

TERMS OF SERVICE – B2B

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ATTENTION: PLEASE READ THESE TERMS OF SERVICE CAREFULLY BEFORE ACCESSING AND USING THE SOFTWARE AND/OR PRODUCTS. YOUR USE OF THE SOFTWARE AND/OR PRODUCTS CONSTITUTES YOUR ACCEPTANCE OF THESE TERMS OF SERVICE.

These Terms of Service (hereinafter: “**TOS**”), together with the NetRefer Order Form (hereinafter: “**Order Form**”) and the Service Level Agreement (hereinafter: “**SLA**”), as well as any future addendums, appendices, exhibits or other documents signed between the Parties (hereinafter, collectively referred to as “**Agreement**”) form a binding contract between you (“**Licensee**”) and Arnold Media Limited (“**Licensor**”).

(The Licensor and the Licensee shall hereinafter be referred to individually as a “**Party**” and collectively as the “**Parties**”).

1. Definitions:

- 1.1 “**Affiliate**” means any third parties who direct online and/or offline traffic to the online and/or offline properties of the Licensee which can be tracked and attributed to the affiliate and who are incentivized by the Licensee for such introductions and are permitted to access and utilize, but not further distribute, the Software.
- 1.2 “**Bundled Products**” means the products marketed and distributed by Licensee with which or into which the Software and/or Products are bundled (either as one product or as separate products or modules), embedded, integrated and/or used along with Licensee’s products. The Bundled Products may also include third party products marketed and distributed by Licensee.
- 1.3 “**Confidential Information**” means any proprietary or confidential information which one Party (“**Disclosing Party**”) discloses to the other Party (“**Recipient**”) pursuant to, or in connection with, this Agreement (whether orally, in writing or through any other medium and whether or not the information is expressly stated to be confidential or marked as such). Confidential Information shall include: (a) all information relating to the Products and/or the Software including the concepts and ideas relating thereto; (b) business, financial or operating information of the Disclosing Party, which information is of a secret or proprietary nature or is otherwise expressly stated by Disclosing Party to be confidential; (c) all technical and non-technical information, data, drawings, trade secrets and know-how relating to the Disclosing Party’s business plans and strategies, products, services, customers, IT systems, design methodology, evaluation methodology and criteria, and manufacturing processes ; and (d) all notes, memoranda, analyses, compilations, studies and other documents prepared by, for or on behalf of Disclosing Party and of its employees or advisors. Confidential Information shall not include information that: (i) is or becomes a part of the public domain through no act or omission of the Recipient; (ii) is lawfully disclosed to the Recipient by a third party without restriction on disclosure; (iii) was in the Recipient’s lawful possession prior to the date of disclosure and had not been obtained by the Recipient either directly or indirectly from the Disclosing Party; or (iv) is independently developed by the Recipient without the use or benefit of the Disclosing Party’s Confidential Information, as evidenced by its written records.
- 1.4 “**Contractual Partners**” means Affiliates, consultants, agents and any other individuals or entities engaged with Licensee and who in any way make use of the Software and/or Products.
- 1.5 “**Derivative work**” means (a) for copyrightable or copyrighted material: a work that is based upon one or more pre-existing works, such as a revision, modification, translation, abridgment, condensation, expansion, collection, compilation or any other form in which such a pre-existing work may be recast, transformed or adapted, and that, if prepared without authorization by the owner of the pre-existing work, would constitute copyright infringement; (b) for patentable or patented material: any adaptation, addition, improvement, or combination based on a pre-existing work; and (c) for material subject to trade secret or protection or confidentiality obligations: any new material, information, or data relating to and derived from such existing trade secret material or Confidential Information, including new material which may be protected by copyright, patent, trade secret or other proprietary rights.

- 1.6 **“End User”** means Licensee’s customer using the Bundled Products as provided by Licensee.
 - 1.7 **“End User License Agreement” or “EULA”** means a license agreement between the Licensee and any End User to which Licensee provides the Bundled Products.
 - 1.8 **“Group Company”** means in respect of either Party, any subsidiary or holding company from time to time of that Party, and any subsidiary from time to time of a holding company of that Party, including any affiliated company, joint venture or any other kind of undertaking in which the Party directly or indirectly holds an interest.
 - 1.9 **“Products”** means any products and/or services and/or programs and/or features which may be provided from time to time by the Licensor alone or in conjunction with the use of the Software by the Licensee.
 - 1.10 **“Software”** means any of the Licensor's proprietary software applications and platforms, and any and all customizations, modifications, updates and upgrades, if any, thereto.
2. **Grant of License:** Pursuant to the terms of this Agreement, Licensor hereby grants to Licensee, and Licensee hereby accepts, a non-transferable, non-exclusive, non-assignable worldwide license to market and sublicense the Software and/or Products to End Users only as part of the Bundled Products, during the term of this Agreement.
 3. **Limitation on Use:** Licensee shall not, nor permit others to: (a) copy, modify, distribute, redistribute, sell, lease, assign, transfer, trade, rent, publish or sub-license the Software and/or Products to any third party, whether in full or in part; (b) download or make any copies of the Software and/or Products; (c) disassemble, reverse engineer or decompile any copies of the Software and/or Products, whether in full or in part; (d) develop, produce, make, distribute, license or exploit any of the Software’s and/or Products’ Derivative Work; (e) allow third parties to access or use the Software and/or Products, except for third parties specifically authorised in writing by Licensor; (f) use a single account given to the Licensee for the use of the Software and/or Products for multiple business entities, unless specifically authorised in writing by the Licensor; (g) use the Software and/or Products for any purpose except in the normal course of its business; (h) use the Software and/or Products for any illegal purpose or cause; (i) remove or attempt to remove any proprietary notice of Licensor.
 4. **Third-Party Sites and Products:** Third-party sites and products are not under Licensor’s control. Third-party sites and products are provided to Licensee only as a convenience, and the availability of any third-party site or product does not mean Licensor endorses, supports or warrants the third-party site or product. Licensor’s website may include links to other websites, services, resources or products on the Internet that are owned and operated by online merchants and other third parties. Licensee acknowledges that Licensor is not responsible for the availability, content, legality, appropriateness or any other aspect of any third-party site or product. Licensee’s use of third-party sites or products is at its own risk and subject to the terms of use and privacy policies of each site or product. Licensor makes no guarantees and assumes no responsibility or liability of any type with respect to content, products and services provided by any third party.
 5. **Term:** This Agreement shall enter into force on the Initial Service Start Date and shall remain in force until the end of the Initial Term (as specified in the Order Form) (**“Initial Term”**). At the end of the Initial Term, this Agreement shall be automatically renewed for further periods according to the Automatic Renewal Term in the Order Form (**“Renewal Term”**), unless either Party provides the other Party with written notice of non-renewal at least six (6) months prior to the end of the Initial Term or the then current Renewal Term, as applicable, (except when due to a Fee and/or billing revision as stated in clause 6(c) below), or it is otherwise terminated as provided herein.
 6. **Fees:**
 - (a) Licensee shall pay to the Licensor the fees as stipulated in the Order Form (hereinafter: **“Fees”**) (as may be modified during the Initial Term and/or Renewal Term pursuant to a change in the Products and/or other services requested by Licensee). All Fees are stated exclusive of VAT and are non-refundable. Licensee shall be responsible for paying all use, sales, excise, value-added or other tax or governmental charges related to Licensee’s use of the Software and/or Products. The Licensee shall not make any set-off or any deduction whatsoever from the Fees due to the Licensor.

- (b) The Licensee agrees that the charge for the Software and/or Products within the Bundled Products provided to End Users shall be the Fees stated in the Order Form plus a maximum mark up which shall be agreed upon by the Parties and specified in an addendum to this Agreement.
 - (c) Licensor reserves the right to revise the Fees and/or billing practices for any subsequent Renewal Term by providing Licensee written notice of such increase at least sixty (60) days prior to the end of the then current term. In the event that Licensee does not accept the revised Fees and/or billing practices, it shall provide written notification to Licensor of such non-acceptance within thirty (30) days of receiving notification of the revised Fees and/or billing practices by Licensor, in which event either Party shall have the right to notify the other Party of non-renewal of the Agreement. For the avoidance of doubt, it is hereby clarified that failure by Licensee to provide Licensor with notice of non-acceptance as aforesaid, shall be deemed to constitute acceptance by the Licensee of the revised Fees and/or billing practices.
 - (d) It is hereby agreed by the Parties that in the event that the End User becomes bankrupt or insolvent and/or breaches its agreement with the Licensee and fails to pay for use of the Software, the Licensee shall not be held liable to Licensor for payment for such End User's use of the Software, provided that Licensee shall take all reasonable measures to collect from the End User the outstanding fees owed to Licensor for use of the Software.
- 7. Termination by Licensee:** Licensee shall have the right to immediately terminate this Agreement in the following cases: (a) Licensor commits a material breach of this Agreement and/or fails to perform pursuant to this Agreement, and such breach or non-performance is not remedied within thirty (30) days of written notice of such breach or non-performance by Licensee to Licensor; or (b) Licensor becomes bankrupt or insolvent, as evidenced by written records. Termination pursuant to this clause 7 shall not release Licensee from its obligations to pay to Licensor all Fees which accrued prior to such termination. Licensee's sole and exclusive remedy shall be to terminate this Agreement and receive a refund of any Fees or pro-rata portion thereof paid by Licensee for any remaining period of the Agreement, if any, from the date of termination.
- 8. Termination by Licensor:** Licensor shall have the right to immediately terminate this Agreement, and Licensee shall be obligated to pay to Licensor all Fees which accrued prior to such termination, if: (a) Licensee commits a material breach of this Agreement and/or fails to perform pursuant to this Agreement (such as failure to timely pay any of the Fees due), and such breach or non-performance is not remedied within thirty (30) days of written notice of such breach or non-performance by Licensor to Licensee; or (b) Licensee becomes bankrupt or insolvent, as evidenced by written records; or (c) Licensor becomes bankrupt or insolvent. Termination pursuant to (a) or (b) above shall not release Licensee from its obligations to pay to Licensor all Fees for the entire duration of the Initial Term or Renewal Term, as applicable, as if this Agreement had not terminated and had continued in full force and effect and, in such event, Licensor may demand that the entire Fees for the entire duration of the Initial Term or Renewal Term, as applicable, shall become immediately due and payable.
- 9. Obligations that Survive Termination:** The Parties recognize and agree that their obligations under clauses 14, 17, 18, 19, 22 and 24 hereof survive the cancellation, termination or expiration of this Agreement.
- 10. Post Termination:** Upon termination of this Agreement, for any reason whatsoever, Licensor shall have the right to immediately remove and/or terminate access of the Products and/or Software and related data from its own and/or from the Licensee's servers, as applicable. Subject to the provisions in the SLA, Licensor shall have no obligation to retain or store, and may delete, Licensee's data, unless otherwise agreed upon in writing by the Parties and provided Licensee pays Licensor an agreed upon data retention fee.
- 11. Mutual Warranties:** Each Party represents and warrants to the other that: (a) it has the full right, power and authority to enter into this Agreement; and (b) it operates legally, has all necessary governmental approvals for such operation and shall remain solely responsible for maintaining such approvals.
- 12. Limited Warranty:** Licensor warrants that the product description and features of the Software and/or the Products as provided in the user manual, are accurate in all material respects at the time of signing this Agreement and it shall take all reasonable steps in accordance with the provisions of this Agreement to correct any defect in the Software and/or Products. However, Licensor does not warrant that all defects can and will be corrected. In the event that any defect substantially affects the operation of the Software and/or Products, Licensor shall have the option to either repair or replace the Software and/or

Products at its sole expense. Notwithstanding the foregoing, if in Licensor's sole discretion, correcting a defect which substantially affects the operation of the Software and/or Products is not possible or feasible, Licensor shall have the right to either (i) provide Licensee with a method to bypass such defect, provided that the functionality or ease of use of the Software and/or Products is not materially affected by any such method to bypass the defect; or (ii) allow the Licensee to terminate this Agreement, in which event Licensee's sole remedy shall be a refund of any Fees or pro-rata portion thereof paid by Licensee for any remaining period of the Agreement from the date of termination. In no event shall Licensor be liable for any incidental, consequential, punitive or other damages as a result of the aforesaid.

This limited warranty is void if failure of the Software has resulted from (i) the acts or omissions of non-Licensor personnel; (ii) accident, abuse, misuse, misapplication, theft, vandalism, fire, water or other peril; and (iii) modifications, alterations or additions not authorized by Licensor.

13. No Other Warranties: EXCEPT FOR THE FOREGOING AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SOFTWARE AND PRODUCTS ARE PROVIDED "AS IS" WITHOUT WARRANTIES, REPRESENTATIONS OR CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. LICENSOR DOES NOT WARRANT THAT THE PRODUCTS, THE SOFTWARE, THE OPERATION OF THE SOFTWARE, OR ANY RELATED SOFTWARE SERVICES WILL MEET LICENSEE'S REQUIREMENTS OR THAT IT WILL BE UNINTERRUPTED OR ERROR-FREE.

14. Limitation of Liability: TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT WITH RESPECT TO CLAUSES 15, 16 AND 17 BELOW, IN NO EVENT SHALL EITHER PARTY OR ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR GROUP COMPANIES BE LIABLE FOR ANY (A) INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS; BUSINESS INTERRUPTION; LOST BUSINESS OPPORTUNITY; LOSS, CORRUPTION OR NON-AVAILABILITY OF DATA; OR ANY OTHER COMMERCIAL OR PECUNIARY DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO LICENSEE'S USE OF OR INABILITY TO USE THE SOFTWARE OR PRODUCTS OR ANY THIRD PARTY SOFTWARE OR APPLICATIONS IN CONJUNCTION WITH THE SOFTWARE OR PRODUCTS, OR ARISING OUT OF OR RELATED IN ANY WAY TO ANY THIRD PARTY PARTNER OR PROVIDER OF EITHER PARTY, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT OR OTHERWISE) AND EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; (B) DAMAGES (REGARDLESS OF THEIR NATURE) FOR ANY DELAY OR FAILURE BY EITHER PARTY TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT DUE TO ANY CAUSE BEYOND SUCH PARTY'S REASONABLE CONTROL; OR (C) CLAIMS MADE A SUBJECT OF A LEGAL PROCEEDING AGAINST EITHER PARTY MORE THAN TWO (2) YEARS AFTER ANY SUCH CAUSE OF ACTION FIRST AROSE.

WITHOUT LIMITING THE GENERAL EXCLUSION OF LIABILITY AS PROVIDED HEREIN, THE CUMULATIVE, AGGREGATE LIABILITY OF EACH PARTY AND ALL OF ITS DIRECTORS, OFFICERS, EMPLOYEES, CONSULTANTS AND GROUP COMPANIES TO THE OTHER PARTY OR ANY THIRD PARTY IN RESPECT OF CLAIMS, WHETHER FOR BREACH OF CONTRACT, NEGLIGENCE, MISREPRESENTATION, TORT, QUASI-TORT OR OTHERWISE, SHALL BE LIMITED TO DIRECT DAMAGES AND SHALL NOT EXCEED AN AMOUNT EQUAL TO THE TOTAL ANNUAL FEE (AS SPECIFIED IN THE ORDER FORM) PAID BY THE LICENSEE DURING THE COURSE OF THE CURRENT TERM OF THE AGREEMENT DURING WHICH THE EVENT GIVING RISE TO THE LIABILITY OCCURS.

15. Indemnification by Licensor: Licensor shall indemnify Licensee against any third party claim that the Software and/or Products infringes any patent, copyright, trademark or trade secret owned or controlled by the third party; provided however, that: (a) Licensee promptly notifies Licensor in writing of any such claim; (b) Licensor shall have sole control of the defence of any action on such claim and all negotiations for its settlement or compromise; (c) Licensee shall cooperate fully with Licensor to facilitate the settlement or defence of such claim; and (d) Licensee has not contributed in any way to the infringement, inter alia by way of (i) modifying the Products and/or Software, improper use or improper integration, or (ii) use of the Products and/or Software or any component thereof in combination with any other system, equipment or software not provided or approved by the Licensor.

In addition, in the event an injunction or order shall be obtained against Licensee's use of the Software and/or Products by reason of any such infringement allegation or if, in Licensor's sole opinion, the Software and/or Products is likely to become the subject of a claim of infringement or violation of any existing patent, copyright, trademark, trade secret, or other proprietary right of a third party, Licensor may, without in any way limiting the foregoing, in Licensor's sole discretion and at Licensor's expense

either: (a) procure for Licensee the right to continue using the Software and/or Products; (b) replace or modify the Software and/or Products so that it becomes non-infringing, but only if the modification or replacement does not, in Licensor's reasonable sole opinion, adversely affect the functional performance or specifications for the Software and/or Products or its use by Licensee; or (c) if neither (a) nor (b) above is practical, terminate this Agreement and refund to Licensee any Fees or pro-rata portion thereof paid by Licensee for any remaining period of the Agreement, if any, from the date of termination. In no event shall Licensee be liable to Licensor for any charges after the date that Licensee no longer uses the Software and/or Products because of actual or claimed infringement.

INDEMNIFICATION BY LICENSOR AS AFORESAID IS LIMITED TO THE AMOUNT FINALLY AWARDED IN A FINAL JUDGMENT BY A COURT OR AGREED UPON BY LICENSOR IN A SETTLEMENT. IN NO EVENT SHALL LICENSOR BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, BUSINESS OR GOODWILL) SUFFERED OR INCURRED BY LICENSEE. THE FOREGOING STATES LICENSOR'S ENTIRE LIABILITY, AND LICENSEE'S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO INDEMNIFICATION FOR PATENT, COPYRIGHT, TRADEMARK AND TRADE SECRET INFRINGEMENT.

- 16. Indemnification by Licensee:** Licensee agrees to indemnify, hold harmless, and defend Licensor from and against any claims or lawsuits, including attorneys' fees, arising out of or accruing from (i) use or distribution of the Bundled Products; and (ii) any Bundled Products developed by Licensee that infringe or threaten to infringe any copyright, trademark, trade secret, patent or other intellectual property right of any person. Further, Licensee shall indemnify and hold the Licensor and its directors, officers, employees, agents and Group Companies harmless from and against any claims, actions, proceedings, damages, liabilities and costs arising out of or otherwise relating to Licensee's and/or Contractual Partners' and/or End Users' (i) improper use of the Software or Products and/or (ii) breach of any term, condition or obligation under this Agreement.

- 17. Intellectual Property Rights:** Except for the rights explicitly granted to Licensee hereunder, Licensor shall retain all rights, title and interest in and to the Products and/or Software, including any and all enhancements, modifications, upgrades, updates and Derivative Works relating to, or deriving from, the Products and/or Software, and in all materials developed, used and provided to the Licensee under this Agreement including, without limitation, all or any part of proprietary methods, algorithms, source code, object code, protocols, systems architecture, menu structures, database schemas, documentation text, interfaces, inventions, formulae, processes, designs and discoveries, whether patentable or not. Licensee agrees that the Products and/or Software shall bear all copyright, trademark and other proprietary notices included therein by Licensor. Licensee agrees that such notice shall include a clearly visible phrase or logo in the form: "Powered by NetRefer" or any other similar form.

ANY USE OR DISCLOSURE OF THE PRODUCTS AND/OR SOFTWARE, OR OF ITS ALGORITHMS, PROTOCOLS OR INTERFACES, OTHER THAN IN STRICT ACCORDANCE WITH THIS AGREEMENT, MAY BE ACTIONABLE AS A VIOLATION OF LICENSOR'S COPYRIGHT, PATENT, TRADE SECRET OR OTHER RIGHTS AND MAY BE SUBJECT TO CIVIL AND/OR CRIMINAL ACTION IN MULTIPLE JURISDICTIONS.

The Parties agree that ordinary remedies may not be sufficient in case of a violation by the Licensee of any of the Licensor's intellectual property rights, whether copyright, patent, trademark, trade secret or otherwise, and that in such case the Licensor shall be entitled, in addition to any other right available at law, to seek an injunctive relief against the Licensee.

- 18. Confidentiality:** The Parties agree to hold each other's Confidential Information in confidence during the term and after termination of this Agreement. The Parties agree not to use each other's Confidential Information for any purpose other than the implementation of this Agreement and not to disclose the Confidential Information to any third party, except to those of its officers, directors, employees, financial or legal advisers who have a reasonable need to know such Confidential Information for purposes of implementing this Agreement, provided that such individuals are advised of the confidentiality provisions of this Agreement and agree to maintain the confidentiality of the Confidential Information. Each Party agrees to use the same degree of care that it uses to protect its own Confidential Information of a similar nature and value but in no event less than a reasonable standard of care. Despite any provision of this Agreement to the contrary, Recipient may disclose Confidential Information as required by law, regulation, court order or other legal process; provided, however, that immediately upon receipt of such disclosure requirement, Recipient shall notify Disclosing Party of the impending disclosure to allow Disclosing Party an opportunity to take appropriate legal measures to protect the Confidential Information. Upon request from the Disclosing Party, Recipient shall immediately return, or at Disclosing

Party's direction destroy, all documents, papers or records in whatever form containing Confidential Information.

- 19. Personal Data:** Each Party undertakes to comply with its obligations under relevant applicable data protection laws. To the extent that personal data is processed using the Software and/or Products, the Parties acknowledge that the Licensor is a data processor and the Licensee is a data controller and the Parties shall comply with their respective statutory data protection obligations. The Licensee shall ensure that the personal data which it supplies or discloses to the Licensor has been obtained fairly and lawfully. The Licensor shall provide adequate security for the processing of the data in line with good business practice. Licensor shall not use personal data processed under this Agreement for any purposes other than for carrying out its obligations under this Agreement, for improvement of systems setup, troubleshooting the Software and/or Products, or in the normal operation of the Software and/or Products. Notwithstanding the aforesaid, Licensee grants Licensor the right to use the personal data in aggregate or anonymised form.

The Licensor shall provide the Licensee with an initial user name and password allowing access to the Software and/or Products by the Licensee. The Licensee will thereafter be able to create further user names and passwords to each staff member that the Licensee designates as authorised to access the Software and/or Products. The Licensee is solely responsible for the security of the user names and passwords issued to Licensee's staff members.

- 20. Publicity:** Licensor may publicly disclose on its website, promotional material, in a press release, public statement or otherwise, that the Licensee is a user of the Software and/or Products.

- 21. EULA:** Prior to allowing any End Users to access or use the Software and/or Bundled Products, the Licensee shall ensure that each such End User has agreed to the terms and conditions of an EULA which include the following minimum terms:

21.1 Acknowledgment: Licensee and the End User must acknowledge that the EULA is concluded between the Licensee and the End User only and not with Licensor, and Licensee is solely responsible for the Bundled Products and the components thereof.

21.2 Grant of License: Licensee grants to End User a non-transferable, non-exclusive, non-assignable, non-sublicensable right to use the Software as incorporated in the Bundled Products for End User's internal use only.

21.3 Limitation on Use: The EULA may not provide for usage of the Software in a manner that is less restrictive than the Limitation on Use contained in Clause 3 hereof.

21.4 Warranties: The EULA shall include suitable warranty disclaimers, including conspicuous disclaimers of warranties of merchantability and fitness for particular purpose, and a statement that Licensor shall not have any warranty or direct or indirect liability to the End User.

21.5 Termination: The EULA shall provide that upon termination of its agreement with Licensee to use the Bundled Products, the End User shall discontinue use and, if applicable, destroy or return to Licensee the Software and any documentation relating thereto.

21.6 Intellectual Property Rights: No ownership of, or title to, the intellectual property in the Software is transferred to the End User. Licensor owns and shall retain all rights, including intellectual property rights, in and to the Software.

- 22. Exclusivity and Non-Solicitation:** Licensee agrees that during the term of this Agreement it shall not, directly or indirectly, sell, market, license, sub-license or otherwise distribute any product which directly or indirectly competes with the Bundled Products. During the term of this Agreement and for a period of one (1) year following its termination, Licensee shall not solicit, induce, hire or engage any employee of Licensor, or in any other way interfere with Licensor's contractual or employment relations with any of its employees, nor will Licensee hire or engage any individual who was an employee of Licensor at any time during such one (1) year period.

- 23. Assignment:** Licensee shall not assign, license, sub-license or otherwise transfer any of its rights or obligations under this Agreement in general, and under the License in particular, in whole or in part, including to any person or Group Company, whether by written agreement, merger, consolidation, operation of law or otherwise, without the prior written consent of the Licensor. Any attempt to assign this Agreement by Licensee without such consent will be null and void and of no force and effect.

- 24. Governing Law and Jurisdiction:** This Agreement shall be governed by and construed in accordance with the laws of Malta. The Parties shall endeavour to resolve amicably any dispute, controversy or claim arising out of or in connection with this Agreement. In case of failure to reach an amicable settlement, the Parties hereby agree that the dispute shall be referred and submitted to arbitration in Malta in accordance with the rules of the Malta Arbitration Centre, as in force on the date on which such dispute, controversy or claim arises. The number of arbitrators shall be one (1) and shall be appointed by agreement between the Parties. Should the Parties not agree on the person who shall be appointed as arbitrator within fifteen (15) days from the date on which either of the Parties may refer the dispute, controversy or claim to arbitration, the arbitrator shall be appointed by the Malta Arbitration Centre. The language to be used in the arbitral proceedings shall be English.
- 25. Relationship of Parties:** The Parties are independent contractors and neither Party is an agent, partner or employee of the other. No relationship of franchise, partners, joint ventures, principal and agent, master and servant is established hereby between the Parties. Neither Party has the authority to bind the other Party or to incur any obligation on other Party's behalf.
- 26. Severability:** If any provision of this Agreement is held invalid or otherwise unenforceable, such provisions shall be deemed to be severed from this Agreement and the enforceability of the remaining provisions shall not be impaired thereby.
- 27. No Waiver:** A failure by any Party to exercise any right provided for herein or pursue any remedy shall not be deemed a waiver of such or other right hereunder on any other occasion.
- 28. Entire Agreement:** This Agreement sets forth the entire understanding of the Parties and supersedes any prior contracts, agreements or representations by or among the Parties, written or oral, with respect to the subject matter hereof, and may not be modified except in writing and signed by both Parties.
- 29. Counterparts:** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement.
- 30. Changes to TOS:** Licensor may at any time change the provisions of these TOS upon notice to Licensee. Any such changes will become effective no earlier than fourteen (14) days after Licensee has been notified. Licensee's continued use of the Software and/or Products after such date constitutes Licensee's acceptance of the revised TOS. The date these TOS were last revised shall be indicated at the top of this page.
- 31. Notices:** All notices sent pursuant to this Agreement or Order Form shall be in writing and sent by electronic mail (with confirmation of its acceptance), by fax (with confirmation of receipt) or by registered mail to the Parties' respective addresses set forth in the Order Form. A registered letter shall be deemed as having arrived at its destination following 72 hours from its dispatch by post; a fax or email shall be deemed as duly received upon receipt of confirmation of delivery.
- 32. Electronic Signatures:** Unless otherwise agreed in writing by the Parties, the electronic signature of a Party to this Agreement shall be as valid as an original signature of such Party and shall be effective to bind such Party to this Agreement. The Parties agree that any electronically signed document (including this Agreement) shall be deemed (i) to be "written" or "in writing," (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. Such paper copies or "printouts," if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the Parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither Party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule. For purposes hereof, "electronic signature" means a manually-signed original signature that is then transmitted by electronic means; "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a "pdf" (portable document format) or other replicating image attached to an e-mail message; and, "electronically signed document" means a document transmitted by electronic means and containing, or to which there is affixed, an electronic signature.