

## Nebu General Terms & Conditions (2018)

### 1. DEFINITIONS

The terms set forth below shall have the following meanings:

**Affiliates** - Any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity (including, without limitation, its parents, subsidiaries and related (i.e., “brother” or “sister”) entities

**Agreement** - The agreement concluded between Nebu and Customer, including associated annexes, Order Form, the SLAs, DPA and these Terms & Conditions.

**Applicable Law:** (i) all applicable laws and regulations, government requests and codes of conduct laid down by competent authorities or industries that apply to providing or receiving the Nebu Services and/or End User Nebu Services in the country where the Nebu Services and/or the End User Services are delivered; and also (ii) all regulations, guidelines, conditions, policy rules and/or other requirements that are used by Operators in the country where the Nebu Services and/or the End User Service are delivered.

**Business Day** - Monday to Friday (inclusive), except bank or public holidays in the Netherlands.

**Business Hours** - the hours on Business Days set forth in the SLA.

**Customer** – the party with whom Nebu concludes the Agreement

**DPA** – The Nebu Data Processing Agreement, which reflects the Parties’ agreement with respect to the terms governing the processing of Personal Data under Nebu’s Terms & Conditions in conformance with the GDPR and applicable to all Nebu Services.

**Effective Date** - The effective date set forth in the Agreement.

**End-User Services** – services provided by Customer to end-users using and/or incorporating the Nebu Services.

**Nebu** - Nebu B.V., registered in the Netherlands under number 35022517, or its affiliate identified in the Agreement.

**Order Form** – a document duly executed by both parties in writing to an Agreement, defining the full scope of Nebu Services of an Agreement, including all general and/or specific terms & conditions thereto.

**Collected Data** - means all information that Customer submits, collects, generates or processes with or via the Nebu Services.

**Usage Data** – all data contained within the Nebu Services and/or Software on the usage of the Nebu Services by Registered Users, end-users and/or respondents.

**Traffic** - electronic communication and/or data traffic from and to a mobile telephone and/or fixed line, mobile device or online application. Such traffic includes without limitation SMS, MMS, Push, OTT, RCS, voice and/or data.

**Registered User** – a natural person authorised by Customer to make use of the Nebu Services and/or End-User Services.

**Operator:** a (mobile) electronic communications service provider that provides (wireless) voice and data communication and other related services to other Operators and/or for its subscribed end users.

**Nebu Services** - Any operations, consulting, training, access, hosting, software-as-a-service, development or other service provided by Nebu for Customer under the Agreement.

**SLA** - the Service Level Agreement being part of the Agreement, as amended, including any Annex thereto.

**Software** - The software provided by Nebu to Customer set forth in the Agreement.

### 2. SCOPE

2.1. These Terms & Conditions apply to all request, offers, relations, quotations and Agreements between Nebu and Customer, unless Parties have expressly agreed otherwise in writing.

2.2. The application of any general (purchasing) conditions used by Customer is hereby expressly excluded.

2.3. Reference to “writing” anywhere in the Agreement shall be considered all communication in either electronic or paper format.

2.4. Applicable Law applies to End-User Services and will take precedence upon conflict with the provisions of the Agreement or these Terms & Conditions. Upon request Nebu may inform Customer concerning the contents and/or applicability of said Applicable Law. However, it is Customer’s sole responsibility to familiarize itself with all Applicable Law and to procure independent legal advice in respect thereof and Nebu will not provide warranties in this regard. If for any reason whatsoever the provisions of the Applicable Law shall be deemed not to apply to the relations between Nebu and Customer, or be declared inapplicable, the provisions of the Agreement and these Terms and Conditions shall take precedence.

### 3. OFFERS

3.1. All offers made by Nebu are without obligation and are non-binding unless expressly stated otherwise in writing. If not stated otherwise, an agreement with Nebu shall not be concluded until Nebu has expressly accepted or confirmed an order to that effect in writing.

3.2. Nebu expressly reserves the right to amend its pricing and/or pricing model regarding general price lists, brochures, information on websites and other information provided in the context of offers.



#### 4. LICENSE

- 4.1. Nebu hereby grants Customer the limited, non-exclusive and non-transferable right ("License") to use the Software (in object code form only) and the Nebu Services pursuant to the terms of this Agreement for Customer's internal business purposes. All rights not expressly granted to Customer are hereby reserved to Nebu. Customer agrees that the Software is valuable, confidential and copyrighted property belonging solely to Nebu, and that Customer has not purchased or been sold any interest in the Software other than the Customer's rights as expressly provided herein.
- 4.2. As set forth in the Agreement, the Software and the Nebu Services may be used by Customer or its employees either (a) on Customer's maintained server infrastructure or (b) on equipment maintained by Nebu. If Nebu provides the Software within an application service provider model from a centrally managed facility, the Software will be remotely accessible by Customer and may be located at a data centre operated by Nebu or by a third party under agreement with Nebu. If the Software or the Nebu Services are used on Customer's maintained server infrastructure, Customer will allow remote access to its server infrastructure for administration and auditing purposes.
- 4.3. Customer agrees not to directly or indirectly (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, or underlying ideas, including underlying database, its schema and business logic or algorithms of the Software; (ii) modify, translate, or create derivative works based on the Software; or (iii) rent, lease, distribute, sell, resell, assign, or otherwise transfer rights to the Software; (iv) use the Software for timesharing or service bureau purposes or otherwise for the benefit of a third party (other than to provide its third party customers with survey reports generated by the Software); or (v) remove any proprietary notices or labels on the Software.
- 4.4. Customer agrees not to cooperate with, publish or disclose to third parties any evaluation and/or (competitive) comparison of the Software without Nebu's prior written consent.
- 4.5. Customer acknowledges that Nebu retains exclusive ownership throughout the world of all the Software, any portions or copies thereof, and all rights therein.
- 4.6. Upon termination of this Agreement for any reason, this License will terminate, and Customer, and any user accessing the Software or Nebu Services by any means will cease to use or have access to the Software and Nebu Services.

#### 5. TERM OF AGREEMENT

- 5.1. Unless otherwise set forth in the Agreement or any amendment or addendum thereto, this

Agreement shall remain in effect for 12 (twelve) months from the Effective Date ("Initial Term").

- 5.2. Unless terminated in accordance with this Agreement, the Agreement shall automatically be renewed after the Initial Term on each anniversary of the Effective Date for subsequent periods of 12 (twelve) months each ("Renewal Term(s)") (unless specifically designated, the Initial Term and the Renewal Term(s) are collectively referred to as the "Term"),
- 5.3. After the Initial Term, either party may terminate the Agreement by providing a written notice to the other, not less than ninety (90) days prior to the end of the Term.
- 5.4. Either Party may terminate this Agreement solely in accordance with the provisions provided in this Agreement.

#### 6. SERVICES AND SUPPORT

- 6.1. Customer is responsible for obtaining and maintaining all hardware, software and communications equipment needed to access the Nebu Services, and for paying all third-party access charges (e.g., kiosk, ISP, telecommunications) incurred while using the Nebu Services.
- 6.2. Nebu makes no guarantees as to the continuous availability of the Nebu Services or of any specific feature(s) of the Nebu Services. Nebu will inform Customer of any significant changes to the Nebu Services or the terms and conditions of this Agreement that it may make from time to time. During the Term hereof, Nebu, or its designees, agree to provide support services of its Software and services as defined in the SLA on Business Days during Business Hours.
- 6.3. Nebu has no obligation to provide Customer with hard-copy documentation, upgrades, enhancements, modifications, or other support unless specifically contracted for.

#### 7. OBLIGATIONS

- 7.1. Customer will ensure a secure, continuously working connection at its own cost to the Nebu Services.
- 7.2. Customer shall ensure that access to the connection as per 7.1 and the account of Customer is limited to authorized employees of Customer and that log-in credentials are stored securely. It is not permitted to authorize use to other persons and/or third parties.
- 7.3. Customer shall only use the Nebu Services for its intended and normal purpose and/or purposes as agreed and described in the Agreement. Any change to the Service is to be requested in writing.
- 7.4. Customer is responsible for the content of Traffic and Collected Data sent and used by Customer, the lawfulness of the Traffic and Collected Data and the identity of the relevant end user or respondent, including as to whether such end

user or respondent has "opted in" to receive applicable Traffic and/or Collected Data, and guarantees that these comply with Applicable Law. The Customer will maintain up to date records of end user consent or proof of lawful basis and provide these to Nebu upon request. The Customer will not send any unsolicited traffic, nor other unethical, illegal, punishable or otherwise fraudulent or illicit traffic or content.

- 7.5. Customer will not use the Software or Nebu Services in any way for spamming, chain letters, junk mail or distribution lists to contact any person who has not given specific permission to be included in such. Customer agrees not to transmit or permit its employees to transmit through the Nebu Services any unlawful, harassing, libellous, abusive, threatening, harmful, vulgar, obscene or otherwise objectionable material of any kind. Customer will only use the Software and Nebu Services for lawful purposes, in compliance with all Applicable Laws including, without limitations, copyright, trademark, privacy, obscenity and defamation laws. Unlawful activities may include (without limitation) storing, distributing or transmitting any unlawful material, attempting to compromise the security of any networked account or site, or making direct threats of physical harm.
- 7.6. Customer accepts that Nebu may be obliged by Operators and/or competent authorities to provide the data of Customer as described in the previous paragraph and the data of other parties that are being connected via Customer. Customer shall provide all such data requested by Customer within three (3) Working Days.
- 7.7. Customer shall cooperate with any audit which investigates whether the Customer is acting in accordance with Applicable Law.

## 8. RELATIONSHIP OF PARTIES

- 8.1. Nebu is an independent contractor and is not an employee, agent, servant, partner or joint venture of Customer. Customer shall determine the Nebu Services to be provided by Nebu, but Nebu shall have sole control over how it provides those services.
- 8.2. Nebu shall pay all wages, salaries, and other amounts due to its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them relating to social security, income tax withholding, unemployment compensation, worker's compensation, and similar matters.

## 9. PRICES, PAYMENT & TAXES

- 9.1. Customer shall pay Nebu in accordance with the terms set forth in this Agreement.
- 9.2. Unless explicitly agreed otherwise in this Agreement, all payments required under this Agreement shall be made in Euros.
- 9.3. Customer shall make all payments without suspension, set-off or deduction within thirty (30)

days of invoice date, unless the Agreement explicitly contains different payment terms.

- 9.4. Nebu may charge interest, which Customer shall promptly pay, on all amounts not in dispute and not paid prior to the due date. Interest shall accrue at a rate of 1.5% monthly, beginning on the thirty-first (31st) day after the invoice date, and ending on receipt of payment. If the above rate exceeds the maximum amount permitted under applicable law, the maximum amount permitted under applicable law will accrue.
- 9.5. If Customer disputes any portion of its invoice, Customer shall pay the undisputed portion of the invoice in full by the due date and submit a written claim fully documenting the reasons the remaining amount is disputed. Upon receipt of such claim, Nebu will undertake an investigation of the disputed charges. At the conclusion of the investigation, Nebu will notify Customer of any amount determined by Nebu to be correctly charged and such amount will become immediately due and owing. Amounts determined by Nebu to have been correctly charged will be increased with monthly interest, as stated in subsection 9.4. Unless such claim is submitted in this manner and received by Nebu within ten (10) calendar days of the date the invoice is issued, Customer waives all rights to dispute such charges, unless otherwise provided by law.
- 9.6. Customer's access to the Nebu Services and Software may be suspended if Customer's account is delinquent. Nebu may impose a charge to restore suspended accounts.
- 9.7. Unless otherwise agreed in writing by Customer and Nebu, Customer shall pay any and all sales taxes, fees, tariffs, or other similar levies imposed by any government, governmental unit or similar authority with respect to the charges made or payments received in connection with the Nebu Services. Customer shall indemnify Nebu for and against all claims by tax authorities in this regard and shall indemnify Nebu for all losses, penalties and costs arising thereof.
- 9.8. Where bank fees occur, Customer shall bear the costs imposed by its own bank, any intermediate bank and the bank of Nebu as indicated on the invoice when making payments under the Agreement. The net amount received by Nebu shall correspond to the amount invoiced. In this regard, Customer remains liable to pay the any shortfall of outstanding amounts due.
- 9.9. Nebu reserves the right to adjust prices annually in line with inflation at the commencement of a new calendar year for the provision of software packages specified within the Agreement, and will notify Customer in advance of any changes, with reasonable notice prior to the 90-day renewal termination date.
- 9.10. Notwithstanding the above, Nebu is in every instance entitled to change its prices following



from changes to Applicable Law, from an increase in the purchase price of messages and/or from rates changes effected by Operators, increase of the purchase price of (key global) suppliers of which prices cannot be reasonably controlled by Nebu or its subcontractors. Nebu shall inform the Customer in advance of such price increases as soon as reasonably possible and will substantiate the reason for the adjustment.

## 10. ASSIGNMENT

- 10.1. This Agreement is non-transferable and non-assignable, in whole or in part, by Customer without the prior written consent of Nebu, such consent will not be unreasonably withheld.
- 10.2. Notwithstanding anything to the contrary contained in this Agreement, if ownership of Nebu is materially changed through merger, acquisition or other change in control, Nebu may assign its rights and obligations under this Agreement to its successor without notice or the consent of Customer.
- 10.3. Any prohibited assignment shall be null and void. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns.
- 10.4. Nebu is entitled to engage affiliates and third parties for the performance of the Agreement.

## 11. CONFIDENTIAL INFORMATION & CUSTOMER DATA

- 11.1. For purposes of this Agreement, the term Confidential Information shall mean all business and technical information and documentation of any kind and other similar data made available, directly or indirectly, by a party to this Agreement and its affiliates ("Discloser") to another party to this Agreement and its affiliates ("Recipient"), or received by a party to this Agreement during the Term hereof. Confidential Information includes the Software and any other software, data, processes, documentation, and other information, that is regarded by the Discloser as confidential or proprietary and that: (i) is communicated to the Recipient in written or other tangible form, or (ii) is disclosed to the Recipient orally or by inspection, or (iii) any other information disclosed or obtained that the Discloser treats as confidential and proprietary.
- 11.2. During the Initial Term, any Renewal Terms, and thereafter, all Confidential Information disclosed to or obtained by a Recipient in the course or conduct of the Nebu Services shall be kept in confidence and shall not be divulged by the Recipient.
- 11.3. Nothing contained in this Agreement will in any way restrict or impair a party's right to use, disclose, or otherwise deal with any information which: (i) was in the Recipient's possession, without obligation of confidentiality, prior to the Recipient's first receipt of the corresponding information; (ii) is now or hereafter becomes,

through no act or failure to act on the Recipient's part, generally available to the public on a non-confidential basis; (iii) was heretofore or is hereafter made available on an unrestricted basis to the Recipient from a source other than the Discloser, which source legally and properly received and disclosed the Confidential Information; (iv) becomes available on an unrestricted basis to a third party knowingly from the Discloser; (v) is hereafter independently developed by or for the Recipient or an affiliate thereof by someone who had no access, directly or indirectly, to the Discloser's Confidential Information.; or (vi) is released for disclosure with the Discloser's written consent.

- 11.4. Customer shall be the owner of all Customer data (including Customer Confidential Information) provided to or received by Nebu during the Term hereof. Customer data and Confidential Information shall be provided solely for the purposes of this Agreement and Nebu shall have no rights in or any license to such data and Confidential Information. Customer data and Confidential Information (and all copies thereof in any medium) shall be returned to Customer or destroyed, according to Customers instructions, within 14 days of termination of this Agreement for any reason.
- 11.5. Personal data of the Customer (and Registered Users) is collected by Nebu. This data is required for contract management, usage of the Nebu Services and/or Software and customer support, which includes informing Customer on changes, operations and/or anomalies in the Nebu Services and/or Software. The data can additionally be used for statistical research and to contact Customer for marketing activities of Nebu and its affiliates.
- 11.6. Nebu processes Traffic and Usage data (including personal data), for the following purposes: providing continuous information to Customer through Nebu Analytics, billing, financial administration, handling complaints and disputes, traffic control, providing information to emergency services, preventing fraud and preventing criminal activities.
- 11.7. The processing of data mentioned in the previous articles 11.5 and 11.6 is necessary for the delivery and operation of the Nebu Services and associated invoicing, therefore Nebu is a Controller for the aforementioned data. Nebu will act according to Applicable Law associated with its status as Controller, as defined in the DPA.
- 11.8. As a Controller of data referred to in article 11.7, it is Nebu's policy to respect the privacy of its users. Nebu provides information such as Customer's name, address, and bank account numbers to organizations (such as credit verification and billing services) to ensure that Nebu receives proper payment for Nebu Services. Nebu will not share, rent, sell, or trade personal





information (including e-mail addresses) that identifies its customers or users to third parties. Nebu will not share, rent, sell, or trade data contained in Customer's account. However, Nebu may use this information to contact Customer to ensure that it is satisfied with Nebu products or services, learn about any ideas Customer may have to improve Nebu's offerings, call Customer's attention to additional offerings or services provided by Nebu, and communicate other information that Nebu believes will be useful. In addition, Nebu may share e-mail addresses and other information required to ensure that Nebu subcontractor can provide their services forming part of Nebu Services and/or service and support direct to Customer.

11.9. Sharing of data for which Nebu is Controller shall only be done under fully executed data processing agreement, identifying such parties as (sub-)Processor.

11.10. Nebu may occasionally ask Customer to provide demographic or personal preference data. If Customer elects to provide such data, Nebu may use it to analyse the characteristics of Nebu customers and visitors to the Nebu Website. Nebu may also use such data to customize the specific information provided to Customer, or tailor it to better meet Customer's needs. Nebu may share information aggregated from such data with third parties without notifying Customer.

11.11. Registered User and Account Data given to Nebu are considered confidential. Nebu's privacy policy is subject only to Nebu's obligation to comply with applicable laws and lawful government requests, to operate its business properly, and to protect its users or itself. Nebu reserves the right to contact users of the Nebu Services via e-mail or other means to inform them of their account status or changes or alterations to the Nebu Service, or to inform them about additional offerings or services being provided or contemplated. Users may at any time request that they not receive informational e-mail messages not related to their account activity or current use of the Nebu Services by sending their name and address to the e-mail address detailed in the Agreement for such purpose. Nebu reserves the right at any time to change its privacy policy.

## **12. INTELLECTUAL PROPERTY RIGHTS**

12.1. Customer's right to use the Software and related documentation is limited as provided in this Agreement, the Agreement, and subsequent Agreements or orders and may not be assigned or otherwise transferred without the prior written consent of Nebu. These restrictions shall survive the termination of this Agreement. Nebu hereby reserves all rights to the Software and related documentation.

12.2. Title and full ownership rights in and to the Software and related documentation made available for use by Customer pursuant to this Agreement shall always remain with Nebu. Customer understands and agrees that the Software and related documentation is proprietary information and a trade secret of Nebu whether or not any portion thereof is or may be validly copyrighted or patented.

12.3. Customer acknowledges that Nebu has exclusive rights, title and interest in and to the Software and related documentation. All applicable rights to patents, copyrights, trademarks and trade secrets in the Software and related documentation and modifications thereto made at Customer's request are and shall remain in Nebu. Customer agrees that it will not at any time do or cause to be done any act or thing impairing or tending to impair any part of such rights, title and interest. Customer agrees that its use of the Software and related documentation shall not create in Customer's favour any right, title or interest in the Software and related documentation except as expressly provided herein.

12.4. Nebu remains free to provide similar services to other customers provided it does not violate the terms hereof concerning Confidential Information of Customer. While providing the Nebu Services, Nebu may develop inventions, technologies, methods, techniques, trade secrets, know-how and other intellectual property concerning, without limitation, the provision of remote computer services, information technology services, telecommunications, data networks and data centre management (collectively IP). Except as provided herein, ownership of all intellectual property rights and all other right, title, and interest in all IP shall automatically vest in and remain the exclusive property of Nebu.

## **13. NON-DISCLOSURE**

13.1. Customer shall not disclose to any third party any terms of this Agreement or the Agreement, except where Customer is required to make disclosure by decree, court order, law, or applicable regulation, or where Customer reasonably deems such disclosure necessary to its auditors, accountants, bankers, attorneys, financial intermediary, or regulatory agencies.

13.2. Customer may make, at Customer's expense, such number of copies of documentation provided to it by Nebu as may be necessary or required for Customer's use of the Software.

## **14. PATENT OR COPYRIGHT INFRINGEMENT**

14.1. Nebu hereby agrees to indemnify and hold Customer harmless from any third party claim that any Software employed by Nebu for Customer's benefit infringes any patent, and/or any copyright, trade secret or other property right held by such a third party, provided that Nebu is

notified promptly by Customer of any such claim (including any threatened claim) and Nebu shall have sole control of the defence with respect to same (including without limitation, the negotiations and settlement of such claim).

- 14.2. If such third-party claim as described above has occurred or, in Nebu's opinion, is likely to occur, Customer agrees to permit Nebu, at Nebu's option and expense, either to procure for Customer the right to continue using the Software, to replace the Software, or to modify the same, so that it becomes non-infringing. If none of the foregoing alternatives is reasonably available, after using commercially reasonable efforts, Customer agrees that Nebu may terminate this Agreement. In such case, Customer shall be entitled to a prorated refund of the fees paid hereunder.
  - 14.3. THE FOREGOING CONSTITUTES THE ENTIRE LIABILITY OF NEBU AND THE SOLE REMEDY OF CUSTOMER WITH RESPECT TO ANY CLAIM OR ACTION BASED IN WHOLE OR IN PART UPON INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET OR OTHER PROPRIETARY RIGHT OF ANY THIRD PERSON.
  - 14.4. Except for the foregoing infringement claims, Customer shall indemnify and hold harmless Nebu, its officers, employees and agents from and against any claims, demands, or causes of action whatsoever, including without limitation those caused by, or arising out of, or resulting from, the exercise or practice of the License granted hereunder by Customer or its officers, employees or agents.
- 15. LIMITED WARRANTY**
- 15.1. Nebu warrants that it will provide the Nebu Services in accordance with the Agreement. All Nebu Services shall be provided in a timely manner by qualified persons in accordance with the degree of care observed in the industry generally. Nebu does not warrant that the Nebu Services, Software or other software employed by it for Customer's benefit is error-free.
  - 15.2. The Customer recognizes that access to the internet, the GSM network and other communication media is subject to uncertainties, including but not limited to, in relation to availability of services, reliability of transmission, authorizations, authenticity and data security. There is no warranty that the Services are, or will be completely free of faults or defects. Nebu shall not be liable if an interruption of the service was due to a fact beyond its control, such as, but not limited to, disturbance of radiotelephone and/or telecom transmissions outside the direct control of Nebu. In the event of a fault or defect, Nebu shall use its reasonable efforts to restore the Nebu Service in accordance with proper practices recognized in the electronic communications industry.
  - 15.3. Customer must notify Nebu in writing, within fifteen (15) days of delivery of Nebu Services of a claim that Nebu has failed to deliver the Nebu Services in accordance with this Agreement or the applicable Agreement. If Nebu determines that the Nebu Services are not being delivered in accordance with this Agreement or the applicable Agreement, its sole obligation under this warranty is to bring the Nebu Services into compliance with this Agreement or the applicable Agreement in a manner consistent with its regular business practices.
  - 15.4. THE ABOVE IS A LIMITED WARRANTY AND IT IS THE ONLY WARRANTY MADE BY NEBU. NEBU HEREBY EXPRESSLY DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO, ALL EXPRESS WARRANTIES, ALL IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES OF MERCHANTABILITY. NEBU HAS AUTHORIZED NO WARRANTY WITH RESPECT TO THE SOFTWARE AND SERVICES AND CUSTOMER HAS NOT RELIED ON ANY OTHER WARRANTY IN ITS DECISION TO EXECUTE THIS AGREEMENT.
  - 15.5. Customer warrants that the content and the promotion of the End User Service under no circumstances infringes the (intellectual property) rights of third parties or is in breach of Applicable Law.
  - 15.6. Customer shall indemnify, defend and hold harmless Nebu and its affiliates against all liabilities, losses, damages, claims, penalties, fines and costs (including reasonable legal costs) resulting from or arising out of the failure by Customer to comply with article 7 and/or Applicable Law. The indemnity includes, but is not limited to claims made by authorities, organizations and institutions that supervise compliance with the Applicable Law and the content of the Traffic and/or Collected Data, claims by third parties and also all claims made by Operators in connection with the failure by Client to comply with the Applicable Law.
  - 15.7. Nebu will not be responsible for any Service failures or faults which occur, or losses suffered by the Customer, as a result of a breach by the Customer of the provisions of this Agreement, including but not limited to the Customer's obligations in Article 7.
- 16. LIMITATION OF LIABILITY OF NEBU**
- 16.1. NEBU SHALL NOT, IN ANY CIRCUMSTANCES, BE LIABLE WHETHER IN AGREEMENT, TORT OR OTHERWISE, FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE HOWSOEVER ARISING AND OF WHATSOEVER NATURE SUFFERED OR INCURRED BY CUSTOMER, INCLUDING (WITHOUT LIMITATION) LOSS OF PROFITS, LOSS OF AGREEMENTS, LOSS OF DATA, LOSS OF OPERATION TIME, OR LOSS OF THE USE OF ANY

EQUIPMENT OR PROCESS SUFFERED DIRECTLY OR INDIRECTLY BY CUSTOMER, OR LOSS OF ANTICIPATED SAVINGS, WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH LOSS AND WITHOUT REGARD TO ANY DETERMINATION THAT A REMEDY SPECIFIED HEREUNDER FAILS ITS ESSENTIAL PURPOSE.

- 16.2. Nebu's liability for breach of Agreement, acts of tort, negligence or otherwise, shall be limited to the amount paid by the Customer to Nebu in the twelve (12) months prior to the occurrence of the event that caused the loss or damage, subject to a maximum of EUR 100,000 per event giving rise to liability, and subject to a further maximum of EUR 250,000 in any period of twelve months.
- 16.3. The limitations on liability specified in Article 16.1 and 16.2 shall cease to apply if and insofar as the loss is due to the wilful intent or gross negligence of the liable party, or in case of damage to life, body and health, unless applicable law allows a limitation of liability for such claims, in which event the aforementioned limitation or liability provisions shall apply.
- 16.4. If Nebu suffers a loss as a consequence of the Customer acting contrary to an obligation under the Agreement, these Terms and Conditions or Applicable Law, the Customer is obliged to compensate Nebu for the resulting loss.

#### 17. FORCE MAJEURE

- 17.1. Nebu shall not be liable for any delay in, or failure of, performance hereunder due to any contingency reasonably beyond its control, rendering performance commercially unreasonable including, but not limited to, an act of God, war (declared or undeclared), terrorist acts, mobilization, riot, strike, labor dispute, fire, flood, shortages, or failure or delays of energy, materials, supplies or equipment, unavailability of transportation, goods or services, transportation embargoes or delays, or breakdowns in machinery or equipment, labor disputes, blockades, governmental restrictions or actions; provided, however, Nebu shall exert its reasonable best efforts to eliminate or cure or overcome any of such causes and to resume performance of its obligations.
- 17.2. Upon the occurrence of a force majeure event as described in the previous paragraph and if the force majeure event as described in the previous paragraph substantially prevents, hinders or delays performance by Nebu of its obligations pursuant to the agreement, Nebu shall be entitled to delay the agreed delivery of Nebu Services without incurring any liability.
- 17.3. If Nebu is prevented from complying with its obligations due to force majeure, it shall make this known to the Customer as soon as reasonably possible.

#### 18. TERMINATION & SUSPENSION

- 18.1. This Agreement may be terminated before its expiration or before the Term set above, as follows:
- If Customer fails to pay any amount due hereunder on or before the due date or violates the non-disclosure provisions of paragraph 10 hereof;
  - Should one of the parties commit a breach of any of the terms of this Agreement, such as, but not limited to a), the other party may give written notice of such breach to the breaching party and communicate its intention to terminate this Agreement if the breach is not cured within thirty (30) days from the date of receipt of such notice. Should the breach not be curable in such thirty (30) day period, the breaching party shall cure the breach in period necessary in good faith to remedy the breach; or
  - If Customer commits an act of bankruptcy, suspends payment to its creditors or generally is unable to pay its debts as or when they fall due or makes any composition or arrangement with its creditors, or goes into liquidation, whether voluntary or compulsory, or if any order is made or a resolution is passed for the winding up of Customer (except for the purpose of amalgamation or reconstruction), or if Customer ceases or prepares to cease trading, or if Customer suffers the appointment of a receiver, administrative receiver, administrator or similar officer of the whole or part of any of its assets.
- 18.2. The right to terminate this Agreement is in addition to any other right set forth by the law and shall not replace such rights, and the exercise of one or more rights shall not be interpreted as a waiver of any parties' ability to exercise another right(s). The failure by one of the parties to exercise the right to terminate this Agreement shall not be interpreted as a limitation of the right of termination or other subsequent rights.
- 18.3. If the Customer acts contrary to an obligation under the Agreement, these Terms and Conditions, Applicable Law, Operator guidelines or the obligation to pay the amounts due to Nebu within the agreed payment term, Nebu is entitled to suspend provision of the Nebu Service without limitation to any other remedy available to Nebu, including cancellation of this Agreement and/or a claim for specific performance and/or damages.
- 18.4. Customer remains liable for payment for the period that the provision of the Nebu Service is suspended in accordance with the provisions of this Article.
- 18.5. As soon as the reason for suspension in accordance with the provisions of this Article is removed by Nebu, Nebu shall resume delivery of the Nebu Service unless Nebu believes that the



nature and/or frequency of Customer's non-compliance is such that the provision of the Nebu Services should be cancelled permanently. If applicable, the activation costs which Nebu incurs in this respect will be charged to the Customer.

## 19. NOTICE

- 19.1. All notices, demands and requests which either party hereto is required or may desire to give the other party shall be deemed to have been properly given (a) if delivered personally, on the date of such delivery, (b) if sent by registered or certified mail, return receipt requested, postage prepaid, on the date of delivery as evidenced by such receipt, or (c) upon delivery by overnight courier service which provides evidence of delivery, on the date of delivery so evidenced. Notices given pursuant to this Section shall be addressed at the address listed in the Agreement, unless Nebu is notified in writing of a different address or a change in location for Customer.

## 20. GOVERNING LAW

- 20.1. This Agreement is governed by the laws of the Netherlands, without regard to its conflict of laws principles.
- 20.2. Parties shall use good faith efforts to resolve any dispute, claim or proceeding arising out of or relating to this Agreement.
- 20.3. In the event that any disputes cannot be resolved at this level then the senior executives of the parties who have authority to settle the same shall use good faith efforts to resolve the same.
- 20.4. If the matter is not resolved through negotiation, it shall be settled by mediation in accordance with the Mediation Rules of Stichting Geschillenoplossing Automatisering (Automation Industry Disputes Resolution Foundation), The Hague, the Netherlands. To initiate mediation a party must give notice in writing to the other party requesting mediation pursuant to the Mediation Rules.
- 20.5. If the parties fail to settle the matter by mediation, the matter will be settled exclusively by the competent court in Amsterdam, the Netherlands. In this event, each of the parties shall have the right to take proceedings in any other jurisdiction for the purposes of enforcing a judgment or order obtained from the court.

## 21. MISCELLANEOUS

- 21.1. This Agreement constitutes the entire, sole, and exclusive Agreement between the parties and supersedes all prior and contemporaneous Agreements, representations, understandings, arrangements, communications and negotiations between the parties. No warranties, representations, guarantees, or other terms and conditions not contained in this Agreement shall be of any force or effect.
- 21.2. No amendment, modification or other change to the terms and conditions of this Agreement shall

be effective unless such amendment, modification or waiver is in writing signed by both parties.

- 21.3. In case of conflict between the Agreement and these Terms & Conditions, the Agreement shall have precedence.
- 21.4. Except as provided in paragraph 10, no assignment by a party to this Agreement of its right, title and interest hereunder shall relieve such party of its obligations hereunder unless the other party otherwise agrees in writing. Any assignment in violation of this Agreement shall be void and be of no force or effect.
- 21.5. The provisions of paragraphs 9, 11, 12, 13, 14, 15, 16, 20 and this section 21.5 shall survive the termination for any reason of this Agreement.
- 21.6. Except as expressly provided herein, no waiver of any term, provision or condition of this Agreement, whether by conduct or otherwise, in any one or more instances shall be deemed to be, or shall constitute, a waiver of any other instance or provision, whether or not similar, nor shall such waiver constitute a continuing waiver. No waiver or modification of this Agreement shall be binding unless executed in writing by an authorized officer of the parties hereto.
- 21.7. If any provision of this Agreement is declared invalid by any tribunal, then such provision shall be deemed automatically adjusted to the minimum extent necessary to conform to the requirements for validity as declared at such time and, as so adjusted, shall be deemed a provision of this Agreement as though originally included herein. In the event that the provision invalidated is of such a nature that it cannot be so adjusted, the provision shall be deemed deleted from this Agreement as though such provision had never been included herein. In either case, the remaining provisions of this Agreement shall remain.

## 22. ADDITIONAL TERMS AND CONDITIONS VOICE

If Voice (telephony/DaaS) Services are a part of the Nebu Services provided to Customer under the Agreement, the following conditions apply:

- 22.1. The applicable prices and rates for Voice Services are available on request from Nebu and/or described in the Agreement. Unless a fixed price has been expressly agreed, Nebu reserves the right to change prices and rates at any time without notice. Customer shall be charged for all Traffic that is sent to and received by the Voice Service via the connection of Customer. The billing period is based on CE(S)T time zone.
- 22.2. Customer guarantees that it will refrain from: (i) using the Voice Services for other than normal use as intended by Nebu, (ii) infringing intellectual property rights of third parties, (iii) misusing allocated access codes or issuing such to third parties, (iv) teasing, spamming, offending, causing hurt or annoyance, hacking or causing a





nuisance in some other way, (v) establish connections on a large scale to sales numbers or services, (vi) as well as every action as a result of which payments owing to Nebu are improperly restricted.

- 22.3. Customer shall not use or permit others to use the Voice Services in a manner that is fraudulent or unauthorized. Nebu may, without notice and without liability, interrupt all Customer's communications to prevent or terminate fraudulent and/or unauthorized activities.
- 22.4. Nebu is obligated to use reasonable efforts to enable interoperability of services in order to make telephone numbers reachable from as many networks as possible. However, Nebu must rely on the interoperability of services of Operator(s) in each country for end-to-end connectivity. Nebu does not warrant and represent that all telephone numbers from all networks will be reachable at all times.
- 22.5. Customer is responsible to securely connect its network or systems with the Nebu Services. Customer is responsible for all Traffic submitted to the Nebu Services or initiated from the Customer account and is without exceptions also fully responsible for the payment of all aforementioned Traffic. Customer is responsible for its own calling behaviour, call destinations and Traffic to and/or through the Nebu Services.
- 22.6. Customer is required to send along the correct information with regard to the location where the call is initiated/set up ("Caller" or "Sender ID") with every call that comes through the Voice Services via the connection of Customer. Withholding that actual location information - intentionally or by accident - is in any case, but certainly in the event of trying to lower costs, considered to be unreasonable use of the Service by Customer and is strictly forbidden. In this event, Nebu may take immediate proportionate measures including but not limited to applying a surcharge and disconnecting the Service.
- 22.7. Customer shall indemnify, defend and hold harmless Nebu and its affiliates against all liabilities, losses, damages, claims, penalties, fines and costs (including reasonable legal costs) resulting from or arising out of the failure by Client to comply with this article.