



# SELLIGENT MARKETING CLOUD SUBSCRIPTION AND SERVICES AGREEMENT

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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 **June 22, 2018**, 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>
<i>4° Selligent Support and Service Level Agreement (“SLA”)</i>
<i>5° Subscription and Services Agreement (“SSA”)</i>

**“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.

**“Client”** includes any entity that controls, is controlled by, or is, at the time of execution of this Agreement, under common control with signing 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, that has access to or use the Services under a specific Service Order. “Client” also includes 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. 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 bound by the Agreement.

**“Client Data”** means all data 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, any audio-visual design (i.e. photographic images, video, animations, illustrations), or other identifying or branding elements of Client or its customers to enable performance of the 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**

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.

Selligent will also provide Client with Project Services and Support Services as may be indicated in a Statement of Work.

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

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.

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.

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.

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 Obligations – Reservation of Rights**

Selligent shall make the Service(s) available to Client pursuant to all the terms and conditions of the Agreement and any set forth in the Service Order(s). During the term of the Agreement, Selligent will perform the Subscription Services using commercially reasonable care and skill in all material respects as described in the Documentation. The level of availability of the Subscription Services is described in the SLA.

Selligent will provide Support Services in line with the SLA.

All claims relating to the Services must be notified in writing to Selligent’s attention as soon as reasonably possible and in any case, within thirty (30) days of the date on which the condition giving rise to the claim first appeared or of the date of delivery of Project Services.

Without prejudice to liability rules otherwise applicable, Client will not be entitled to make any claim or hold Selligent liable if the alleged problem is the result of faults or negligence attributable to Client or, in particular if the problems are the result of:

- Denial of Service attack;
- Actions of Client in an explicit intent to create downtime (during audit in accordance with Article 4 of the SLA).

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

Client shall use the Services for internal business purposes only. Client is solely responsible for the use of the Platform and the Services. 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 instructions and recommendations.

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.

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**

Subject to the terms of the DPA, Client agrees that Selligent may process Client Data.

Client Data remain Client's exclusive property.

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.

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 format in which such data will be returned will be in Selligent format or any other format that can be run on standard software. Client will be invoiced for the costs related to such return at the agreed rates for Support 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**

Client acknowledges that Selligent and its suppliers retain all right, title and interest in and to the original and any copies (by whomever produced), updates or extensions of the Services, Platform, software and their documentation, whether or not incorporated in or integrated with any other service, software, platform or product, and ownership of all patent, copyright, trademark, trade secret and other intellectual property rights pertaining thereto, shall be and remain the sole and exclusive property of Selligent and its suppliers. Client cannot claim any property right to the service, software and/or the documentation emanating from third parties. The intellectual property rights which remain the exclusive property of Selligent 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.

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

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.

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.

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.

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.

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

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 : .

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;
- (iv) Not to send spam or otherwise duplicative or unsolicited messages in violation of applicable laws;
- (v) Not to send or store material (including meta-tags, hyperlinks, deeplinks, or comparable references) which is infringing, libelous, contrary to public order or common decency (including any pornographic material) or otherwise unlawful or tortious, including material which is in violation of third party privacy rights, use the Services for criminal, illegal or otherwise unlawful purposes;

- (vi) 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;
- (vii) 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;
- (viii) Not to modify, copy or create derivative works based on the Services or Selligent Platform or software;
- (ix) Not to disassemble, reverse engineer, translate or decompile the Services or Platform or software, 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.

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).

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 the acceptable use of the Services, 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.

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.

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.

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.

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**

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

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 on in contract, whether or not it knew of the possibility of such loss.

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.

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

"Confidential Information" means all information disclosed between the parties, 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. Parties agree that the Services, the Documentation and this Agreement shall be deemed Confidential Information without any marking or further designation.

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 steps to protect the confidentiality of such information. Reasonable steps means those steps the receiving party takes to protect its own similar Confidential Information, but which shall not be less than reasonable care.

Such non-disclosure obligations shall not apply to information that (a) was already rightfully known to the party prior to disclosure by the other 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; (e) was independently developed by a party without the use of the Confidential Information; or (f) is required to be disclosed by law or court or administrative decision.

Each party receiving Confidential Information from the other party agrees that this information remains, in any event, the property of the disclosing party.

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.

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.

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**

This Agreement may be terminated immediately without any court intervention nor notice period by one party, in the event the other party breaches its contractual obligations, after notice to perform has been given by registered letter with notice of receipt and remained without effect thirty (30) calendar days after its receipt. 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.

Each party is also entitled to terminate this Agreement if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership or liquidation.

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 repeated violations 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.

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.

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.

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, Law 15/2010 of July 5, of amendment of Law 3/2004, of December 29, which establishes measures to combat late payment in commercial operations, will be applied. It will be applicable. The Client is aware that this means, among other things, that under the current bill, once the payment period (agreed), Selligent will automatically be entitled (without notice of inactivity required): (i) receive interest of delay due to late payment equal to the ECB's basic interest rate + 8%, rounded up to half a percentage point; and (ii) a minimum fixed amount of € 40, as compensation for administrative and other expenses. Likewise, Selligent shall be entitled to receive reasonable compensation from the Client for any recovery expenses incurred that exceed the fixed amount of € 40 due to the delay in the payment of the Client.

13.3 Indexation. All fees applicable pursuant to this Agreement are adjusted each year on the anniversary date of the Contract Effective Date, as defined in the relevant Sales Order, depending on the variations in the Spanish consumer 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 Contract Effective Date for the year N
- S0 = Index from the month before the month of the anniversary date of the Contract Effective Date for the year N-1

Example:

Contract Effective Date: 15 March 2018 – Monthly Subscription Fee of €5,000

The first indexation shall take place on 15 March 2019 as follows:

$P0 = €5,000$

$S1 = [102]$  (index of February 2019, published beginning of March 2019)

$S0 = [101]$  (index de February 2018, published beginning of Mars 2018)

$P1 = (5,000 \times 102)/101 = €5,049.50$

#### **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.

Notwithstanding 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 Spanish law, without reference to its conflicts of law principles (i.e. in the event of any conflicts, Spanish 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 Barcelona. 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 the 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, but the inability to meet financial obligations is expressly excluded.

**15.5 Assignment** - 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 to 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.