

## APPENDIX 2 OF THE PURCHASE ORDER

### ESEF SOFTWARE AS A SERVICE (SaaS) TERMS AND CONDITIONS Pack

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The “ESEF Software as a Service (SaaS) Terms and Condition pack” refers to the applicable terms and conditions for the ESEF Software as a Service (SaaS).

The ESEF Software as a Service (SaaS) Terms and Conditions pack includes the following attached documents:

- Terms and Conditions: Ref SJ Esef Saas PO TC NO 10 2021 (16 pages)
- Technical Requirements V1.4 (7 pages)
- SaaS Service Levels: Ref SJ Esef Saas PO SL NO 10 2021 (9 pages)
- Security
  - Part 1 ISSP Ref QP16-601-6 (18 pages)
  - Part 2 BCP Ref QP17-605-3 (9 pages)
- Professional Services : Ref SJ Esef Saas PO PS NO 10 2021 (2 pages)
- Personal Data Processing: Ref SJ Esef Saas PO PDP NO 10 2021 (6 pages).

## TERMS AND CONDITIONS

Ref : SJ Esef Saas PO TC NO 10 2021

### AGREED TERMS:

#### 1 Interpretation

1.1 The definitions and rules of interpretation in this Clause apply to the Purchase Order.

“**Affiliate**” means any entity, which directly or indirectly controls, is controlled by, or is under common control with the subject entity. “**Control**”, for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity and the expression change of control shall be construed accordingly.

“**Appendix**” means an appendix to the Purchase Order.

“**Authorised Users**” means:

- (a) The users, individuals, identified by the Client that have a user ID and a password and are authorised to access the Services and the Documentation; and/or
- (b) The hardware or software systems that access and operate any process in connection with the Services (including but not limited to PCs, laptops and mobile devices) in any case on need-to-know basis only, as further described in Clause 2.2(d).

**“Business Day”** means a day other than a Saturday, Sunday or public holiday in France.

**“Client”** means the legal entity signing the Purchase Order.

**“Client Data”** means all the data inputted by the Client and Authorised Users for the purpose of using the Services or facilitating the Client’s use of the Services and for the purpose of the Professional Services.

**“Commercial proposal”** means the Appendix 1 of the Purchase Order that constitutes the specific terms and conditions for the provision for the Service, for the Professional Services such as but not limited to prices, number of Authorized Users, costing assumptions, RACI or project breakdown.

**“Confidential Information”** means in respect of each Party, all confidential or proprietary information, documents and data of whatever nature, whether disclosed orally, in writing, or by any other means, which relates to a Party (or its Affiliates) whether or not designated as confidential or proprietary information but which by its nature is confidential or commercially sensitive or which might reasonably be considered as such, including information of each of the Parties, relating to the business, products, affairs and finances of the relevant Party for the time being confidential to the relevant Party and trade secrets including, without limitation, business data, technical data and know-how relating to the business of the relevant Party or any of its Affiliates.

**“Documentation”** means the document made available to the Client by Invoke from time to time, which sets out a description of the Services and the user instructions for the Services.

**“Personal Data”** means the personal data that the Client processes in the context of its use of the Service, within the meaning of European Regulation 2016/679 of 27 April 2016 (General Data Protection Regulation or GDPR) on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC. This set of regulations is hereinafter referred to as “Personal Data Legislation”

**“Effective Date”** means the date mentioned in the Purchase Order.

**“Fee”** means the fee payable in respect of a Service and/or the Professional Services as set out in Appendix 1 Commercial Proposal of the Purchase Order.

**“Force Majeure Event”** has the meaning set out in Clause 15.

**“Good Industry Practice”** means in relation to any undertaking or circumstances, the exercise of reasonable skill, care, diligence, prudence, efficiency, foresight and timeliness which would reasonably and ordinarily be expected from a skilled person experienced and qualified in the provision of services similar to the Services.

**“Infrastructure”** means all hardware and software constituting Invoke’s IT infrastructure and under its responsibility necessary for the provision and performance of the Services, with the exception of equipment necessary for the Client to access the Service from its own IT system and in particular its telecommunication equipment.

**“Intellectual Property Rights”** means all patents, petty patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, semi-conductor topography rights, moral rights, rights in confidential information (including data, information, materials, know-how and trade secrets) and any other intellectual

property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**“Invoke Technology”** means Invoke’s Intellectual Property Rights, the software, the source code, the updates, the documentation, data, trademarks, all know-how, images, solutions, methodologies and any other materials or information of whatever nature owned by licensed or to Invoke that are provided to the Client by, or on behalf of, Invoke or are made available by Invoke in connection with the provision of the Services.

**“Professional Services”** means the fee in relation to any professional services (analysis, development, testing, settings, training) offered by Invoke and purchased by the Client according to the Purchase Order and Appendix 1 Commercial Proposal.

**“Purchase Order”** : means the agreement signed by the Client and Invoke which includes the following Appendices :

- Appendix 1 – Commercial Proposal
- Appendix 2 – ESEF Software as a Service (SaaS) Terms and Condition pack.

**“Service”** means the inseparable package subscription services provided by Invoke, through its parent corporation Invoke SA located in France, to the Client via a web address or any other website notified to the Client by Invoke from time to time, as more particularly described in the Documentation. The Service includes the Software, the Support and the Updates.

**“Service Activation”** means the activation of the Services by Invoke through the provision to the Client of one or more user IDs to access the Services.

**“Service Activation Date”** means the first date on which Invoke provides the Client with one or more user IDs to access the Services.

**“Service Levels”** means Invoke’s policy for providing Support in relation to the Services as set out in the document referenced SaaS Service Levels, which may be updated by Invoke from time to time.

**“Software”** means the online software applications provided by Invoke as part of the Service pursuant to the terms of the Purchase Order.

**“Specifications”** means the technical specifications agreed between the Parties for a Service as set out in Appendix 1 Commercial Proposal or as otherwise agreed by the Parties in writing.

**“Support”** means assistance in the use of the Service concerning the use of the standard application functions.

**“Technical Requirements”** means the system requirements recommended by Invoke and to be put in place and complied by the Client in order to access and use the Services as set out in the Technical Requirements document.

**Terms and Conditions:** means the present document.

**“Updates”** means improvements, upgrades, modifications, and corrections made to the Service by Invoke concerning the Software and the Infrastructure as defined in the Service Levels.

**“User Subscriptions”** means each user subscription purchased by the Client, which entitles Authorised Users to access and use the Services and the Documentation in accordance with the Purchase Order.

**“Virus”** means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

- 1.2 Clause, appendix and paragraph headings shall not affect the interpretation of the present document.
- 1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.4 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

## **2 User Subscriptions**

- 2.1 Subject to the Client purchasing the User Subscriptions in accordance with Clause 3, the restrictions set out in this Clause 2 and the other terms and conditions of the Purchase Order, Invoke hereby grants to the Client a limited, non-exclusive, non-transferable and revocable right to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Client’s internal business operations.
- 2.2 In relation to the Authorised Users, the Client undertakes that:
  - (a) the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;
  - (b) it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;
  - (c) each Authorised User shall keep a secure password for his use of the Services and Documentation, that such password shall be changed frequently and that each Authorised User shall keep his password confidential;
  - (d) it shall maintain a written, up to date list of current Authorised Users and provide such list to Invoke within 5 Business Days of Invoke’s written request at any time or times;
  - (e) if the Client has underpaid Subscription Fees to Invoke, then without prejudice to Invoke’s other rights, the Client shall pay to Invoke an amount equal to such underpayment as calculated in accordance with the prices set out in Appendix 1 Commercial Proposal within 10 Business Days of the date of the relevant audit.

- 2.3 The Client shall not access, store, distribute or transmit any data during the course of its use of the Services that is illegal. In particular, given the authorised use of the Service, the Client shall refrain from sending or storing non-professional data;

Invoke reserves the right, without liability or prejudice to its other rights to the Client, to disable the Client's access to any material that breaches the provisions of this Clause.

- 2.4 The Client shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the Parties:
  - (i) and except to the extent expressly permitted under the Terms and Conditions, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Service and/or Documentation (as applicable) in any form or media or by any means; or
  - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Service; or
- (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
- (c) use the Services and/or Documentation to provide services to third parties; or
- (d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this Clause 2;

- 2.5 The Client shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Invoke.

- 2.6 The rights provided under this Clause 2 are granted to the Client only, and shall not be considered granted to any subsidiary or holding company or Affiliate of the Client.

### **3 Additional User Subscriptions**

- 3.1 Subject to Clause 3.2 and Clause 3.3, the Client may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in Appendix 1 Commercial Proposal and Invoke shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of the Terms and Conditions.

- 3.2 If the Client wishes to purchase additional User Subscriptions, the Client shall notify Invoke in writing. Invoke shall evaluate such request for additional User Subscriptions and respond to the Client with approval or rejection of the request.

- 3.3 If Invoke approves the Client's request to purchase additional User Subscriptions, the Client shall, within forty-five (45) days of the date of Invoke's invoice, pay to Invoke the relevant fees for such additional User Subscriptions as set out in Appendix 1 Commercial Proposal and, if such additional User Subscriptions are purchased by the Client part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-

rated for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

#### **4 Services**

- 4.1 Invoke shall from the Service Activation Date and for the duration of the remainder of the Purchase Order make the Services and Documentation available to the Client on and subject to the present Terms and Conditions.
- 4.2 Invoke shall use its best endeavours to provide Support to the Client in accordance with the Service Levels or such period as the Client subscribes for the Services.
- 4.3 The Client may at any time request Invoke to provide at Invoke's then current rates:
- additional Professional Services including training;
  - additional User Subscriptions in excess of the number set out in the Commercial Proposal in Appendix 1 Commercial Proposal.
- 4.4 All the items listed in Clause 4.3 above will be charged to the Client according to the rates agreed between the Parties in writing.
- 4.5 Invoke may make any changes in the operation of the Service and related facilities used in providing the Services that Invoke determines in its sole discretion to be necessary and/or desirable including, without limitation, changes in computer hardware, systems, and/or applications software, programming languages, data communications, location of systems and service equipment, Client identification procedures, and type of terminal equipment provided such changes are seamless to the Client and do not produce significant downtime. In the event of any such changes that, in Invoke's reasonable determination, would materially change the operation of the Service, Invoke will notify the Client in writing of such changes prior to implementation so as to minimize downtime for Client's operation.

#### **5 Client Data**

- 5.1 The Client shall own all right, title and interest in and to all of the Client Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Client Data. Invoke shall not use the Client Data other than for use in accordance with the Purchase Order.
- 5.2 The Parties must comply with Data Protection Legislation and as applicable to each Party.
- 5.3 The Client shall ensure that at all times the Client is entitled to disclose the relevant personal data to Invoke so that Invoke may lawfully use, process and disclose the personal data in accordance with the Purchase Order on the Client's behalf.
- 5.4 Invoke shall follow its back up procedures for Client Data as set out in the Security documents, as such policy may be amended by Invoke in its sole discretion from time to time. In the event of any loss or damage to Client Data, the Client's sole and exclusive remedy shall be for Invoke to use reasonable commercial endeavours to restore the lost or damaged Client Data from the latest back-up of such Client Data maintained by Invoke in accordance with the archiving procedure described in its Back-Up Policy. Invoke shall not be responsible for any loss, destruction, alteration or disclosure of Client Data caused by any third party (except those third parties sub-contracted by Invoke to perform services related to Client Data maintenance and back-up).
- 5.5 Invoke shall, in providing the Services, comply with its privacy and security policies relating to the privacy and security of the Client Data, as such policies may be amended from time to time by Invoke in its sole discretion, which are set out in the attached documents.

5.6 If Invoke processes any Personal Data on the Client's behalf when performing its obligations under the Purchase Order:

- (a) the Client shall ensure that the Client is entitled to transfer the relevant personal data to Invoke so that Invoke may lawfully use, process and transfer the personal data in accordance with the Purchase Order on the Client's behalf;
- (b) the Client shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
- (c) Invoke shall process the personal data only in accordance with the terms of the Purchase Order and pursuant to the Personal Data Processing document; and
- (d) each Party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

## 6 Invoke's Obligations

6.1 Invoke endeavours to perform the Services with reasonable skill and care and in accordance with Good Industry Practice and to provide them substantially in accordance with the Specifications, the Service Levels, the provisions of the Security document, and the terms and conditions of the Purchase Order.

6.2 Clause 6.1 shall not apply to the extent of any non-conformance which is caused by the Client or use of the Services contrary to Invoke's instructions, or modification or alteration of the Services by any Party other than Invoke or Invoke's duly authorised contractors or agents.

6.3 If the Services do not conform with the Service Levels, the provisions of the Security documents and Clause 6.1, Invoke will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Client with an alternative means of accomplishing the desired performance. Such correction or substitution as set out in the Service Levels constitutes the Client's sole and exclusive remedy for any breach of the Service Levels and the provisions of the Security documents.

6.4 Notwithstanding the foregoing, Invoke:

6.4.1 does not warrant that the Client's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Client through the Services will meet the Client's requirements;

6.4.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Client acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities; and

6.4.3 shall not be liable for any failure to meet its obligations under the Purchase Order to the extent that such failure arises from a failure of the Client to meet any of its obligations arising under the Purchase Order.

6.5 The Purchase Order shall not prevent Invoke from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services, which are similar to those provided under the Purchase Order.

6.6 Invoke warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Purchase Order.

## **7 Client's Obligations**

### **7.1 The Client shall:**

- 7.1.1 pay the Fees to Invoke in accordance with the terms of the Purchase Order;
- 7.1.2 provide Invoke with:
  - (a) all necessary co-operation in relation to the Purchase Order; and
  - (b) all necessary access to such information as may be required by Invoke;

in order to provide the Services, including but not limited to Client's Data, security access information and configuration services;
- 7.1.3 comply with all applicable laws and regulations with respect to its activities under the Purchase Order;
- 7.1.4 carry out all other Client responsibilities set out in the Purchase Order in a timely and efficient manner. In the event of any delays in the Client's provision of such assistance as agreed by the Parties, Invoke may adjust any agreed timetable or delivery schedule as reasonably necessary;
- 7.1.5 ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of the Purchase Order and be responsible
- 7.1.6 ensure that its network and systems comply with the Technical Requirements provided by Invoke from time to time;
- 7.1.7 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Service, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Client's network connections or telecommunications links or caused by the internet:
- 7.1.8 ensure that all Client's Data is provided in a timely, accurate and adequate fashion and be available and accessible electronically, on-line or in any format as reasonably required by Invoke and be responsible for all of the Client's Data provided to Invoke under the Purchase Order (including Client's Data provided by any employees, sub-contractors and agents acting on behalf of the Client).

7.2 The Client acknowledges that problems with the internet, including equipment, software, or network failures, impairments, or congestion may prevent, interrupt, or delay Client's access to the Services.

7.3 The Client shall not license, sublicense, sell, resell, transfer, assign, time share, or otherwise commercially exploit or make the Services available to any third party, other than as permitted by the express terms of the Purchase Order.

7.4 The Client agrees to comply with the Technical Requirements (Exhibit 2) and with all security and operating guidelines, procedures, and protocols provided to the Client by Invoke including, without limitation, pertaining to use of passwords.

7.5 The Client shall be solely responsible for maintaining adequate controls over its processing and data transmissions.



## **8 Warranties and Representations**

8.1 Each Party represents and warrants for the benefit of the other Party that:

- 8.1.1 it has the requisite power and authority to enter into the Purchase Order and to carry out the obligations contemplated in the Purchase Order;
- 8.1.2 the Purchase Order constitutes a binding obligation in accordance with its terms;
- 8.1.3 it shall comply with all statutes, laws, regulations and by-laws as are applicable to it; and
- 8.1.4 it shall obtain and maintain all necessary licences, consents, and permits to enter into and to perform its obligations under the Purchase Order.

8.2 The Client acknowledges that (i) it has received from Invoke all the necessary information enabling it to assess whether the Services supplied by Invoke meet its requirements and (ii) it is aware of the pre-conditions it must fulfil, including those concerning the hardware and software it shall have in place in order to receive and to benefit from such Services and ensure that such Services work properly for the Client.

## **9 Charges and Payment**

9.1 The Client shall pay the Fees to Invoke for the User Subscriptions in accordance with this Clause 9 and Appendix 1 Commercial Proposal.

9.2 Invoicing and Payment

- 9.2.1 Invoke shall invoice all Fees in euros, unless a different currency specified in Appendix 1 Commercial Proposal.  
The Service annual fees shall be invoiced according to the provisions of Appendix 1 Commercial Proposal.
- 9.2.2 Where bank fees are charged in connection with any payment under this Clause 9 (including fees charged by intermediate banks), such bank fees shall be borne by:
  - (a) the debtor, where imposed in the debtor country; and
  - (b) the creditor, where imposed in the creditor country.
- 9.2.3 All invoiced amounts shall be: (a) invoiced in the currency specified in Appendix 1 Commercial Proposal and the Client shall make all payments to Invoke in the same currency; (b) due for payment within thirty (30) days after the date stipulated on the invoice as mentioned in Appendix 1 Commercial Proposal;
- 9.2.4 Without prejudice to Invoke's other rights, any payment default or late payment shall immediately entail the application of late-payment penalties equivalent to three (3) times the statutory interest rate beginning on the day after the payment due date indicated on the invoice as well as a fixed sum of €40 (Article L.441-6 of the French commercial code and Article 121 of Law No. 2012-387 of 22/03/2012).

Furthermore, if the Client breaches its obligation to pay Invoke's invoices, Invoke reserves the right, fifteen (15) days after sending a formal notice to pay in the recommended form has remained partially or totally without effect, to suspend the provision and performance of the SaaS Service until the sums due are paid in full and/or to terminate the Purchase Order automatically in accordance with article 15.2 "Termination for default" without requiring a new formal notice.

Unless expressly authorised by Invoke, in no case shall the amounts due to Invoke be subject to any offsetting with sums due from Invoke.

9.2.5 If the Client disputes an invoice for Fees, the Client may withhold any disputed sum until the dispute is resolved but shall pay the undisputed amount in accordance with this Clause 9.

9.3 The Parties agree that on January 1 of each year following the signing of the Purchase Order, the prices may be revised according to the following formula:  $NP = IP \times (LSI/SIO)$

Key:

NP = New revised price

IP = Initial price or price of the last revision

LSI = Last published SYNTEC index as of the revision date

SIO = published SYNTEC index at the time of the signing of the Purchase Order or the published SYNTEC index as of the date of the previous revision.

## **10 Additional Charges and Taxes**

10.1 Invoke may invoice the Client for additional costs incurred by Invoke arising from local country taxes, tariffs and surcharges, including (without limitation) sales and use taxes, value added taxes, volume sensitive tariffs and usage surcharges, if any. Invoke shall notify the Client in writing if such additional charges become payable.

## **11 Proprietary Rights**

11.1 The Client acknowledges and agrees that Invoke and/or its licensors own all Intellectual Property Rights in Invoke Technology, the Services and the Documentation. Except as expressly stated herein, the Purchase Order does not grant the Client any rights to, or in, patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of Invoke Technology, Services or the Documentation.

11.2 Invoke confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of the Purchase Order.

11.3 All copyright and other Intellectual Property Rights in any products, software, drawing, reports, Documentation or other documents or data generated, created or produced by Invoke in the performance of the Purchase Order and physical possession of any media upon which such Works are contained shall vest in and be the property of Invoke.

11.4 The Client undertakes to promptly notify Invoke of any actual or threatened breach of any Intellectual Property Rights as soon as it becomes aware of the same (including without limitation any actual or suspected computer piracy, unauthorised intrusion, copying or use or unfairly competitive act by any person of all or part of the Services).

### **11.5 Intellectual Property Rights Indemnity**

11.5.1 Invoke shall indemnify the Client against all third party claims, proceedings, actions, liabilities, damages, and losses (including reasonable legal costs) suffered or incurred by the Client arising out of a claim that the Services infringe the Intellectual Property Rights of a third party.

11.5.2 If any third party makes a claim, or notifies an intention to make a claim, against the Client which may reasonably be considered likely to give rise to a liability under this indemnity, the Client shall:

- (a) as soon as reasonably practicable, give written notice of the claim to Invoke, specifying the nature of the claim in reasonable detail;
- (b) not make any admission of liability, agreement or compromise in relation to the claim without the prior written consent of Invoke;
- (c) give the sole authority to defend or settle the claim;
- (d) provide reasonable co-operation to Invoke in the defence and settlement of such claim.

11.5.3 In no event shall Invoke, its employees, agents and sub-contractors be liable to the Client to the extent that the alleged infringement is based on:

- (a) a modification of the Services or Documentation by anyone other than Invoke; or
- (b) the Client's use of the Services or Documentation in a manner contrary to the instructions given to the Client by Invoke; or
- (c) the Client's use of the Services or Documentation after notice of the alleged or actual infringement from Invoke or any appropriate authority.

11.5.4 In the defence or settlement of any claim, Invoke may procure the right for the Client to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate the Purchase Order on 20 Business Days' notice to the Client without any additional liability or obligation to pay liquidated damages or other additional costs to the Client.

11.5.5 The foregoing states the Client's sole and exclusive rights and remedies, and Invoke's (including Invoke's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right.

## **12 Publicity & Confidentiality**

12.1 The Client agrees that Invoke may use the Client's name (or use its image or logo) as a commercial reference in its commercial documentation, regardless of the medium, as well as on documents used and/or produced by Invoke under the Purchase Order.

However, any press release and/or announcement or customer testimonial mentioning the Client's name or reproducing its logo or any of its trademarks must first be submitted to the Client for approval (such consent not to be unreasonably withheld).

12.2 Except as provided below, each Party undertakes to treat as confidential and keep secret all Confidential Information with the same degree of care as it employs with regard to its own Confidential Information of a like nature and in any event in accordance with best current commercial security practices. This Clause shall not extend to any information which was rightfully in the possession of either Party prior to the commencement of the negotiations leading to the Purchase Order or which is already public knowledge or becomes so at a future date (other than as a result of a breach of this Clause).

12.3 Neither Party shall divulge any part of the other Party's Confidential Information to any person without the prior written consent of the other Party except:

12.3.1 to its own employees and then only to those employees who need to know the same for the purposes of carrying out its obligations under the Purchase Order; or

12.3.2 to either Party's auditors, a court of competent jurisdiction, governmental body or applicable regulatory authority and any other persons or bodies having a right duty

or obligation to know the business of the other Party and then only in pursuance of such right duty or obligation.

- 12.4 Both Parties undertake to ensure that persons and bodies referred to in Clause 12.3.2 are made aware before the disclosure of any part of the Confidential Information that the same is confidential and that they owe a duty of confidence to the other Party. If requested by the owner of the Confidential Information, the Party disclosing the Confidential Information to the persons and bodies referred to in Clause 12.3.2 must use its best commercial endeavours to obtain from such third parties duly binding agreements to maintain such Confidential Information in confidence to at least the same extent as the Parties are so bound under the Purchase Order. Each Party shall promptly notify the other Party if it becomes aware of any breach of confidence by any person to whom it divulges all or any part of the Confidential Information and shall give the other Party all reasonable assistance in connection with any proceedings, which the other Party may institute against such person for breach of confidence.
- 12.5 The foregoing obligations as to confidentiality shall remain in full force and effect during the term of this Purchase Order and notwithstanding any termination of the Purchase Order for a period of 5 years after the end of the Term.
- 12.6 Neither Party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 12.7 The Client acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Invoke's Confidential Information.

### **13 Limitation of Liability**

- 13.1 This Clause 13 sets out the entire financial liability of Invoke (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client:
- arising under or in connection with the Purchase Order;
  - in respect of any use made by the Client of the Services and Documentation or any part of them; and
  - in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Purchase Order.
- 13.2 Nothing in the Purchase Order shall exclude or limit the liability of either Party to the other for:
- death or personal injury due to its negligence;
  - any liability which is due to either Party's fraud or fraudulent misrepresentation
  - any other liability which it is not permitted to be excluded or limited as a matter of law.
- 13.3 The Services and the Documentation are provided to the Client on an "as is" basis.
- 13.4 Invoke shall not be liable for:
- any defect in the Services to the extent that the defect has been directly caused or materially contributed to by the Client's failure or negligence to comply with the terms of the Purchase Order;
  - the corruption of the Service by any Client Data or the incompatibility of the Service with any Client Data or with any third party software used by the Client which the Service interfaces or is connected or on which it operates;
  - any Virus infecting the Service, provided that Invoke has followed the reasonably accepted Good Industry Practices applicable to security in respect of the Services; and respects the provisions of the Security documents.
  - an event of Force Majeure has occurred, subject to Clause 15.

13.5 In any event, the Client shall give Invoke a reasonable opportunity, which shall not exceed thirty (30) days, to remedy any matter for which Invoke is liable before the Client incurs any costs and/or expenses in remedying the matter itself.

13.6 Subject to Clause 13.2:

13.6.1 neither Party shall be liable, whether any such losses could be reasonably foreseen by Invoke or not, even if it has been advised of the possibility of such damages or losses, for any indirect, incidental or consequential losses or damages. Invoke can only be held liable for direct and foreseeable damage suffered by the Client, insofar as the Client has provided proof that Invoke's actual breach is the direct cause of this damage.

13.6.2 Invoke's aggregated liability to the Client for all incidents resulting in a liability shall not exceed the total value of the Fee paid by the Client to Invoke during the 1 (one) prior calendar year immediately preceding the incidents that resulted in the liability or proven direct damages.

13.7 The Parties acknowledge and agree that the limitations and exclusions of liability set out in this Clause 13 are reasonable and have been agreed taking into account the commercial value of the Purchase Order to each Party and the commercial standing of each Party.

## 14 Duration and Termination

### 14.1 Duration

The provisions applicable to the duration are described in the Purchase Order.

### 14.2 Termination for default

A Party (the "**Defaulting Party**") will be considered to be in default if it:

- breaches one of its obligation under the Purchase Order which is not capable of remedy;
- breaches one of its obligation under the Purchase Order, which is capable of remedy, but has not been remedied within thirty (30) days of receiving written notice requiring the breach to be remedied;

(each an "**Event of Default**").

The Client will be considered to have committed an Event of Default if it fails to pay any Overdue Amount within thirty (30) days after having received written notice from Invoke to do so.

Invoke will be considered to have committed an Event of Default if it fails to meet the Service availability monthly rate indicated in the Service Levels for three consecutive months (unless the Service unavailability is directly attributable to the Client).

If an Event of Default occurs, then:

- if the Client is the defaulting Party, Invoke may withhold the performance of any Services and cease to provide any Services in progress;
- the non-defaulting Party may terminate the Purchase Order with immediate effect by giving written notice to the defaulting Party; and/or
- all the amounts owed by the Defaulting Party to the other Party shall immediately become due and payable.

14.3 The exercise of either Party's rights under this Clause does not limit any other remedies that may be available to them in law or in equity, including (without limitation) the right to claim damages or to obtain an injunction against the defaulting Party.

14.4 Before expiration of the Purchase Order for whatever reason, the Client shall be solely responsible to retrieve the Client Data by making use of the relevant features of the Service or shall request Invoke to provide a copy of the most recent backup of the Client's Data. If the Client asks Invoke to provide a copy of the most recent backup of the Client Data, this shall be done in SQL Server format. Any return requested by the Client in a format other than SQL Server shall be invoiced following a quotation from Invoke accepted by the Client.

#### 14.5 **Obligations on Terminations**

On termination of the Purchase Order for any reason:

- all right to use granted under the Purchase Order shall immediately terminate;
- access to the Service shall cease on the last day of the Service or the date of termination of the Purchase Order;
- each Party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other Party;
- Invoke shall destroy or otherwise dispose of any of the Client Data sixty (60) days after termination of the Purchase Order, provided that the Client has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). Pursuant to this clause 14.5, the destruction or disposal of the Client Data shall apply to the production data as well as to the backed-up data, depending on the relevant backup retention periods specified in the Security documents; and
- any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Purchase Order which existed at or before the date of termination shall not be affected or prejudiced.

### 15 **Force Majeure**

15.1 A Party (the "**Affected Party**") shall not be liable for non-performance of its obligations under the Purchase Order during the time and to the extent that such performance is prevented, wholly or substantially by an occurrence of strikes, lock-outs or other industrial disputes (whether involving the workforce of Invoke or any other Party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction (or any interpretation thereof), accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors) or other any others acts, events, omissions, accidents or circumstances beyond its reasonable control (a "**Force Majeure Event**").

15.2 The Affected Party must:

- 15.2.1 promptly provide the other Party with full information in relation to the Force Majeure Event (including the extent of its inability to perform, the likely time required to overcome the Force Majeure Event, and the steps the Affected Party will take to comply with Clauses 15.2.2 to 15.2.4 (inclusive);
- 15.2.2 use its best endeavours to remedy, or mitigate the effect of, the Force Majeure Event and minimise the impact on its obligations to the other Party;
- 15.2.3 use its best endeavours to complete its obligations under the Purchase Order as far as is practicable in the circumstances; and
- 15.2.4 resume performance of any obligation affected by a Force Majeure Event as soon as reasonably possible after the termination or abatement of the Force Majeure Event.

## **16 Variation**

No variation of the Purchase Order shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

## **17 Waiver**

No failure or delay by a Party to exercise any right or remedy provided under the Purchase Order or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **18 Severance**

- 18.1 If any provision (or part of a provision) of the Purchase Order is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 18.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the Parties.

## **19 Entire agreement**

- 19.1 The Purchase Order, and any documents and appendices referred to in it, constitute the whole agreement between the Parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 19.2 Each of the Parties acknowledges and agrees that in entering into the Purchase 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 the Purchase Order, other than as expressly set out in the Purchase Order.

## **20 Assignment**

- 20.1 The Client shall not, without the prior written consent of Invoke, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Purchase Order
- 20.2 Invoke may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Purchase Order.

## **21 Counterparts**

The Purchase Order may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

## **22 Mutual assistance**

Each Party agrees, at the reasonable request of the other Party (the “**Requesting Party**”), to execute and deliver to the other such additional documents and undertakings reasonably necessary and appropriate to the Requesting Party to carry out and perform their respective obligations under the Purchase Order. The Parties also agree to perform such acts and do all such other things as may be reasonably necessary and appropriate to accomplish the transactions contemplated in the Purchase Order.

## **23 Agents, Subcontractors**

Either Party may appoint an agent or a subcontractor to fulfil some or all of its obligations under the Purchase Order, whilst retaining responsibility for those functions itself.

## **24 No Partnership or Agency**

Nothing in the Purchase Order is intended to or shall operate to create a partnership between the Parties, or authorise either Party to act as agent for the other, and neither Party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **25 Notices**

- 25.1 Unless otherwise stipulated, any notification or communication under the Purchase Order must be made in writing and sent by post, email, or letter (registered letter with acknowledgement of receipt) to the address indicated in the article 27.2
- 25.2 The addresses and email addresses for service of notices are mentioned in the Purchase Order.
- 25.3 Either Party may change its address by a notice given to the other Party in the manner set forth above.

## **26 Governing Law, Jurisdiction and Dispute Resolution**

The Purchase Order and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of France.

Each Party irrevocably agrees that the courts of Paris shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Purchase Order or its subject matter or formation (including non-contractual disputes or claims).

Before either Party commences legal proceedings, both Parties agree to use their reasonable endeavours to resolve their dispute through an amicable and good faith conciliation process within thirty (30) days of receiving a notice of dispute. Notwithstanding the amicable dispute resolution set forth in this Clause 26, a Party may exercise all rights and remedies to seek and obtain injunctive and/or other equitable relief from any court of competent jurisdiction.