

## STANDARD TERMS FOR THE SUPPLY OF MEDIAKIND PRODUCTS AND SERVICES

### I. INTRODUCTION

These are the terms (“Terms”), which together with a relevant Order, shall apply to and govern all purchases by the Customer of MediaKind’s Products and Services. Any other terms and conditions set out or referred to in a PO or any other document or communication from the Customer are hereby excluded. Any variation to the scope or content of these Terms shall only take effect if agreed in writing and signed by both Supplier and Customer. In the event of a conflict or ambiguity between these Terms and any provisions contained in any document forming part of an Order, the order of precedence to resolve that conflict shall be, in order of priority: Section I of these Terms, the relevant Order, the remainder of these Terms, any agreed amendments and any other document.

### 2. DEFINITIONS

2.1 In these Terms the following terms shall have the following meanings:

**Acceptance:** occurs, (i) if Delivery only, in accordance with Section 3.2(a), or (ii) if installation Services are included or where specific Acceptance Tests are agreed in an Order, in accordance with Sections 3.2(b) and 3.3;

**Acceptance Tests:** tests designed to verify substantial conformity of the Products with the Specifications, agreed between the parties in writing prior to Delivery, or in the absence of those, Supplier’s standard test procedures;

**Affiliate:** a company (i) controlling; (ii) controlled by; or (iii) under common control with Supplier or Customer as appropriate;

**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 Products from Content during the normal and proper use of the Products by the Customer in accordance with these Terms;

**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 the Customer introduces into or makes available through or transfers or transmits over or using the Products;

**Customer:** the person, firm or company placing an Order, a PO, or entering into relevant SOWs, with the Supplier;

**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 Products during their normal and

proper use by the Customer in accordance with these Terms;

**Defect(s):** material defects caused by defective material, workmanship or design which result in a failure of the Products to substantially conform to the Specifications;

**Delivery:** delivery as set forth in Section 3.1;

**Hardware:** hardware (including any purpose-built platform that houses software), documentation and other tangible deliverables or equipment that the Supplier has agreed to supply under a relevant Order;

**MediaKind/Supplier:** the applicable MediaKind entity supplying the Hardware, Software, and/or Services hereunder as indicated in the relevant quotation and/or order acknowledgement;

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

**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;

**Order:** a written quote or proposal from the Supplier confirmed by an associated PO, or an agreed SOW or other document accepted in writing by Supplier; or, 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 some other confirmatory action (e.g. by downloading and/or installing Software), or taking such steps as may otherwise be stipulated by Supplier to complete the purchase of a Product from Supplier;

**Permitted Purpose:** installation, configuration and use, for normal business purposes, of Products, for the purpose identified in, and subject to any restrictions contained in, a relevant Order or applicable user documentation (including without limitation restrictions on the numbers of users, channels or copies), and in the absence of an explicit purpose, limited to the ingest, storage, processing, packaging and delivery of Content in connection with the Customer’s provision of media services to its subscribers;

**Products:** Hardware, Software, and/or Services, including Subscription Products;

**PO:** a purchase order or any other document for the purchase of Products issued by Customer and accepted in writing by Supplier;

**Services:** such services as Supplier agrees to provide pursuant to an Order including without limitation, systems integration, installation, commissioning and training;

**Software:** any computer program, firmware or other software products owned or distributed by Supplier that Supplier has agreed to supply to Customer under an Order, including, but not limited to, any related components, application programming interfaces, development kits, associated media, printed materials, online or electronic documentation, and any updates, maintenance releases, bug fixes, corrections, enhancements, or other modifications thereto;

**Specifications:** the specifications agreed in writing by the parties as being applicable to an Order, PO or SOW or, in the absence of such, Supplier's standard product data sheets;

**Subscription Products:** any Products which are sold and/or licensed for a fixed term and/or subscription basis under a relevant Order;

**Subscription Term:** the license period for Subscription Products as more particularly described in Section 14.2 below;

**SOW:** any statement of work or similar document agreed in writing by the parties describing the scope of the Products being purchased;

**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 Products (and which may be separately branded);

**Usage Management:** the monitoring, auditing and management of the Customer's use of the Products;

**Usage Quota(s):** a fixed amount of Metered Consumption, if/where specified in an Order, 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 5.11.

## 3. DELIVERY, INSTALLATION AND ACCEPTANCE

### 3.1 Delivery. The Delivery term for:

(a) Hardware supplied pursuant to an Order shall be (i) where payment is to be made by letter of credit, CPT to Supplier's nominated airport, (ii) for Orders with a shipping destination in the United States of America, DDP to agreed destination, and (iii) for all other Orders, FCA named place on Supplier's order acknowledgement or if none stated, place of manufacture, in each case unless the parties agree otherwise. Any agreed trade term shall be construed in accordance with the Incoterms in force at the formation of the relevant Order;

(b) Software (including software running on a hardware platform) supplied pursuant to an Order shall be FCA origin. For any Software where the method of delivery is via FTP/sFTP, delivery of such Software to Customer shall be deemed completed when Supplier notifies Customer in writing that the Software is available for download from the FTP/sFTP website;

(c) Services supplied pursuant to an Order, as stated in that Order;

(d) unless agreed otherwise in an Order, Customer is responsible for installation of all Products. The installation method shall be as stated in an Order.

### 3.2 Acceptance. Where the Order:

(a) is for Delivery only (e.g. no installation or deployment Services), unless the Product is rejected by Customer for a

Defect within ten (10) business days of Delivery, then Acceptance of such Products shall be deemed to have occurred; or

(b) includes installation or deployment Services to be provided by Supplier where Supplier shall certify Products as ready for use, or where specific Acceptance Tests are agreed in an Order, then Acceptance occurs in accordance with the processes set out in Section 3.3 below.

Notwithstanding the aforesaid, Acceptance shall be deemed to have occurred upon the supplied Products being put into operation by the Customer.

### 3.3 Acceptance Tests. Where Section 3.2(b) applies, either:

(a) Supplier shall certify the purchased Products as ready for use upon successful completion of Supplier's standard test procedures for those Products; or,

(b) if specific Acceptance Tests have been agreed in an Order, such tests shall be conducted by the Supplier at the test site(s), and on the dates specified in, that Order and shall be attended by representatives of Customer, and (i) if the purchased Products pass the Acceptance Tests Supplier shall prepare and Customer agrees to promptly sign an acceptance certificate classified as a "Pass" and Supplier shall be entitled to invoice Customer for any payment corresponding to Acceptance referred to in these Terms or the relevant Order; (ii) if the purchased Products fail the Acceptance Tests but such failure would not prevent the Products being put into operation (such failures being "Minor Defects") Supplier shall prepare and Customer agrees to promptly sign an acceptance certificate classified as "Conditional Pass" with a list of identified Minor Defects and Supplier shall be entitled to invoice Customer for any payment corresponding to Acceptance referred to in these Terms or the relevant Order, and Supplier shall use commercially reasonable efforts to remedy such identified Minor Defects within thirty (30) business days of the issue of the Conditional Pass certificate; (iii) if the purchased Products fail the Acceptance Tests and such failure is not for Minor Defects, Supplier shall endeavor to remedy the substantial non-conformities and shall notify Customer when the remedy for the identified substantial non-conformities is ready for testing whereupon the Acceptance Tests shall be repeated with particular attention to the previously identified substantial non-conformities and the provisions of Sections 3.3(b)-(d) inclusive shall apply to the repeated Acceptance Tests.

3.4 Delay. Where an express date for Acceptance (or in the case of a Delivery only Order, Delivery) has been agreed in writing by the parties, if Acceptance (or where applicable, Delivery) is not achieved within ten (10) business days of the date(s) so agreed, Customer shall have the right to recover from Supplier by way of liquidated damages an amount equal to 1% of the price for the purchased Products which cannot be used in consequence of the delay for each complete week that Acceptance (or where applicable, Delivery) is delayed, up to a maximum of 10% of the price for such Products.

3.5 Liquidated damages shall not be payable for any delay arising in consequence of Force Majeure or to the extent that Customer or any third party acting on Customer's behalf is responsible for the delay.

3.6 Liquidated damages payable under Section 3.4 shall represent Supplier's entire liability to Customer and Customer's

sole remedy in respect of any delays in achieving Acceptance (or where applicable, Delivery).

3.7 Customer shall not be entitled to terminate an Order as a result of delay until the maximum amount of liquidated damages has become payable under Section 3.4, following which Customer may terminate that Order in accordance with the provisions of Section 14.2 below.

3.8 The Parties acknowledge and agree that the foregoing liquidated damages in Section 3.4 are commercially justified based on the respective positions of the parties albeit that such liquidated damages may not prove to be an accurate reflection of the true loss suffered in any particular case.

## 4. VARIATIONS

4.1 Customer may request changes to the Specifications or timescales set out in an Order (a “Change Request”) in accordance with the procedure in this Section 4.

4.2 Upon receipt of a Change Request, Supplier shall allocate a reference number to the Change Request and shall undertake an impact assessment as to whether the requested changes are feasible and achievable and, if so, shall provide to Customer a quotation (a “Change Request Quotation”) setting out the impact (if any) of such changes on the project plan, the price, the payment terms and any other provisions of the Order. Supplier shall use commercially reasonable efforts to provide such Change Request Quotation within ten (10) business days of a Change Request except in the case of major Change Requests requiring a significant amount of additional work, such as an investigation of the technical feasibility of such a Change Request, in which case Supplier shall promptly notify Customer of the expected time for delivery of a Change Request Quotation.

4.3 Should Customer wish to proceed with the Change Request, it shall instruct Supplier in writing accordingly as soon as reasonably practicable but in any event not later than fifteen (15) business days after receipt of the Change Request Quotation. Those parts of the Order affected by the Change Request will then be deemed to be modified accordingly (a “Variation”). Customer shall take such steps as are necessary to give effect to any change to the price, payment or other terms of the Order as set out in the Change Request Quotation or otherwise agreed in writing by the parties.

4.4 Until Customer formally accepts a Change Request Quotation in accordance with Section 4.3, Supplier shall continue to perform and be paid as if the Change Request had not been made.

4.5 Except as provided above, no amendment, variation or modification shall be made to an Order unless agreed in writing by a duly authorized representative of each party.

## 5. PRICE, FEES AND PAYMENTS

5.1 All Supplier proposals and quotations remain valid for thirty (30) days after issue. Customer shall pay the prices and fees (in the currency) set out in the Order. Prices do not include sales, use, value added or goods and services taxes. Where appropriate, such taxes will be added to the invoice and paid by Customer unless Customer provides Supplier with evidence of payment or certificate of exemption.

5.2 Payment Terms. Unless stated otherwise in an Order, (i) all invoices shall be paid within 30 days of invoice date, in the

currency stipulated in the invoice, and (ii) all Orders shall be 100% invoiced upfront and payable forthwith following receipt of invoice, unless Supplier has agreed to grant credit and Customer is within its credit limit in which case the fees for Products supplied and any other charges shall be paid in full by Customer as follows:

(a) for delivery only Orders (i) 30% invoiced on the placing of order, payable forthwith and in any event prior to shipment of the Products; and (ii) 70% invoiced on the earlier of shipment or Delivery of the Products; or

(b) where an Order includes Acceptance Tests as provided in Section 3.3 (i) 30% invoiced on the placing of Order, payable forthwith and in any event prior to shipment of the Products; (ii) 60% invoiced on the earlier of shipment or Delivery of the Products; and (iii) 10% invoiced on Acceptance; or

(c) for Software only Orders, 100% invoiced on shipment; or

(d) for one-time Services included in an Order, 100% invoiced upfront; or

(e) for Orders that include Services chargeable on a time and materials basis, monthly in arrears; or

(f) for Orders that include Subscription Products, (a) Metered Consumption will be invoiced monthly in arrears (pay-as-you-go) and/or (b) upfront or minimum payments will be invoiced in advance (pre-paid) as specified in the relevant Order.

5.4 For Subscription Products, 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 14.2), 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.

5.5 No payment shall be deemed to have been received until Supplier has received cleared funds. Any payments made by Customer shall be made without any set off or counterclaim whatsoever.

5.6 Milestone Payments. Where any milestone defined in an Order (“Milestone”) is delayed for a period exceeding 30 days beyond the anticipated date for achieving such Milestone due to reasons not attributable to Supplier, then any payment linked to such Milestone shall become due and payable on the expiry of such 30-day period subject to Supplier giving Customer notice of such delay.

5.7 Overdue Payments/Fees. If Customer is overdue with any payment then, without prejudice to any other right or remedy available to Supplier and subject to written notification by Supplier to Customer of its intention to exercise the rights set out in this Section: (i) Customer 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 contractual performance under any or all active Orders and/or exercise a lien over unshipped goods until Customer has paid all outstanding invoices, fees (and where applicable, interest) due, and the exercise of any such suspension or lien shall not affect Customer’s obligation to pay any amounts due prior to suspension.

5.8 Credit Requirements. Where Customer has been advised of a requirement for the same in advance of Supplier’s order acknowledgement Supplier reserves the right to withhold or

refuse contractual performance until Customer has supplied a satisfactory credit reference or bank guarantee or has agreed payment in the form of an irrevocable letter of credit drawn on a bank reasonably acceptable to Supplier.

**5.9 Additional Services.** Where Supplier carries out on the instruction of Customer any services which are not Services included in the Specifications (“Additional Services”), including without limitation integration to or any issues relating to integration with any third party product which arise out of the Acceptance Tests, Supplier shall be entitled to charge for 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 the value or likely value of charges for Additional Services shall be notified to Customer in advance of the provision of the Additional Services. Acceptance of the Products shall not be delayed pending completion of such Additional Services.

**5.10 Usage Management.** Supplier reserves the right to incorporate or use or provide access to a Usage Management tool or license manager within, as part of, or as a required add-on to any Products. Customer is 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 Products 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 Customer hereby undertakes 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.

**5.11 Increasing Hard-Capped Usage Quotas.** Where a Subscription Product is licensed on the basis of a hard-capped Usage Quota, Customer 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 the 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) Customer shall pay Supplier the additional fees for such increased Usage Quota(s) as and when due.

**5.12 Reporting/Audit.** For Products licensed on the basis of capacity or throughput or any other variable or where the Order includes Subscription Products, Customer shall, no later than the end of each calendar quarter, submit to Supplier a written statement detailing Customer’s use of the licensed Products (certified by a senior executive of Customer) to enable Supplier to calculate and verify the license fees due under the relevant Order. Such statement shall be certified by an executive manager of Customer. Supplier may during the term of the license and for two (2) years thereafter audit Customer’s use of licensed Products to verify that such use is and has been in accordance with these Terms, upon prior written notice thereof to the Customer and only during normal business hours. The Customer shall provide Supplier with all reasonable assistance, including access to all information necessary for such verification.

**5.13 Right to True-Up.** Without prejudice to any other rights or remedies of Supplier under these Terms or law, Supplier is entitled to invoice the Customer for any use of licensed Products (or of available features and/or functionality) in excess of or in addition to what the Customer has paid for and the Customer agrees to pay such excess or additional amounts as are invoiced. For the avoidance of doubt, there will be no reduction or refund of license, usage and/or product support fees given if the license volumes, usage or any other applicable variable is below the level purchased or paid for or if the Products are not in use.

## **6. CUSTOMER’S RESPONSIBILITIES**

**6.1** Customer shall promptly undertake and complete all actions identified as Customer’s responsibilities in an Order, or in any project plan or Specification, and shall (i) prepare the installation site; (ii) provide Supplier with all information, document approvals, assistance, access and facilities; and (iii) provide a safe working environment, in each case as reasonably required from time to time to facilitate the proper and timely performance of the Order.

**6.2** Customer warrants and undertakes that all information provided by it to Supplier will be accurate and adequate in all material respects and that Customer is entitled to provide the information to Supplier for its use without recourse to any third party.

**6.3** Where the performance by Supplier of its obligations under an Order is conditional upon obtaining licenses, permits or other consents and the obtaining of the same is dependent on the provision by Customer of information or undertakings, Customer shall provide such information or undertakings promptly upon request. Supplier shall use commercially reasonable efforts to notify Customer of any such requirements as soon as reasonably practicable.

**6.4** Customer shall satisfy itself that the importation, possession and use of Products in the country of destination is lawful in that country and except as set out in Section 13 Supplier shall not assume, and hereby disclaims, any obligation or liability in these regards. Customer shall dispose of any Hardware no longer needed in a responsible manner and may return the Hardware (at Customer’s cost) to Supplier for recycling/disposal.

## **7. FORCE MAJEURE**

Neither party 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.

## 8. HEALTH AND SAFETY

Each party shall comply with all relevant health and safety laws and regulations in all respects relating to its obligations under an Order (including without limitation a safe working environment and methods of working) and shall indemnify the other party with respect to all costs, liabilities, damages or expenses incurred as a result of any failure to do so.

## 9. TITLE IN EQUIPMENT

Hardware (excluding Software and IPR in the Hardware, and Subscription Products) supplied under an Order shall become Customer's property when all sums due to Supplier under that Order for such Hardware have been paid in full. Until then, Supplier shall retain legal and beneficial ownership of the Hardware.

## 10. INTELLECTUAL PROPERTY RIGHTS; LICENSE

10.1 Title. Software and the IPR in all Products shall at all times remain the exclusive property of Supplier or its suppliers. All IPR arising under an Order including without limitation IPR arising from the supply of Products, except to the extent that they comprise or incorporate IPR supplied by Customer, shall vest in and be owned by Supplier or its suppliers absolutely, and Customer shall acquire no right, title or interest therein. To the extent that delivery of the Products requires any IPR supplied or owned by Customer, Customer grants Supplier a non-exclusive, worldwide, perpetual, irrevocable, fully paid-up, royalty free license with the right to sub-license, to design, develop, make, have made, use, copy, modify, sell, lease or otherwise distribute products based on, using or incorporating any such IPR.

10.2 Third Party Products. Third Party Products and Software incorporated 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 Customer acknowledges and agrees 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 Customer's use of the Third Party Products in preference to these Terms.

10.3 License Grant. Subject always to Section 10.5 below, Supplier shall grant to, or procure the grant to, Customer of a non-exclusive, non-assignable, non-transferable license to use the Software (in executable form only) and the Products for the Permitted Purpose in accordance with these Terms.

10.4 Right to Sub-License. Customer shall be entitled to grant a sub-license to any person installing, configuring or using the Products in the terms, and subject to the conditions, of the license granted to Customer under this Section 10.

10.5 License Type. The license granted under Section 10.3 (and any sub-license granted under Section 10.4) shall:

(a) for Subscription Products, be limited for the Subscription Term specified in the relevant Order; or

(b) for Products other than Subscription Products, (i) be limited for the term specified in the relevant Order, or (ii) where no term is specified in the Order, be without limit of period, save that Supplier may immediately terminate such license (and the right to continue any sub-licenses) to use the relevant Software and/or Products by notice in writing to Customer if Customer or any sub-licensee breaches any term of the license or sub-license (and if such breach is incapable of remedy or is not remedied within a reasonable time of a request to do so), whereupon Customer shall, at Supplier's direction, immediately cease use of the Software and/or Products and return to Supplier, or destroy, the Software and any back-up copies (and procure that sub-licensees do the same) and certify in writing to Supplier that this has been done.

10.6 Copies. Customer may make copies of any 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.

10.7 Restrictions. Customer shall have no right to copy, adapt, reverse engineer, decompile, disassemble, modify or create derivative works of any Software in whole or in part except: (i) as specifically permitted by law; or (ii) with Supplier's prior written consent. The restrictions in these license conditions 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.

10.8 Feature/Functionality Changes. Supplier reserves the right to change or vary the features and/or functionality of, or components within, its Products and/or updates thereto (including substituting or replacing Third Party Products, Open Source Software or AI) as the Products evolve or undergo updates and/or improvements, and hence Supplier may amend its Product technical data sheets and/or relevant specifications from time to time, *provided* that those changes do not materially impact or reduce the features and functionality available within the Products as purchased by Customer.

10.9 Open Source Software. Software may contain 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 specifications, datasheets or via its website. In the event of conflict between the terms and conditions of these Terms 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 these Terms, 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.

10.10 Artificial Intelligence. The Software 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 specifications, datasheets or via its website.

10.11 Acceptable Use Policy. Customer shall, and shall require its end-users to, comply with MediaKind's Acceptable Use policy posted at [www.mediakind.com](http://www.mediakind.com), or an equivalent policy. The examples described in the Acceptable Use Policy are not exhaustive, and the Acceptable Use Policy may be modified at any time by posting a revised version on the above site.

## 11. WARRANTY

11.1 Subject to the provisions of this Section 11 and Section 12, the Supplier warrants:

(i) for Subscription Products, during the Subscription Term, that it will promptly repair, replace, or provide reasonable substitutes for Hardware and Software (or the defective part thereof) having Defects, (a) in accordance with the support processes and timescales set out in the relevant Order, which are dependent upon the level of support services purchased by the Customer, or (b) if no level of support services is specified in the Order, in accordance with Supplier's standard support service offering in effect during the Subscription Term;

(ii) for Products other than Subscription Products, for a period of 12 months for hardware and 90 days for Software from (a) Delivery, for delivery only Orders; or (b) Acceptance, for other Orders (the "Warranty Period") that it shall promptly (i) repair, replace, or provide reasonable substitutes for Hardware and Software (or the defective part thereof) having Defects; or (ii) re-perform Services to the extent that they were provided otherwise than with reasonable skill and care; in each case subject to the request for the same being logged with the Supplier's Customer Support Helpdesk (the "Helpdesk") promptly and during the Warranty Period.

11.2 Repair/Replacement. Repairs and replacements shall be carried out in accordance with the reasonable procedures advised to Customer by the Helpdesk. Customer shall return defectives Products or part thereof (where asked to do so by Supplier) to Supplier or as Supplier otherwise directs in the original or appropriate alternative packaging accompanied with the appropriate return authorization form and at Customer's cost to enable Supplier to make full examination of the alleged defective material, workmanship or design. Shipping charges for return to Customer shall be borne by Supplier unless notified differently by the Helpdesk. Any Hardware and Software replaced shall become the property of Supplier. In the event that it is not commercially feasible to dispatch repaired or replacement or substitute Hardware and Software within a reasonable time (being not less than 30 business days from the defect being logged with the Helpdesk and if applicable, receipt by Supplier of the relevant Hardware and Software), and Supplier is unable to provide Customer with an alternative reasonably acceptable solution, Supplier shall at Customer's request accept the return of the Hardware and Software not useable in consequence of the warranted defect and refund to Customer that part of the price attributable to the same.

11.3. The warranties given in this Section 11 are unique to Customer and may not be assigned or transferred in whole or in part by Customer, and any sub-licenses granted shall not operate as an assignment or transfer of any such warranties.

11.4 Warranty Limitations. Supplier shall not be liable for a

breach of the warranty (i) to the extent the defect arises and/or is exacerbated as a result of misuse, neglect (including without limitation failure to notify Supplier of failure within a reasonable time), alteration, mishandling, attempted repair, maintenance or unauthorized manipulation by any person other than Supplier authorized personnel; or (ii) the defect arises because Customer failed to follow Supplier's instructions as to the storage, installation, use or maintenance of the Products or (if there are none) good trade practice; or (iii) Customer alters or repairs such Products without the written consent of Supplier. Supplier does not warrant that operation of Software will be uninterrupted or error free.

11.5 Repair/Replacement Warranty. Repaired and replacement Products provided pursuant to the provisions of this Section 11 shall have the benefit of a warranty in the terms of this Section 11 for the remainder of the Warranty Period for the original Product or 3 months from provision of the repair or replacement, whichever is longer.

11.6 Third Party Product Warranty. For Third Party Products Customer shall only be entitled to such warranty or other benefit as Supplier has received from the manufacturer or licensor and is able to pass on. Except as provided in this Section 11.6, no warranty (whether express, statutory or implied) is given to Customer by any supplier or licensor of Supplier in respect of the whole or any part of a 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.

11.7 Any work carried out by Supplier at Customer's request which is otherwise than as required in satisfaction of Supplier's warranty obligations under this Section 11 shall be treated as Additional Services pursuant to Section 5.9. Supplier shall be entitled to dispose of any Products that have been sent to Supplier for repairs or upgrades which remain uncollected and in respect of which Customer has incurred charges that remain overdue for more than 60 days.

11.8 Entertainment Use. The Products 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 Products 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 Customer (or its users) use the Products for any purpose other than Entertainment Use and/or for any purpose related to (i) to (v) above, then such use is at Customer's sole risk without any recourse against or with respect to Supplier and Customer hereby indemnifies and holds 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.

11.9 Warranty Exclusions. The warranties contained in this Section 11 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 Orders. The sole remedies of Customer for any breach of warranty are as set out in this Section 11.

## 12. LIABILITY

12.1 NEITHER SUPPLIER'S NOR CUSTOMER'S LIABILITY FOR ANY OF THE FOLLOWING IS EXCLUDED OR LIMITED BY THESE TERMS OR ANY OTHER PROVISION OF AN ORDER (EVEN IF ANY OTHER TERM OF ORDER WOULD 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, UNDER THE LAW GOVERNING THE ORDER, LIABILITY CANNOT BE EXCLUDED OR LIMITED. CUSTOMER'S LIABILITY FOR BREACH OF THE TERMS OF SECTIONS 10 AND 13.5 SHALL NOT BE EXCLUDED OR LIMITED IN ANY WAY.

12.2 SUBJECT TO SECTION 12.1, NEITHER SUPPLIER, NOR ANY SUPPLIER OR LICENSOR OF SUPPLIER, NOR CUSTOMER SHALL BE LIABLE UNDER OR IN RELATION TO AN ORDER (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) 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.

12.3 SUBJECT TO SECTIONS 12.1 AND 12.2, 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:

(I) FOR ANY ORDER CONTAINING SUBSCRIPTION PRODUCTS, IN EACH CALENDAR YEAR FOR ALL CLAIMS FIRST ARISING IN THAT CALENDAR YEAR, TO AN AMOUNT EQUAL TO THE TOTAL AMOUNT PAID BY THE CUSTOMER UNDER THAT ORDER DURING SUCH CALENDAR YEAR; AND

(II) FOR ALL OTHER ORDERS, TO AN AMOUNT EQUAL TO THE TOTAL AMOUNT PAID BY CUSTOMER PURSUANT TO THE ORDER UNDER WHICH THE LIABILITY ARISES.

12.4 CUSTOMER AGREES THAT IT SHALL TAKE, AND

SUPPLIER SHALL (SAVE AS PROVIDED IN SECTION 12.1) HAVE NO LIABILITY FOR ANY LOSS, HARM OR DAMAGES THAT WOULD HAVE BEEN PREVENTED BY, REASONABLE PRECAUTIONS (RELATIVE TO THE IMPORTANCE TO CUSTOMER OF THE PRODUCTS CONCERNED), INCLUDING WITHOUT LIMITATION BACKING UP SOFTWARE AND DATA AT REASONABLE INTERVALS, IMPLEMENTING BACK-UP SYSTEMS OR REDUNDANCY AND MAINTAINING SUITABLE NUMBERS OF SPARE UNITS AT SUITABLE LOCATIONS (AT A MINIMUM TO THE SUPPLIER'S RECOMMENDED SPARES LEVELS).

## 13. THIRD PARTY RIGHTS

13.1 SUBJECT TO THE PROVISIONS OF SECTION 12 AND THIS SECTION 13, SUPPLIER SHALL, AT SUPPLIER'S EXPENSE, (A) DEFEND CUSTOMER FROM AND AGAINST ANY CLAIMS, DEMANDS, ACTIONS, CAUSES OF ACTION, AND/OR PROCEEDINGS ASSERTED BY A THIRD PARTY AGAINST CUSTOMER 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 PRODUCTS WITHIN THE APPROVED TERRITORY (AN "INFRINGEMENT CLAIM") AND (B) INDEMNIFY CUSTOMER FROM AND AGAINST ANY REASONABLE EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES), DAMAGES, LOSSES, AND/OR LIABILITIES THAT ARE (1) DIRECTLY RELATED TO AN 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. CUSTOMER SHALL PROVIDE SUPPLIER WITH PROMPT NOTICE OF ALL INFRINGEMENT CLAIM(S) FOR WHICH SUPPLIER IS RESPONSIBLE HEREUNDER, AND SUCH NOTICE SHALL INCLUDE AN IDENTIFICATION OF THE PRODUCTS THAT CUSTOMER CONTENTS ARE THE SUBJECT OF THE INFRINGEMENT CLAIM(S) AND AN IDENTIFICATION OF THE SPECIFIC INFRINGEMENT ALLEGATION(S) (IN THE CASE OF A PATENT INFRINGEMENT CLAIM, AN IDENTIFICATION OF THE SPECIFIC PATENT CLAIMS) THAT CUSTOMER CONTENTS IMPLICATES SUCH PRODUCTS. IN ALL CIRCUMSTANCES, SUPPLIER SHALL HAVE FULL AUTHORITY TO ASSUME CONTROL OF THE DEFENSE AND SETTLEMENT OF ANY INFRINGEMENT CLAIM; HOWEVER, CUSTOMER SHALL HAVE THE RIGHT TO PARTICIPATE AT ITS OWN EXPENSE IN THE DEFENSE OF AN INFRINGEMENT CLAIM THROUGH COUNSEL OF ITS OWN CHOOSING. AT ALL TIMES CUSTOMER SHALL COOPERATE FULLY WITH SUPPLIER IN THE DEFENSE OF AN INFRINGEMENT CLAIM, INCLUDING PROVIDING SUPPLIER WITH ASSISTANCE AS SUPPLIER MAY REASONABLY REQUIRE IN CONNECTION THEREWITH. SUPPLIER SHALL HAVE NO OBLIGATION UNDER THIS SECTION IF THE INFRINGEMENT CLAIM RESULTS FROM OR IS BASED ON: (I) THE USE OF THE PRODUCTS IN COMBINATION WITH PRODUCTS, SOFTWARE, OR SERVICES NOT SUPPLIED BY SUPPLIER; (II) THE MODIFICATION OF THE PRODUCTS BY ANYONE OTHER THAN SUPPLIER OR ITS SUBCONTRACTORS OR AGENTS; (III) CUSTOMER CAUSING OR CONTRIBUTING TO THE EVENTS THAT GAVE RISE TO THE 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 CUSTOMER PRODUCTS, SERVICES, DATA AND BUSINESS PROCESSES; (V) A SPECIFICATION, REQUIREMENT, DESIGN OR INSTRUCTION PROVIDED BY CUSTOMER; (VI) THE USE OF THE PRODUCT, OR PART THEREOF, IF CUSTOMER HAS REFUSED AN OFFER OF A REPLACEMENT OR MODIFICATION FOR SUCH PRODUCT, OR PART THEREOF, AND SUCH REPLACEMENT OR MODIFICATION IS NOT SUBJECT TO THE INFRINGEMENT CLAIM; (VII) FAILURE OF THE CUSTOMER OR THEIR END-CUSTOMER TO TAKE A LICENSE AND/OR PAY PARTICIPATION FEES EXPRESSED TO BE PAID BY 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; (VIII) DATA OR CONTENT INTRODUCED INTO OR MADE AVAILABLE THROUGH OR TRANSFERRED OR TRANSMITTED OVER OR USING THE PRODUCTS.

13.2 THE INDEMNITY IN SECTION 13.1 SHALL ONLY APPLY TO ANY GIVEN INFRINGEMENT CLAIM PROVIDED THAT: (I) CUSTOMER AS SOON AS REASONABLY POSSIBLE NOTIFIES SUPPLIER IN WRITING OF THE INFRINGEMENT CLAIM ONCE IT BECOMES AWARE OF IT (WHETHER BY FORMAL NOTICE OR OTHERWISE); (II) CUSTOMER DOES NOT MAKE ANY ADMISSION AS TO LIABILITY IN RELATION TO, OR COMPROMISE OR AGREE TO ANY SETTLEMENT OF, THE INFRINGEMENT CLAIM WITHOUT THE PRIOR WRITTEN CONSENT OF SUPPLIER; (III) IF SUPPLIER SO REQUESTS, CUSTOMER ALLOWS SUPPLIER AT ITS OWN EXPENSE TO HAVE THE CONDUCT OF OR SETTLE ALL NEGOTIATIONS AND LITIGATION ARISING FROM THE INFRINGEMENT CLAIM; (IV) CUSTOMER ACTS IN RELATION TO THE INFRINGEMENT CLAIM IN ACCORDANCE WITH THE REASONABLE INSTRUCTIONS OF SUPPLIER AND, AT SUPPLIER'S REQUEST AND EXPENSE, GIVES SUPPLIER ALL REASONABLE ASSISTANCE IN CONNECTION WITH THOSE NEGOTIATIONS AND SUCH LITIGATION; AND (V) SUBJECT TO THE OTHER PROVISIONS OF THIS SECTION 13.2, CUSTOMER TAKES ALL REASONABLE STEPS TO MINIMIZE ANY LOSS OR DAMAGE SUFFERED BY IT THAT WOULD OTHERWISE HAVE BEEN COVERED BY THE INDEMNITY.

13.3 IF ANY INFRINGEMENT CLAIM IS MADE, OR IN SUPPLIER'S REASONABLE OPINION IS LIKELY TO BE MADE, THEN SUPPLIER MAY, AT ITS OPTION AND EXPENSE, AND CUSTOMER SHALL PERMIT SUPPLIER TO (I) OBTAIN THE RIGHT FOR CUSTOMER TO CONTINUE USING THE PRODUCT(S) THAT ARE SUBJECT OF THE INFRINGEMENT CLAIM; OR (II) REPLACE OR MODIFY THE PRODUCT(S) THAT ARE SUBJECT TO THE INFRINGEMENT CLAIM WITH NON-INFRINGEMENT PRODUCTS OF EQUIVALENT FUNCTIONALITY AND IN CONFORMITY WITH THE REQUIREMENTS OF THE RELEVANT ORDER AND THESE TERMS. IF NEITHER OF THE ALTERNATIVES SET FORTH IN THE FOREGOING SUB-CLAUSES (I) AND (II) ABOVE IS REASONABLY COMMERCIALY PRACTICABLE IN SUPPLIER'S DISCRETION, THEN (A) SUPPLIER WILL NOTIFY CUSTOMER TO DISCONTINUE USING THE PRODUCTS (OR PORTIONS THEREOF); (B) CUSTOMER WILL DISCONTINUE USE OF THE PRODUCTS (OR

PORTIONS THEREOF); AND (C) SUPPLIER SHALL REFUND TO CUSTOMER THE FEES PAID TO SUPPLIER FOR THE PERTINENT PRODUCTS, LESS A REASONABLE AMOUNT FOR DEPRECIATION, AND CUSTOMER SHALL RETURN THE PERTINENT PRODUCTS TO SUPPLIER. IF CUSTOMER FAILS TO DISCONTINUE USE OF THE PRODUCTS (OR PORTIONS THEREOF) AS SET FORTH IN THE IMMEDIATELY PRECEDING SENTENCE, SUPPLIER SHALL HAVE NO LIABILITY FOR SUCH CONTINUED USE BY CUSTOMER OF THE RELEVANT PRODUCTS.

13.4 THIS SECTION SETS FORTH SUPPLIER'S SOLE LIABILITY AND CUSTOMER'S SOLE REMEDY FOR ANY CLAIM OF INFRINGEMENT OR VIOLATION OF A PATENT, TRADE SECRET, COPYRIGHT, OR OTHER INTELLECTUAL PROPERTY RIGHT OF ANY THIRD PARTY.

13.5 THE CUSTOMER SHALL INDEMNIFY SUPPLIER FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES OR EXPENSES ("LOSSES") INCURRED OR SUFFERED BY SUPPLIER AS A RESULT OF ANY THIRD PARTY CLAIM WHERE THE USE, REPRODUCTION, DISTRIBUTION, DELIVERY, CACHING OR TRANSMISSION OF CONTENT, OR OF ANY INFORMATION OR MATERIALS CONTAINED IN SUCH CONTENT, OVER OR USING THE PRODUCTS (I) INFRINGES OR MISAPPROPRIATES ANY INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; OR (II) IS UNLAWFUL, HARMFUL, THREATENING, DEFAMATORY, OBSCENE, INFRINGING, HARASSING OR RACIALLY OR ETHICALLY OFFENSIVE, PROVIDED ALWAYS THAT THIS INDEMNIFICATION SHALL NOT APPLY TO THE EXTENT THAT ANY SUCH LOSSES ARISE OUT OF ANY FAILURE OF THE PRODUCTS TO OPERATE IN ACCORDANCE WITH THE SPECIFICATIONS.

#### 14. SUSPENSION/CANCELLATION/TERMINATION

14.1 Termination Without Cause. For Products other than Subscription Products, Customer may not cancel the whole or any part of an Order without cause, without the prior written consent of Supplier.

14.2 Subscription Term. For Subscription Products, Orders shall commence in accordance with their terms, and shall:

(a) if the Order is for a fixed minimum period, 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 the licenses granted to use the Subscription Products) 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 period, 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".

14.3 Termination With Cause. Supplier or Customer may



terminate any Order immediately at any time by written notice to the other if: (i) the other commits a material breach of the Order or these Terms 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 amalgamation or reconstruction) or any event occurs in a foreign jurisdiction analogous to, or comparable with, any of the above.

**14.4 Effect of Termination.** Except as expressly stated elsewhere in a relevant Order, on termination of any Order for any reason: (a) each party shall return and make no further use of any Confidential Information belonging to the other party, and (b) if the Order includes Subscription Products and/or other term-based Products, then all rights and licences granted hereunder to use those Subscription Products and/or term-based Products shall terminate, and the Customer shall immediately cease use of the Subscription Products and/or term-based Products and immediately return any relevant Hardware to the Supplier and, at Supplier's direction, return or destroy relevant Software and any back-up copies (and procure that sub-licensees do the same) and certify in writing to Supplier that this has been done. Notwithstanding the foregoing, the parties agree that the equitable remedy of specific performance of either party is hereby expressly excluded.

**14.5 Right To Suspend.** In the event of non-compliance with Sections 10.3, 10.7 and/or 10.10, Supplier reserves the right to suspend Customer's use of the Products and/or any licenses granted, and Supplier shall be under no obligation to reinstate such rights or licenses until such time as Customer is in compliance. Serious or persistent non-compliance shall constitute a material breach. Further, if any appropriate instructions, information, technical documents, design approval, letters of undertaking, licenses or authorizations required to be provided by Customer have not been provided, Supplier reserves the right (subject to giving Customer reasonable written notice of its intention to exercise the rights set out in this section) to suspend its contractual performance or withhold any relevant shipment under this Agreement pending provision of the same.

**14.6 Termination of an Order 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 that 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.**

**14.7 Upon the expiration or termination of any Order the following provisions shall continue in full force and effect: Section 5 and Sections 10 to 16.**

## **15. CONFIDENTIALITY AND CUSTOMER DATA**

**15.1** 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.

**15.2** Subject to Section 15.4, 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 these Terms or to meet its obligations under an Order.

**15.3** 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 these Terms.

**15.4** 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.

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

**15.6** Customer acknowledges that details of the Products, results relating to the performance, testing, development and support of the Products 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.

**15.7** Supplier is permitted to advertise or publicly announce that Supplier is providing its products and/or services to Customer, 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) Customer has been informed of such planned advertising or public announcement (email notice sufficing), and has not objected thereto in writing on reasonable grounds within 10 days of being informed of Supplier's plans.

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

**15.9** In these Terms 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.

**15.10** Customer Data shall be treated in the same manner as Confidential Information, and for the purposes of these Terms, (i) Customer shall be considered to own all right, title and interest in and to the Customer Data and shall have sole responsibility for the use, legality, reliability, integrity and accuracy of Customer Data, and (ii) the parties record their

intention that Customer 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 Products; (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.

15.11 If Supplier processes any personal data on Customer's behalf when performing its obligations under an Order (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](http://mediakind.com)) and applicable law, and:

(a) Customer acknowledges and agrees that for personal data relating to UK, EEA and Swiss data subjects, such data may be transferred or stored outside the UK, EEA, Switzerland (respectively), or the country where Customer and the data subject is located, in order to fulfil Supplier's obligations under an Order, provided Supplier conducts such transfer in accordance with an approved data transfer mechanism (e.g. SCCs);

(b) Customer 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 Customer's behalf in accordance with the Order;

(c) Customer 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 these Terms, the relevant Order and any other lawful written instructions reasonably given to it by Customer 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.

## 16. GENERAL

16.1 Except as may be expressly provided elsewhere in these Terms, Customer may not transfer, assign or sub-license the Order or any or all of its rights under it without the prior written consent of Supplier. Supplier or Customer may assign the 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, sub-contract or procure the performance of all or any part of the Order by an Affiliate and reserves the right to sub-contract to third party suppliers. Notwithstanding any other provision to the contrary, Customer hereby consents to any assignment of any rights of Supplier in relation to any receivables arising under any Order to any financial institution or other third party.

16.2 For Customer's based in the UK or EU, the construction, validity and performance of these Terms and any Order shall be governed by the laws of the England and Wales and the parties hereby irrevocably submit to the sole and exclusive jurisdiction of the Courts of England and Wales to resolve any disputes between them. For Customers based in any location other than the UK or EU, the construction, validity and performance of these Terms 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 these Terms 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.

16.3 The United Nations Convention on Contracts for the International Sale of Goods shall not apply. The Uniform Computer Information Transactions Act shall not apply.

16.4 The failure of either party to enforce any term of these Terms does not constitute a waiver of it and shall in no way affect the right later to enforce the term.

16.5 The invalidity or unenforceability of the whole or part of any provision of these Terms 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.

16.6 Unless otherwise agreed in writing, entry into a 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 any Order shall be the Confidential Information of Supplier and shall not be disclosed to any third party by Customer.

16.7 These Terms and the documents referred to herein (including any non-disclosure agreement between the parties) constitute the whole agreement between the parties with respect to the 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 these Terms or the relevant Order.

16.8 Customer agrees to fully comply with all applicable trade compliance and export laws and regulations of the United States or any other relevant jurisdiction, and shall satisfy itself that the purchase and use of Products (and if relevant, the importation, possession and use of those Products) 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, Customer agrees 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 Customer fails to provide any information reasonably requested by Supplier pursuant to this section, or provides incorrect information, Supplier reserves the right to suspend any licenses granted hereunder, until such time as the requested information or corrected information is received and verified by Supplier.

16.9 A written notice required to be given under these Terms

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 marked for the attention of the contact person set out in that 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.