable Services Schedule and (ii) license to (download and install, where applicable) and use the Software (in executable form only) in the Territory for the Permitted Purpose in accordance with the terms of this Agreement and applicable Services Schedule.

**2.4 Copies.** If Software is downloaded/installed by You, You may make copies of such Software for reasonable back-up purposes, and shall retain a log of the location of the original and number and location of permitted copies of the Software and, upon request, shall advise Supplier of such location and copies.

**2.5 Restrictions On Use.** Unless expressly permitted elsewhere in this Agreement or in an applicable Services Schedule, You are prohibited and shall have no right to (except as specifically permitted by law or with Supplier’s prior written consent):

- (a) exceed a hard-capped Usage Quota (if applicable);
- (b) permit an allocated user login to be used by more than one individual Authorized User (unless it has been reassigned in its entirety to another individual Authorized User, in which case the prior Authorized User shall no longer have any right to access or use the Solution);
- (c) copy, adapt, reverse engineer, decompile, disassemble, unbundle, repackage, attempt to derive source code, modify or create derivative works of any Solution or Software or any of its component parts for any reason whatsoever, in whole or in part;
- (d) sell, lease, license, sublicense, rent, assign, distribute, or otherwise transfer or share, in whole or in part, the Solution or Software, or your rights in or to the same, to another party, including rights on a membership, subscription, or hosted basis;
- (e) bundle or distribute the Solution or Software in any manner whatsoever;
- (f) enable or permit use of the Solution or Software by a third party (other than to permit Your Authorized Users to access and use the Solution in the normal course of business), whether for evaluation or otherwise, or whether in a third-party outsourcing facility, on a service or service bureau arrangement, or on a rental, application service provider, or timesharing basis;
- (g) use or permit the use of the Solution or Software other than within the Territory; and/or

(h) use the Solution or Software to transmit, reproduce, store, or share Content that you do not have the right to transmit, reproduce, store, or share or which violates Supplier's acceptable use policy.

These restrictions are made for the benefit of Supplier, and its suppliers and may be enforced by such suppliers to the extent that they relate to any Software and IPR supplied by such suppliers. Any and all rights not expressly granted to You are reserved in all respects by Supplier.

**2.6 Usage Management.** Supplier reserves the right to incorporate or use or provide access to a Usage Management tool within, as part of, or as a required add-on to any Solution or Software and any upgrades thereof. You are prohibited from accessing or changing any parameters contained within the tool or manipulate in any way the proper function of the tool and/or its functionality. The Usage Management tool and/or Software may contain a function which in a random sequence sends usage related information to (or if the tool is cloud based, collects such information for) Supplier and You hereby undertake to install the tool and maintain Supplier's access to it (or if the tool is cloud based, to maintain such connectivity to the tool) as directed by Supplier and as may be required to ensure such information can be received and/or collected by Supplier without hindrance.

**2.7 Feature/Functionality Changes.** Supplier reserves the right to change or vary the features and/or functionality of, or components within, a Solution and/or updates thereto (including substituting or replacing Third Party Products, Open Source Software or AI) as the Solution evolves or undergoes updates and/or improvements, and hence may amend relevant Specifications, *provided* that those changes do not materially impact or reduce the features and functionality available within the Solution as purchased by You.

**2.8 Open Source Software.** Software may contain and/or Solutions may utilize open source libraries and software (collectively, "Open Source Software") the use of which may be subject to specific license terms, and which Supplier shall where required identify in relevant product/service specifications or via its website. In the event of conflict between the terms and conditions of this Agreement and the terms of the applicable license for such Open Source Software, the terms of the applicable Open Source Software license shall govern, but only to the extent required by such license. Notwithstanding anything to the contrary in this Agreement, all Open Source Software is provided "as-is", and Supplier makes no warranties, whether express or implied, in respect of the Open Source Software, and disclaims all implied and statutory warranties in respect thereof, and Supplier shall not have any indemnification liabilities in respect of any claims to the extent arising from or connected to Open Source Software.

**2.9 Artificial Intelligence.** The Solutions may include features and functionality that incorporate, use or rely on machine-based systems that use AI as a core function. Supplier shall identify all such AI use in relevant product/service specifications or via its website.

### 3. FEES & PAYMENT

**3.1 Taxes.** Fees payable will be stated as either including or excluding sales, use, value added or goods and services taxes, and where stated as excluded, such taxes will where appropriate be added to the price payable by You for the Solution, Software

and/or any associated Services unless You provide Supplier with a certificate of exemption.

**3.2 Payment Terms.** Fees payable for access and use of the Solutions and/or Software will be as stipulated in the applicable Order (and/or Services Schedule) and unless explicitly stated otherwise are non-refundable. Fees due shall be paid in the currency stipulated in the Supplier invoice. Supplier shall be entitled to increase the pricing and/or fees payable under an Order, (i) if the Order is for a fixed minimum period, at the start of each Renewal Period (defined in Section 9.2), or (ii) if the Order has no fixed minimum period, once per calendar year; in both cases, upon 90 days' prior notice to the Customer.

**3.3 Right To True-Up.** Without prejudice to any other rights or remedies Supplier may have under these terms or at law, Supplier is entitled to invoice You for any use of a Solution and/or associated Software and Services (and/or of available features and/or functionality) in excess of or in addition to what You have paid for, and You agree to pay such excess amounts as are invoiced. There will be no reduction or refund of fees paid if license volumes, usage or any other applicable variable is below the level purchased or paid for or if the Solution and/or associated Software or Services are not in use.

**3.4 Increasing Hard-Capped Usage Quotas.** Where a Solution is licensed on the basis of a hard-capped Usage Quota, You may from time to time during the Subscription Term increase any of those Usage Quotas by sending written notice to Supplier containing details of the quota(s) that you wish to increase and from when, whereupon: (a) Supplier shall evaluate Your request and respond with approval or rejection of the request, and where approved, Supplier shall activate the increased Usage Quota(s) as soon as is reasonably practicable but in any event within 30 days of its approval of the request and confirm this via email; and (b) You shall, within 30 days of the date of Supplier's invoice with respect to the fees due for the increased quota(s), pay to Supplier the relevant fees for such increased Usage Quota(s) as and when due. If Your usage exceeds a hard-capped Usage Quota without Supplier's permission, You will be liable for all additional fees incurred with respect to such overuse at non-discounted prices, and if such overuse occurs on 2 or more occasions in any given 3 month period, Supplier reserves the right to suspend access and use of the Solution on reasonable notice until the parties have agreed a revised Usage Quota and all sums due are paid.

**3.5 Overdue Fees.** If fees become overdue at any time then, without prejudice to any other right or remedy available to Supplier and subject to Supplier giving You written notice of its intention to exercise the rights set out in this Section: (i) You shall be liable to pay interest on the overdue amount at the rate of one per cent per complete month until Supplier has received payment of the overdue amount together with interest that has accrued; and (ii) Supplier reserves the right to suspend Your use of the Solution (which may include disabling user accounts, passwords and access to all or part of the Solution) and/or any licenses granted to You with respect to Software made available pursuant to a relevant Order, and Supplier shall be under no obligation to provide access to all or part of the Solution, until such time as You have paid all outstanding invoices, fees (and where applicable, interest) due.

**3.6 Additional Services.** Where Supplier carries out on Your instruction any services which are not Services included as part of a purchased Solution (known herein as "Additional

Services”), including without limitation integration to or any issues relating to integration with any third party products, Supplier shall be entitled to charge additional and separate fees for such Additional Services in accordance with its standard charging rates on a time and materials basis (or such other basis as is agreed in writing by the parties). Wherever reasonably practical You will be notified of the value or likely value of charges for Additional Services in advance of the provision of the Additional Services.

**3.7 Record Keeping.** You shall keep complete, clear and accurate records with respect to Your use of the Solution and/or associated Software. Supplier may during the term of grant and for two (2) years thereafter request a written statement detailing Your use of the Solution and/or associated Software (certified by one of Your senior executives) to inter alia verify the fees due under this Agreement and/or applicable Services Schedule, and/or may audit Your use of the Solution (and/or associated Software and Services) to verify that such use is and has been in accordance with this Agreement and applicable Services Schedule, upon giving You prior written notice thereof and only during normal business hours. You shall provide Supplier with all reasonable assistance, including access to all information necessary for such verification.

## **4. SUPPLIER RESPONSIBILITIES & WARRANTY**

**4.1** In consideration of the payment of fees due, Supplier shall, during the Subscription Term, provide the Solution to You on and subject to the terms of this Agreement.

**4.2 Maintenance.** Supplier shall use commercially reasonable endeavors to make the Solution available in accordance with any availability targets (as stated in the applicable Specification or SLA), except for: (a) scheduled maintenance (being pre-planned maintenance windows notified to You in advance); and (b) unscheduled maintenance (provided Supplier has where possible given You at least 12 hours’ notice in advance).

**4.3 Performance Warranty.** Supplier warrants that the Solution will perform in a manner which substantially conforms to the applicable Specification, and in so far as the Solution does not so conform, Supplier will, at its expense and option, use reasonable endeavors to correct any such non-conformance in accordance with the terms of the SLA applicable to the Solution purchased or otherwise provide You with an alternative means of accomplishing the desired performance, or if the aforesaid are not in Supplier’s sole opinion achievable within a reasonable timeframe or at reasonable cost, Supplier may opt to refund to You fees paid for the Solution or part thereof during the period of non-conformance. Save as may otherwise be explicitly provided for in the applicable SLA, such correction, substitution or refund constitutes Your sole and exclusive remedy for any breach of this section. Supplier shall have no responsibility to correct any non-conformance to the extent that it is caused by (i) use of the Solution contrary to Supplier’s instructions, or (ii) modification or alteration of the Solution by any party other than Supplier, or (iii) use other than in accordance with the terms and conditions of this Agreement.

**4.4 Included Support.** Supplier shall, where expressly stated as “included” in the Solution, provide You with Supplier’s standard customer support services in accordance with the terms of the basic SLA applicable to the Solution purchased. Supplier may amend the SLA in its sole and absolute discretion from time to time. You may purchase additional or enhanced support

services separately upon request.

**4.5 Warranty Limitations.** Other than as explicitly stated in this Agreement: (a) Supplier does not warrant that use of the Solution by You will be uninterrupted or error-free; or that the Solution will meet Your requirements; (b) Services are provided to You on an “as is” basis; (c) Supplier is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and You acknowledge that the Solution may be subject to limitations, delays and other problems inherent in the use of such communications facilities; and (d) for Third Party Products You shall only be entitled to such warranty or other benefit as Supplier has received from its suppliers and is able to pass on. Except as provided in this subsection, no warranty (whether express, statutory or implied) is given by any Supplier or licensor of Supplier in respect of the whole or any part of a Third Party Product, and such suppliers and licensors disclaim all such warranties including without limitation any warranties of merchantability, non-infringement or fitness for a particular purpose.

**4.6 Warranty Exclusions.** The warranties contained in this Section 4 are in lieu of all other warranties or conditions expressed or implied by operation of law or otherwise, including without limitation implied warranties or conditions of merchantability, satisfactory quality, fitness for a particular purpose and non-infringement of third party rights and which are, to the fullest extent permitted by law, excluded from this Agreement, all Services Schedule and Orders. Your sole remedies for any breach of warranty are as set out in this Section 4.

## **5. YOUR RESPONSIBILITIES**

**5.1 Compliance With Laws.** You shall comply with all applicable laws and regulations with respect to Your activities under this Agreement and Your use of the Solution. Further, You are responsible for satisfying yourself that the purchase and use of the Solutions, Software and/or Services by You (together with any Content you introduce into or make available through or transfer or transmit over or using the Solution or Software) is lawful in the Territory, and that you have obtained all necessary consents, permits or licenses for such use by You. Save as set out in Section 7, Supplier does not assume, and hereby disclaims, any obligation or liability in this regard.

**5.2** You agree to:

(a) provide Supplier with such co-operation and access to such information as may reasonably be required to enable Supplier to provide the Solution, including but not limited to relevant Customer Data, network and security access information and configuration services;

(b) ensure that Authorized Users only use the Solution in accordance with the terms and conditions of this Agreement;

(c) be responsible for ensuring You have suitable backups and redundancies of Customer Data and/or Content;

(d) comply with the restrictions on use set out in this Agreement and a relevant Services Schedule;

(e) be responsible for procuring and maintaining all network connections and telecommunications links from Your systems to those cloud / hosted services provided by Supplier as part of the Solution, and all issues, conditions, delays, delivery failures



and all other loss or damage arising from or relating to Your network connections or telecommunications links or caused by the internet; and

(f) use all reasonable endeavours to prevent any unauthorized access to, or use of, the Solution and, in the event of any such unauthorized access or use, promptly notify Supplier.

5.3 Acceptable Use. You undertake not to:

(a) use, encourage, promote facilitate or instruct others to use, the Solution for any illegal, harmful, fraudulent, infringing or offensive use, or to transmit, store, display, distribute or otherwise make available Content or other material that is illegal, harmful, fraudulent, infringing or offensive, examples of which can include (without limitation):

- activities that are illegal, that violate the rights of others, or that may be harmful to others, our operations or reputation, including disseminating, promoting or facilitating child pornography, offering or disseminating fraudulent goods, services, schemes, or promotions, phishing, or pharming;
- Content that infringes or misappropriates the intellectual property or proprietary rights of others;
- Content that is defamatory, obscene, abusive, invasive of privacy, or otherwise objectionable, including content that constitutes child pornography, relates to bestiality, or depicts non-consensual sex acts;
- Content and other technology that may damage, interfere with, surreptitiously intercept, or expropriate any system, program, or data, including viruses ("virus" for the purpose this Agreement means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices);

(b) use the Solution to violate the security or integrity of any network, computer or communications system, software application, or network or computing device, examples of which can include (without limitation): scanning or testing system vulnerabilities, monitoring data transmission without permission, using false TCP-IP packet headers; and

(c) use the Solution to make network connections to any users, hosts, or networks unless you have permission to communicate with them, examples of which can include (without limitation): denial of service, bombing or flooding techniques, using systems designed to avoid or bypass limitations on access or use.

5.4 Entertainment Use. The Solutions are designed for the provision and management of video, audio and/or data assets intended for entertainment use (including educational and training purposes) and/or uses ancillary thereto (such as contribution and distribution of Content to entertainment networks) ("Entertainment Use"). The Solutions are not designed, manufactured, tested or intended for operation or use in relation to any (i) military or military support activities; (ii) intelligence gathering or surveillance, dissemination or planning

activities; (iii) medical or medical observation activities; (iv) flight, navigation or related communication or planning activities (including without limitation those relating to air or space flight); or (v) any inherently dangerous, life-endangering or life-support applications. If You (or Your Authorized Users) use the Solutions for any purpose other than Entertainment Use and/or for any purpose related to (i) to (v) above, then such use is at Your sole risk without any recourse against or with respect to Supplier and You hereby indemnify and hold Supplier and its third party suppliers and licensors harmless from any claims for loss, cost, damage, expense or liability arising out of or in connection with such use.

## 6. FORCE MAJEURE

Neither Supplier or You shall be liable for any loss or damage suffered or incurred by the other arising from a party's delay or failure to fulfill or otherwise discharge any of its obligations (except obligations to pay fees due) to the extent such delay or failure is caused by any cause or circumstance beyond its or its sub-contractors' reasonable control including but not limited to act of God, declared natural disasters and health pandemics. governmental act, compliance with any law or governmental order, currency or trade restriction, embargo or sanction, withholding, delay or revocation of export or import control approval or other license, materials or component shortages. war (whether formally declared or not), terrorist activity, nuclear, chemical or biological contamination, fire, flood, explosion, prolonged break-down of transport, telecommunication, information system or energy supplies, civil commotion or industrial dispute (other than industrial disputes related solely to the employees of the party claiming Force Majeure) ("Force Majeure"). Subject to the party so delaying promptly notifying the other party in writing of the reason for the delay and the likely duration of the delay, the performance of the delaying party's obligations to the extent affected by the delay shall be suspended during the period that the cause persists, provided that each party shall use commercially reasonable efforts to avoid the effect of that cause. If performance is not resumed within 60 days of that notice the non-delaying party may at any time thereafter but in any event prior to resumption of obligations by the delaying party by notice in writing cancel the affected Order.

## 7. LIABILITY

7.1 NEITHER SUPPLIER'S NOR YOUR LIABILITY FOR ANY OF THE FOLLOWING IS EXCLUDED OR LIMITED BY THIS AGREEMENT OR ANY OTHER PROVISION OF THE SERVICES SCHEDULE OR AN ORDER (EVEN IF A TERM SEEKS TO SUGGEST OTHERWISE): (I) DEATH OR BODILY INJURY CAUSED BY THAT PARTY'S NEGLIGENCE OR THE NEGLIGENCE OF ITS EMPLOYEES, AGENTS OR SUB-CONTRACTORS; (II) FRAUD OR OTHER CRIMINAL ACT; (III) FRAUDULENT MISREPRESENTATION; (IV) FOR ANYTHING ELSE IN RELATION TO WHICH LIABILITY CANNOT BE EXCLUDED OR LIMITED. YOUR LIABILITY FOR BREACH OF THE TERMS OF SECTION 2 SHALL NOT BE EXCLUDED OR LIMITED IN ANY WAY.

7.2 SUBJECT TO SECTION 7.1, NEITHER SUPPLIER, NOR ANY AFFILIATE OR LICENSOR OF SUPPLIER, NOR YOU SHALL BE LIABLE UNDER OR IN RELATION TO THIS AGREEMENT, SERVICES SCHEDULE OR AN ORDER (WHETHER THE LIABILITY ARISES FOR BREACH OF CONTRACT, NEGLIGENCE, UNDER AN INDEMNITY,

OBLIGATION TO REFUND, UNDER ANY OTHER THEORY OF LAW OR FOR ANY OTHER REASON INCLUDING WITHOUT LIMITATION LIABILITY ARISING FROM ACCIDENTAL, NEGLIGENT AND DELIBERATE BREACH) FOR ANY:- (I) LOSS OF PROFITS; (II) LOSS OF REVENUE; (III) LOSS OF SAVINGS OR PROSPECTIVE SAVINGS; (IV) LOSS OF OR DAMAGE TO GOODWILL OR REPUTATION; (V) LOSS OF, OR LOSS OF THE USE OF, OR UNAUTHORIZED ACCESS TO ANY SOFTWARE, CONTENT OR DATA; (VI) LOSSES OR LIABILITIES IN RELATION TO ANY OTHER CONTRACT; (VII) COSTS ASSOCIATED WITH NON-UTILIZATION OF A TRANSMISSION NETWORK OR (VIII) INDIRECT, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE. FOR THE PURPOSES OF THIS SECTION THE TERM "LOSS" INCLUDES A PARTIAL LOSS OR REDUCTION IN VALUE AS WELL AS A COMPLETE OR TOTAL LOSS.

7.3 SUBJECT TO SECTIONS 7.1 AND 7.2, SUPPLIER'S TOTAL AGGREGATE LIABILITY (WHETHER THE LIABILITY ARISES FROM BREACH OF CONTRACT, NEGLIGENCE, UNDER AN INDEMNITY, OBLIGATION TO REFUND, UNDER ANY OTHER THEORY OF LAW OR FOR ANY OTHER REASON INCLUDING WITHOUT LIMITATION LIABILITY ARISING FROM ACCIDENTAL, NEGLIGENT AND DELIBERATE BREACH) SHALL BE LIMITED IN EACH CALENDAR YEAR FOR ALL CLAIMS FIRST ARISING IN THAT CALENDAR YEAR TO AN AMOUNT EQUAL TO THE TOTAL AMOUNT OF FEES PAID BY THE CUSTOMER UNDER THAT ORDER DURING SUCH CALENDAR YEAR.

7.4 YOU AGREE THAT SUPPLIER SHALL (SAVE AS PROVIDED IN SECTION 7.1) HAVE NO LIABILITY FOR ANY LOSS, HARM OR DAMAGES THAT WOULD HAVE BEEN PREVENTED BY YOU TAKING REASONABLE PRECAUTIONS (RELATIVE TO THE IMPORTANCE TO YOU OF THE SOLUTION CONCERNED), INCLUDING WITHOUT LIMITATION BACKING UP SOFTWARE, CUSTOMER DATA AND CONTENT AT REASONABLE INTERVALS, AS WELL AS IMPLEMENTING BACK-UP SYSTEMS OR REDUNDANCY.

## 8. INDEMNIFICATION

8.1 SUBJECT TO THE PROVISIONS OF SECTION 7 AND SECTIONS 8.2 TO 8.4, SUPPLIER SHALL, AT SUPPLIER'S EXPENSE, (A) DEFEND YOU FROM AND AGAINST ANY CLAIMS, DEMANDS, ACTIONS, CAUSES OF ACTION, AND/OR PROCEEDINGS ARISING FROM ANY ACTUAL OR ALLEGED INFRINGEMENT OR VIOLATION OF A PATENT, TRADE SECRET, COPYRIGHT, OR OTHER INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY RESULTING FROM THE PROPER USE OF THE SOFTWARE WITHIN THE TERRITORY (A "SUPPLIER INFRINGEMENT CLAIM"), AND (B) INDEMNIFY YOU FROM AND AGAINST ANY REASONABLE EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES), DAMAGES, LOSSES, AND/OR LIABILITIES THAT ARE (1) DIRECTLY RELATED TO A SUPPLIER INFRINGEMENT CLAIM AND (2) FINALLY ORDERED BY A COURT OF COMPETENT JURISDICTION OR ARE REQUIRED TO BE PAID AS PART OF A SETTLEMENT AGREEMENT APPROVED IN WRITING BY SUPPLIER. YOU SHALL PROVIDE SUPPLIER WITH PROMPT NOTICE OF ALL SUPPLIER INFRINGEMENT CLAIM(S) FOR WHICH SUPPLIER IS RESPONSIBLE HEREUNDER, AND SUCH NOTICE SHALL INCLUDE AN IDENTIFICATION OF THE SOFTWARE THAT

YOU CONTEND IS A SUBJECT OF THE SUPPLIER INFRINGEMENT CLAIM(S) AND AN IDENTIFICATION OF THE SPECIFIC INFRINGEMENT ALLEGATION(S) (IN THE CASE OF A PATENT INFRINGEMENT, AN IDENTIFICATION OF THE SPECIFIC PATENT CLAIMS) THAT YOU CONTEND IMPLICATES SUCH SOFTWARE. IN ALL CIRCUMSTANCES, SUPPLIER SHALL HAVE FULL AUTHORITY TO ASSUME CONTROL OF THE DEFENSE AND SETTLEMENT OF ANY SUPPLIER INFRINGEMENT CLAIM; HOWEVER, YOU SHALL HAVE THE RIGHT TO PARTICIPATE AT YOUR OWN EXPENSE IN THE DEFENSE OF A SUPPLIER INFRINGEMENT CLAIM THROUGH COUNSEL OF ITS OWN CHOOSING. AT ALL TIMES YOU SHALL COOPERATE FULLY WITH SUPPLIER IN THE DEFENSE OF A SUPPLIER INFRINGEMENT CLAIM, INCLUDING PROVIDING SUPPLIER WITH SUCH ASSISTANCE AS SUPPLIER MAY REASONABLY REQUIRE IN CONNECTION THEREWITH. SUPPLIER SHALL HAVE NO OBLIGATION UNDER THIS SECTION IF THE SUPPLIER INFRINGEMENT CLAIM RESULTS FROM OR IS BASED ON: (I) THE USE OF THE SOFTWARE IN COMBINATION WITH PRODUCTS, SOFTWARE, OR SERVICES OR OTHER TECHNOLOGIES NOT SUPPLIED BY SUPPLIER; (II) THE MODIFICATION OF THE SOFTWARE BY ANYONE OTHER THAN SUPPLIER OR ITS SUBCONTRACTORS OR AGENTS; (III) YOU CAUSING OR CONTRIBUTING TO THE EVENTS THAT GAVE RISE TO THE SUPPLIER INFRINGEMENT CLAIM FOR WHICH IT SEEKS DEFENSE AND/OR INDEMNITY; (IV) THE VALUE OF THE USE OF A NON-SUPPLIER PRODUCT, SERVICE, DATA, BUSINESS PROCESS, OR OTHER INTELLECTUAL PROPERTY RIGHTS, INCLUDING YOUR PRODUCTS, SERVICES, DATA AND BUSINESS PROCESSES; (V) A SPECIFICATION, REQUIREMENT, DESIGN OR INSTRUCTION PROVIDED BY YOU; (VI) THE USE OF THE SOFTWARE, OR PART THEREOF, IF YOU HAVE REFUSED AN OFFER OF A REPLACEMENT OR MODIFICATION FOR SUCH SOFTWARE, OR PART THEREOF, AND SUCH REPLACEMENT OR MODIFICATION IS NOT SUBJECT TO THE SUPPLIER INFRINGEMENT CLAIM; (VII) FAILURE BY YOU OR YOUR END-CUSTOMER TO TAKE A LICENSE AND/OR PAY PARTICIPATION FEES EXPRESSED TO BE PAID TO A THIRD PARTY (OTHER THAN A NETWORK EQUIPMENT PROVIDER OR TECHNOLOGY PROVIDER) UNDER ANY LICENSING REGIME, INCLUDING, WITHOUT LIMITATION, MPEG 4 PART 10 OR HEVC, UNLESS SUPPLIER HAS PREVIOUSLY NOTIFIED YOU THAT SUCH LICENSE AND/OR PARTICIPATION FEES IS INCLUDED WITHIN THE SOLUTION; (VIII) DATA OR CONTENT INTRODUCED INTO OR MADE AVAILABLE THROUGH OR TRANSFERRED OR TRANSMITTED OVER OR USING THE SOFTWARE.

8.2 THE INDEMNITY IN SECTION 8.1 SHALL ONLY APPLY TO A SUPPLIER INFRINGEMENT CLAIM PROVIDED THAT: (I) AS SOON AS REASONABLY POSSIBLE YOU NOTIFY SUPPLIER IN WRITING OF THE SUPPLIER INFRINGEMENT CLAIM ONCE YOU BECOME AWARE OF IT (WHETHER BY FORMAL NOTICE OR OTHERWISE); (II) YOU DO NOT MAKE ANY ADMISSION AS TO LIABILITY IN RELATION TO, OR COMPROMISE OR AGREE TO ANY SETTLEMENT OF, THE SUPPLIER INFRINGEMENT CLAIM WITHOUT THE PRIOR WRITTEN CONSENT OF SUPPLIER; (III) IF SUPPLIER SO REQUESTS, YOU ALLOW SUPPLIER AT ITS OWN EXPENSE TO HAVE THE CONDUCT OF OR SETTLE ALL NEGOTIATIONS AND LITIGATION ARISING FROM THE

SUPPLIER INFRINGEMENT CLAIM; (IV) YOU ACT IN RELATION TO THE SUPPLIER INFRINGEMENT CLAIM IN ACCORDANCE WITH THE REASONABLE INSTRUCTIONS OF SUPPLIER AND, AT SUPPLIER'S REQUEST AND EXPENSE, GIVE SUPPLIER ALL REASONABLE ASSISTANCE IN CONNECTION WITH THOSE NEGOTIATIONS AND SUCH LITIGATION; AND (V) SUBJECT TO THE OTHER PROVISIONS OF THIS SECTION 8.2, YOU TAKE ALL REASONABLE STEPS TO MINIMIZE ANY LOSS OR DAMAGE SUFFERED BY YOU THAT WOULD OTHERWISE HAVE BEEN COVERED BY THE INDEMNITY.

8.3 IF ANY SUPPLIER INFRINGEMENT CLAIM IS MADE, OR IN SUPPLIER'S REASONABLE OPINION IS LIKELY TO BE MADE, THEN SUPPLIER MAY, AT ITS OPTION AND EXPENSE, AND YOU SHALL PERMIT SUPPLIER TO (I) OBTAIN THE RIGHT FOR YOU TO CONTINUE USING THE SOFTWARE THAT IS THE SUBJECT OF THE SUPPLIER INFRINGEMENT CLAIM; OR (II) REPLACE OR MODIFY THE SOFTWARE THAT IS SUBJECT TO THE SUPPLIER INFRINGEMENT CLAIM WITH NON-INFRINGEMENT SOFTWARE OF EQUIVALENT FUNCTIONALITY AND IN CONFORMITY WITH THE REQUIREMENTS OF THIS AGREEMENT. IF NEITHER OF THE ALTERNATIVES SET FORTH IN THE FOREGOING SUBCLAUSES (I) AND (II) ABOVE IS REASONABLY COMMERCIAL PRACTICABLE IN SUPPLIER'S DISCRETION, THEN (A) SUPPLIER WILL NOTIFY YOU TO DISCONTINUE USING THE SOFTWARE (OR PORTIONS THEREOF); (B) YOU WILL DISCONTINUE USE OF THE SOFTWARE (OR PORTIONS THEREOF); AND (C) SUPPLIER SHALL REFUND TO YOU THE FEES PAID TO SUPPLIER FOR THE PERTINENT SOFTWARE, LESS A REASONABLE AMOUNT FOR DEPRECIATION, AND YOU SHALL RETURN TO SUPPLIER (OR AT SUPPLIER'S REQUEST, DELETE FROM YOUR SYSTEMS) THE RELEVANT SOFTWARE. IF YOU FAIL TO DISCONTINUE USE OF THE SOFTWARE (OR PORTIONS THEREOF) AS SET FORTH IN THE IMMEDIATELY PRECEDING SENTENCE, SUPPLIER SHALL HAVE NO LIABILITY FOR CONTINUED USE BY YOU OF SAID SOFTWARE.

8.4 SECTIONS 8.1 TO 8.3 SET FORTH SUPPLIER'S SOLE LIABILITY AND YOUR SOLE REMEDY FOR ANY CLAIM OF INFRINGEMENT OR VIOLATION OF A PATENT, TRADE SECRET, COPYRIGHT, OR OTHER INTELLECTUAL PROPERTY RIGHT OF ANY THIRD PARTY.

8.5 YOU SHALL, AT YOUR EXPENSE, (A) DEFEND SUPPLIER FROM AND AGAINST ANY CLAIMS, DEMANDS, ACTIONS, CAUSES OF ACTION, AND/OR PROCEEDINGS ARISING FROM ANY BREACH OF SECTIONS 2.3, 2.5 AND 5 (A "CUSTOMER INFRINGEMENT CLAIM"), AND (B) INDEMNIFY SUPPLIER FROM AND AGAINST ANY REASONABLE EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES), DAMAGES, LOSSES, AND/OR LIABILITIES THAT ARE (I) DIRECTLY RELATED TO A CUSTOMER INFRINGEMENT CLAIM AND (2) FINALLY ORDERED BY A COURT OF COMPETENT JURISDICTION OR ARE REQUIRED TO BE PAID AS PART OF A SETTLEMENT AGREEMENT APPROVED IN WRITING BY YOU. SUPPLIER SHALL PROVIDE YOU WITH PROMPT NOTICE OF ALL CUSTOMER INFRINGEMENT CLAIM(S) FOR WHICH YOU ARE RESPONSIBLE HEREUNDER, AND SUCH NOTICE SHALL INCLUDE AN IDENTIFICATION OF THE SUBJECT OF THE CLAIM(S) AND OF THE SPECIFIC

ALLEGATION(S). YOU SHALL HAVE THE RIGHT TO ASSUME CONTROL OF THE DEFENSE AND SETTLEMENT OF ANY CUSTOMER INFRINGEMENT CLAIM, SAVE THAT SUPPLIER MAY TAKE CONTROL OF THE DEFENSE AND SETTLEMENT OF A CLAIM IF YOU FAIL TO DO SO IN A TIMELY MANNER. WHERE YOU DO ASSUME CONTROL, SUPPLIER SHALL HAVE THE RIGHT TO PARTICIPATE AT ITS OWN EXPENSE IN THE DEFENSE OF A CUSTOMER INFRINGEMENT CLAIM THROUGH COUNSEL OF ITS OWN CHOOSING. SUPPLIER SHALL COOPERATE FULLY WITH YOU IN THE DEFENSE OF A CUSTOMER INFRINGEMENT CLAIM. YOU SHALL HAVE NO OBLIGATION UNDER THIS SECTION IF THE CUSTOMER INFRINGEMENT CLAIM RESULTS FROM OR IS BASED ON A CLAIM FOR WHICH SUPPLIER IS OBLIGED TO INDEMNIFY YOU UNDER SECTION 8.1.

## 9. CANCELLATION/TERMINATION/SUSPENSION

9.1 This Agreement shall commence on the date of Your first Order and shall continue in full force and effect for as long as an Order governed by this Agreement remains active, or it is otherwise terminated in accordance with its terms.

9.2 Subscription Term. Orders shall commence in accordance with their terms, and shall:

(a) if the Order is for a fixed minimum term, continue for that minimum period (the "Initial Subscription Term") and thereafter be automatically renewed for successive periods of 12 months (each a "Renewal Period") unless: (i) either Party gives the other not less than 90 days' written notice of cancellation before the end of either the Initial Subscription Term or a Renewal Period (as applicable), in which case the Order (and applicable Services Schedule, and the licenses granted to use the Solution) shall terminate upon the expiry of the Initial Subscription Term or Renewal Period, as applicable; or (ii) otherwise terminated in accordance with the provisions of this Agreement or the relevant Order; or,

(b) if the Order has no fixed minimum term, continue until (i) cancelled by either Party giving the other not less than 90 days' written notice at any time; or, (ii) otherwise terminated in accordance with the terms of this Agreement or the relevant Order.

Unless an Order states otherwise, the period of time from the Order commencing until its expiry, cancellation or termination shall constitute the "Subscription Term".

9.3 Termination For Cause. Supplier or You may terminate this Agreement immediately at any time by written notice to the other if: (i) the other commits a material breach of this Agreement, the applicable Services Schedule or an Order which it fails to remedy within 30 days of receiving written notice requiring it to do so; or (ii) the other becomes insolvent, has an administrator, receiver or manager appointed over the whole or any part of its assets or business, makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt or an order or resolution is made for its winding-up dissolution or liquidation (other than for the purpose of solvent reconstruction) or any event occurs in a foreign jurisdiction analogous to, or comparable with, any of the above.

9.4 Effect of Termination. On termination of this Agreement for any reason:



(a) all rights and licences granted under this Agreement shall immediately terminate and You shall immediately cease all use of the Solution and all associated Software and Services;

(b) each party shall return and make no further use of any equipment, property and other items (and all copies of them) belonging to the other party; and

(c) Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless Supplier receives, within 10 days of the effective date of the termination of this Agreement, a written request for the delivery to You of the then most recent back-up of the Customer Data, which Supplier shall endeavour to deliver to You within 30 days of receipt of such written request, provided that You have, at that time, paid all fees outstanding at (and/or resulting from) termination (whether or not due at the date of termination). You agree to pay all reasonable expenses incurred by Supplier in returning or disposing of Customer Data.

**9.5 Right To Suspend.** In the event of non-compliance with Sections 2.3, 2.5 and/or 5, Supplier reserves the right to suspend Your use of the Solution (which may include disabling user accounts, passwords and access to all or part of the Solution) and/or any licenses granted to You with respect to Software made available pursuant to the terms of this Agreement or any Services Schedule, and Supplier shall be under no obligation to provide access to all or part of the Solution, until such time as You are in compliance. Serious or persistent non-compliance by You shall constitute a material breach. Further, if any instructions, information, technical documents, design approval, letters of undertaking, licenses or authorizations required to be provided by You have not been provided, Supplier reserves the right (subject to giving You reasonable written notice of its intention to exercise the rights set out in this section) to suspend its contractual performance under this Agreement pending provision of the same.

**9.6** Termination of this Agreement for any reason shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision in this Agreement, or a Services Schedule, or an Order which is expressly or by implication intended to come into force or continue in force on or after that termination. Notwithstanding the foregoing, the parties agree that the equitable remedy of specific performance of either party is hereby expressly excluded.

**9.7** Upon the expiration or termination of this Agreement, and/or any Services Schedule or relevant Order the following provisions shall continue in full force and effect: Sections 2, 3, 4, 5 and 7 through 11.

## **10. CONFIDENTIALITY & CUSTOMER DATA**

**10.1** Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that: (a) is or becomes publicly known other than through any act or omission of the receiving party, free of any obligation of confidence; (b) was in the other party's lawful possession before the disclosure; (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or (d) is independently developed by the receiving party, which independent development can be shown by written evidence.

**10.2** Subject to Section 10.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party or use the other's Confidential Information for any purpose other than the implementation of this Agreement.

**10.3** Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

**10.4** A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this sub-section it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

**10.5** Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

**10.6** You acknowledge that details of the Solution, results relating to the performance, testing, development and support of the Solution or any other existing or new product and/or service of Supplier, and analyses, reports and other work resulting or derived therefrom are Supplier's Confidential Information.

**10.7** Supplier is permitted to advertise or publicly announce that Supplier is providing its products and/or services to You, where either (i) it is required to do so by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, or (ii) You have been informed of such planned advertising or public announcement (email notice sufficing), and You have not objected thereto in writing on reasonable grounds within 10 days of being informed of Supplier's plans.

**10.8** Each party shall comply with applicable data protection laws and regulations.

**10.9** In the following sub-sections the words "data controller", "data processor", "data subject", "personal data" and to "process" have the meanings given to them in the EU General Data Protection Regulation (EU 2016/679); "UK" means the United Kingdom, the "EEA" means the European Economic Area, "EU" means the European Union, and "SCCs" means the EU-approved standard contractual clauses.

**10.10** Customer Data shall be treated in the same manner as Confidential Information, and You shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the use, legality, reliability, integrity and accuracy of Customer Data; and the parties record their intention that You shall be the data controller and Supplier the data processor. For the avoidance of doubt, Supplier (and its Affiliates) may collect, copy and use data collected by it in relation to (a) the performance and support of the Solutions; (b) Supplier's testing, development, and sales of existing or new products and/or services; and (c) compiling and analyzing such data in an aggregated and anonymized format, to prepare reports, analysis or other work resulting from such compilation



and analysis for Supplier's internal use.

10.11 If Supplier processes any personal data on Your behalf when performing its obligations under this Agreement (and the parties have not entered into a separate data processing agreement to govern such processing), it shall do so in accordance with its privacy policy (available at mediakind.com) and applicable laws, and:

(a) You acknowledge and agree that for personal data relating to UK and EEA data subjects, such data may be transferred or stored outside the UK and EEA or the country where You and the data subject is located in order to provide the Solution and/or fulfil Supplier's other obligations under this Agreement, provided Supplier conducts such transfer in accordance with an approved data transfer mechanism (e.g. SCCs);

(b) You shall ensure that the transfer of relevant personal data to Supplier is permitted, and that Supplier may lawfully use, process and transfer the personal data on Your behalf in accordance with this Agreement;

(c) You shall ensure that relevant data subjects have been informed of, and understand their rights in relation to, such use, processing, and transfer as required by applicable data protection legislation;

(d) Supplier shall process the personal data only in accordance with the terms of this Agreement and any lawful instructions reasonably given by You from time to time; and

(e) taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the parties shall each implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk, in order to protect against accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to the personal data.

## 11. GENERAL

11.1 Except as may be expressly provided elsewhere in this Agreement, You may not transfer, assign or sub-license an Order or any or all of its rights under it without the prior written consent of Supplier. Supplier or You may assign an Order on a transfer of its business or undertaking in which event the Order shall automatically accrue for the benefit of the assigning party's successor by operation of law. Supplier may assign, this Agreement and any Orders to an Affiliate as part of a group restructuring or consolidation, and/or may sub-contract or procure the performance of all or any part of an Order by an Affiliate and reserves the right to sub-contract to third party suppliers. Notwithstanding any other provision to the contrary, You hereby consent to any assignment of any rights of Supplier in relation to any receivables arising under an Order to any financial institution or other third party.

11.2 The construction, validity and performance of this Agreement, a Services Schedule and any Order shall be governed by the laws of Texas, USA and the parties hereby irrevocably submit to the sole and exclusive jurisdiction of the courts of Collin County, Texas, USA to resolve any disputes between them. All proceedings shall be conducted using the English language and, in the event that this Agreement, Services Schedule or an Order are translated, the English language version shall be the governing version. Notwithstanding the

foregoing the parties shall attempt to resolve in good faith any disputes arising and shall give due consideration to the use of mediation or alternative dispute resolution techniques and reference to independent experts prior to the issue of court proceedings. The United Nations Convention on Contracts for the International Sale of Goods, and the Uniform Computer Information Transactions Act, shall not apply.

11.3 The failure of either party to enforce any term of this Agreement, a Services Schedule or an Order does not constitute a waiver of it and shall in no way affect the right to later enforce the term.

11.4 The invalidity or unenforceability of the whole or part of any provision of this Agreement, Services Schedule or an Order shall not adversely affect the validity or enforceability of the remaining provisions or the remainder of the provision in question, which shall remain in full force and effect. Where relevant, the parties shall use commercially reasonable efforts to find a new stipulation resembling the invalid one in its commercial consequence as much as possible.

11.5 Unless otherwise agreed in writing, entry into an Order shall not affect any related non-disclosure agreement entered into between the parties, which shall continue in full force and effect and shall apply to the subject matter of the Order. All pricing, Software and technical information provided by Supplier under or in relation to an Order shall be the Confidential Information of Supplier and shall not be disclosed to any third party by You.

11.6 This Agreement and the documents referred to herein (including any non-disclosure agreement between the parties) constitute the whole agreement between the parties with respect to Orders placed hereunder and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover. Each of the parties acknowledges and agrees that in entering into each Order it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of such Order, other than as expressly set out in this Agreement, applicable Services Schedule or the relevant Order.

11.7 You agree to fully comply with all applicable trade compliance and export laws and regulations of the United States or any other relevant jurisdiction. You shall satisfy Yourself that the use of the Solution (and if relevant, the importation, possession and use of any included Software and/or supplied Services) in the country of destination is lawful in that country and Supplier hereby disclaims and shall have no liability in connection therewith. Where requested by Supplier, You agree to provide Supplier with such information as it may reasonably request for the purpose of demonstrating compliance with international laws on export, trade compliance, and embargo. If You fail to provide any information reasonably requested by Supplier pursuant to this section, or provide incorrect information, Supplier reserves the right to suspend Your access to and/or use of the Solution (which may include disabling user accounts, passwords and access to part or all of the Solution in use by You) and/or any licenses granted to You with respect to Software made available pursuant to the terms of this Agreement, until such time as the requested information or corrected information is received and verified by Supplier.

11.8 This Agreement may be entered into in any number of counterparts. Each counterpart will, when executed and delivered, be regarded as an original, and all the counterparts will together constitute one and the same instrument.

11.9 Any variation of this Agreement, a Services Schedule or an Order shall not be effective unless in writing and signed by both Parties (though their authorized representatives).

11.10 A written notice required to be given under this Agreement shall: (i) be in writing and shall be: (a) delivered personally; or (b) sent by pre-paid recorded or tracked delivery; or (c) sent by commercial courier, to the Party required to

receive the notice at its address set out in the relevant Order (or Services Schedule as applicable) marked for the attention of the contact person set out in the relevant Order. In addition, copies of all notices sent to the Supplier must also be emailed to: [legalnotices@mediakind.com](mailto:legalnotices@mediakind.com). A written notice shall be deemed duly received: (a) if delivered personally, when left at the address and for the contact referred to above; or (b) if sent by pre-paid recorded or tracked delivery, or by commercial courier, on the date and at the time the delivery receipt is signed.