



# SELLIGENT MARKETING CLOUD

## Subscription and Services Agreement

(28-02-2020)

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## **SELLIGENT MARKETING CLOUD SUBSCRIPTION AND SERVICES AGREEMENT**

THIS SUBSCRIPTION AND SERVICES AGREEMENT GOVERNS ACQUISITION AND USE OF SELLIGENT’S SERVICES BY THE CLIENT. BY EXECUTING A SALES ORDER AND/OR STATEMENT OF WORK THAT REFERENCES THIS AGREEMENT, THE CLIENT AGREES TO ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. THE INDIVIDUAL ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY REPRESENTS TO HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS. ANY INDIVIDUAL WHO DOES NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH ALL OF THESE TERMS AND CONDITIONS, MUST NOT ACCEPT THIS AGREEMENT. ANY CLIENT WHO DOES NOT AGREE WITH THESE TERMS AND CONDITIONS MAY NOT ACCESS OR USE THE SERVICES.

This Agreement was last updated on **February 28, 2020**, it is effective between the Client and Selligent as of the date of a Sales Order and/or Statement of Work is executed by both parties (“Effective Date”).

## **Article 1.- Definitions**

**“Agreement”** means this Subscription and Services Agreement, the Service Order(s) and the other documents as listed below, in prevailing order should there be conflicting provisions:

<i>1° Selligent Service Order(s)</i>
<i>2° Specific Terms, as applicable</i>
<i>3° Data Processing Agreement (“DPA”)</i>
<b><i>4° Selligent Support and Service Level Agreement (“SLA”)</i></b>
<b><i>5° Subscription and Services Agreement (“SSA”)</i></b>

**“Acceptable Use Policy” or “AUP”** refers to the required actions and practices, as well as those actions and practices that are unacceptable and prohibited, with respect to the Client’s use of any product or Service created, developed, sold, licensed, delivered, supplied or performed by Selligent.

**“Affiliates”** means any entity that controls, is controlled by, or is under common control with the named entity (“Affiliates”), where “control” is defined as the ownership of at least 51% of the equity or beneficial interests of such entity or the right to vote for or appoint a majority of the board of directors or other governing body of such entity.

**“Client”** includes any Affiliates of the signing entity and any and all employees, agents (third party service providers), or subcontractors of Client who access or otherwise use the Services provided under a specific Service Order and/or perform services incidental thereto. Signing entity shall assume any liability arising out of acts or omissions of its Affiliates, employees, agents (third party service providers) or subcontractors under this Agreement. For the avoidance of doubt, only the signing entity and Selligent are party to the Agreement.

**“Client Data”** means all data, documentation, content or information submitted by or on behalf of Client for the purpose of performing the Subscription Services, or generated and used by the Subscription Services, including personal data, audio-visual design (such as photographic images, animations, illustrations) or other identifying or branding elements of Client or its customers to enable performance of the Services.

**“Deliverables”** means certain work product, limited to content specific to Client and excluding any retained, common, reusable or generic elements or methodologies, if any, as described in an SOW for Project Services.

**“Documentation”** means the information provided by Selligent describing operation and use of the Service(s), by any means of delivery, whether at Client’s request or otherwise, along with any other information provided to Selligent’s clients generally, and all such items as updated from time to time.

**“Platform”** means the technical infrastructure Selligent has in place to provide the Subscription Services for Client.

**“Project Services”** means project or data services, of which timing and staff availability are planned with Client. Project Services can be (but are not limited to) auditing the quality of databases, project management, technical integration services, campaign creation services, consultancy services and training services.

**“Service Order”** means a Sales Order for Subscription Services, a Project Services order (“Statement of Work”) or other form, specifying, amongst others, the scope of Services ordered, its subscription term and the applicable fees. All such forms are executed under this Subscription and Services Agreement and deemed incorporated herein.

**“Services”** means the Subscription Services, Project Services and Support Services that Client orders under this Agreement.

**“Subscription Services”** means access to software module(s) made available by Selligent to Client (e.g. Selligent Marketing Cloud Base, channels or options) in a Software as a Service mode within the limits set out in the Sales Order.

**“Subscription Term”** means the term specified in the applicable Sales Order during which Client can use the Subscription Services.

**“Support Services”** means helpdesk and technical support services which are by nature consumed on an ad-hoc basis and cannot be planned. Selligent provides permanent availability for those services governed by the conditions in the SLA.

**“Usage Rights”** means those rights to use the Subscription Services within the limits set out in the Sales Order.

**“User”** means any individual expressly authorized by Client to use the Services and to whom Client has supplied a user identification and password, such as employees, agents (third-party service providers) or subcontractors.

## **Article 2.- Object**

2.1. Subject to the terms of this Agreement, Selligent grants Client, within the limits set out in the Sales Order, the non-transferable, non-exclusive, non-sublicenseable right to use the Subscription Services ordered under such Sales Order.

2.2. Selligent will also provide Client with Project Services, Success Services and Support Services as indicated in a Sales Order or Statement of Work.

2.3. Client does not have any right, claim or interest whatsoever relating to the Services other than those granted under this Agreement.

2.4. Selligent is authorised to engage and exchange subcontractors for the performance of its contractual obligations under this Agreement in compliance with the applicable provisions in the DPA. Selligent is responsible for any acts or omissions of such subcontractors under this Agreement as if such acts or omissions were performed by Selligent directly.

2.5. Ordering of one or more Subscription Services is not contingent on the delivery of any future functionality or features, nor on any oral or written private or public comments made by Selligent in relation to such future functionality or features.

2.6. Selligent and its technical partners are authorized to examine the Platform and the Services at any time without prior consent in the context of maintenance operations, installation of patches and Client support.

2.7. Selligent may analyse the Subscription Services to gather information in relation to Client’s use of the Subscription Services to improve its products and services, without accessing Client Data.

## **Article 3.- Selligent’s Obligations – Reservation of Rights**

3.1. Selligent shall provide the Service(s) in a workmanlike manner consistent with general industry standards reasonably applicable to the provision thereof. Subject to maintenance and downtime contemplated in the SLA, if Client notifies Selligent in writing, within thirty (30) calendar days of receipt thereof, of the failure of any unaltered version of any Deliverables specified in an applicable Statement of Work or any Subscription Services ordered in a Sales Order, to perform as described in any Documentation or set forth in an applicable Statement of Work (“Error(s)”), Client’s sole remedy and Selligent’s sole liability with respect to the noted Errors in the unaltered versions of such Deliverables or Subscription Services, shall be to attempt to correct those Errors. Should any Errors contained within any of the Deliverables or with respect to any Subscription Services result from a denial of services attack, or from Client’s, or any third party’s actions, alterations, modifications or adjustments to the same, Selligent may, in its sole discretion, attempt to correct those Errors, on a time and materials basis at its then-current rates.

3.2. Client acknowledges that timeframes specified in any Service Order are only estimates and that actual performance times will be dependent upon Client’s timely provision of accurate and properly formatted data, feedback and access to key personnel reasonably requested by Selligent from time-to-time. Selligent shall not be account able for any performance delays caused by Client’s failure to timely provide such data, access or feedback required for its performance. In such an event, estimated timetables shall be extended accordingly, and fees may

be increased as a result of such delays.

#### **Article 4.- Client's Obligations**

4.1. Client shall use the Services for internal business purposes only. Client is solely responsible for the use of the Platform and the Services under Client's user accounts and acknowledges having been sufficiently informed about the Services specificities. Client (i) shall implement the necessary measures to prevent unauthorized access to, or use of, the Services, and will promptly notify Selligent of any such unauthorized access or use of which Client becomes aware; (ii) has sole responsibility for the accuracy, quality, integrity, legality, reliability and appropriateness, and, in general, the content of Client Data stored in the Platform and used by the Services; and (iii) shall comply with all applicable laws and Selligent's reasonable instructions and recommendations with respect to the Services.

4.2. Client is responsible for the provision and use of the appropriate equipment, including computers, computer operating system and web browser, needed to connect to and use the Services. Client shall ensure that this equipment complies with the specifications set forth in the Documentation.

4.3. Client will ensure that any User using the Services (i) has followed the on-line training made available by Selligent and is properly certified, or has been properly trained by Selligent certified trainers, the latter training being billable; and (ii) uses the Services in accordance with the acceptable use of the Services as set forth in Article 8 below. In particular, this implies that the quality of the databases used for sending e-mails complies with the acceptable use of the Services. Should the quality appear to be below such acceptable use after the database audit performed as part of the set-up services and fees, Selligent will make the necessary recommendations in collaboration with Client. Implementation of the recommendations will be charged at the agreed rates for Project Services subject to Client's prior approval.

#### **Article 5.- Evolution of the Services**

Selligent reserves the right to update, upgrade or discontinue features of the Services. No functionality of the Services will be materially decreased from that available as of the ordering of such Services. In case of a major upgrade, Client shall be provided with a prior reasonable notification via the Platform.

#### **Article 6.- Data Ownership and Protection**

6.1. Subject to the terms of the DPA and Selligent's Privacy Policy available at: <https://www.selligent.com/privacy-policy>, Client agrees that Selligent may process Client Data.

6.2. Client Data remain Client's exclusive property. Client hereby grants to Selligent a non-exclusive, non-transferable license to use, perform and display identifying or branding elements of Client during the Subscription Term solely to allow Selligent and/or its Affiliates to perform its obligations as stated herein.

6.3. Selligent's back-up procedure is described in the SLA. However, Client acknowledges that the Services are not meant to replace Client's need for making copies of its primary Client data source. Client is responsible for maintaining copies of its primary Client data.

6.4. Client Data may be retrieved by Client from the Platform at any time during the term of this Agreement. Upon specific request by Client made at the latest ten (10) working days prior to the effective date of termination or expiration of this Agreement, Selligent may return Client Data to Client through FTPS or SFTP. All complaints relating to the return of the data must be notified to Selligent in writing within ten (10) working days of the return, failing which all rights whatsoever will be null and void. The Client Data will be returned in a format that can be run on standard database systems. Client will be invoiced for the costs related to such return at the agreed rates for Project Services subject to a cap of €1,000. After termination of the Agreement, Selligent shall have no obligation to maintain or provide Client Data and shall thereafter, delete all Client Data in its systems or otherwise in its possession or control.

#### **Article 7.- Intellectual Property**

7.1. Client acknowledges that in providing the Services, Selligent uses original and any copies (by whomever produced), updates or extensions of (a) Selligent and/or its Affiliates' company name(s), copyright(s), trademark(s), logo(s), domain name(s), the product and service name(s) associated with the Services and other trademarks and service marks, (b) certain audio and visual information and (c) other technology, software, hardware, products, processes, algorithms, user interfaces, know-how and other trade secrets, techniques, designs, inventions and other tangible and intangible technical material or information (collectively "Selligent Technology"), and that the Selligent Technology is covered by intellectual property rights owned or licensed by Selligent and/or its Affiliates (collectively "Selligent IP Rights"). Certain components of the Selligent Technology may be provided by third-party providers, and are subject to Specific Terms as may be indicated in the applicable Sales Order. Such third-party components are the intellectual property of the specific providers, and as such, no right, title or interests, other than the right to utilize the Services as described herein, shall vest in the Client. Selligent IP Rights, and its suppliers, include all copies, updates or additions, including any new functions, that may be developed for Client. The intellectual property rights on any improvement, design contributions or derivative works conceived or created by either party in or to the Services will also be exclusively owned by Selligent or its suppliers. Other than as expressly set forth in this Agreement, no right, title, license or any other rights in or to the Selligent Technology or Selligent IP Rights are granted to Client.

7.2. Documents, software or hardware made available to Selligent by Client shall be and remain the sole and exclusive property of Client or its suppliers.

7.3. Selligent represents to Client that it has the right to enter into this Agreement and grant the Usage Rights provided herein.

7.4. Selligent shall defend Client against any claim brought against Client by a third party alleging that the use of the Services as contemplated hereunder constitutes a direct infringement or misappropriation of a patent claim, copyright or trademark or trade secret of such third party, and Selligent will pay damages finally awarded against Client (or the amount of any settlement Selligent enters into) with respect to such claims, provided Client (a) promptly gives written notice of such claim to Selligent (but only to the extent that delay in giving notice materially impairs Selligent's ability to defend the claim); and (b) gives Selligent primary control of the defense and settlement of the claim. This obligation of Selligent shall not apply if the alleged infringement or misappropriation results from a use of the Services in violation of this Agreement by the Client or its Users.

7.5. Selligent shall have primary control of the defense of the claim and may agree on any settlement provided Selligent will not enter into or agree to any settlement that imposes any obligation on Client without Client's prior written consent. Selligent will not admit liability on behalf of Client. In case Client rejects the defense by Selligent or the control of such defense by Selligent, Selligent shall be released of any obligation under this Article 7. Client shall provide Selligent with full assistance in such defense and can participate to the defense at its own expense and with its own counsel. Selligent shall keep Client advised of the status of the claim and will consider in good faith recommendations made by Client with respect to the claim.

7.6. Selligent reserves the right to cease such defense of any claim in the event the Services are no longer alleged to infringe or misappropriate, or are held not to infringe or misappropriate, the third party's rights.

7.7. In the event a claim under this Article is made, or is, in Selligent's reasonable opinion, likely to be made, Selligent may, at its sole discretion and expense: (i) procure for Client the right to continue using the Services under the terms of this Agreement; or (ii) replace or modify the Services to be non-infringing without material decrease in functionality. If the foregoing options are not reasonably available, Selligent may terminate the infringing Services and refund all prepaid fees to Client, without any additional compensation or damages.

Selligent's obligations under this Article 7 shall be Client's sole remedy for any above claim and action, without prejudice to the application of mandatory law.

#### **Article 8.- Acceptable use of the Services - Restrictions**

8.1. Selligent grants Client a limited, non-exclusive, non-transferable, non-sublicenseable, right to access and use the Service(s) in accordance with all the terms and conditions of this Agreement. Client must comply with

the Acceptable Use Policy (“AUP”) of Selligent, as may be updated from time-to-time by Selligent, on notice to the Client, currently available at: <https://www.selligent.com/acceptable-use-policy>.

Client further agrees to:

- (i) Use the Services and the Platform in accordance with the Documentation, best practices and generally accepted code of conduct.
- (ii) Not to license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time-share or otherwise commercially exploit or make the Services available to any third party, other than as contemplated by this Agreement;
- (iii) Not to circumvent the User authentication or security of the Services or Platform or any host, network or account related thereto nor intentionally interfere with or disrupt the integrity or performance of the Services or the data contained therein;
- (iv) Not to send or store material which contains software viruses, worms, Trojan horses, or other harmful computer code, files, scripts, agents or programs or use low quality database, below market standard;
- (v) Not to use the Services or the Platform for activities or purposes for which the Platform or Services require specific certifications (e.g. they are not certified for Payment Card Industry (PCI) compliance or healthcare related data) or are not conceived (e.g. the sending of videos and the hosting of videos on the Platform and Services or using of bandwidth in an abusive manner by including large files in e-mails are forbidden), or in excess of the Platform Limitations (defined in the Documentation), or in a manner adversely affecting the Services’ usability for Selligent, including other Selligent clients;
- (vi) Not to modify, copy or create derivative works based on the Services or Selligent Technology;
- (vii) Not to disassemble, reverse engineer, translate or decompile the Services or Selligent Technology (unless, and only to the extent, with respect to the Selligent Technology, this restriction is prohibited by applicable law) or purposefully access it with the intent to (A) build a competitive product or service, (B) build a product or service using substantially similar features, functions or graphics of the Services, or (C) copy any features, functions or graphics of the Services. Client may not access the Services if Client is a direct competitor of Selligent, except with Selligent’s prior written consent. Client may not access the Services for purposes of monitoring its performance or functionality, or for any other benchmarking or competitive purpose.

8.2. In case of investigation by Selligent of the Platform or the Services in connection with services outages, security problems and any suspected breach of this Agreement, Client will cooperate and immediately act upon each reasonable request of Selligent to remove and/or adapt its own content and/or use of the Services (e.g. to avoid hindrance of Services’ performance to other Selligent clients).

8.3. Selligent, at its own discretion or at the direction of any then-applicable third party service provider may suspend access to the IP address(es), and as the case may be the Services, because of a violation of Article 8.1 or an actual or reasonably apparent imminent attack or unauthorized access, until such violation, attack or unauthorized access is remedied. Selligent will use commercially reasonable efforts to provide Client with advance notice of such suspension. Any action requested by Selligent due to a misuse of the Services or the Platform shall be invoiced to Client at the agreed rates for Project Services.

8.4. In the event of any temporary blocking as described in this Article 8, Client shall not be entitled to any refund, except where such suspension is demonstrably abusive or not grounded on legitimate elements.

8.5. Third-Party Providers - Any exchange of data or other interaction between Client and a third party provider (other than any subcontractor or agent performing any obligation of Selligent under this Agreement), and any purchase by Client of any product or service offered by any third party provider, is solely between Client and such third party provider.

8.6. Subject to this Agreement, Client shall defend, indemnify and hold Selligent harmless against any loss or damage (including reasonable attorneys' fees) incurred in connection with claims made against Selligent by a third party in relation to Client Data or alleging that Client's illegal or unauthorized use of the Services infringes the rights of, or has otherwise harmed, a third party, provided Selligent (a) promptly gives written notice of the claim to Client (but only to the extent that delay in giving notice materially impairs Client's ability to defend the claims); and (b) gives Client primary control of the defense and settlement of the claim.

8.7. Client shall have primary control the defense of the claim and may agree on any settlement, provided Client will not enter into or agree to any settlement that imposes any obligation on Selligent without Selligent's prior written consent. Client will not admit liability on behalf of Selligent. In case Selligent rejects the defense by Client or the control of such defense by Client, Client shall be released of any indemnification obligation under this paragraph. Selligent shall provide Client with full assistance in such defense and is allowed to participate to the defense at its own expense and with its own counsel. Client shall keep Selligent informed of the status of the claim and will consider in good faith recommendations made by Selligent with respect to the claim.

#### **Article 9.- Limitation of liability**

9.1. Except for what is specifically provided for below, the parties' liability is governed by the liability rules under the governing law.

9.2. Without prejudice to the application of mandatory law, each parties' liability shall, in any case be, limited to the twelve (12) months value of the Subscription Services fee (see the Sales Order), whether in contract or in tort.

9.3. No party shall be liable for consequential damage or loss, such as loss of revenues or profits, of commercial opportunities, of data or of use of data, damage to the brand or know-how, third party claims, whether in tort or in contract, whether or not it knew of the possibility of such loss.

9.4. With regard to Project Services and Support Services, Selligent undertakes to comply with generally accepted professional standards and Selligent's liability is limited to those operations by Selligent necessary to rectify a Service that does not meet generally accepted professional standards. However, if it becomes apparent that Selligent personnel must attend when the operating incident is not attributable to Selligent, this Service will be invoiced.

9.5. Nothing in this Agreement excludes the liability of either party (a) for death or personal injury caused by its negligence or (b) for fraud or fraudulent misrepresentation.

#### **Article 10.- Confidentiality**

10.1. "Confidential Information" refers to any information of a party ("Disclosing Party") disclosed by or on behalf of the Disclosing Party to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of the disclosure (including pricing and other terms reflected in all Service Order(s)), the Service(s), the Selligent Technology, business and marketing plans, trade secrets, technology and technical information, product designs, methods, processes, code, data, inventions, apparatus, statistics, programs, research, development, information technology, network designs, passwords, sign-on codes, usage data, the Documentation and the terms of this Agreement. Confidential Information shall not include any information that: (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach by any third party of any obligation owed to the Disclosing Party; (c) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (d) is received from a third party without being subject to any confidentiality obligation.

10.2. Each party agrees that it will not use in any way for its own account or the account of any third party, any Confidential Information, except that each party may use the Confidential Information to perform its obligations or exercise its rights under this Agreement, and each party will take reasonable care and precaution to protect



the confidentiality of such information. Reasonable care and precaution mean those steps the Receiving Party takes to protect its own similar Confidential Information, but which shall not be less than reasonable standard of care.

10.3. Such non-disclosure obligations shall not apply to information that (a) was already rightfully known to the Receiving Party prior to disclosure by the Disclosing Party hereunder; (b) became part of the public domain after its disclosure or was part of the state of the art at the time of disclosure, provided, in both cases, that this was not the result of a violation of a confidentiality obligation with respect to the party that transmitted the Confidential Information; (c) has been rightfully received from a third party not under obligation of confidentiality; (d) has been approved for release by written authorization; or (e) was independently developed by a party without the use of the Confidential Information.

10.4. Each party agrees that Confidential Information remains, in any event, the property of the Disclosing Party.

10.5. Disclosure of Confidential Information is only permitted to the legal representatives, agents, suppliers, service providers or subcontractors of the parties within the limit of what they need to know to perform the tasks incumbent upon them.

10.6. The parties undertake to inform the persons to whom the information is transmitted of its confidential nature. They also agree to have their suppliers, service providers or subcontractors sign a confidentiality undertaking in terms similar to the one they have subscribed to hereby, it being understood that the parties are guarantors of compliance by the persons referred to in this paragraph of this confidentiality obligation.

10.7. If the Receiving Party is compelled by law or judicial or regulatory order to disclose Confidential Information of the Disclosing Party, it shall (a) provide the Disclosing Party with reasonable prior written notice of such compelled disclosure (to the extent legally permitted); (b) provide the Disclosing Party with reasonable assistance and cooperation, at Disclosing Party's cost, if the Disclosing Party wishes to contest or limit the disclosure; and (c) only disclose that Confidential Information necessary to comply with such order as determined by counsel at Disclosing Party's reasonable cost.

10.8. Upon the written request of Disclosing Party at any time throughout the Subscription Term or upon expiration or termination of this Agreement, Receiving Party shall at its option, and if legally permissible, return or destroy (and certify such destruction in a signed writing) all Confidential Information of Disclosing Party, including all copies thereof, whether in physical or electronic form; provided, however, that Selligent and its Affiliates may retain an archival set of its working papers and a copy of Client's Confidential Information for ensuring compliance with applicable laws, regulations and professional standards regarding documentation of work performed under this Agreement. To the extent that it is impracticable to return or destroy any Confidential Information, and with respect to any information retained for archival purposes, Receiving Party shall continue to maintain the confidentiality of such information in accordance with this Agreement for as long as such information is retained.

10.9. This Confidentiality obligation shall survive the termination of this Agreement for a period of three (3) years.

#### **Article 11.- Term**

This Agreement shall come into effect on the Effective Date and will remain in force so long as there is at least one active Service Order in place, unless earlier terminated in accordance with Article 12 below. Except otherwise stated in an applicable Sales Order, each Subscription Service is sold for a minimum Subscription Term of twelve (12) months as of such Subscription Service Start Date (i.e. password and log-in delivered to Client). Each Sales Order will renew in accordance with the renewal conditions set forth in such Sales Order. Renewals will automatically pertain to all Subscription Services of the Sales Order.

#### **Article 12.- Termination**

12.1. Either party may by written notice served on the other party terminate this Agreement immediately without any court intervention if the other party is in material breach of its obligations under this Agreement

and, if such breach is remediable, fails to remedy that breach within a period of thirty (30) calendar days after receipt of notice in writing requiring it to do so. Moreover, should Client remain in breach of its payment obligation notwithstanding two (2) written reminders to pay within seven (7) calendar days each, Selligent has the right to deactivate Client's passwords and log-ins and/or to block access to the Services, whereby the contractually agreed fees will remain due for the period during which access was blocked and/or passwords and log-ins deactivated and Client will be solely responsible for all consequences that result from the blocking and the deactivation, without possibility of recourse against Selligent.

12.2. Selligent is entitled to terminate this Agreement immediately without any court intervention nor notice period (i) for any material violation by Client that risks the safety, security or reputation of any network, person or entity, or for violation of Selligent applicable use of the Services as set forth in Article 8 or (ii) in the event Client becomes a competitor, directly or indirectly as a result of its direct or indirect shareholders.

12.3. In the event of the premature termination of the Agreement due to Selligent breaching its obligations, Selligent will reimburse Client the portion of any fees that have been paid in advance by Client and cover the period during which the Services have not been provided.

12.4. In the event of the premature termination of the Agreement due to Client breaching its obligations, Client must pay (i) all of the Subscription Services fees provided for in this Agreement and (ii) the Project Services and Support Services provided up to the termination date.

12.5. Notwithstanding any termination of this Agreement, the provisions of this Agreement that by their nature should survive the termination, shall survive the termination of this Agreement.

### **Article 13.- Fees & Payment**

**13.1 Fees.** Client shall pay all fees specified in all executed Services Order hereunder. All fees are quoted in EURO, excluding VAT or any other relevant taxes. Except as otherwise provided in this Agreement, fees are non-refundable.

**13.2 Invoicing & Payment.** Fees for the Services will be invoiced in accordance with the terms in the relevant Service Order. Invoices are payable within thirty (30) calendar days from the date of invoicing. In the event of late payment, Selligent will automatically (no notice of non-performance being required) be entitled to (i) an interest for late payment that is equal to the ECB base rate + 8%, rounded up to the next half percentage point and (ii) a fixed sum of minimum €100 as compensation for administrative and other expenses and that Selligent is also entitled to obtain reasonable compensation from Client for any recovery costs exceeding the fixed sum of €100 and incurred due to Client's late payment.

13.3 Indexation. All fees applicable pursuant to this Agreement are adjusted each year on the anniversary date of the Subscription Term Start Date, as defined in the relevant Sales Order, depending on the variations in the Syntec price index (hereafter the "**Index**"), using the formula:

$P1 = (P0 \times S1) / S0$  where:

- P1 = New Fee for the year N
- P0 = Current Fee
- S1 = Index from the month before the month of the anniversary date of the Subscription Term Start Date for the year N
- S0 = Index from the month before the month of the anniversary date of the Subscription Term Start Date for the year N-1

Example:

Subscription Term Start Date: 15 March 2019 – Monthly Subscription Fee of €5,000

The first indexation shall take place on 15 Mars 2020 as follows:

P0 = €5,000

S1 = [102] (index of February 2020, published beginning of March 2020)

S0 = [101] (index de February 2019, published beginning of Mars 2019)

P1 = (5,000\*102)/101 = €5,049.50

#### **Article 14.- Commercial reference**

Client authorizes Selligent to use the following information as a commercial reference in publications, events and actions to promote Selligent's products and services: Client's name and information that is publicly known about Client (including Client's logo). Client can revoke this authorisation at any time in writing without any justification.

#### **Article 15.- General Provisions**

**15.1. Entire Agreement – Severability** - The Agreement is the entire agreement between the parties relating to subject matter hereof, and supersedes all prior or simultaneous agreements, negotiations or statements.

Any commercial offer issued by Selligent under this Agreement shall be valid for a maximum period of three (3) months.

The interconnected environment of cloud computing is subject to rapid and substantial change of operational, legal and data security requirements parameters. As a result, this Agreement may need to be amended from time to time. Any such change will be notified to Client by email and shall be applicable immediately. Substantial change of such parameters includes any substantial change of the digital technology industry and enactment of local, national or international law or regulation applicable to the Selligent products and services, in particular as regards data security.

Subject to the above, this Agreement may not be released, discharged, amended or modified in any manner, except by an instrument in writing signed by a duly authorized officer or representative of each party.

In case any provision of this Agreement is held invalid or unenforceable for any reason, the remaining provisions shall continue in full force without being impaired. Client and Selligent shall act in good faith to replace any invalid provision with a valid one that most closely approximates the intent and economic effect of the invalid provision.

**15.2. Other Documents** - No terms, provisions or conditions of any purchase order, acknowledgment or other business form that Client may use in connection with the purchase of any Service will have any effect on the rights, duties or obligations of the parties under, or otherwise modify this Agreement, irrespective of any failure of Selligent to object to such terms, provisions or conditions. Service Orders are non-cancelable and non-refundable except as expressly provided otherwise.

**15.3. Governing Law – Limitation** - This Agreement is governed by and construed under Italian law, without reference to its conflicts of law principles (i.e. in the event of any conflicts, Italian law, rules and regulations shall prevail and govern). Any dispute in connection to this Agreement shall be subject to the exclusive jurisdiction of the courts of Milan. Any claim before a court in connection with this Agreement can only be initiated by the signing entity and is subject to a limitation period of one (1) year as of the date when the facts giving rise to such claim are known or should have been known by the claimant.

**15.4. Force Majeure** - Neither party shall incur any liability to the other for any failure to perform any of its obligations under this Agreement to the extent such failure is caused by events, occurrences or causes beyond its reasonable control and without any negligence on the part of the party seeking protection under this Article. Such events shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war, terrorism, earthquake, fire or explosions. The inability to meet financial obligations is expressly excluded from this Article. Each party shall use best effort to minimise and reduce any period of delay caused by any event of force majeure. Should the force majeure event continue for a period longer than thirty (30) days, then either party shall be entitled to terminate this Agreement upon written notice and no further obligation shall be owed by such party to the other party in respect thereof.

**15.5. Assignment** - Except as provided for elsewhere in this Agreement, the parties shall not assign this Agreement (or any portion thereof) without the other party's written consent, which shall not be unreasonably withheld. Each party may assign this Agreement in connection with a merger, reorganization, or sale of all or substantially

all of the assets of the assigning party or sale of sufficient stock to constitute a change of control. This Agreement shall be binding on the parties' respective successors and permitted assigns.

**15.6. Waiver** - Any waiver of a party's rights under this Agreement must be in writing to be effective and shall be construed in a limitative way, meaning that it shall not affect such right with respect to other breach or circumstances of similar nature. Failure, neglect or delay by a party to enforce the provisions of this Agreement or its rights shall not be deemed to be a waiver of such party's rights under this Agreement and shall not affect the validity of whole or part of this Agreement.

**15.7. Non-solicitation** - Parties shall not, directly or indirectly, solicit any employee of the other party who has participated in the performance of this Agreement, throughout the term of this Agreement and for six (6) months after its expiry. In the event of breach of this Article, the non-defaulting party could claim from the defaulting party compensation equal to twelve (12) times the last monthly gross remuneration of the concerned employee, within a maximum period of three (3) months following the knowledge by the claiming party of the hiring of such employee.

**15.8. Notice** - Any notice under this Agreement must be in writing and sent by registered mail with acknowledgement of receipt to the address of the applicable party identified in the Sales Order, or to such other address of such party as may be later designated in writing in accordance with this Article. Email notice may be given to noticed email addresses and are effective on dispatch, provided the above method is also performed on such same date. . Each party must notify the other of any changes of its Contact Information within fifteen (15) calendar days of any change thereto.

**15.9. Exhibits** – DPA – SLA – and Specific Terms, as referred to in the definition of "Agreement" above, shall be part of the Agreement.

**15.10. Reservation of Rights** – Any software associated with the Services and website is protected by copyright laws and international copyright treaties, as well as other intellectual property rights, laws and treaties.

**15.11. Electronic Signature** – Parties agree to the execution of the Agreement under an electronic format. The Parties agree, to the extent necessary, that such written format is regarded as the original of the document and is set up and kept in accordance with conditions necessary to allow due identification of the signatories and to warrant its integrity. The Parties shall not invoke the electronic nature of the document to dispute the Agreement's admissibility, enforceability or its value as evidence. The Parties agree to use an on-the-fly electronic signature process, using a single-use electronic certificate as a reliable identification process to ensure that the electronic signature is linked to the document bearing it. Selligent uses the process available to it as part of its partnership with a third-party provider.