

# US Standard Client Terms and Conditions

TrustYou, Inc.

## 1. SCOPE

- 1.1 These US Standard Client Terms and Conditions (“**General Terms**”) apply to and govern all services that TrustYou, Inc, a corporation organized under the laws of the State of Delaware, and with its place of business at 600 B Street, San Diego, CA, 92101 (“**Provider**” or “**TrustYou**”), agrees to provide to Client (the “**Services**”). The Services are provided in the form of “Software as a Service” (“SaaS”) to be used via the internet. The hardware and software used by TrustYou to provide its Services are centrally hosted by TrustYou and/or TrustYou’s service providers in one or more data centres, and will not be handed over to the Client.
- 1.2 Any specific Services to which Client has subscribed are set forth in an online or offline order form which contains any specific terms and conditions agreed by Provider and Client in writing or by completion of an online form (the “**Specific Terms**”). The Specific Terms and these General Terms, together, constitute the entire agreement between Client and Provider (the “**Agreement**”). Client’s use of the Services, and Provider’s provision of the Services, will signify the Parties’ assent to and acceptance of the Agreement.
- 1.3 Provider shall provide access to the Services to the agreed number of persons designated by Client who are employees of or consultants to Client or employees or consultants of third-parties that shall be entitled (each a “**Subscriber**” or “**User**”), as more fully described in the Specific Terms. Client is responsible for ensuring that any User uses the Services only in accordance with this Agreement and applicable laws. Client shall be full liable to Provider for any conduct of any User under this Agreement.
- 1.4 Provider addresses its Services to business customers and/or entrepreneurs, not to consumers.
- 1.5 Client and Client’s Users must be of legal age (18 years+) to access and use the Services.
- 1.6 Provider’s Services are exclusively governed by the Agreement. General terms and conditions of the Client shall not apply unless Provider has expressly agreed to them in writing (email not sufficient). General terms and conditions of the Client shall particularly not apply if the Client has referred to such general terms and conditions (or provided a copy of them) and Provider has merely not explicitly objected to them.
- 1.7 The exclusive contract language shall be English. In case these General Terms are also provided in other languages than English, the English version shall prevail in case of disputes or contradictions.

## 2. TERM AND TERMINATION

- 2.1 **Term.** The delivery of the Services to Client by Provider will commence on the date set forth in the Specific Terms as “subscription start date” or “license start date” or “effective date” (hereinafter the “**Subscription Start Date**”) and continue for the period stated therein (“**Subscription Period**”). If no specific Subscription Start Date is set forth in the Specific Terms, then the Subscription Start Date shall be the date on which Client is first granted access to the Services by receiving account credentials.

Unless otherwise agreed the Subscription Period will continue for twelve (12) months from Subscription Start Date (the “**Initial Term**”), and effective as of each anniversary of the Subscription Start Date, the Agreement shall automatically renew for an additional twelve (12) months period (each such 12 months period a “**Renewal Term**”) unless Written Notice of termination is provided by either party no later than three (3) months prior to the end of the then-current Initial Term or Renewal Term. “**Written Notice**” for the purpose of this and any other provision of the Agreement means a document signed personally or through advanced electronic signature (pursuant to the European eIDAS Regulation No 910/2014) by an authorized representative of the party and provided to the other party as original form, telefax or PDF copy as email attachment.

- 2.2 **Termination and Suspension.**

- a. The Agreement may be terminated by either party to the end of the Initial Term or then-current Renewal Term by giving not less than three (3) months prior Written Notice to the other party.
- b. If a party is in material breach of its obligations under the Agreement which is incapable of remedy, or if capable of remedy fails to remedy the same within thirty (30) days (unless another period is agreed between the parties, acting reasonably) of Written Notice to do so by the other party, the other party may, without prejudice to its other rights and remedies and at its option, terminate the Agreement as a whole, or any affected element of the Services provided under it.
- c. Provider may suspend access to the Services with immediate effect if Client does not pay the agreed fees by the Due Date. Client’s failure to pay the agreed fees by the due date shall be considered a material breach pursuant to subsection b. above.

- d. Provider may terminate the Agreement at any time upon ninety (90) days' written notice to Client.
- e. The Parties' statutory right to terminate the Agreement for due cause remains unaffected hereby.

### 2.3 Effects of Termination.

Upon termination of the Agreement:

- i. all of the provisions of this Agreement shall cease to have effect, save that the provisions which are expressed, or by its nature, implied to continue, survive or come into force in the event of such termination.
- ii. the parties shall (without prejudice to any other rights and remedies) promptly pay to each other all sums which are due or outstanding; and
- iii. Client's right to use the Services shall terminate and Client shall cease all use of the Services; and
- iv. unless necessary in order that Provider may continue to perform its obligations, Provider shall cease all access to the Client's systems, if any.

Except to the extent that this Agreement expressly provides otherwise, the termination of this Agreement shall not affect the accrued rights of either party.

## 3. FEES AND BILLING

- 3.1 In consideration of Provider providing or granting access to the Services the Client shall pay to Provider the fees set forth in the Specific Terms in accordance with the payment terms and schedule specified therein.
- 3.2 If the Specific Terms do not set forth payment terms or a payment schedule, Client shall prepay Provider, either by valid credit card or through electronic funds transfer ("**EFT**"), the agreed annual subscription charges for the Services within 14 (fourteen) days from the receipt date of the respective invoice ("**Due Date**"). Invoices can be issued upon signing of the contract for the provision of the Services within the Initial Term and - in the event of renewal - before start of the respective Renewal Term.
- 3.3 Client shall pay the agreed fees on or before the due date without any deduction. Set off against Provider's claims for the agreed fees shall only be permitted with Client counterclaims that (i) are undisputed, (ii) have been confirmed in binding court decision which cannot be appealed, or (iii) are based on defects of the specific Services for which the respective fee has been agreed.
- 3.4 If the Client purchases additional services or features ("**Additional Services**") during a subscription period of an already existing Agreement ("**Existing Agreement**"), i) the Subscription Period of the Existing Agreement shall apply to the provision of the Additional Services, ii) the agreed fees for the Additional Services shall be paid upon signing of the agreement about the Additional Services and receipt of the respective invoice, iii) the fees for the Additional Services for the remaining period of the term of the Existing Agreement shall be invoiced and paid *pro rata temporis*, iv) the invoice for the Additional Services' in Renewal Terms shall be issued upfront together with the invoice about the Services purchased by Existing Agreement, i.e. before start of Renewal Terms, and v) all invoices shall be paid within 14 (fourteen) days after invoicing.
- 3.5 Provider can modify the agreed fees for the Services with Client's consent. Client's consent to such modification shall be deemed given if (i) Provider communicates the proposed modification to Client in a Written Notice or electronically at least thirty (30) days before the proposed effective date and (ii) client does not object to the modification in a Written Notice or electronically within 21 days after Client's receipt of Provider's communication. In its communication to Client regarding the proposed modification, Provider shall explicitly mention this effect of Client's failure to object to the modification.
- 3.6 In the event Provider is unable to successfully charge Client's credit card via EFT, or an invoice is not paid on or before the Due Date of such invoice, Provider reserves the right to suspend Client's access to the Services. Such suspension of access to the Services according to this clause does not terminate the Agreement, does not release the Client from the obligation to pay the fees and shall not entitle the Client to derive any rights or claims against the Provider.
- 3.7 Any fees more than fourteen (14) days past due are subject to an interest surcharge, calculated at the statutory rate for late payments.
- 3.8 Leave or exchange of Users of the Client during the term of the Agreement shall not result in any reduction of the Agreed Fees nor shall result in an obligation of Provider to refund paid license fees or any portion thereof unless otherwise expressly agreed between the parties.
- 3.9 The obligation to pay the agreed fees is independent of the actual use of the Services by Client. The obligation to pay arises and exists with availability of the Services as agreed in the Agreement, regardless of whether and to what extent Client makes use of the available Services. This also applies if the Client is unable to use the available Services because Client ceases to operate the hotel or other facility for which Client originally purchased the Services, or because of a

force majeure event such as flood, fire, natural disaster, political unrest, legal or administrative restrictions, or a pandemic situation.

#### 4. PROVISION OF SERVICES

Provider shall provide Services to Client with the following specifications:

- 4.1 Provider will provide Client and its Users access to the Services, which shall be password protected for the exclusive use of Users through the Internet. Client may revise its designation of Users upon prior written notice to Provider.
- 4.2 Where reviews and other information submitted by users on third-party sites (“**External Content**”) are subject of the Services, Provider cannot assure that all relevant reviews, videos, images, blog entries, article postings, references and other information will be found or delivered, or that irrelevant reviews, videos, images, blog entries, article postings, references and other information will not be delivered.
- 4.3 Provider shall make no effort, and shall not be required hereunder, to substantiate the truthfulness of External Content provided in connection with the Services, or of any other information submitted by users in the context of Services, and Provider does not endorse, warrant, attest to, or make any judgement about any such information.
- 4.4 Provider does not guarantee or warrant the uninterrupted availability, functionality and compatibility of Provider's website or Services. From time to time delivery of the Services may be delayed due to scheduled or unscheduled maintenance or factors beyond Provider's control, and Provider's failure to deliver the Services in such event or events shall not constitute a breach of the Agreement. Provider will try to reduce the resulting down time or unavailability of Services to a minimum and to limit it to times of day with as little use as possible.
- 4.5 Provider shall not be responsible for disruptions that occur in connection with programs, systems, websites, etc., as well as resulting usage restrictions and other consequences for the Client (including data loss) that are not part of the Services or which are outside of Provider's reasonable control, e.g. hardware failures or software problems on the part of the Client or disruptions of the data transmission networks, server failures as a result of power failures, or illegal interference by third parties, e.g. hackers, etc. Provider is not responsible for any damages, losses, or damages caused by such disruptions.
- 4.6 Provider is not responsible for the content, the lawfulness, and the functionality of websites of third parties to which Provider provides links in connection with the Services. The exclusive liability lies with the providers of such websites.
- 4.7 In case a force majeure event prevents Provider to provide the Services, Provider is not obligated to perform the Services for the duration of the force majeure event. If such force majeure event continues for more than three months, Client is entitled to terminate the Agreement with Provider.

#### 5. CLIENT OBLIGATIONS

- 5.1 Client shall provide Provider with the following information prior to start of the Subscription Period: (i) applicable location name(s), (ii) location website(s), (iii) the names of three of Client's competitors, and (iv) e-mail addresses of all Users (together the “**Setup Information**”). If Client does not provide the Setup Information in due time this does neither affect the start of the Subscription Period nor the obligation of Client to pay the agreed fees.
- 5.2 Client acknowledges that with regard to reviews and other content submitted by users on third party sites (“**External Content**”), Provider only aggregates, analyzes and provides, but does not create or generate such External Content underlying the Services, and that information furnished by Provider based on External Content represents the opinions of others and may contain inaccuracies, libelous material, profanity, and pornography. Provider may block certain comments using specific keywords, and Client will have the ability to control the blocking of key words.
- 5.3 Client is obliged to keep the access data and passwords secret and not to make them accessible to unauthorized third parties or persons that are not defined as Users. In addition, the Client shall ensure that the Users entitled under the Agreement also comply with this obligation. If the Client becomes aware of the misuse of access data or a password, the Client will immediately stop the misuse and inform Provider. In case of misuse, Provider is entitled to block access to the Services, if necessary, after prior warning. Client is liable to Provider for any misuse for which Client is responsible.
- 5.4 Client understands and acknowledges that the Services and the information provided in connection therewith are for Client's internal review, analysis, and research only, and Client agrees, represents, and warrants to not redistribute such information, in whole or in part, to others, and agrees not to publish or make publicly available (except for publishing or making available on Client's own website through the Provider's Marketing Widget), broadcast, or sell any materials received hereunder.
- 5.5 Client undertakes not to infringe on any copyrights, other rights or proprietary interests of any third party by which data or other information accessible via the Services was generated.
- 5.6 If Client makes use of Provider's Services to collect reviews from Client's customers, the Parties agree that such reviews shall be provided independently and uninfluenced. Client shall not solicit reviews from customers by use of means which

might reasonably be expected to impair or unduly influence the judgment of the reviewer and therefore the accuracy or veracity of the review. Practices that are deemed likely to so impair or influence a review include, without limitation:

- Compensation payable to the reviewer which is dependent on the content of the review or which constitutes an immoderate incentive;
- Exerting pressure on guests to alter or withdraw a review, including through unjustified threat of legal action;
- Offering incentives for positive reviews, or for changing negative reviews;
- Soliciting or knowingly publishing reviews created by people other than guests, or by insiders or other parties affiliated with Client; and
- Soliciting reviews only from guests already identified as satisfied or otherwise likely to post a positive review.

5.7 Client undertakes that its or any User's access to and use of the Services in accordance with the Specific and these General Terms will comply with all applicable laws, rules and regulations, including but not limited to those that relate to data protection and electronic communications. Client further warrants that it or any User has all necessary permissions and consents – if necessary – to allow Provider to receive and process Client Content (in particular guest data provided by Client to Provider) and to send communications (e.g. via email or SMS) to individuals on Client's or any User's behalf. Client is responsible for ensuring that Client and any User meet all information, notice and consent obligations for processing personal information and sending communications to individuals in the jurisdictions where they reside. Client is solely responsible for determining whether the Services are suitable for Client or any User to use in light of any laws and regulations that govern Client or any User, its industry, or its relationship with its customers, including but not limited to consumer protection, privacy, advertising, intellectual property or other laws. Client may not use the Services for any unlawful or discriminatory activities.

5.8 The Client undertakes, upon request, to provide Provider with copies of documents or acknowledged digital information evidencing compliance with applicable legal requirements, e.g. – where required – consent of the guest i) to be contacted through the used channel, in particular email or direct messaging, for the purpose of Survey Mails or Live Messaging, and ii) to processing of its personal information by the Client and Provider for the purpose of Survey or Messaging. Provider may suspend Survey and Messaging applications temporarily or permanently at any time without prior notice if i) it considers that the Client's undertakings regarding – where required by law – consent collection from or information of the consumer by the Client or any User are not sufficient to guarantee compliance with applicable laws; or ii) if there occur complaints from guests or other third parties questioning the lawfulness of the emails or messages received through Survey or Messaging application or the underlying data processing processes.

5.9 Client undertakes to indemnify, defend, and hold harmless Provider and its employees and agents from and against any and all claims, suits, actions, costs, damages, expenses (including, but not limited to, reasonable legal costs) and losses incurred by any of such parties arising out of or related to or occurring in connection with (i) Client's or any User's breach of any of its obligations arising out of or in connection with the Agreement, including Client's publication, making publicly available, transmission, delivery, or other use of any information or material contained in the Services or provided or furnished to Client or any User's pursuant to the Agreement, (ii) Client's or any User's access to and use of the Services; (iii) any Client Content (as defined below); and (iv) Client's or any User's violation or infringement of any rights of any third party (including intellectual property rights or privacy rights).

Upon written request from Provider, Client shall promptly defend or settle such claim, suit, or action at Client's sole expense through counsel reasonably acceptable to Provider; provided, however, Client may not settle or compromise any claim without the prior written consent of Provider, which consent shall not be unreasonably withheld.

In the event Client elects not to defend any claim hereunder, Provider may settle or defend such claim, and shall be entitled to recover from Client the amount of any final settlement or judgment, as well as all costs and fees incurred by Provider in connection with such settlement or defense, including reasonable attorney's fees and expenses.

5.10 The foregoing notwithstanding, nothing herein shall prevent Provider, in its sole discretion, from defending or settling any such claim, suit or action at its own expense and through its own counsel.

## 6. INTELLECTUAL PROPERTY RIGHT

6.1 Provider is and shall be the sole owner of all of its trademarks, patents, patent applications, copyrights, trade secrets and other intellectual property, including without limitation any and all software code, business systems, sales and other data (including, without limitation, any data collected via the Services), developed by, for or on behalf of Provider whether now existing or later developed and whether or not relating to Client, and all derivatives thereof, other than Client Content, as defined below (the "Provider IP").

6.2 In addition, the look and feel of the Services, including without limitation, all page headers, custom graphics, button icons and scripts, constitute the trademark or corporate identity of Provider and may not be copied, imitated or used, in whole or in part, without Provider's prior written permission. Nothing contained in the Agreement is intended to convey, or shall be construed to convey, to Client any right, title or interest in or to the Services or the Provider IP, the information

gathered or provided in connection therewith, or any of the software underlying the gathering of information in connection with the Services. All right, title and interest in and to the Services and the Provider IP and any information gathered or provided in connection therewith (except for personal data under Client's control) is owned exclusively by Provider.

- 6.3 If, notwithstanding this, any Intellectual Property Rights in or arising from the Products, Services and Documentation are acquired by Client (including any new Intellectual Property Rights), Client hereby assigns (and to the extent that any such Intellectual Property Rights are not capable of such assignment, agree to hold on trust and grant a license to Provider) and agrees to do all such things and sign all such documents as Provider may reasonably require in respect of the assignment of all such Intellectual Property Rights to Provider or Provider's licensors as may be appropriate.
- 6.4 Client retains all rights in and to the content Client provides through the Services, including but not limited to Client's logos, designs, text, graphics, images, customer lists, messaging content and other campaign materials (collectively "Client Content") and Provider does not claim any ownership interest in or to Client Content. However, by using the Services, Client grants to Provider a limited, nonexclusive, revocable license to access, use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, perform and display Client Content solely for purposes of providing and improving the Services.
- 6.5 Provider shall only be liable under the terms of this Agreement for any infringements of third-party intellectual property rights if (i) Client promptly notifies Provider of any infringement or alleged infringement of which Client has notice; (ii) Client makes no admission as to liability or agree any settlement of such claim without Provider's prior written consent; (iii) Client allows Provider (or a relevant third party supplier), at Provider's expense, to conduct and/or settle all negotiations and litigation arising from any claim or action relating to the alleged infringement; and (iv) Client, at Provider's expense, give Provider (or a relevant third party supplier) such reasonable assistance as may be requested in such settlement or negotiation.
- 6.6 Provider shall have no liability for any Infringement Claim or alleged Infringement Claim to the extent such claim (i) arises from possession, use, development, modification, or operation of the Services (or part thereof) by Client other than in accordance with the terms of the Agreement; (ii) failure by Client to take any corrective action directed by Provider; or (iii) is based upon any item provided by Client and incorporated into the Services at Client's request.
- 6.7 Client shall indemnify Provider against all costs, claims, demands, expenses (including reasonable legal costs) and liabilities of whatever nature incurred by or awarded against Provider arising out of or in connection with any claim that Provider's use of Client's systems pursuant to the Agreement infringes the intellectual property rights of any third party.

## 7. DISCLAIMERS AND LIMITED WARRANTIES

CLIENT'S USE OF THE SERVICES IS AT CLIENT'S SOLE RISK. THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE." PROVIDER MAKES NO WARRANTY HEREUNDER OF ANY KIND, EXPRESS OR IMPLIED, TO CLIENT WITH RESPECT TO THE SERVICES AND/OR THE INFORMATION PROVIDED IN CONNECTION THEREWITH. PROVIDER EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. PROVIDER EXPRESSLY DISCLAIMS RESPONSIBILITY FOR THE ACCURACY, COMPLETENESS, TIMELINESS, OR ADEQUACY OF THE SERVICES, FOR THE UNINTERRUPTED AVAILABILITY, FUNCTIONALITY AND COMPATIBILITY OF THE SERVICES, WEBSITES AND APPLICATIONS OF PROVIDER, OR FOR THE INFORMATION FURNISHED PURSUANT TO THE AGREEMENT. PROVIDER CANNOT AND DOES NOT REPRESENT OR WARRANT THAT THE SERVICES ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. CLIENT AGREES THAT IN NO EVENT SHALL PROVIDER BE LIABLE FOR ANY LOSS OR DAMAGES ARISING FROM THE USE OF THE SERVICES OR RELIANCE ON INFORMATION PROVIDED IN CONNECTION THEREWITH.

## 8. LIMITATION OF LIABILITY

- 8.1 Nothing in this Agreement will (i) limit or exclude any liability for death or personal injury resulting from negligence; (ii) limit or exclude any liability for fraud or fraudulent misrepresentation; (iii) limit any liabilities in any way that is not permitted under applicable law; or (iv) limit or exclude any liabilities that may not be excluded under applicable law.
- 8.2 The limitations and exclusions of liability set out in this clause 8 and elsewhere in this Agreement are subject to Clause 8.1, and govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.
- 8.3 IN NO EVENT WILL PROVIDER BE LIABLE TO CLIENT FOR ANY DAMAGES INCLUDING, WITHOUT LIMITATION, ANY DIRECT OR INDIRECT DAMAGES, WHETHER FORESEEABLE OR NOT, OF ANY KIND, INCLUDING WITHOUT LIMITATION, LOST PROFITS, LOSS OF GOODWILL, LOSS OF OR DAMAGE TO DATA, SOFTWARE, OR HARDWARE, LOSS OF USE OF PRODUCTS, DOWNTIME, PROPERTY DAMAGE, OR LIABILITY OF ANY KIND RELATING TO INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS, IN EACH CASE ARISING FROM THE PROVISION OF SERVICES HEREUNDER, EVEN IF PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL PROVIDER BE LIABLE TO CLIENT, UNDER ANY THEORY OF LAW, WHETHER IN CONTRACT OR TORT, IN AN AMOUNT GREATER THAN THE AGGREGATE

AMOUNT OF THE FEES PAID TO PROVIDER BY CLIENT HEREUNDER DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE ACT OR OMISSION GIVING RISE TO SUCH LIABILITY.

## 9. DATA PROTECTION

- 9.1 The provision of the Services may require processing of personal data. The Parties will ensure compliance with all applicable data protection laws.
- 9.2 In particular, if and where Provider, within provision of the Services, processes personal data as processor for Client as controller, the Parties acknowledge that it is the sole responsibility of Client as controller to fulfil Controller's obligations, in particular to collect – where required by law - necessary consents from data subjects, inform the data subjects about data processing activities, and ensure the data subjects' rights according to the applicable laws. Provider will assist Client with complying to these obligations as far as required by law. The data processing agreement available at [www.trustyou.com/dpa](http://www.trustyou.com/dpa) shall apply in this regard, and shall be considered an integral part of the Agreement.

## 10. CONFIDENTIALITY INFORMATION

- 10.1 "**Confidential Information**" for purposes of the Agreement is information that (i) has been or is developed or is otherwise owned by either party hereto or any of their respective affiliates, whether developed by such party or an affiliate of such party or by any other person for or on behalf of such party or affiliate of such party, (ii) is not readily available to the public and not generally ascertainable by proper means by the public, (iii) if disclosed to the public, would be harmful to the interests of a party or an affiliate of a party, and (iv) is treated or designated by a party hereto or an affiliate of a party hereto as being confidential.
- 10.2 Confidential Information shall not include any information that (i) is or becomes publicly available, other than through the fault or negligence of the receiving party; (ii) was known to the receiving party, without restriction, at the time of receipt; (iii) is rightfully and lawfully obtained by the receiving party from a third party rightfully and lawfully possessing the same without restriction; (iv) is independently developed by the receiving party without having had access to the information disclosed hereunder; or (v) is obligated to be produced under an order of a court of competent jurisdiction, provided that the disclosing party is immediately notified by the recipient.
- 10.3 Each party hereto agrees that such party will not, directly or indirectly, at any time disclose to any person, or take or use for any purpose, other than for purposes in accordance with the intent of the Agreement, any Confidential Information. The obligations of the parties in this Section apply to, and are intended to prevent, the direct or indirect disclosure of any Confidential Information to any person where such disclosure of the Confidential Information would reasonably be considered to be useful to the competitors of a party or a party's affiliates or to any other person to become a competitor based, in whole or in part, on such Confidential Information.

## 11. MISCELLANEOUS

- 11.1 Provider can assign the Agreement (including all its rights and obligations hereunder) to Provider's affiliated companies by providing Written Notice of such assignment to Client; assignments to any other third parties require the prior written consent of Client (which shall not be unreasonably withheld or delayed). Client may assign the Agreement only with prior written consent of Provider (which shall not be unreasonably withheld or delayed).
- 11.2 Provider is, and for all purposes hereunder shall be deemed, an independent contractor, and not an agent, partner or joint venturer of Client. Neither party shall make any warranties or representations of any kind, express or implied, to third parties in the name of the other party, nor shall any party hereunder assume or create, or attempt to assume or create, any obligation of any kind on behalf of the other party.
- 11.3 No delay or omission by either party in exercising any right under the Agreement will operate as a waiver of that or any other right. A waiver or consent given by a party on any one occasion is effective only on that occasion, and shall not be construed as a waiver of that right or consent as to any other occasion or any other breach. No course of dealing between the parties will give rise to any implied amendment or waiver.
- 11.4 In case that any provision in the Agreement is invalid or becomes invalid, the remaining provisions remain unaffected hereby. The parties undertake to replace any invalid provision in the Specific Terms by a valid provision that comes as close as possible to the invalid provision in legal, economic and factual terms. The same applies in case of a loophole in the Specific Terms.
- 11.5 Neither party shall be in default by reason of failure in performance of the Agreement if such failure arises, directly or indirectly, out of causes beyond the reasonable or foreseeable control of either party, including but not limited to, default by suppliers, acts of hackers, problems associated with the Internet or a telecommunications service provider, acts of God, acts of terrorism or the public enemy, U.S. or foreign governmental acts in either a sovereign or contractual capacity, transportation contingencies, fire, flood, epidemic, restrictions and strikes.

- 11.6 The Agreement shall be exclusively governed by, and construed in accordance with, the laws of the State of New York, United States, without regard to the conflicts of laws rules or principles thereof that would require the application of the laws of another jurisdiction.
- 11.7 ANY PARTY BRINGING A LEGAL ACTION OR PROCEEDING AGAINST ANOTHER PARTY FOR THE RESOLUTION OF ANY DISPUTE ARISING IN CONNECTION WITH THE INTERPRETATION, CONSTRUCTION, OR ENFORCEMENT OF THE AGREEMENT SHALL BRING SUCH LEGAL ACTION OR PROCEEDING IN ANY COURT OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY OR ANY FEDERAL COURT HAVING JURISDICTION OVER NEW YORK COUNTY, NEW YORK. EACH PARTY HERETO AGREES TO SUBMIT TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE STATE AND FEDERAL COURTS HAVING JURISDICTION OVER NEW YORK COUNTY, NEW YORK FOR THE RESOLUTION OF ALL DISPUTES ARISING IN CONNECTION WITH THE INTERPRETATION, CONSTRUCTION, AND ENFORCEMENT OF THE AGREEMENT, AND HEREBY WAIVES THE CLAIM OR DEFENSE THEREIN THAT SUCH COURTS CONSTITUTE AN INCONVENIENT FORUM. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION THAT IT MAY NOW OR LATER HAVE TO THE LAYING OF VENUE OF ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE AGREEMENT BROUGHT IN ANY SUCH COURTS.
- 11.8 If litigation, or any form alternative dispute resolution, is necessary to enforce the terms of the Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and costs, court costs, and costs of any alternative dispute resolution.
- 11.9 Provider can modify the terms and conditions of the Agreement with Client's consent. Client's consent to such modification shall be deemed given if (i) Provider communicates the proposed modification to Client in a Written Notice or electronically at least thirty (30) days before the proposed effective date and (ii) client does not object to the modification in a Written Notice or electronically within 21 days after Client's receipt of Provider's communication. In its communication to Client regarding the proposed modification, Provider shall explicitly mention this effect of Client's failure to object to the modification.
- 11.10 Any and all notices, requests, claims, demands and other communications required or permitted hereunder as well as changes and amendments to this Agreement shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in person, by facsimile, by nationally recognized overnight courier, or by express, registered or certified mail to the respective party at the address or facsimile number first set forth above (or at such other address as a party shall specify in a written notice given in accordance with this paragraph).
- 11.11 Changes and amendments to the Agreement need to be made in writing, i.e. through a document signed personally or through advanced electronic signature (pursuant to the European eIDAS Regulation No 910/2014) by authorized representatives of the parties and provided to the other party as original form, telefax or PDF copy as email attachment. This also applies to a change of this written form requirement.
- 11.12 The Agreement, consisting of any Specific Terms and these General Terms, constitute the entire agreement between the Parties with respect to the delivery of Services, and the information provided in connection therewith, and supersedes all prior or contemporaneous agreements, proposals, negotiations, representations or communications, whether written or oral, relating to such subject matter. The Parties acknowledge and agree that they have not been induced to enter into the Agreement by any representations or promises not specifically stated herein.
- 11.13 Should a contradiction arise between contractual documents, it is formally agreed that the provisions contained in the document of a higher rank shall supersede. The following document hierarchy shall apply by decreasing order of priority: 1. Specific Terms including all appendices and any addendum, 2. General Terms.