XMedius offers services on the cloud relating, among other things, to the transmission of faxes and secure file sharing. By retaining the Services (as defined below) of XMedius, you agree to the following Terms and Conditions.

We reserve the right to update and change these Terms and Conditions from time to time and will post a copy of the amended Terms and Conditions on our website at the following address: https://portal.xmedius.com/terms_of_service; we encourage you to review them periodically. If we make any material changes to the Terms and Conditions, we will notify you by displaying a prominent notice when you log on to our website or via email/electronic notification sent to the Customer's Account administrators. If you do not agree to, or cannot comply with, these Terms and Conditions as amended, you are not authorized to use the Services. You will be deemed to have accepted these Terms and Conditions, as amended, if you continue to use the Services after any such changes. Any new features that improve or enhance the current Services, including the release of new tools and resources, is subject to the Terms and Conditions. If you wish to cancel your account because you do not agree with the Terms and Conditions, as amended, you may do so by giving a written notice to such effect to XMedius within sixty (60) days of XMedius's official notice of change to the Terms and Conditions.

1. DEFINITIONS

Unless otherwise provided, the following terms and expressions shall have the following meaning:

1.1. "**Activation Date**" shall mean the date of activation of the Credit(s) by the Customer upon the redemption of the associated voucher code, it being understood that each Credit, if not activated earlier, will be deemed activated at the latest thirty (30) days after the date of its purchase by you, unless otherwise indicated at time of purchase of any such Credit;

1.2. "**Agreement**" shall mean the agreement concluded between you and XMedius by way of these Terms and Conditions and, when applicable, the Proposal for Services;

1.3. "**Application**" shall mean, when applicable, the application enabling the use of the Services and through which the Customer may access its Data and Customer's Account;

1.4. "**Claim**" means claims, suits, actions, or proceedings brought against the Customer in a court of competent jurisdiction in a Covered Country by a third party which allege an infringement by the Services of a third party's patent, copyright, or trade secret.

1.5. "**Collateral damages**" has the meaning ascribed to such term in Subsection 17.2 herein;

1.6. "**Covered Country**" means each contracting party to The Patent Cooperation Treaty (currently published at http://www.wipo.int/pct/en/);

1.7. "**Credit**" shall mean, when applicable, the non-refundable credits bought from time to time by the Customer in order to use the Services, directly from XMedius or through the Application or any other interface, as the case may be. Each

Credit expires, unless otherwise indicated at time of purchase, after a twelve-month (12-month) period from its Activation Date;

1.8. "**Customer**" means you, your wholly-owned subsidiaries and any related and controlled affiliates. Consumers and more generally any individual or entity acting for purposes other than business or professional purposes are excluded from the definition of Customer;

1.9. "**Customer's Account**" shall mean the account used by the Customer for the purpose of accessing and using the Services;

1.10. "**Data**" shall mean, as the case may be, all faxes, files, emails, documents and other data pertaining to Customer and its usage of the Services, and hosted on XMedius's servers and/or its subcontractors;

1.11. "**EMEA Zone**" has the meaning ascribed to such term in Subsection 21.1 herein;

1.12. "**End Users**" has the meaning ascribed to such term in Subsection 14.1 herein;

1.13. "**Intellectual Property Rights**" shall mean any present or future rights pertaining to a (i) patent, trade-mark, domain name, copyright, system, software, source code, object code, compilation, know-how, information, invention, technology, right to use, procedures, development, technical information, databases, algorithms, engineering and reverse engineering; (ii) the registration and any application to register any of the foregoing intellectual property rights; and (iii) the Data;

1.14. "**Payee**" shall mean any legal entity designated as such by XMedius which is entitled to (i) enter into a Proposal for Services with you; ii) sell Credits to you, when applicable; and (iii) receive payment from you in lieu of XMedius as more fully described in Section 12 herein;

1.15. "**Payment Term**" subject to any specific provisions applicable in your jurisdiction, shall mean a period of thirty (30) days, or, if applicable, the payment term set forth in the Proposal for Services;

1.16. "**Premium Numbers**" has the meaning ascribed to such term in Subsection 12.10 herein;

1.17. "**Privacy Policy**" shall mean the then-current privacy policy of XMedius, a copy of which can be found at the following address: https://www.xmedius.com/en/privacy-policy/;

1.18. "**Proposal for Services**" shall mean the proposal for services entered into by and between you and XMedius or, when applicable, any commercial agreement between you and the Payee, where the scope of Services may be modified from time to time by you by modifying the subscribed Services via your Customer's Account. The XMedius Proposal for Services, if applicable, and these Terms and Conditions shall be deemed to form the Agreement between you and XMedius;

1.19. "**Security Roles and Responsibilities Document**" shall mean the then-current security roles and responsibility document of XMedius, a copy of which can be found at the following address: https://www.xmedius.com/en/Security-RR/;

1.20. "**Services**" shall mean, as applicable, the XMedius services offered on the Cloud, including without limitation, XM Fax, which is a fax transmission service, and XM SendSecure, which is a service enabling the secure exchange and

sharing of large and/or sensitive emails and documents;

1.21. "**SLA**", when applicable, shall mean XMedius then-current service level agreement which sets forth the levels of services to be delivered by XMedius to an End User, a copy of which can be found at https://xmedius.com/en/xmc_sla/;

1.22. "**Specifications**" shall mean the specifications set forth in detail in the Customer's Account, or when applicable in the Proposal for Services;

1.23. "**Term**" shall mean either the Term specified in the Proposal for Services, when applicable, or the period of time which begins upon the installation of the Application and ends with the complete removal of all Applications from all of your devices;

1.24. "**XM Fax**" shall mean the proprietary cloud solution developed by XMedius more fully described in Subsection 1.18 herein; and

1.25. "**XM SendSecure**" shall mean the proprietary cloud solution developed by XMedius more fully described in Subsection 1.18 herein.

2. DESCRIPTION OF THE SERVICES

2.1. XMedius shall provide the Services from servers managed exclusively by XMedius and to which the Customer is not authorized to access.

2.2. XMedius shall provide access to its Services, which require the Customer's authentication. XMedius commits to securing the Data to prevent disclosure of private information to unauthorized parties.

2.3. XMedius stores Data related to your account on its servers as long as the Services are being provided to you. XMedius may store Data for a longer period if required by law or a court order.

2.4. The Services allow the Customer to access its Data and manage it from a remote computer through the use of a Web browser that meets the Specifications, in accordance with the provisions of this Agreement.

2.5. Data Retention for XM Fax. XMedius will store fax messages received through the Customer's Account until the earliest of (i) the end of the retention period agreed between XMedius and the Customer; or (ii) the termination of the Agreement, after which XMedius shall be entitled, without any further notice to the Customer, to destroy any such stored fax messages. After ninety (90) days of the termination of the Services, all Data will be deleted or destroyed from XMedius's online servers without further notice. Subject to a prior written notice of thirty (30) days, the Customer hereby acknowledges that XMedius may change its practices and limitations concerning storage of fax messages, including without limitation the maximum number of days that fax messages will be retained, the maximum number of messages stored at any one time, and the maximum storage space that will be allotted on the servers on Customer's behalf, as specified in the Customer's Account or, when applicable, as set forth in the Proposal for Services. The Customer further agrees that, subject to applicable law, XMedius has no responsibility or liability whatsoever for the deletion of or failure to store any fax messages and/or other communications maintained or transmitted through the Services, except in the

event of XMedius's negligence or willful misconduct.

2.6. <u>Retention of Data for XM SendSecure</u>. XMedius will store large and/or sensitive documents sent and received through the Customer's Account until the earliest of (i) the period selected by the Customer when using the Services; or (ii) the termination of the Agreement, after which XMedius shall be entitled, without any further notice to the Customer, to destroy any stored documents. After ninety (90) days of the termination of the Services, all Data will be deleted or destroyed from XMedius's online servers without further notice. Subject to a prior written notice of thirty (30) days, the Customer hereby acknowledges that XMedius may change its practices and limitations concerning storage of large and/or sensitive documents, including, without limitation, the maximum number of days that large and/or sensitive documents will be retained, the maximum number of documents stored at any one time, and the maximum storage space that will be allotted on the servers on Customer's behalf, as specified in the Customer's Account, or when applicable, as set forth in the Proposal for Services. The Customer further agrees that, subject to applicable law, XMedius has no responsibility or liability whatsoever for the deletion of or failure to store any document and/or any communication stored or transmitted through the Services, except in the event of XMedius's negligence or willful misconduct.

3. TERM

3.1. XMedius grants the Customer a temporary and non-transferable right to access the Services during the Term of this Agreement. The Customer acknowledges and accepts that it may not terminate this Agreement before the expiry of the Term, except in accordance with the provisions set forth in Subsection 11.2 hereof or any other specific provision set forth herein.

3.2. If the Services have been subscribed to by means of a Proposal of Services, the Term set forth therein will automatically renew for an additional term equal to the initial Term upon expiry, the whole subject to price adjustment pursuant to Subsection 12.7 hereof, unless either party gives notice in writing to the other party of its intention not to renew the Agreement, between the sixtieth (60th) and the thirtieth (30th) day preceding the end of Term. When required by law, XMedius shall send a written notice of upcoming renewal to the Customer between fifteen (15) and thirty (30) days prior to the above 60-day period.

4. CUSTOMER RESPONSIBILITIES AND OBLIGATIONS

4.1. The Customer is fully responsible for the contents of its transmissions through the Services. XMedius simply acts as a passive conduit for the Customer to send and receive information of its own choosing. The use of the Services (including the transmission of Data stored through the Services) is subject to all applicable local, state, provincial, national and international laws and regulations (including, without limitation those governing account collection, export control, consumer protection, unfair competition, anti-discrimination, securities, false advertising, personal data protection and direct marketing). The Customer undertakes to comply with these laws and regulations and not to (i) use the Services illicitly; (ii) transmit, share, exchange or store materials susceptible to violate intellectual property rights or other rights of any third party or being illegal, illicit, tortuous, defamatory content, or content that affects the privacy of third parties; (iii) transmit, share, exchange or store Data belonging to a

third party without first obtaining any required consent; (iv) transmit, share, exchange or store Data containing computer viruses or other codes, files or dangerous computer programs such as Trojans, Worms or delayed bombs; (v) disrupt or interfere with the servers of the network related to the Services; or (vi) try to access the Services, other users' accounts, systems or computer network related to the Services without authorization.

4.2. The Services make use of the Internet so that the Customer can send and receive information of its own choosing. As a result, Customer's conduct is subject to Internet regulations, policies and procedures. The Customer agrees not to use or reference the Services for chain letters, junk fax or junk mail, spamming or any activity involving the use of distribution lists and sending to any person in violation of any applicable law. The Customer further agrees not to attempt to gain unauthorized access to other computer systems. The Customer shall not interfere with another customer's use and enjoyment of the Services or another entity's use and enjoyment of similar services.

4.3. Furthermore, the Customer must (i) obtain and pay for all equipment and third-party service (e.g., Internet access and email service) required to access and use the Services; (ii) maintain the security of its PIN number, password and other confidential information relating to its Customer's Account; and (iii) to the full extent permitted by applicable law, be responsible for all charges resulting from its use of the Services, including unauthorized use, and taking steps to prevent any reoccurrence, except in cases where the unauthorized use of Services was caused by security issues of XMedius and/or agents or third parties retained by XMedius in the delivery of theServices.

4.4. In order to enable XMedius to better serve the Customer, the Customer hereby undertakes to reasonably cooperate with XMedius, and the Payee when applicable, and to provide, upon request, any reasonable information for the purposes of rendering the Services. The Customer also hereby undertakes to notify XMEDIUS, or the Payee as applicable, of any additional constraints or legal obligations pertaining to Customer's Data that could be applicable to XMedius or the Payee with regard to the provision of the Services, including but not limited to, any legal obligation in processing personal data related to an individual's health. Any delay relating to the acts or omissions of the Customer with respect to the delivery of any required information shall affect the provision of Services, without incurring XMedius's or the Payee's liability. The Customer undertakes to provide accurate, exact and complete information to XMedius and the Payee when and if so requested, including but not limited to, its name, address, phone number and email address, so that XMedius and the Payee can maintain up-to-date information for the duration of the Term.

4.5. The Customer shall communicate to XMedius and update regularly a list of all its representatives authorized to act on its behalf under the Customer's Account.

4.6. The Customer acknowledges that its monthly plan service fees paid in advance, or when applicable, Credits purchased from time to time, are non-refundable, irrespective of the partial use or lack of use of the Services during the said month or the validity period of the Credits, subject always to any SLA in force.

4.7. The Customer shall not distribute unsolicited faxes, emails or other forms of commercial electronic messages, as applicable, through the Services and

Customer acknowledges that XMedius, at its entire discretion and without further notice, may use technologies and procedures, such as filters, that may terminate the transmission of such unsolicited commercial electronic messages without delivering them. Without limiting the generality of the foregoing, should the Customer be using the Services for unsolicited commercial electronic messages, XMedius shall be entitled to terminate the Agreement without incurring any liability following a prior written notice of five (5) days to such effect.

5. PROHIBITION TO RESELL OR USE THE SERVICES FOR OTHER PURPOSES

The rights granted to the Customer by this Agreement are strictly personal and the Customer commits not to transfer, sublet or resell the Services and will use the Services solely for its own business operations.

6. AUDIT RIGHTS

XMedius shall have audit rights over relevant metadata and logs to verify the usage by the Customer of its Services and compliance with these Terms and Conditions.

7. OWNERSHIP

7.1.   The Customer hereby acknowledges that XMedius shall be the exclusive owner of all Intellectual Property Rights relating to the Services, whether registered or not, which may be granted or recognized pursuant to any law or principle of equity. The Customer shall benefit from the use the Services solely under a non-exclusive license for its own business purposes only for the Term of the Agreement.

7.2.   Notwithstanding the foregoing, Customer shall retain all ownership rights relating to the Data, it being understood that XMedius shall have a limited license, throughout the Term of this Agreement, to access and audit such Data for the purposes set forth under this Agreement. XMedius does not define the means and purposes of the Customer's use of the Services and cannot be considered a subcontractor of the Customer.

8. CUSTOMER'S ACCOUNT AND SECURITY

8.1.   The Customer is fully responsible for maintaining the confidentiality of its Customer's Account password. Losing the password may preclude any access to the Data.

8.2.   Unless otherwise agreed upon, the storage location for the Customer's Data will be assigned based on the geographic region of the Customer's main business address, as set forth in the Proposal for Services. XMedius shall obtain Customer's approval before modifying the territory where data is stored.

8.3.   The Customer hereby acknowledges that part or all of the Services may be provided by a third party, including, but not limited to, the storage of the Data. Notwithstanding the foregoing, XMedius shall remain liable for the performance of all services provided by such third party.

8.4.   The Customer hereby acknowledges having read the Security Roles and Responsibilities Policy and accept to act in compliance of such Security Roles

and Responsibilities Policy.

9. ACCESS TO SERVICES AND AVAILABILITY OF SERVICES

9.1. It is the Customer's responsibility to have and maintain adequate equipment and Internet access to use the Services, at the Customer's expense. Subject to any SLA in force, with respect to interruptions in the Services resulting from elements under XMedius's reasonable control, the Services are provided "as is" on a "according to availability" basis. Notwithstanding any other provision to the contrary or any SLA in force, neither XMedius nor the Payee can be held responsible, and no credit shall be awarded for any and all momentary interruptions in the Services resulting from telecommunication failure, equipment failure, reasonable planned maintenance, maintenance associated to critical problems or any other elements outside of XMedius's or the Payee's reasonable control.

9.2. The Customer agrees that XMedius may, at any time, without notice and without liability, restrain the use of the Services or limit their availability for maintenance purposes or in case of emergency.

9.3. NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY, THE CUSTOMER HEREBY ACKNOWLEDGES THAT THE XMEDIUS SERVICES DO NOT SUPPORT 911 OR 112 FUNCTIONALITY OR ANY OTHER SIMILAR FEATURE.

10. OTHER LIMITATIONS

10.1. Subject to any SLA in force, XMedius declines any and all responsibility in case of suppressions or failures pertaining to the Services. XMedius reserves the right, upon providing prior written notice, to temporarily suspend the Customer's access to the Services in accordance with Subsection 11.1 herein in the event that the Customer breaches said Terms and Conditions.

10.2. The Customer is solely responsible for the use of the Services and Data transmitted or stored through the Services and undertakes to hold harmless and indemnify XMedius and the Payee (where applicable) in that regard in accordance with Section 18 of these Terms and Conditions, unless it is due to XMedius's negligence or willful misconduct.

10.3. In the event that the Customer is governed by restrictive legislation regarding transfer and storage of health data, the Customer acknowledges that it can only use the Services after having entered into a specific agreement to this effect with XMedius.

11. CANCELLATION, SUSPENSION AND TERMINATION

11.1. Subject to a forty-eight (48) hour (or immediately in case of emergency) prior written notice to such effect, XMedius may, at its sole discretion, suspend or cancel without delay the use of, and access to, the Services during the Term, in case of default by the Customer to comply with any provision of this Agreement or in case of misuse of the Services. The Services will only be restored once XMedius receives from the Customer a written undertaking to cease any misuse of the Services and, when applicable, the default has been cured in full to XMedius's reasonable satisfaction. In the event where the Customer is still in default under the Agreement after a thirty-day (30-day)

period following the date of such notice, XMedius will suspend the Services and may then terminate this Agreement without any further delay or notice. With respect to XM Fax, and during that thirty-day (30-day) grace period, XMedius may suspend all transmission and delivery of faxes to Customer, but may continue to receive said faxes and store them on its servers. XMedius's right of termination is in addition to, and without prejudice to, any other rights and remedies available to XMedius, it being understood that in such a case, when the Services have been subscribed to by means of Proposal of Services, Customer shall pay to XMedius or the Payee, when applicable, an amount equal to fifty percent (50%) of the base plan service fees set forth in the Proposal for Services for the remainder of the Term, subject always to applicable taxes. When the Services have been entered into by the installation of the Application, XMedius's right of termination is in addition to, and without prejudice to, any other rights and remedies available to XMedius, it being understood that in such a case, Credits purchased are non-refundable and will be cancelled, irrespective of their validity period.

11.2. The Customer may terminate this Agreement at any time during the Term (i) if XMedius materially breaches the provisions of this Agreement and that such breach is not cured following a thirty-day (30-day) prior written notice to such effect; or (ii) if XMedius fails to meet more than three (3) times over a consecutive period of twelve (12) months the minimum service level set forth under any SLA in force per the provisions of the Proposal for Services, when applicable, it being understood that the Customer shall only be entitled to exercise this right within thirty (30) days from the date of XMedius's breach exceeding such threshold; or (iii) at Customer's entire discretion and without cause following a prior written notice sent to XMedius, and the Payee when applicable. When the Services have been subscribed to by means of a Proposal of Services and in the event where Customer terminates this Agreement before the end of the Term pursuant to (iii) above, Customer shall pay, as a precondition to terminating the Agreement for convenience, to XMedius or the Payee, as the case may be, fifty percent (50%) of the base plan service fees set forth in the Proposal for Services for the remainder of the Term, subject always to applicable taxes and any outstanding fees. When the Services have not been subscribed to through a Proposal of Services, the Credits so purchased shall be non-refundable and cancelled, irrespective of their validity period.

11.3. Upon termination, the Customer's rights to use the Services shall terminate. The provisions of Sections and Subsections 1, 10.2, 11, 12.5, 14, 15, 16, 17, 18 and 21 shall survive the termination of this Agreement.

11.4. XMedius gives the Customer the option to obtain a copy of its Data at its own expense and at the then prevailing rate of service of XMedius, which option may be exercised by the Customer within thirty (30) days following the termination of this Agreement. If the Customer does not exercise the option, the Data may be deleted by XMedius without further notice or delay.

11.5. Upon termination, XMedius will deploy its best business effort to assist the Customer in porting out its fax numbers related to the XM Fax Service.

12. RATES AND PAYMENT FOR THE SERVICES

12.1. <u>Payments:</u> When the Services have been subscribed to by means of a Proposal of Services, the Customer shall pay XMedius, or the Payee when applicable, the fees for the Services as indicated in the Proposal for Services. These fees shall be invoiced monthly and be payable in accordance with the Payment Term following the receipt of said invoice, the Customer hereby acknowledges that it shall pay to XMedius, or the Payee when applicable, the service fees for the current month and the usage fees for the previous month, and any additional charges, the whole as agreed by XMedius and the Customer. Should the Customer select the automatic payment options, XMedius or the Payee, when applicable, shall be entitled to automatically debit its account the amount of the charges incurred once the invoice has been transmitted.

12.2. <u>Credits:</u> When the Services have not been subscribed to through a Proposal of Services, the Customer shall purchase Credits.

12.3. <u>Additional Services:</u> The Customer agrees that the additional services which could be requested from XMedius and which are not covered by this Agreement shall be the subject of a specific written agreement or a notice by XMedius that such service is not part of this Agreement, and may be invoiced to the Customer, by XMedius, or the Payee when applicable, at the rates mentioned in the Proposal for Services, when applicable, or as published from time to time by XMedius, in addition to the fees mentioned in Subsection 12.1 or Subsection 12.2 above.

12.4. <u>Taxes:</u> Prices mentioned in this Agreement do not include applicable taxes.

12.5. <u>Interest:</u> Unless otherwise agreed upon in the Proposal for Services, or unless otherwise restricted by mandatory applicable law, any late payment will carry interest at the following rate: (i) if the main country or region of the Customer's Account is located outside the European Union territory, the interest rate will be one percent (1%) per month (twelve percent (12%) per year); (ii) if the main country or region of the Customer's Account is located within the European Union territory, the interest rate will be the statutory rate applicable to that specific country where the Customer's Account was initially set up, as per the European Commission's directive to such effect, plus a one- time fee of €40 as compensation for recovery costs.

12.6. <u>Non-payment:</u> When applicable and subject to any specific provisions applicable in your jurisdiction, XMedius reserves the right not to provide the Services or withhold the Services to the Customer if fees remain unpaid more than thirty (30) days (or any other timeframe provided by any mandatory applicable law) after the invoice date.

12.7. <u>Pricing Modifications:</u> XMedius reserves the right to change prices (other than fees related to international telecommunications, when applicable, which shall be subject to the provisions of Subsection 12.9 hereinafter) upon a three-month (3-month) prior written notice to such effect given by XMedius, or the Payee when applicable, it being understood that, for Services subscribed through a Proposal of Services, changes to the base service fees shall only apply from the date of renewal of the Term. As for the Customer's remaining Credits, when applicable, they will remain in effect until the end of their validity period. Should the Customer not agree with the price revision, it shall be entitled to terminate

the Agreement by giving a written notice to such effect to XMedius, or the Payee when applicable, within thirty (30) days of the receipt of the price revision notice from XMedius or the Payee, as the case may be, in which case, the Agreement shall terminate upon the end of the Term when the Services are subscribed to through a Proposal for Services, or at the date of notice when the Services were not subscribed through a Proposal for Services.

12.8. <u>Network Overload:</u> In the event that the average fax page transmission is more than sixty (60) seconds, XMedius reserves the right to bill the Customer a surcharge, based on the following calculation: (average transmission duration per page in seconds – 60) / 60 * price per transmitted page * number of pages sent or received. This surcharge shall be billed on a monthly or quarterly basis based on current usage or, as the case may be, shall be debited from the Credits.

12.9. <u>International Telecommunications:</u> In regard to XM Fax, and with respect to the fees related to international telecommunications, such fees may vary from time to time, per the market conditions and thus XMedius, or the Payee when applicable, will inform Customer of such changes. When the subscription to the Services was not made through a Proposal of Services, the international telecommunications fees shall be paid with Credits.

12.10. <u>Premium Numbers.</u> Notwithstanding anything to the contrary herein, the Customer shall be responsible for all additional applicable charges, if any, in regard to calls for which a fee is charged to the caller, such as chat lines, adult entertainment services, or internet-dialer operated services (collectively "**Premium Numbers**"). Without limiting the foregoing, XMedius does not warrant that calls made to Premium Numbers will be supported by the Services.

13. DISCONTINUANCE AND MODIFICATIONS TO SERVICES

13.1. XMedius reserves the right to discontinue any of the Services upon a six-month (6-month) prior written notice to such effect to the Customer. Should the Customer wish, it shall be entitled to terminate the Agreement by giving a written notice to such effect to XMedius or the Payee, as the case may be, within thirty (30) days of the receipt of XMedius's discontinuance of service notice. Neither XMedius nor the Payee shall be liable to the Customer or any third party should XMedius exercise its right to discontinue the Services, subject only to the refund of unused and unexpired Credits at the date of the modification and discontinuation of any such Services, when applicable.

13.2. The Customer has the right to have access to new functionalities added to the Services when XMedius, at its sole discretion, makes them available during the Term.

13.3. XMedius may, at its sole discretion, improve its product and services. In order to optimize the Services, XMedius reserves the right, at its sole discretion, to add, modify or suppress functionalities from the Services at any time and without notice.

13.4. XMedius can occasionally, at its sole discretion, establish and maintain general use practices in order to optimize the use and availability of the Services and prevent any misuse. As part of its practices, XMedius reserves the right to

monitor its system, implement technical solutions and modify these Terms and Conditions to fix or prevent any problem, if and when necessary.

14. DATA PRIVACY

14.1. In providing the Services, it is possible that certain information concerning the Customer and end users that use the Services (the "**End Users**") is collected. If XMedius collects personal information, it will do so in compliance with the Privacy Policy. In the event where XMedius or the Payee is required to disclose information or provide a copy of the Data to a governmental authority under the law or pursuant to a court order, the Customer undertakes to hold harmless and indemnify XMedius and the Payee with respect to any such disclosure or transfer of Data.

14.2. As a technical intermediary, XMedius has no obligation to monitor the Services' use and/or Data transmitted or stored through the Services, besides what is specifically set forth in the Proposal for Services, when applicable. However, and in addition to what is already set forth in the Privacy Policy, XMedius reserves the right to verify certain Data or information at any moment in order to investigate (i) wrongful usage, real or presumed, of the Services, to which the Customer explicitly consents; or (ii) any technical problems or Services failure at the request of Customer.

15. LIMITED WARRANTIES

Subject to any specific SLA entered into by the Parties, XMedius's warranty is limited to the Services. XMedius agrees to notify the Customer of any failure of its Services. Subject to the foregoing, XMedius makes no other warranty, including no warranty of Data integrity or Services availability or in the event where the Customer does not meet the configuration requirements set forth in the Proposal for Services, when applicable, or as specified from time to time by XMedius, or if it fails to comply with the instructions provided from time to time by XMedius with respect to the use of the Services. No Xmedius agent, representative or dealer is authorized to modify, extend or add to this warranty on behalf of Xmedius. This warranty is voided in the event the program or media on which the program is supplied is subject to misuse and/or abuse.

16. WARRANTY EXCLUSION

SUBJECT TO PROVISIONS IN SECTION 15 OF THESE TERMS AND CONDITIONS, THE SERVICES AND ALL THIRD-PARTY SERVICES ARE SUPPLIED "AS IS" AND "ACCORDING TO AVAILABILITY" WITH ALL THEIR FLAWS. XMEDIUS, ITS PAYEES AND ITS LICENSORS SUPPLY THE SERVICES WITHOUT ANY WARRANTY OF ANY KIND, WRITTEN OR VERBAL, STATUTORY, EXPRESS OR IMPLICIT, INCLUDING AMONGST OTHER, WARRANTIES OF CONFORMITY, ABSENCE OF INFRINGEMENT, MERCHANDISE QUALITY, ADEQUATION TO A PARTICULAR USAGE, ACCURACY, NON-INTERFERENCE, COMPATIBILITY WITH COMPUTER SYSTEMS, INTEGRATION, SECURITY, RELIABILITY, PUNCTUALITY, PERFORMANCE OF THE SERVICES, INCLUDING WARRANTIES ARISING FROM COMMERCIAL ACTIVITIES AND THE EXCLUSION OF SUCH WARRANTIES. XMEDIUS, ITS PAYEES AND ITS LICENSORS DO NOT GUARANTEE THAT THE SERVICES WILL NOT BE INTERRUPTED, BE FREE OF ERRORS OR THAT THE SERVICES PROVIDES PROTECTION AGAINST ALL POSSIBLE THREATS TO SAFETY OR THAT THE DATA WILL BE SECURE OR THAT IT WILL NOT BE OTHERWISE LOST OR DAMAGED. NEITHER ADVICE NOR ANY INFORMATION

SUPPLIED BY XMEDIUS, ITS PAYEES, ITS LICENSORS, ITS SUBSIDIARIES, ITS AGENTS, ITS SUBCONTRACTORS OR THEIR RESPECTIVE EMPLOYEES SHALL MODIFY THE CONDITIONS OF THE PRESENT AGREEMENT NOR WILL THEY SERVE AS WARRANTY. XMEDIUS, ITS PAYEES AND ITS LICENSORS DECLINE ANY AND ALL RESPONSIBILITY IN CASE OF DEFORMATION, MISUSE, ABUSIVE USAGE, NEGLIGENCE, INAPPROPRIATE USAGE, INAPPROPRIATE ELECTRICAL CURRENT OR TENSION, REPAIRS CONDUCTED BY A THIRD PARTY, ALTERATIONS, MODIFICATIONS, ACCIDENTS, FIRES, FLOODING, ACTS OF VANDALISM OR NATURAL DISASTERS. EXCEPT FOR THE TERMS, CONDITIONS AND DEFINITIONS CONTAINED HEREIN, THERE SHALL BE NO OTHER REPRESENTATION, WARRANTY OR COMMITMENT WITH RESPECT TO THE SERVICES UNLESS DUE TO XMEDIUS'S NEGLIGENCE OR WILLFUL MISCONDUCT.

17. LIMITATION OF RESPONSIBILITY

17.1. XMEDIUS, ITS PAYEES AND ITS LICENSORS DO NOT EXERT ANY CONTROL OVER AND DECLINE ANY AND ALL RESPONSIBILITY WITH RESPECT TO THE DATA CREATED OR ACCESSIBLE THROUGH THE SERVICES. THE CUSTOMER ACCEPTS NOT TO USE THE SERVICES FOR HIGH RISK ACTIVITIES WHERE AN ERROR COULD RESULT IN SERIOUS PERSONAL DAMAGE OR DEATH.

17.2. XMEDIUS, ITS PAYEES AND ITS LICENSORS CANNOT BE HELD RESPONSIBLE FOR ACCESSORY, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES OR DAMAGES RELATED TO LOSS OF TRUST (IN THE CONTEXT OF CONTRACTUAL RESPONSIBILITY, TORTIOUS OR OTHER), WHICH INCLUDES, WITHOUT LIMITATION, DAMAGES RELATED TO PROFIT LOSS, REVENUE LOSS, GOODS AND EQUIPMENT LOSS, TECHNOLOGICAL LOSS, RIGHTS OR SERVICES LOSS, LOSS OF DATA OR INTERRUPTION OR LOSS OF ACCESS TO THE SERVICES OR EQUIPMENT (COLLECTIVELY THE "**COLLATERAL DAMAGES**") WHETHER SAID COLLATERAL DAMAGES RESULT FROM XMEDIUS'S NEGLIGENCE OR FROM A DELIBERATE FAULT, INDEPENDENTLY OF THE FACT THAT XMEDIUS MAY HAVE BEEN ADVISED OF THE PROBABILITY OF SUCH DAMAGE.

17.3. XMEDIUS, ITS PAYEES OR ITS LICENSORS' RESPONSIBILITY, RESULTING FROM PROVIDING THE SERVICES OR IN ANY OTHER SITUATION RESULTING FROM OR TO THE PRESENT AGREEMENT, AS WELL AS THE EXCLUSIVE REMEDY OF ALL PARTIES WITH RESPECT TO ANY DAMAGES SUFFERED, INCLUDING ANY INDIRECT DAMAGES, BY THE CUSTOMER, MUST BE LIMITED TO, WHEN THE SERVICES HAVE BEEN ENTERED INTO THROUGH THE PROPOSAL OF SERVICES, THE SMALLEST VALUE BETWEEN X) THE PROVABLE AMOUNT OF REAL DAMAGES DIRECTLY SUFFERED BY THE CUSTOMER AND Y) THE NET MONTHLY AMOUNT IN FACT PAID BY THE CUSTOMER TO XMEDIUS OR THE PAYEE FOR THE APPLICABLE SERVICES, OR, WHEN THE SERVICES HAVE BEEN ENTERED INTO THROUGH THE INSTALLATION OF THE APPLICATION, THE VALUE OF CREDITS PURCHASED, DURING THE SIX (6) MONTH PERIOD PRECEDING THE MOMENT WHEN SAID LOSSES OCCURRED.

18. INDEMNIFICATION

18.1. The Customer shall defend, hold harmless and indemnify XMedius, its Payees, its parent corporations, subsidiaries, directors, officers, employees and agents against all claims, requirements, costs, damages, losses, responsibilities and third party expenses, including reasonable lawyers' fees, issued by third parties in

relation to the use of the Services from Customer's Account or arising from the Data transmitted or stored via the Services relating to Customer's Account, including but not limited to any alleged infringement of any patent, copyright, trade secret, right of publicity, right to privacy or of any other exclusive rights, or to any violation of any laws or regulations prohibiting transmission of unsolicited commercial electronic messages or any breach of this Agreement. The Customer shall also defend, hold harmless and indemnify XMedius, its Payees, its parent corporations, subsidiaries, its directors, officers, employees and agents against all claims relating to its use of services of telecom partners or of any other telecommunication or internet company.

18.2. Provided the Customer is not in material breach of the Agreement and is current with payment obligations, XMedius will defend the Customer from any Claim, to the extent it arises solely from Customer's use of the Services in accordance with the provisions of the Agreement. This defense will not apply to an Claim to the extent caused by: (i) modification of the Services by any party other than XMedius; or (ii) the combination or use of the Services with software, hardware, firmware, data, or technology not provided by XMedius to the Customer. As to any such Claim referenced under the preceding items (i) or (ii), XMedius assumes no liability for infringement and the Customer will hold XMedius harmless against any infringement claims arising therefrom. XMedius' obligations in this Section are conditioned upon: (a) the Customer notifying XMedius in writing within 10 days of the Customer becoming aware of an Claim; (b) the Customer not making an admission against XMedius' interests; (c) the Customer not agreeing to any settlement of an Claim without the prior written consent of XMedius; (d) the Customer providing reasonable assistance to XMedius in connection with the defense, litigation, and settlement by XMedius of the Claim; and (e) XMedius' sole control over legal counsel, litigation and settlement of each Claim. XMedius will indemnify the Customer from any judgment finally awarded, or in settlement of, any Claim where all the conditions of this Section are satisfied. If the Services become, or in XMedius' opinion may become, the subject of an Claim, XMedius will, at no expense to the Customer: (x) obtain a right for the Customer to continue using the Services; (y) modify the Services so they become non-infringing but still provide substantially the same functionality as the infringing Services; or (z) terminate the Services and refund the unused portion of any prepaid fees received by XMedius from the Customer. XMedius' entire liability and the Customer's sole and exclusive remedy with respect to any Claim shall be limited to the remedies set forth in this Section 18.2.

19. ENTIRETY OF THE AGREEMENT

The Agreement, including the Proposal for Services when applicable, these Terms and Conditions and the conditions pertaining to additions and updates to the Services (including any contract that could be included with the Services supplied by XMedius to be used with the Services), as well as the related assistance services constitute the entirety of the Agreement with respect to the Services.

20. ASSIGNMENT

This Agreement cannot be assigned by the Customer without the prior written consent of XMedius, which consent cannot be unreasonably withheld by XMedius. XMedius may assign its rights under this Agreement without consent of the Customer, in which case XMedius shall remain jointly and severally liable with such assignee for the fulfillment of all the Terms and Conditions hereof.

21. GENERAL PROVISIONS

21.1. You agree that this is the complete, exclusive and final statement of the agreement between you and XMedius relating to the subject-matter of these Terms and Conditions. If you are headquartered in the United States of America: (i) this Agreement shall be governed and construed in accordance with the laws of the State of New York applicable to agreements entered into and completely executed in the State of New York, regardless of conflict of laws principles and excluding the *United Nations Convention on Contracts for the International Sale of Goods*, if applicable; and (ii) the parties hereto irrevocably consent to exclusive jurisdiction and venue of the courts of the United States District Court for the Southern District of New York or the Commercial Division of the New York Supreme Court for all disputes arising out of or relating to these Terms and Conditions. If you are headquartered within the European Union territory, in the Middle East or on the continent of Africa (the "**EMEA Zone**"): (i) this Agreement shall be governed and construed in accordance with the laws of France, regardless of conflict of laws principles and excluding the *United Nations Convention on Contracts for the International Sale of Goods*, if applicable; and (ii) the parties hereto irrevocably consent to the exclusive jurisdiction and venue of the courts of Paris. If you are headquartered anywhere other than in the United States of America or the EMEA Zone: (i) this Agreement shall be governed and construed in accordance with the laws of the Province of Quebec and the laws of Canada applicable therein, regardless of conflict of laws principles and excluding the *United Nations Convention on Contracts for the International Sale of Goods*, if applicable; and (ii) the parties hereto irrevocably consent to the exclusive jurisdiction and venue of the courts of the Province of Quebec, District of Montreal, Canada for all disputes arising out of or relating to this Agreement. The parties waive all defenses of lack of personal jurisdiction and *forum non conveniens*. Process may be served on either party in the manner authorized by applicable law or court rule.

21.2. If any provision of this Agreement is held to be invalid, such provision shall be severed from this Agreement and the remaining provisions shall remain in full force and effect.

21.3. This Agreement shall be binding upon and inure to the benefit of the parties hereto and to their successors and permitted assigns.

21.4. No waiver of any breach or infringement of this Agreement by the Customer or XMedius shall be deemed to be a waiver by said party of any other right provided hereunder for any other breach or subsequent infringement thereof.

21.5. Either party cannot be held responsible towards the other party for any failure or delay in performance caused by circumstances beyond its control, including, without limitation, force majeure, natural disasters, fires, flooding, labor disputes, riots, interventions by civil or military authorities, acts of war, declared or not, terrorism, failures of utilities and public services, failure of telecommunications services and other unpredictable events.

21.6. The Customer hereby grants to XMedius the right to identify the Customer as a client on XMedius's websites and commercial documents, and for such purpose only, the Customer hereby grants unto XMedius the limited, non- exclusive and royalty-free right to display the Customer's name and logo. The Customer may

withdraw its consent at any time by sending XMedius a notice to such effect.

22.CONTACT US

Should you have any questions or comments about these Terms and Conditions or our Services, and you wish to contact us, please use the contact information as provided below:

XMEDIUS **Americas & Asia Pacific (APAC)**	XMEDIUS **Europe, Middle East & Africa (EMEA)**
275 Frank Tompa Drive Waterloo, ON N2L 0A1 Canada	100 Esplanade Général de Gaulle Coeur Défense – Tour B Etage 30 92400 Courbevoie France

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