



## TERMS OF SERVICE

This Agreement is effective as of date of the Order to which it is attached by and between KENGAGE, LDA. ("**Vaibe**") and the Customer identified therein ("**Customer**"), each a "**Party**", together the "**Parties**

### 1. DEFINITIONS

- 1.1. "**Affiliate**": any entity controlling, controlled by, or under common control with a party, where "control" is defined as: (a) the ownership of at least fifty percent (50%) of the equity or beneficial interests of the entity; (b) the right to vote for or appoint a majority of the board of directors or other governing body of the entity; or (c) the power to exercise a controlling influence over the management or policies of the entity.
- 1.2. "**Content**": any kind of data, resources, information obtained by Vaibe and provided to the Customer in the execution of this Agreement.
- 1.3. "**Customer Data**": any information, data content or materials Customer or its clients transmit, upload, create, submit or store to or on the Service.
- 1.4. "**Documentation**": any material, information, manuals and documents provided by Vaibe to the Customer in relation to the Software.
- 1.5. "**Order**": an ordering document for access to the Software, Service, Professional Services, and/or any related services, that is signed by the parties and references this Agreement, including an order form, statement of work, work order or equivalent document. The terms of this Agreement shall be deemed incorporated by reference in each Order.
- 1.6. "**Product**": means any Professional Service, Service or Software that can be acquired by the Customer through and detailed in the applicable Order.
- 1.7. "**Professional Services**": any training, enablement, consultancy, advisory or other technical services provided by Vaibe related to the Service, as identified in an Order. Unless otherwise specified, support is not Professional Services.
- 1.8. "**Service**": the activities to be performed by Vaibe under this Agreement, including the maintenance and support, any Professional Services, add-ons, Updates, the deployment of the Software on Vaibe's cloud services.
- 1.9. "**Software**": object code form of the Vaibe software products as specified in an Order.
- 1.10. "**Update**": means technical modifications, improvements, minor functional enhancements as well as patches with corrections to the software or other workarounds for possible malfunctions.

### 2. OBJECT.

- 2.1. Scope. Subject to the terms of this Agreement, Vaibe will provide the Services detailed in the Order(s).
- 2.2. Software Subscription. Subject to the terms of this Agreement and the payment of all applicable fees, Vaibe grants to Customer a limited, personal, non-transferable, non-sublicensable, non-exclusive and non-assignable subscription to use the Software for its internal business purposes provided such use occurs in accordance with (a) the Documentation, (b) this Agreement and (c) any restrictions set forth in the applicable Order. Customer is responsible for the use of the Software and Services by any of its users, as well as for use by any third-party that uses the Services or Software through Customer's credentials. Customer shall implement its own security measures in order to safeguard its credentials and prevent their disclosure to any third-party.
- 2.3. Professional Services. Vaibe may perform Professional Services as described in the relevant Order. Customer will

cooperate reasonably and in good faith with Vaibe in the execution of the Professional Services and shall give Vaibe timely access to any resources reasonably needed for the performance of the Professional Services. If Customer fails to do so, Vaibe will be excused from its obligation to provide these Professional Services until such access is provided and any deadlines for the provision of those services will be extended accordingly. If Vaibe provides Customer with deliverables as part of Professional Services, Customer may use the deliverables only as part of its authorized use of the Service.

- 2.4. Intellectual Property Rights. Neither party assigns, grants or otherwise transfers any rights or licenses not expressly set out in this Agreement.

### 3. DATA AND CONTENT

- 3.1. Processing. Vaibe will collect, use, and process Content and Customer Data to provide the Service. Vaibe maintains administrative, physical, and technical safeguards to improve the security, confidentiality, and integrity of Content and Customer Data, including measures for preventing access, use, modification, or disclosure of Content and Customer Data by Vaibe's personnel except (a) to provide the Service and prevent or address technical problems, (b) as compelled by law or (c) if Customer expressly allows it in writing. Notwithstanding, Customer acknowledges that such measures cannot guarantee complete security, including with respect to technological failures, human error, and concerted efforts to breach, and thus Vaibe cannot warrant the complete security of Content and Customer Data. Processing of Personal Data is subject to the rule set out in Appendix 2.
  - 3.2. Delivery of Data. Customer grants Vaibe the non-exclusive, worldwide, right to use, copy, store, transmit, modify, and process Customer Data as part of Vaibe's development, provision, support, and maintenance of the Service under this Agreement, and Customer irrevocably consents to the processing of Customer Data by Vaibe for such purposes, including using such Customer Data in a manner that does not identify Customer as the source of such data in the provision of services to Vaibe's other customers. Vaibe will have the right to generate patterns, trends, knowledge, metadata and other insights (i) by anonymizing Customer Data; (ii) aggregating Customer Data with other data; and/or (iii) based on anonymous learnings, logs and data regarding use of Vaibe Service ("Vaibe Insights Data"). The Parties agree that Vaibe Insights Data shall belong to Vaibe and that Vaibe may use such data for any purpose during or after the term provided the Customer is not identified as a source of such data. Customer is responsible for ensuring adequate protection of the information systems, data, content or applications that Customer deploys and/or accesses. This includes, but is not limited to, any level of data transfer, data delivery, communication, data encryption, access controls, roles and permissions granted to Customer's internal, external, and third-party users.
- ### 4. CUSTOMER DUTIES
- 4.1. Customer Responsibilities. Customer is responsible for (a) users' compliance with this Agreement, (b) the accuracy, quality, content, and legality of Customer Data (including the means by which it was acquired or the use that is given

thereto) and (c) preventing unauthorized access to or use of the Service and Content, and notifying Vaibe promptly of any such unauthorized access or use. Customer shall comply with all applicable laws. Customer will cooperate with any of Vaibe's investigations into Service outages, security problems, and/or suspected breaches of the Agreement. Customer represents and warrants to Vaibe that Customer has made all necessary disclosures and has all necessary rights, consents and permissions to submit Customer Data to the Service, use it with the Service and grants Vaibe the rights in this Agreement, without infringing laws, third-party rights (including intellectual property, publicity or privacy rights) or any terms or privacy policies that apply to Customer Data.

- 4.2. Usage Restrictions.** Customer will not: (a) make the Service, Software or any Content available to, or use the Service, Software or Content for the benefit of anyone other than itself; (b) sell, resell, license, sublicense, distribute, rent or lease the Service, Software or Content, or include the Service, Software or Content in a service bureau or outsourcing offering; (c) use the Service or Software to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; (d) use the Service or Software to store or transmit code, files, scripts, agents, or programs intended to do harm, including, for example, computer viruses, worms, logic bombs, adware, and backdoor programs; (e) interfere with or disrupt the integrity or performance of the Service, Software, or Content contained therein; (f) attempt to gain unauthorized access to any Service, Software or Content or its related systems or networks; (g) copy the Software, Service, Content, Documentation, or any part, feature, function or user interface thereof; (h) access the Service, Software or Content in order to build a competitive product or service; (i) reverse engineer the Service or Software; (j) use the Software or Service for any activities where use or failure of the Software or Service could lead to death, personal injury, or environmental damage, including in life support systems, emergency services, nuclear facilities, autonomous vehicles or air traffic control (k) use the Software or Service in contravention to applicable laws or regulations.

## **5. FEES AND PAYMENT**

- 5.1. Fees.** Customer will pay all fees specified in the Order ("Fees"). Vaibe may revise the Fees for subsequent renewal terms by providing written notice at least thirty (60) days prior to the end of the then current term. Unless otherwise specified herein or in an Order, payment obligations are non-cancelable, and Fees paid are non-refundable.
- 5.2. Taxes; Invoices.** The amount of Fees is a net amount, excluding any Value Added Tax (VAT) or any local equivalent (e.g. sales tax, excise tax, goods and services tax, consumption tax and always to include duties, levies, imposts or similar governmental indirect tax assessments, collectively "Indirect Taxes"). Indirect Taxes shall be borne by Customer. Vaibe shall therefore charge the Indirect Taxes to Customer in addition to the net amount owed by Customer and to the extent required by applicable tax laws. Customer shall provide to Vaibe its VAT identification number(s) on the Purchase Order Form for (i) the country where Buyer has established its business and/or (ii) any other country where Buyer has a fixed establishment. Vaib shall not be liable for any Indirect Taxes arising from Customer's incorrect indication of the VAT identification number. Customer shall use the ordered Offerings from Vaibe for Customer's business use in the foregoing location(s) in accordance with the provided VAT identification number(s). Settlements

between the parties, including payment of Fees and advances, are made on the basis of VAT invoices. .

- 5.3. Payment terms.** Vaibe will invoice Customer in advance or otherwise in accordance with the relevant Order. Invoices shall be paid regardless of being under dispute. Unless otherwise stated in the Order, invoiced charges are due net thirty (30) days from the invoice date. Customer is responsible for providing complete and accurate billing and contact information to Vaibe (including, if applicable, a valid purchase order or equivalent thereof) at time of signature and notifying Vaibe of any changes to such information. Delays in providing such information will reduce the payment terms accordingly.
- 5.4. Overdue Payments.** Late payment amounts accrue late interest at the rate of eight percentage points above basic rate of interest (§ 247 para 1 BGB).
- 5.5. Accounts Payable or Supplier Relations Systems.** If the Customer uses any accounts payable or supplier relations system, the functioning of that system or Vaibe's accreditation may not be invoked to delay payments. Until the configuration of the system, which shall not be unreasonably delayed by Vaibe, Vaibe will be allowed to send invoices in .pdf by email and gets fully paid on time. Any cost resulting from the use of those systems shall be reimbursed to Vaibe.

## **6. TERM, TERMINATION, AND SUSPENSION**

- 6.1. Term.** Unless earlier terminated pursuant to sections 6.2 ("Termination for Cause") or 6.3 ("Termination for Insolvency"), this Agreement commences on the Order Effective Date and continues in force until all Orders issued under this Agreement have expired or been terminated.
- 6.2. Termination for Cause.** Either party may terminate this Agreement by means of a written notification in case of the other party failing to perform any material obligation under this Agreement (including the failure to pay Fees) if such breach remains uncured following thirty (30) days written notice. If Customer terminates the Agreement for cause, Customer shall be relieved of its payment obligations for the terminated period and shall be entitled to a pro-rated refund of any pre-paid unused Fees for the terminated period as its sole and exclusive remedy. Customer is not entitled to recover any amounts paid for performed Services.
- 6.3. Termination for Insolvency.** Either Party may terminate the Agreement immediately if the other Party becomes insolvent and the entity licensed and authorized by the applicable law to act in relation to such insolvent Party does not personally guarantee the future payment of any due Fees.
- 6.4. Suspension.** Vaibe may suspend the Service and/or the use of the Software in case of: (i) any outstanding invoice not being paid in the due date; (ii) becoming aware that Customer's use of the Service violates any applicable law or infringes upon third-party rights; (iii) Customer's use of the Service in violation of Section 4 (Customer Duties); (iv) Customer's acts or omissions risk harm to other customers or the security, availability or integrity of the Service; or (v) in any event where Vaibe is entitled to terminate this Agreement for cause. Once the Customer resolves the issue that led to suspension, and duly notifies Vaibe to that effect providing the necessary evidences, Vaibe will promptly restore Customer's access to the Service and/or Software.

## **7. CONFIDENTIALITY**

- 7.1. Use and Disclosure of Confidential Information.** Neither party shall use or disclose to any other person or entity confidential information relating to this Agreement or an Order, including but not limited to information relating to technology, technical information, pricing, business, marketing plans, client information, and technical specifications furnished by



the other party, either orally or in writing ("Confidential Information"). Each party further agrees to take the necessary steps to ensure that no unauthorized person shall have access to such information. Neither party shall disclose, share, rent, sell or transfer to any third party any Confidential Information. The parties shall use Confidential Information only as necessary to perform this Agreement. The receiving party shall promptly notify the disclosing party in writing it becomes aware of any (i) disclosure, dissemination, or misuse of the disclosing party's Confidential Information by the receiving party or its representatives or agents in breach of this Agreement, or (ii) unauthorized access to use of any of the disclosing party's Confidential Information. "Confidential Information" does not include any information (i) previously known to the receiving party without an obligation of confidentiality, (ii) independently developed by the receiving party without the use of the disclosing party's Confidential Information or without violating the disclosing party's proprietary rights, (iii) acquired by the receiving party from a third party which is not, to the receiving party's knowledge despite reasonable efforts, under an obligation not to disclose such information, or (iv) which is or becomes publicly available through no breach by the receiving party of this Agreement or an Order.

**7.2. Permitted Disclosure.** The receiving party may disclose the disclosing party's Confidential Information: (i) to the receiving party's employees or agents who are directly involved in negotiating or performing this Agreement and who are apprised of their obligations under this Section 7 and directed by the receiving party to treat such information confidentially, and (ii) only to the extent required by applicable law or by a supervising regulatory agency of a receiving party; provided, that in the case of legally-required disclosure, the receiving party shall (a) to the extent permitted by Law, promptly notify disclosing party of such required disclosure, (b) reasonably cooperate with disclosing party to seek confidential treatment of any information that it is required to disclose and (c) only disclose such portion of the Confidential Information that it is legally required, in the opinion of counsel, to disclose.

**7.3. Destruction or return.** Except as otherwise authorized or required in furtherance of the purposes of this Agreement, promptly upon a request by the disclosing party, the receiving party will destroy (and so certify in writing) or return to the disclosing party all Confidential Information and all documents or media containing any such Confidential Information and all copies or extracts thereof. Notwithstanding the foregoing, the receiving party shall not be required to destroy any automated archival backup of such Confidential Information (i) to the extent such destruction is not reasonably practicable, or (ii) as required by applicable law or regulation. Confidentiality obligations will continue to apply to any Confidential Information not destroyed or returned.

## **8. WARRANTIES**

**8.1. Vaibe Warranties.** Vaibe warrants that: (a) it has the required rights to license the Software and provide the Service, (b) it will not materially decrease the overall security of the Service, (c) Software will substantially conform to the Documentation (d) any Professional Services will be performed in a professional and workmanlike manner in accordance with generally accepted industry standards and (e) it will comply with all applicable laws, including without limitation all applicable anti-corruption laws, anti-money laundering laws, antitrust laws, economic sanctions laws, export control laws, data protection and data privacy laws, and modern slavery and human trafficking laws. The

Customer is the sole responsible for the selection of the Service to achieve the intended results and for its installation, use and results obtained.

**8.2. Software Performance Warranty Remedy.** If Vaibe breaches the warranty under (c) of clause 8.1., Vaibe's sole liability (and Customer's exclusive remedy) for any such breach shall be, in Vaibe's discretion, to use commercially reasonable efforts to provide Customer with an error-correction or work-around which corrects the reported non-conformity, to replace the non-conforming Software with conforming Software, or if Vaibe determines such remedies to be impracticable within a reasonable period of time, to terminate the Agreement and refund the license fee paid for the Software.

**8.3. Disclaimers.** VAIBE DOES NOT WARRANT THAT THE SOFTWARE, SERVICES, OR DELIVERABLES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE. CUSTOMER ACKNOWLEDGES THAT THERE ARE RISKS INHERENT IN INTERNET CONNECTIVITY THAT COULD RESULT IN THE LOSS OF CUSTOMER DATA, CONTENT OR USAGE DATA. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, VAIBE PROVIDES THE SOFTWARE, SERVICES, AND DELIVERABLES "AS IS", WITHOUT WARRANTY OF ANY KIND, INCLUDING BUT NOT LIMITED TO, EXPRESS OR IMPLIED OR STATUTORY OR OTHER WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND THOSE ARISING OUT OF COURSE OF DEALING, USAGE, OR TRADE. CUSTOMER SHALL HAVE SOLE RESPONSIBILITY FOR THE ACCURACY, QUALITY, INTEGRITY, LEGALITY, RELIABILITY, APPROPRIATENESS AND OWNERSHIP OF ALL CUSTOMER DATA.

## **9. MUTUAL INDEMNIFICATION**

**9.1. Mutual Indemnification.** Subject to Section 10.2 (Limitation of Liability) and 10.3. (Liability Cap), the Parties will defend and hold each other harmless against any claim, demand, suit or proceeding made or brought against themselves by a third-party alleging that the use of the Service in accordance with this Agreement infringes or misappropriates such third-party's intellectual property rights valid in the licensed geography.

**9.2. Remedies.** In response to any actual or potential infringement claim, if required by a settlement or injunction or as Vaibe determines necessary to avoid material liability, Vaibe may at Vaibe's option, (i) modify the Service so that it no longer infringes or misappropriates, (ii) obtain a license for Customer's continued use of that Service in accordance with this Agreement or (iii) fully or partially terminate the affected Order and refund Customer of any prepaid, unused fees covering the terminated portion. This "Mutual Indemnification" section states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any third-party claim described in this section.

**9.3. Exclusions.** Vaibe's obligations in this Section 9 do not apply to (a) infringement resulting from Customer's unauthorized modification of the Service or Software (b) use of the Service or Software not in accordance with this Agreement or the Documentation or in combination with items not provided or approved by Vaibe (c) infringement resulting from the use of Software other than the most current release made available to the Customer (d) Customer's unauthorized uses of the Service, or (e) trials, betas or other free or evaluation features, products or components

## **10. LIABILITY**



**10.1. LIABILITY.** THE PARTIES SHALL BE LIABLE FOR DAMAGES CAUSED INTENTIONALLY OR GROSS NEGLIGENTLY BY THE PARTY, ITS LEGAL REPRESENTATIVES OR VICARIOUS AGENTS. IN CASES OF NEGLIGENCE, THE PARTIES SHALL ONLY BE LIABLE FOR BREACH OF A MATERIAL CONTRACTUAL OBLIGATION (CARDINAL OBLIGATION), THE FULFILMENT OF WHICH IS ESSENTIAL FOR THE PROPER PERFORMANCE OF THE AGREEMENT AND ON THE OBSERVANCE OF WHICH THE OTHER PARTY MAY REGULARLY RELY, AS WELL AS FOR DAMAGES RESULTING FROM INJURY TO LIFE, LIMB OR HEALTH.

**10.2. LIMITATION OF LIABILITY.** EACH PARTY IS ONLY LIABLE FOR FORESEEABLE DAMAGES, THE OCCURRENCE OF WHICH MUST TYPICALLY EXPECTED. NEITHER PARTY WILL HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOSS OF USE, LOST DATA, LOST PROFITS, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS OR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, GOODWILL, DATA OR DATA USE, FAILURE TO REALIZE SAVINGS OR OTHER BENEFITS, OR CLAIMS OF THIRD PARTIES), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS ITS ESSENTIAL PURPOSE.

**10.3. LIABILITY CAP.** TO THE EXTENT PERMITTED UNDER APPLICABLE LAWS, including case of slight negligence, VAIBE'S TOTAL AGGREGATE LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY VAIBE AND SHALL NOT EXCEED THE LICENSE FEES PAID BY CUSTOMER TO VAIBE IN THE LAST TWELVE (12) MONTHS.

**10.4. STATUTE OF LIMITATIONS** NEITHER PARTY SHALL BRING ANY CLAIM BASED ON THE SERVICES OR SOFTWARE PROVIDED HEREUNDER MORE THAN TWELVE (12) MONTHS AFTER THE CAUSE OF ACTION ACCRUES.

## **11. GENERAL PROVISIONS**

**11.1. Vaibe's Terms and Conditions shall apply exclusively:** These General Terms and Conditions shall apply exclusively to the legal relationship between Vaibe and the Customer. Deviating regulations or regulations of the Customer are hereby expressly rejected. Deviating provisions or regulations of the customer shall not apply even if Vaibe does not expressly object to them individually.

**11.2. Entire Agreement and Order of Precedence.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral. No amendment to, supplement or modification of this Agreement will be binding unless in writing and signed by both Parties. Nonetheless, with notice to Customer, Vaibe may modify the Schedules to reflect new features or changing practices, but the modifications will not materially decrease Vaibe's overall obligations during a subscription term. In the case of conflicts, discrepancies, errors or omissions, the Order, including the documents and amendments attached to it shall take precedence over the Terms of Service (including its Schedules).

**11.3. Assignment.** This Agreement is not assignable or transferable without the prior written consent of the other Party, which shall not be unreasonably withheld. Any attempt by either Party to assign or transfer this Agreement without such consent shall be void. Notwithstanding, Vaibe can freely assign or transfer this Agreement to any Affiliate.

**11.4. Severability.** If for any reason a court of competent jurisdiction finds any provision of this Agreement (including all Orders,

Addenda or annexes), or portion thereof, to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to affect the intent of the Parties, and the remainder of this Agreement or of the provision will continue in full force and effect, except to the extent such invalid provision or part of provision relates to essential aspects of the Agreement. The parties agree that such provision or portion thereof shall be substituted by a provision with an equivalent legal and economic effect.

**11.5. No Waiver.** No forbearance, indulgence, delay or relaxation by any Party to require performance of any provision of this Agreement shall affect, diminish or prejudice the right of such Party to require performance of that provision and any waiver by any Party or any breach of any provisions of this Agreement shall not be construed as a waiver or an amendment of the provisions itself, or a waiver of any right under or arising out of this Agreement.

**11.6. Survival.** Upon expiration or termination of the Agreement, the obligations which by their nature are intended to survive expiration or termination, namely sections 3. (Data and Content), 4 (Customer duties), 7 (Confidentiality), 10 (Liability), and 11 (General Provisions) shall survive termination or expiration of this Agreement.

**11.7. Force Majeure.** No liability shall result to other Party from delay in performance or from non-performance caused by circumstances beyond the reasonable control of the Party affected, including but not limited to act of God, fire, flood, explosion, war, action or request of governmental authority, accident, labor trouble, pandemic, epidemic, but each Party hereto shall be diligent in attempting to remove such cause or causes.

**11.8. Export Laws.** Parties acknowledge the Software and Services may be subject to export control regulations and sanctions including U.S. economic sanctions, European Union regulations, United Nations Security Council resolutions, and other similar national or international regulations ("Export Controls and Sanctions"). Each Party represents and undertakes that it and its Affiliates (i) are not named on any Export Controls and Sanctions list of restricted parties, (ii) will not knowingly export, reexport or transfer the Software or Service directly or indirectly, to any country or a foreign national of a country in violation of any such Export Controls and Sanctions and (iii) will not engage in activities that would cause the other Party or its Affiliates to be in violation of Export Controls and Sanctions.

**11.9. Notices.** Any notice, consent, approval, or other communication intended to have legal effect to be given under this Agreement ("Notices") must be in writing and will be delivered (as elected by the Party giving such notice): (i) by email to the addresses mentioned in the Order, or (ii) by registered mail. Unless otherwise provided herein, all Notices will be deemed effective on the date of receipt (or if delivery is refused, the date of such refusal) if delivered by registered mail and at 9.00 am of the next business day after the date of the transmission by email. Either Party may change the address to which Notices shall be sent by giving Notice to the other Party in the manner herein provided. Notices shall be written in the English language.

**11.10. Publicity.** Neither party may publicly announce this Agreement except with the other party's prior written consent or as required by Law. However, Vaibe may mention Customer in Vaibe's client's portfolio and promotional materials or to make press releases.

**11.11. Governing Law and jurisdiction.** The law that will apply in any dispute or lawsuit arising out of or in connection with this Agreement, and the courts that have jurisdiction over any



such dispute or lawsuit, depend on where Customer is domiciled.

<b><u>If Customer is domiciled in</u></b>	<b><u>Governing law is:</u></b>	<b><u>Courts with exclusive jurisdiction are:</u></b>
<u>Europe, the Middle East, or Africa</u>	<u>German Law</u>	<u>Hamburg, Germany</u>
<u>North and South Americas</u>	<u>New York and controlling United States federal law</u>	<u>New York</u>
<u>Asia or the Pacific Region</u>	<u>Victoria, Australia</u>	<u>Melbourne, Australia</u>

Any national conflicts of law provisions or to the United Nations Convention on the International Sale of Goods shall not be applicable. No person who is not a party to this Agreement shall be a third-party beneficiary or entitled to enforce or take the benefit of any of its terms.

Counterparts and Electronic Signatures. This Agreement may be done in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same Agreement, notwithstanding the fact that all parties are not signatories to the original or the same counterpart. The Parties hereby agree that this Agreement may be delivered by electronic signature by any or both Parties in which case all Parties agree to rely on the receipt of such document so signed and delivered by electronic means as if the original had been received. The Parties hereby warrant and represent that such electronic signature is valid and legally binding in jurisdictions they may respectively be subject to, and they waive any potential right or claim against the validity of this Agreement on the basis of its electronic signature.



## **APPENDIX 1 - SLAS**

Vaibe warrants a monthly 99,80% availability of the Software during the Term, notwithstanding scheduled maintenance, which shall be notified to the Customer in advance and Force Majeure Events which may affect availability. Vaibe will notify the Customer regarding any measures or actions that may affect the availability of the Software and will endeavor to reduce any possible hindrances that such measures may have on the Customer or its business operations.

The Customer undertakes not to perform any maintenance tasks without the prior written consent of Vaibe. The Customer acknowledges and accepts that Vaibe shall not be liable, to the extent permitted by applicable Law, for failures, defects, malfunctions of the Software, of any kind, that may derive from unauthorised maintenance tasks performed by the Customer, not any damage or loss arising out of such failures, defects or malfunctions.

Vaibe will provide Support on working hours and in accordance with the severity of the issues. Vaibe shall not be obliged to provide Support when the failures, defects or malfunctions are caused by misuse, negligence or breach of the terms of the Agreement or any use that contravenes the terms of the Agreement, applicable law and/or instructions, guidelines or recommendations made by vaibe, whether or not they are included in the Documentation. Additionally, Vaibe shall not be obliged to provide Support in the terms provided herein in case of Force Majeure Events or other external factors affecting the availability or functionality of the Software.