d!nk Terms and Conditions

Unless otherwise agreed between the Parties, these Terms and Conditions apply to the licensing of the dINK software (including any demo versions of dINK software) and all services provided by dINK nv to the Customer, in particular with respect to the dINK software. Together with the Cover Document and Annexes, these Terms and Conditions shall constitute the entire Agreement between the Parties.

1. Definitions

In this Agreement, the following definitions will apply unless inconsistent with the context or otherwise specified.

"**Additional Services**" means services delivered by dINK nv that are not within the scope of the Setup Services, Configuration Services, Hosting Services, Content Creation Services or Helpdesk Services, but may be delivered by dINK nv at the request of the Customer, as described in clause 3.6;

"**Affiliate**" of a Party means in relation to a Party (i) any entity under the control of such Party; and (ii) any entity controlling such Party; and (iii) any other entity under the Control of a Controlling entity under (ii);

"**Agreement**" means, collectively, these Terms and Conditions, the Cover Document and all Annexes;

"**Annex**" means any section of the Agreement entitled "Annex";

"**Branding Material**" means all materials (like backgrounds, launch screen, homescreen icon) that are used by the Customer, or that are supplied to dINK nv, in order to adapt the default look-and-feel of a dINK app to the branding of the Customer;

"**Content Admin**" means the Customer's central panel to manage the dINK Instance;

"**Confidential Information**" shall have the meaning as set forth in clause 9.1;

"**Configurations**" means the configuration, parameterization and other activities in respect of dINK that differentiate one dINK Instance from another dINK Instance. Configurations may include the integration of dINK with CRM system or user management systems. Configurations can be implemented either by dINK nv, or (where applicable) the Customer or the VAS Partner. Unless otherwise agreed, any Configurations required by the Customer and performed by dINK nv shall be charged as Additional Services;

"**Configuration Services**" means the services provided by dINK nv to apply and implement the Configurations requested by the Customer, as described in clause 3.2;

"**Content**" means any data generated by the Customer into the dINK Instance;

"**Content Creation Services**" means the Services provided by dINK nv that consist of the processing and/or creation of Content, as described in clause 3.4;

"**Content Creation Fee**": the fee covering the handling and hosting of the Customer Content;

"**Control**" (and derivatives of this term) means with regard to an entity, the power to direct or cause the direction of the management and policies of an individual or entity, whether through the ownership of voting securities, by contract or otherwise;

"**Cover Document**" means the first section of this Agreement entitled "Cover Document";

"**Customer**" means the party so identified in the "Customer details" section of the Cover Document;

"**Data Protection Legislation**" means EU Directive 95/46/EC, General Data Protection Regulation (GDPR), and any national implementations that apply to the Parties' processing of personal data;

"**Device Management System**" is a system for managing the fleet of mobile devices in an enterprise.

"**dINK**" means dINK nv's proprietary tablet publishing application. dINK contains features such as: a content composition engine for the creation of interactive publications; manipulation and storage of Hosted Data; deploy publications to libraries on tablets; collect and process usage.

"**dINK Instance**" means an instance of the dINK application that is set up, customized and configured for the Customer in accordance with and within the limits of this Agreement, together with all Hosted Data;

"**dINK License**" means the license accorded to the Customer for using dINK, as described in clause 2;

"**Enterprise App Store**" is an application on the tablets of Users for distributing enterprise apps.

"**Effective Date**" means the date this Agreement is signed by both Parties (as evidenced by the dates of signature indicated in the Cover Document);

"**Error**" means a substantial, verifiable and reproducible non-conformity of the dINK Instance with the User Guide;

"**Error Correction**" means either the provision of a workaround, the temporary correction of the Error, or the correction of the Error via delivery of a new version, without materially reducing the functionality of the affected dINK Instance;

"**Force Majeure**" means any cause beyond a Party's reasonable control, such as acts from authorities, war, fire, flood, explosion or civil commotion, telecom breakdowns (including "denial of service" attacks and similar unavailability of internet connections), strikes, failure of a third party, software bugs in third party software, industrial action, etc.;

"**Front-End Support**" means the support provided to assist Users and/or Managers with the use of the dINK Instance. Front End Support will typically include answering basic questions, and guiding users through the functionality of the software. The Cover Document specifies whether Front End Support Services shall be provided by dINK nv, Customer, or by a VAS Partner;

"**Helpdesk**" means the point of contact that dINK nv makes available for answering questions regarding the use of the dINK Instance. The Helpdesk can also be used by the Customer for Error reporting and the follow-up of Error Corrections;

"**Helpdesk Services**" means the services provided by dINK nv with respect to the Helpdesk, as described in clause 3.5;

"**Hosted Data**" means any electronic data (including lists, artwork, content, assets, images, accounts of Customers, accounts of Users, etc.) stored in a dINK Instance, after being uploaded by the Customer or a User;

"**Hosting Services**" means the Services described in clause 3.3;

"**Library**": the collection of Customer publications on the tablet produced by the dINK Instance;

"**License Fees**" means the fees to be paid by the Customer for the dINK License and the provision of Hosting and Helpdesk Services during one month. The amount of the License Fees and their payment periodicity shall be set forth in the Cover Document;

"**Malicious Code**" means viruses, worms, time bombs, Trojan horses and other harmful or malware, malicious code, files, scripts, agents or programs;

"**Manager**" means a staff member of the Customer, or any other person appointed by the Customer to manage the Customer's dINK Instance;

"**Party**" means either dINK nv or the Customer, while "**Parties**" means both dINK nv and the Customer;

"**Product Support**" means support services with respect to the dINK Instance that are not handled by Front-end and Service Support (for example, due to the complexity involved). Product Support services shall always be provided by dINK nv;

"**Publishing**" means the outcome of creation and making available of publications with the dINK tools;

"**Service Support**" means support services with respect to the dINK Instance aimed to restore the service as soon as possible when the system is down;

"**Setup Fee**" means the one-time fee to be paid by the Customer to dINK nv for the initial setup and configuration of the dINK Instance;

"**Setup Services**" means the services that relate to the initial setup of the dINK instance: creation of enterprise account in the dINK content admin, creation of the kiosk app with branding material;

"**Services**" means the services provided by dINK nv to the Customer. The Services consist of Hosting Services, Configuration Services, Content Creation Services, Helpdesk Services and/or Additional Services;

"**Software Development Tools**" means any development tool (software in object code, as well as documentation in-soft copy and/or hard-copy) and/or any other value adding tool provided by dINK nv in relation to dINK;

"**Source Code**" means the human readable form of software programs;

"**Standard Rates**" means dINK nv's standard pricing for all Additional Services delivered by it or other services to which the standard pricing applies. The Standard Rates that apply at the Effective Date are set forth in the Cover Document;

"**Story Composer**" means the software component of the dINK platform that allows to create and edit interactive publications;

"**Tablet**": A tablet PC is a wireless, portable personal computer with a touch screen interface like the Apple iPad or Samsung Galaxy Tab;

"**Template**" means a document template, a text or a script, stored within the Customer's dINK Instance, which will be used by Users to create their own electronic documents and/or order the Publishing thereof. A Template may incorporate Branding Material or other material (such as texts or graphics) supplied by the Customer;

"**Term**" means the term of this Agreement, as calculated from the Effective Date;

"**Terms and Conditions**" means the present document, entitled "Terms and Conditions";

"**Training Services**" means the services provided by dINK nv for training the Managers and Users of Customers in using the dINK platform and its tools.

"**User**" means an end-user of dINK, who may under the supervision & authorization of the Customer use the dINK Instance;

"**User Guide**" means the user's guide for dINK, accessible through the online help function and the online Frequently Asked Questions, as updated from time to time;

"**VAS Partner**" shall mean an independent company providing services related to dINK to the Customer. The Customer acknowledges that dINK nv does not exercise control over the VAS Partner, and is not a party to the contract between the Customer and the VAS Partner;

"**Working Day**" means all days except Saturdays, Sundays, public holidays in Belgium. Working Days extend from 9:00 to 17:00 CET;

2. dINK License

2.1 Subject to the Customer's compliance with this Agreement, dINK nv grants to the Customer a non-exclusive, worldwide, non-transferable right to use the dINK Instance as described in the User Guide, and to enable the Managers and Users to access and use the dINK Instance during the Term ("**dINK License**").

2.2 The dINK License set out in this section 2 may be subject to additional restrictions (for example, with respect to the number of Users), which will be set forth in the Cover Document.

2.3 The Customer shall not have the right to receive the Source Code of dINK.

2.4 The Customer acknowledges that dINK and all copyrights, trade secrets and other right, title and interest therein, are the sole property of and vest in dINK nv and that the Customer shall gain no right, title or interest in dINK by virtue of this Agreement other than the non-exclusive right of use granted in this clause. 2. The Customer specifically acknowledges dINK nv's exclusive right to ownership of any modification, translation or adaptation of dINK and any other improvement or development based thereon, irrespective of whether it is developed on behalf of, supplied to, installed at or paid for by the Customer.

2.5 Users shall be able to access and use the dINK Instance as described in the Cover Document.

3. Services relating to dINK

3.1 *Setup Services* – Unless otherwise indicated in the Cover Document, and provided that the Customer in a timely manner delivers all requested information to dINK nv, dINK nv shall perform the initial setup of the dINK Instance.

3.2 *Configuration Services* – If so indicated in the Cover Document, or later on agreed in a separate order, dINK nv shall configure the dINK Instance, for example by modifying the default layout and look-and-feel of the dINK Instance and/or by developing custom features for use by the Users. Where applicable, the dINK software shall also enable the Customer to perform its own Configurations.

3.3 *Hosting Services* – Unless if otherwise indicated in the Cover Document, dINK nv shall make the dINK Instance available to the Customer and the Users. The Hosting Services shall consist of storing the Hosted Data, serving dINK page requests and web service invocations, and maintaining and updating dINK.

3.4 *Content Creation Services* – To the extent agreed in the Cover Document, and always subject to the payment of the applicable fees, dINK nv shall provide the Content Creation Services in relation to the created Content. Content Creation shall give rise to the payment of Content Creation Fees.

3.5 *Helpdesk Services* – To the extent agreed in the Cover Document, dINK nv shall provide the Helpdesk Services, which can consist of Frond-end Support Services and/or Service Support Services and/or Product Support Services, as further described in the Cover Document.

3.6 *Additional Services* – Following the Customer's request or following dINK nv's observation that a particular service is not covered by this Agreement, dINK nv may provide the Customer with other, additional services which relate to dINK ("**Additional Services**"). The Customer expressly agrees that dINK nv is not obliged to deliver any Additional Services, and that the delivery of the Additional Services is subject to prior written acceptance of both Parties, and may also be subject to other or additional terms and conditions than the terms and conditions of this Agreement. The Additional Services shall be charged separately on a time-and-material base, at the Standard Rates, unless otherwise agreed by the Parties. The services listed in clauses 3.1, 3.2 and 3.5 can also be provided by the VAS Partner. The provision of services by the VAS Partner will be subject to clause 12.3.

4. Use of the dINK Instance

4.1 The Customer shall use the dINK Instance and shall ensure that its Managers and the Users use the dINK Instance in accordance with the terms, conditions and limitations set forth in this Agreement and shall ensure that its Managers and Users shall not:

- license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make its dINK Instance available to any third party, unless explicitly allowed by this Agreement;
- send spam or otherwise duplicative or unsolicited messages in violation of applicable laws (such as laws implementing EU Directive 2002/58/EC);
- send or store infringing, obscene, threatening, libelous, or otherwise unlawful material, including material that is harmful to children or violates third party rights;
- deliberately send or store Malicious Code;
- interfere with or disrupt the integrity or performance of the dINK Instance, or the data contained therein; or
- attempt to gain unauthorized access to other dINK Instances, or related systems or networks of dINK nv.

4.2 The Customer acknowledges and accepts that it is responsible for the actions and omissions performed by itself, its employees, its designees, its Managers and the Users making use of the dINK Instance. The Customer shall ensure that said persons shall be informed of the relevant provisions of the Agreement, and shall comply with the relevant provisions of the Agreement. The Customer shall inform dINK nv of any (suspected) non-compliance it becomes aware of. The Customer warrants that the dINK Instance and Content Admin are used in accordance with all applicable local, state, federal, national and international legislation and, in general, in a responsible manner, exclusively for admissible purposes and without breach of the rights of third parties. Without prejudice to clause 4.1, the Customer shall ensure that the Managers and the Users comply with the terms of this Agreement (e.g., by contractually imposing the relevant terms of this Agreement upon the Managers and the Users).

4.3 The Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Hosted Data.

4.4 The Customer shall be responsible for determining which of its employees or designees will have access to the Content Admin. The Cover Document may set forth which data can be accessed through the Content Admin.

4.5 The Customer warrants that the Manager shall be allowed and shall be competent to undertake the tasks and obligations assigned by this Agreement to the Managers.

4.6 The Customer shall prevent unauthorized access to, or use of, the dINK Instance (in particular through Manager accounts), and notify dINK nv promptly of any such unauthorized access or use.

4.7 The Customer shall protect the confidentiality of all its dINK usernames and passwords, and shall notify dINK nv promptly if any username or password is lost or would otherwise get exposed. The Customer shall be responsible and liable for all uses of its usernames and passwords whether or not any such use was authorized by the Customer.

4.8 Without prejudice to clause 11, the Customer warrants that the collection and processing of Hosted Data and the access to and use of the data available in the Content Admin shall comply with all Data Protection Legislation.

4.9 In the event a Manager or a User does not comply with the terms and conditions of this Agreement or the terms and conditions made available on the dINK Instance, dINK nv shall be allowed to prohibit this Manager or User the access to and usage of the dINK Instance.

4.10 During the Term, the Customer shall have the right to use the logo and trade name of dINK and dINK nv to (i) indicate that Customer uses dINK; (ii) indicate that the Customer is a customer of dINK nv; or (iii) promote or provide information on dINK, subject to the conditions that the use of the logo or trade name (a) does not jeopardize the reputation, image and goodwill of dINK nv, and (b) does not lead to any confusion about the fact that dINK is owned and operated by dINK nv; and (c) does not lead to any confusion about the fact that dINK nv and the Customer are two independent parties with a separate legal identity; and (d) complies with any additional usage requirements provided by dINK nv to the Customer.

4.11 dINK nv will receive a worldwide, non-exclusive right (sublicenseable to dINK nv's Affiliates) to use the material provided by the Customer, including (but not limited to) the Branding Material, for the purpose of dINK nv's service delivery. The Customer accepts that such use by dINK nv may require small changes to the material of the Customer, for example to accommodate technical requirements or space constraints. The Customer warrants that it has all

necessary rights and/or licenses to grant dINK nv such license, or has acquired such rights and/or licenses.

4.12 Except to the extent expressly permitted by applicable law, and without prejudice to clause 4.10, Customer shall not (i) modify, copy or create derivative works based on dINK; (ii) reproduce, distribute, reverse engineer, decompile, disassemble, translate or otherwise make the dINK Instance or part thereof available to any third party; (iii) build or maintain a product or service that competes with dINK; or (v) copy any ideas, features, functions, templates created by dINK nv or graphics of dINK.

4.13 In order to allow dINK nv to carry out its support obligations efficiently and effectively, the Customer shall organize a central point of contact within its organization, and staff this central point of contact with qualified personnel. The Customer shall report any Errors immediately on detection through the Helpdesk, in a well-documented way. At dINK nv's request, the Customer shall render assistance, as reasonably requested for the diagnosis, the reproduction and correction of the Error.

4.14 The Customer acknowledges that it is solely responsible for the choice, purchase and operation of the hardware, software and/or telecommunication services required to connect with the dINK Instance and use the dINK Instance. Such hardware, software and/or telecommunication services need to meet the minimum requirements defined by dINK nv. The Customer is responsible for the installation and related costs of purchasing and/or licensing such hardware, software and/or telecommunication services. dINK nv is not responsible for hardware, software, products and services of third parties, such as telecommunication equipment, operating systems and internet browsers.

4.15 The Customer hereby agrees to defend, indemnify and hold harmless dINK nv and its Affiliates against any and all damage, loss, costs, expenses, third party claims or demands (including claims of Users) arising out of the use by the Customer, its employees, its designees, Managers and/or the Users of the dINK Instance in a manner that does not correspond with this Agreement or, in general, all applicable laws, decrees and other legal instrument.

4.16 The Customer acknowledges, accepts and warrants that (i) it acts as a professional, and not as a consumer; and (ii) all of the Users who use a dINK Instance, act as a professional, and not as a consumer.

5. Access to the Software Development Tools

5.1 If so indicated in the Cover Document, dINK nv grants the Customer for the Term a non-exclusive, non-transferable right, to use the Software Development Tools for the purposes of internal development and testing of add-ons.

5.2 Unless otherwise indicated in the Cover Document, the license granted in this article 5 does not include the right (i) to sublicense or transfer the Software Development Tools to another party by means of sale, lease, loan, rent, license or otherwise; or (ii) to install the Software Development Tools outside the Customer's premises (e.g., for use by staff at home, or for use by any other third party). The license rights may be subject to additional restrictions, which will be set forth in the Cover Document or otherwise by dINK nv.

5.3 Unless explicitly indicated otherwise in the Cover Document, the Customer shall not have the right to receive the Source Code of those parts of the Software Development Tools that are made available in object code, in a compiled format or in any other format that cannot be directly changed by the Customer. Except to the extent expressly permitted by applicable law, the Customer shall not reproduce, distribute, reverse engineer, decompile, disassemble, translate or otherwise make those parts of the Software Development Tools available to any third party.

5.4 The Customer shall prevent unauthorized access to, or use of, the Software Development Tools.

5.5 The Customer acknowledges that the Software Development Tools and all copyrights, trade secrets and other right, title and interest therein, are the sole property of and vest in dINK nv and that the Customer shall gain no right, title or interest therein by virtue of this Agreement other than the non-exclusive right of use granted in this article 5. The Customer specifically acknowledges dINK nv's exclusive right to ownership of any modification, translation or adaptation of the Software Development Tools and any other improvement or development based thereon, irrespective of whether it is developed on behalf of, supplied to, installed at or paid for by the Customer.

5.6 The Customer hereby agrees to defend, indemnify and hold harmless dINK nv and its Affiliates against any and all damage, loss, costs, expenses, third party claims or demands (including claims of Users) arising out of the use by the Customer of the Software Development Tools in a manner that does not correspond with this Agreement or, in general, all applicable laws, decrees and other legal instrument.

6. Warranties

6.1 dINK nv warrants that:
- it will perform the Services in a good and workmanlike manner;
- the dINK Instance and the Software Development Tools shall function substantially in accordance with the User Guide, it being understood that small deviations from the User Guide will not constitute a breach of this warranty. The Customer recognizes, however, that all software may from time to time contain errors; and
- it shall use reasonable efforts to maximize the availability of the dINK Instance. The Customer recognizes, however, that this availability is subject to a variety of interdependent factors (such as the availability of telecommunication links, the interaction between software of various parties, network congestion on the Internet, etc.), which are substantially out of the control of dINK nv.

6.2 If the dINK Instance or the Software Development Tools do not perform as warranted, dINK nv shall undertake to correct the Errors. However, dINK nv does not warrant that the dINK Instance or the Software Development Tools will be error free or will perform in an uninterrupted manner. dINK nv cannot guarantee that the Services or the Software Development Tools will meet the Customer's specific expectations, objectives or requirements.

6.3 The Customer acknowledges that the access to and use of the dINK Instance may be suspended from time to time due to unanticipated or unscheduled downtime. To the extent possible, dINK nv shall schedule planned downtime outside Working Days.

6.4 dINK nv may suspend the (access to the) dINK Instance without involvement of a judge and without liability if (i) the dINK Instance is being used in breach of the Agreement; (ii) there is an internal or outside attack on dINK nv's IT systems; (iii) dINK nv is required by law to suspend the Service delivery; or (iv) there is another event for which dINK nv reasonably believes that the suspension of the dINK Instance is necessary to protect its IT systems or customers.

6.5 dINK nv will use commercially reasonable efforts to give the Customer advance notice of such suspension, unless it determines, in its reasonable commercial judgment, that a suspension on shorter or contemporaneous notice is necessary to protect dINK nv or its other customers from imminent and significant operational or security risk.

6.6 dINK nv's warranties do not cover interventions not assignable to dINK nv such as, but not limited to:
- Errors resulting from erroneous, improper, non-authorized or unsupported use of dINK or Software Development Tools;
- Errors resulting from a fault of the Customer, a Manager or a User;
- Errors resulting from the interfacing of dINK with other software from third parties, unless approved in writing by dINK nv.

6.7 Unless explicitly agreed otherwise in writing by the Parties, any deadlines and timeframes for delivery of Services (for example, initial or additional Configurations) shall be considered as indicative, and shall not bind dINK nv, and shall not be of the essence.

6.8 Without the approval of Customer and provided that a similar functionality is kept or an improved functionality is guaranteed, dINK nv shall have the right at any moment to (i) activate a new or improved version of the dINK Instance or the Software Development Tools; (ii) add additional functionality to the dINK Instance or the Software Development Tools; (iii) to modify internal or external functioning of the dINK Instance or the Software Development Tools, provided similar functionality is kept; or (iv) move its servers or networks to other locations or data centers, within the European Union. dINK nv shall undertake best efforts to ensure when performing such actions, that the impact on the use for Customer and its Users is limited.

6.9 This clause 6 constitutes dINK nv's only warranty concerning the Services and is made expressly in lieu of all other warranties. Except as otherwise provided in this clause and to the fullest extent permissible under applicable law, dINK nv makes no warranties, express or implied, regarding any matter, including fitness for a particular purpose, merchantability and/or non-infringement.

6.10 Without prejudice to the generality of clause 6.9, dINK nv makes no warranties for any legal documents it may make available to the Customer for use by the Customer on the dINK Instance towards the Users (e.g., a disclaimer, terms of use or privacy policy). Any such documents are mere templates, which are provided for convenience by dINK nv. The Customer shall be responsible for the legal validity and compliance of such documents.

7. Fees

7.1 The Customer shall pay to dINK nv the fees indicated in the Cover Document. All payment obligations are non-cancelable and fees paid are non-refundable.

7.2 The Additional Services shall be charged at the Standard Rates. The Standard Rates shall be subject to change from time to time by reference to increased cost of production, commercialization, promotion, etc. dINK nv will provide the Customer with sixty (60) days' written notice prior to the effective date of the new Standard Rates.

7.3 The License Fees and Publication Fees can be changed by dINK nv at any time, subject to dINK nv communicating the change to the Customer at the latest three (3) months before the change would become effective. If the Customer does not agree with the proposed change, the Customer can terminate this Agreement for convenience, by sending a registered letter at the latest two (2) months before the change would become effective. In the absence of such termination by the Customer, the adapted rates will be deemed accepted by the Customer. The Parties agree that the License Fees and Publication Fees that are already paid in advance by the Customer, will not be impacted by the increase as set forth in this clause 7.3.

7.4 Without prejudice to clause 7.3, the License Fees and Publication Fees shall be automatically increased by the inflation rate at each renewal of the Agreement pursuant to clause 8.2, unless otherwise agreed in the Cover Document.

7.5 Subject to the Customer's consent, any other expenses incurred by dINK nv (such as travel expenses, out-of-pocket expenses, shipment costs, etc.) shall be invoiced to and paid separately by the Customer. dINK nv shall provide the Customer with proof of such expenses.

7.6 Except as otherwise provided, all fees are quoted and payable in EUR, and do not include any sales, use, excise, import or export, value added or similar tax (collectively "taxes"). Customer and/or User is responsible for paying all taxes associated with its purchases hereunder, excluding taxes based on dINK nv's net income or property. If dINK nv has the legal obligation to pay or collect taxes for which Customer and/or User is responsible under this section, the appropriate amount shall be invoiced to and paid by Customer and/or User, unless Customer and/or User provide dINK nv with a valid tax exemption certificate authorized by the appropriate taxing authority.

7.7 Unless otherwise agreed in the Cover Document, all invoices are payable within thirty (30) days, calculated as from the invoice date. In case of late payment, a monthly interest of 1% will be charged automatically and without prior notice.

7.8 In the event of any failure of the Customer to timely make the payments indicated above, then dINK nv:
- can demand that all outstanding invoices become due at once;
- can suspend the provision of any Service and/or the dINK License, until all outstanding invoices have been paid;
without in any way affecting its other rights hereunder.

7.9 Complaints concerning invoices must be submitted within eight (8) days upon receipt of the invoice. After this eight day period, the invoice will be deemed accepted.

8. Term and termination

8.1 Unless otherwise indicated in the Cover Document, this Agreement comes into force on the Effective Date, with an initial period of twelve (12) months.

8.2 Unless otherwise indicated in the Cover Document, this Agreement shall be tacitly renewed with subsequent periods that shall be equal to the duration of the initial period set forth in clause 8.1, except if one of the Parties terminates this Agreement by registered letter with a notice period of three (3) months before the expiry of the then current period.

8.3 Each Party can terminate this Agreement with immediate effect without intervention of a judge by written notice to the other Party, if the other Party commits a material breach of this Agreement and — in the case of a breach capable of remedy — fails to substantially remedy it within forty (40) calendar days of receipt of a written notice from the Party not in default specifying the breach and containing a warning of an intention to terminate if the breach is not remedied within the forty (40) calendar days grace period.

8.4 Each Party may terminate this Agreement without intervention of a judge with immediate effect on written notice:
- if a receiver, administrator or similar officer is appointed over all or any part of the assets or undertaking of the other Party;
- if the other Party makes any arrangement for the benefit of its creditors; or

- if the other Party goes into liquidation save for the purposes of a genuine amalgamation or reconstruction.

8.5 Notwithstanding the foregoing and without prejudice to dINK nv's other rights assigned to it by law or by this Agreement, dINK nv shall have the right to suspend and/or terminate this Agreement, in whole or in part, immediately without intervention of a judge, upon written notice to the Customer in the event that the Customer:
- exceeds the scope of the dINK License grants and, if applicable, the license to the Software Development Tools, as set forth in clause 2;
- does not comply with the provisions set forth in clause 4;
- breaches any of its obligations of confidentiality set forth in clause 9; or
- breaches the assignment provisions laid down in clause 14.4.

8.6 Upon suspension of this Agreement in accordance with clause 8.5, the Customer's access and license rights (including any sublicenses) with respect to dINK or the Software Development Tools shall be temporarily terminated, during the period of the suspension; and (ii) the fees will continue to accrue.

8.7 After termination of this Agreement:
- all rights granted by dINK nv hereunder shall be terminated;
- each Party shall return or destroy (or provide a certificate of having destroyed) the other Party's Confidential Information;
- the Customer shall remove all copies of all software provided or owned by dINK nv from the Customer's systems;
- dINK nv shall, upon request by Customer made within thirty (30) days after the effective date of termination, provide the Customer with limited access to the dINK Instance, for the sole purpose of enabling the Customer to make a copy of the Hosted Data. After such thirty (30) days period, dINK nv shall have no obligation to maintain or provide any Hosted Data.

8.8 Termination shall not relieve the Customer of the obligation to pay any fees accrued or payable to dINK nv prior to the effective date of termination.

9. Confidentiality

9.1 "Confidential Information" means all confidential information of a Party ("**Disclosing Party**") disclosed to the other Party ("**Receiving Party**") 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 disclosure. Confidential Information shall include: the terms and conditions of this Agreement (including pricing and other terms reflected in the Cover Document), business and marketing plans, technology and technical information, product designs and business processes. Confidential Information shall not include: (i) information that is, or becomes, generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) information known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) information developed
independently by the Receiving Party without breach of any obligation owed to the Disclosing Party; and (iv) information received from a third party without breach of any obligation owed to the Disclosing Party.

9.2 The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party's prior written permission.

9.3 Each Party agrees to protect the confidentiality of the Confidential Information of the other Party in the same manner that it protects the confidentiality of its own confidential information of like kind (but in no event using less than reasonable care).

9.4 If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

10. Protection of Hosted Data

10.1 dINK nv undertakes reasonable industry standard efforts to maintain appropriate administrative, physical, and technical safeguards to protect the Hosted Data against accidental or unlawful destruction, accidental loss, alteration, unauthorized disclosure and unauthorized access.

10.2 The Customer acknowledges that dINK nv's responsibility set out in clause 10.1 does not extend to any of the Customer's data that is hosted outside the dINK Instance. Accordingly, the Customer shall bear sole responsibility for the adequate security, protection and backup of any such data.

10.3 The Customer accepts that (i) dINK nv qualifies as a "hosting provider", as defined by article 14 of the EU E-commerce Directive (2000/31/EC) and "data processor" ; (ii) dINK nv does not have the obligation to monitor the Hosted

Data; (iii) dINK nv has the right to remove at any moment and without prior warning any Hosting Data which, in dINK nv's reasonable opinion, is illegal or infringes (or is likely to infringe) upon the rights of third parties; (iv) dINK nv has the right to remove at any moment and without prior warning any Hosting Data at the request of competent authorities.

11. Data protection

11.1 The Customer shall be t "data controller" and dINK nv shall be the "data processor" (as defined in Data Protection Legislation) in relation to the processing of any "personal data" contained in the Hosted Data. Accordingly, dINK nv shall only process such personal data (i) in accordance with the instructions received from the Customer, which may be specific instructions or instructions of a general nature as set forth in this Agreement: (ii) to the extent, and in such manner, as is necessary for the provision of the Services, or as is required by law or any regulatory body.

11.2 Each Party shall comply with its respective obligations under Data Protection Legislation, and shall not undertake any action that would cause the other Party to breach any of the Data Protection Legislation obligations. In particular, the Customer shall ensure that: (i) all instructions given by it to dINK nv in respect of the Hosted Data will be in compliance with applicable Data Protection Legislation; (ii) it has obtained all rights and permissions to process the Hosted Data outside the European Union and (iii) it has all required consents, licenses and approvals to use, disclose and/or transfer the personal data included in the Hosted Data and/or the personal data available in the Content Admin.

12. Risk allocation

12.1 The parties total aggregate liability under this Agreement, whether for breach of contractual obligations, in negligence or tort, shall never exceed the payments received on annual basis from Customer with a limit of 50,000 (fifty thousand) EUR. dINK nv shall in no event be liable for any indirect, punitive or consequential damages of any kind (such as, without limitation, loss of profits, loss of use, loss of customers, business interruption, loss of data, cost of cover, etc.), regardless of the form of action whether in contract, third party claims, extra-contractual liability or otherwise, even if it has been advised of the possibilities of such damage.

12.2 Nothing in this Agreement shall exclude or limit either Party's liability for fraud or willful misconduct.

12.3 The Customer agrees that dINK nv shall not be responsible or liable for the actions or omissions of the VAS Partner or any other third party who provides services with respect to dINK (for example, Front-End Support or Service Support). dINK nv does not exercise control over such third party, and is not a party to the contract between the Customer and such third party.

13. Intellectual Property Rights Indemnification

13.1 dINK

Subject to the limitations set forth in clause 12, dINK nv shall hold harmless and defend the Customer against any claim lodged against the Customer on the basis that dINK infringes any author rights held by a third party in any country that is a signatory to the Berne Convention for the Protection of Literary or Artistic Works.

The Customer undertakes that dINK nv shall be given prompt notice of any alleged infringement claim that is made against the Customer. dINK nv shall have the right to defend any such claims and make settlements thereof at its own discretion and the Customer shall give such assistance as dINK nv may reasonably require to settle or oppose such claims.

In the event that any such infringement occurs or may occur, dINK nv may, at its sole option and expense, (i) procure for the Customer the right to continue using the dINK Instance or any infringing part thereof; or (ii) modify or amend the dINK Instance (or the infringing part thereof), so that the same becomes non-infringing; or (iii) replace the dINK Instance (or the infringing part thereof) by other software of similar capability; or (iv) reimburse to the Customer the License Fees corresponding to up to a maximum of one year. This indemnity shall not apply to any Branding Material, or other materials or Configurations provided by the Customer or its Users and/or to any materials or Configurations created on the instructions of the Customer or its Users.

13.2 Branding Material - Configurations performed by the Customer - Hosted Data

The Customer shall hold harmless and defend dINK nv against any claim lodged against dINK nv on the basis that (i) the Branding Material or any other material provided by the Customer or the Users in the framework of the Services and/or the Agreement; (ii) the Configurations performed by (or on request of) the Customer; or (iii) the Hosted Data infringe any third party intellectual property

rights. dINK nv undertakes that the Customer shall be given prompt notice of any alleged infringement claim that is made against dINK nv. The Customer shall have the right to defend any such claims and make settlements thereof at its own discretion, and dINK nv shall give such assistance as dINK nv may reasonably require to settle or oppose such claims.

14. Miscellaneous

14.1 **Force Majeure** – Neither Party shall be liable to the other for any delay in, or failure of, the performance of its obligations under this Agreement arising from Force Majeure. The Party affected by Force Majeure shall as soon as practicable, send to the other a written notice setting out the circumstances of the event and its anticipated effect, and shall use all reasonable endeavors to minimize the effect of any such circumstances. If any delay or stoppage arising out of an event of Force Majeure continues for a continuous period of six (6) months, either Party may terminate this Agreement with immediate effect on giving written notice to the other, and neither Party shall be liable to the other for such termination.

14.2 **Waiver** – A failure or delay of any Party to enforce at any time any of the provisions hereof, or the failure to exercise any right which is provided therein or to require at any time performance of any of the provisions thereto, shall in no way be construed to be a waiver of such provisions of this Agreement by such Party in the event of a continuation or repetition of the circumstances which gave rise to such right.

14.3 **Enforceability** – Should any clause of this Agreement be found to be invalid or unenforceable, such clause (or part thereof) shall be deemed severed from this Agreement, and the other clauses thereof shall remain in full force and effect, as if this Agreement had been executed without the offending clause appearing. In such a case, the Parties shall negotiate in good faith and on a commercially all reasonable efforts basis to agree alternative or amended valid, legal and enforceable clauses with the same economic effect as intended by the parties hereto.

14.4 **Assignment** – This Agreement is personal to the Customer and neither this Agreement nor any of the Customer's rights or obligations hereunder shall be assigned, sublicensed, sold or otherwise transferred by the Customer without the prior written consent of dINK nv. dINK nv reserves the right to assign all or part of this Agreement at any time to any Affiliate that can sufficiently execute the obligations under this Agreement, subject to providing the Customer a written notice of such assignment.

14.5 **Relationship of the Parties** – The Parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship.

14.6 **References and logo** – During the Term and a period of five (5) years after the Term, dINK nv may use the Customer's name and logo on its website and in press releases, brochures, financial reports and other promotional materials in any media indicating that Customer is or was a customer of dINK nv. During the Term, the Customer accepts to display the "Powered by dINK" logo on the dINK Instance.

14.7 **Log files** – The Customer accepts the server log files of the dINK Instance as legal proof of all transactions, visits and access requests with respect to the dINK Instance.

14.8 **Notices** – All notices under this Agreement shall be in writing, and shall be deemed to have been given upon: (i) personal delivery; (ii) the third day after mailing; or (iii) the third day after sending by email confirmed by a letter. Notices to dINK nv shall be addressed to the attention of its C.E.O. Notices to Customer shall be addressed to Customer's signatory of this Agreement.

14.9 **Survival** – The clauses of this Agreement that by their nature may reasonably be presumed to survive any termination or expiration of this Agreement (in particular, without limitation, clauses 4.12, 6.9, 9 and 12), shall survive any termination or expiration hereof.

14.10 **Governing law and jurisdiction**– This Agreement and all respective rights and obligations of the Parties shall be governed by and shall be construed in accordance with the laws of Belgium (excluding its conflicts of laws rules). Should any dispute arise between the Parties out of or in connection with this Agreement, the Parties will endeavor to resolve the dispute in good faith by senior level negotiations. If the dispute is not resolved within thirty (30) days through such negotiations, each Party shall have the right to submit the unresolved issue to the Turnhout courts, which shall have exclusive jurisdiction to settle any such dispute, controversy or claim which may arise in connection with this Agreement.