

## Appendix B - General Terms and Conditions

These General Terms and Conditions governs the use of the Services together with the appendices specified in the Main Agreement, jointly (the **“Agreement”**)

### 1 DEFINITIONS

1.1 The following terms shall have the meanings set forth below (wherever used in the Agreement):

**“Add-On Services”** means services governed by the Agreement, but which are not part of the standard service, and which needs to be ordered separately by the Customer.

**“Cluster”** is a number of servers/nodes in Cloud, interacting within close proximity.

**“Confidential Information”** means all material, non-public, business-related information, written or oral, that is disclosed or made available through the Agreement. Confidential Information includes, but is not limited to this Agreement, price information, trade secrets, ideas, concepts, techniques, designs, software, source code, computer programs, business activities etc. Confidential Information also includes information exchanged between the Parties under any non-disclosure agreement entered into prior to this Agreement.

**“Commencement Date”** means the first day of the month which the Customer receives access to the Service, but no later than the date stated in the Agreement.

**“Customer Contact”** means any Customer employee appointed by Customer to manage the technical and operational aspects of the Service from the Customer side. All Customer Contact details, such as email address etc. shall be provided to Supplier before using the Service and be kept up to date at all times.

**“Customer Data”** means all electronic data or information submitted by the Customer to the Service.

**“Defect”** means any material errors, non-conformities, malfunctions, or other deviations from the service description which are not insignificant.

**“Documentation”** means the then-current documentation for the Service published and made available by the Supplier in the form of manuals and function descriptions in printed or electronic form, as the same may be modified by Supplier from time to time.

**“Effective Date”** is the date when this Agreement is duly signed by authorized individuals from both Parties.

**“Go-Live Date”** means the date when the Service is publicly available to Customer’s clients, but no later than the date stated in the Main Agreement.

**“Intellectual Property Rights” or “IPR”** means all patents, inventions, trademarks, logos, design rights (whether registered or not), applications for any of the foregoing, copyright, software, database rights, domain names, know-how and other similar rights or obligations whether registerable or not in any country.

**“Main Agreement”** is the agreement document named “License Agreement”.

**“Market”** is defined as a geographical area or Customer segment, utilizing the market concept of Voyado Elevate whereas behavioral data is kept and analyzed separately.

“**Non-Production Cluster**” is defined as a Cluster that is used for development or testing purposes and which may not be used for Customer clients. The Service Level Agreement agreed between the Parties is not applicable on Non-Production Clusters.

“**Production Cluster**” is defined as a Cluster where the Service is made available to Customer clients via the Site.

“**Project License**” means the license applicable under the project period from the Commencement Date to the Go-Live Date.

“**Regular License**” means the license applicable from the Go-Live Date.

“**Service**” the service and functionality as detailed in the Agreement.

“**Sessions**” means user interactions as measured according to Supplier’s standards and instructions on the Customer’s Site.

“**Site**” means the website(s), channels and/or Customer system agreed upon in writing between the Customer and Supplier.

“**SKUs**” means store keeping unit and is defined as the most disaggregated level of a distinct type of content, or item for sale.

## **2 SCOPE OF THE SERVICES AND SUPPLIER’S UNDERTAKINGS**

2.1 The Supplier undertakes to deliver the Services as described in this Agreement subject to the terms and conditions.

2.2 All Services shall be performed with due care and in a professional and workmanlike manner.

## **3 LICENSE GRANT AND CUSTOMER’S RESPONSIBILITIES**

3.1 Subject to the terms and conditions of the Agreement and the payment of applicable fees, Supplier grants the Customer a: (i) non-exclusive, non-transferable, right to use Services solely for its internal business purposes; (ii) the Services may only be used on the Site(s) and Market Engines specified in the Main Agreement in a manner consistent with the user limitations specified or referenced in the Agreement and the Documentation, and (iii) to use the Documentation solely for supporting the Customer’s authorized use of the Service.

3.2 The Customer shall: (i) be responsible for the accuracy, quality and legality of the submitted Customer Data to the Service and of the means by which the Customer Data has been acquired; (ii) use the Service only in accordance with the Agreement, the Documentation and applicable laws and government regulations; (iii) not copy, maintain, distribute, sell, sublicense, lease, rent, network, transfer, make corrections to or modify, revise, improve, upgrade, enhance or create derivative works of the IPR; (iv) not reverse engineer, decompile, disassemble or otherwise translate the IPR or attempt to derive any of the source code, techniques, processes, algorithms, know-how or other information from the binary code portions of the IPR or permit or induce the foregoing; (v) not use, make available or sublicense the Service for the benefit of a third party or in any manner, for example, but not limited to, in a service bureau, commercial time-sharing, rental, software as a service or outsourcing context.

3.3 Any product data submitted to the Service on behalf of the Customer shall be product data which actually will be used by the Service. Product data no longer in use by the Service shall be removed by the Customer within a reasonable time.

3.4 The Customer shall not conduct performance testing on the Production Cluster of the Service, or invasive tests on any Cluster without prior approval.

3.5 In the event of a breach of this Section 3, the Supplier is entitled and free to choose, effective immediately, whether to restrict access to the Service or give notice to terminate the Agreement and receive compensation for any damages. The Supplier reserves the right to charge the Customer any expense or cost for measures taken by the Supplier resulting from misuse by the Customer. In the event of a breach of this clause, the Supplier reserves the right to retain information (however not personal data) stored by the Supplier, awaiting the Customer's performance, as surety for its claim.

3.6 The Customer is responsible at all times for both access to and costs of any and all technical equipment and software which are required to use the Service.

#### **4 USERS AND ACCESS TO THE SERVICE**

4.1 The Customer is responsible for approving access to users and maintaining the confidentiality of usernames, passwords, and account information. Customer is responsible for all use and harm caused by its users, including unauthorized users who were able to gain access through any actions or omissions by Customer. Customer agrees to immediately notify Supplier of any unauthorized use.

4.2 The Customer shall, within one (1) month from the Effective Date, provide the Supplier with a list of users who are authorized to contact customer support. The Customer is responsible for keeping the list updated at all times and for any instructions given by users included in the list. For the avoidance of doubt, the Supplier assumes no responsibility for instructions given by a person that the Customer has not informed the Supplier should be removed from the list of authorized users.

4.3 Customer shall not permit use of the Services which (i) in any manner violates applicable legislation or issued guidelines, (ii) may be considered harassing, promotes racism or hatred or is otherwise damaging to any person or property, (iii) violates privacy rights, (iv) infringes any Intellectual Property Rights or other proprietary rights, (v) interferes with the operations of the Services, including any action that imposes or may impose an unreasonable or disproportionately large load on Supplier's or our third party providers infrastructure, interferes or disrupts any networks, equipment or servers connected with the Services, or (iv) constitutes fraud or misrepresentation.

#### **5 LIABILITY FOR DEFECTS**

5.1 If any Defects in the Services should occur, Customer shall notify such Defects to the Supplier as soon as possible but no later than seven (7) Business Days after becoming aware of the Defect. The Supplier shall then remedy the Defect as soon as possible without any cost for Customer. In the event an error or fault should prove to not be Supplier's responsibility, Supplier shall be compensated for any work performed according to Supplier's applicable hourly rates.

5.2 The Customer shall designate one (1) primary and preferably two (2) backup Customer Contacts each one with sufficient technical expertise, training and/or experience, who may address Supplier's support team in case of Defects(s).

#### **6 INTELLECTUAL PROPERTY RIGHTS**

6.1 Other than the usage right in Section 3.1 above, all Intellectual Property Rights and proprietary rights relating to the Services or created, developed or used in or in connection therewith, belong to Supplier, or, if applicable, Supplier's third party licensors and this Agreement does not transfer any Intellectual Property Rights to the Customer.

6.2 The Customer is not entitled to adapt, translate, arrange, reverse engineer, decompile, disassemble or otherwise modify any software or part of the Services without obtaining the advance written approval of the Supplier. If approved, all Intellectual Property Rights concerning such modifications will belong to the Supplier without separate compensation. Customer may further not copy or recreate any source or object code unless explicitly permitted by applicable mandatory law.

6.3 The Customer may provide Supplier with suggestions of modifications, improvements and other ideas regarding the Service, (“**Feedback**”). Supplier shall be entitled to freely use such Feedback and incorporate it into the Service without any obligation to compensate the Customer.

## **7 MUTUAL INDEMNIFICATION**

7.1 Supplier shall compensate the Customer for reasonable and proven damages which has been finally awarded in a judgement or approved settlement due to reasonable claims that the Services infringes any Intellectual Property Right of a third Party within the jurisdiction of this Agreement. This indemnity shall apply provided that Customer notifies Supplier as soon as becoming aware of the claim, no admission of liability is made, and Supplier is given sole authority, information and assistance for the defense or settlement of the claim.

7.2 The indemnity in Section 7.1 above, shall not apply for any claim that, (i) arises of any unauthorized use of the Services, or (ii) arises out of the use of the Services in combination with any software or equipment not approved in writing by Supplier, or (iii) reasonably could have been avoided if Supplier’s written instructions had been followed. Supplier has no liability towards Customer if Customer continues to use the Services after the end of such usage rights.

7.3 If the Services is subject to an infringement or misappropriation claim, or in Supplier’s reasonable opinion is likely to become, Supplier may at its own expense and option, elect to either: (i) procure the right for Customer to continue using the Services, (ii) make such alterations/modifications so that it becomes non-infringing without incurring a material diminution in performance and function, or (iii) replace the Services with a non-infringing substantially similar substitute. If none of these are available, Supplier may terminate the Agreement and refund Customer any prepaid fees.

7.4 Customer shall, at its own expense, defend Supplier in a lawsuit or other judicial action, and pay the amount of any adverse final judgment (or settlement to which Customer has consented) from such lawsuit, judicial action or similar proceeding, for any third party claim(s) alleging that the Customer Data or Customer’s unauthorized use of the Service in breach of the agreement terms infringes or misappropriates the intellectual property rights of a third party or violates applicable law, provided that Supplier (i) gives Customer prompt written notice of such claims, (ii) permits Customer to assume and have sole control over the defense or settlement of the claims, and (iii) provides Customer with such assistance, documents, authority and information as it may reasonably require in relation to any such claim and defense or settlement thereof.

7.5 The foregoing Section 7 states each Party’s entire liability, and the other Party’s sole remedy, for the type of claim described in these Sections.

## **8 LIMITATION OF LIABILITY**

8.1 A Party shall be liable for any damage caused to the other Party due to breach of this Agreement. Neither Party shall however be liable for any indirect damage, such as, loss of profit, loss of production, loss of data or similar.

8.2 A Party’s aggregate liability shall be limited to a sum that at most equates to the Regular License for the Services in the twelve (12) months prior to when the damage occurred, or in the event the Agreement has not yet been in force for twelve (12) months, the average Regular License (or Project License if the Go-Live Date has not occurred) multiplied by twelve (12). In order for compensation to be payable, a claim

must be submitted within one (1) month from the time the loss/damage is detected or should have been detected.

8.3 The limitations in this Section 8 shall not apply for damages caused by a Party due to gross negligence or willful misconduct, unauthorized disclosure of Confidential Information under Section 11, breaches of Section 6 (Intellectual Property Rights), and breaches of Section 3.2 (Customer Data) above.

8.4 Both Parties shall procure and maintain reasonable insurance for potential liability under this Agreement.

## **9 FEES AND PAYMENT TERMS**

9.1 Applicable prices and fees for the Service are specified in the Agreement. All fees in the Agreement are specified exclusive of value-added tax, customs, duties and similar taxes and Customer is liable for payment of all such. Payment falls due no later than thirty (30) days after the invoice's date of issue. In the event of overdue payment, default interest will be charged pursuant to the Swedish Interest Act (1975:635). Fees may be adjusted annually on the 1st of January with a five (5) percent increase.

9.2 In the event of non-payment, where such late payment is not subject to a good faith dispute, the Supplier is entitled and free to choose whether to block access to the Service until payment in full has been received or to give notice to terminate the Agreement. Such notice of termination requires the Supplier to have given the Customer a thirty (30) day deadline for rectification. Supplier is entitled to set-off any claims the Customer might have against Supplier for any outstanding fees.

9.3 The Supplier shall be entitled to review and audit systems and records used for measuring Sessions solely for the purpose of ensuring the Customer's correct measurement and reporting of Sessions. In the event the audit should determine that Customer has reported an incorrect number of Sessions, the Supplier shall be entitled to charge the outstanding fees retroactively plus an interest of twenty (20) percent of the correct fee.

## **10 REFERENCE**

10.1 During the term of the Agreement, each Party grants the other Party the right to: (i) use the other Party's logo and name to identify the Party as being a customer of Supplier or supplier of Customer, on its website, in marketing materials and in other publicity material; and (ii) issue a press release announcing the Parties relationship.

## **11 CONFIDENTIALITY**

11.1 Each Party undertakes to the other Party at all times, during the term of the Agreement and thereafter, to hold in confidence, to use only for the purposes of performing its work under the Agreement and not to print, publicize or otherwise disclose Confidential Information relating to the other Party to any third party, without the prior written consent of the other Party. Each Party shall safeguard the Confidential Information of the other Party with the same degree of care as it uses for its own Confidential Information of equivalent importance, but in no event less than a reasonable degree of care.

11.2 However, Confidential Information shall not include any information that:

- (i) is known to the receiving Party, under no obligation of confidence, at the time of disclosure by the other Party;
- (ii) is or becomes publicly known through no wrongful or negligent act of the receiving Party;
- (iii) is lawfully obtained by the receiving Party from a third party who in making such disclosure breaches no obligation of confidence to the other Party; or
- (iv) is independently developed by the receiving Party, as evidenced by the receiving Party's records.

11.3 Notwithstanding Section 11.1 above, the receiving Party shall not be prevented from disclosing Confidential Information received from the disclosing Party if (i) such disclosure is in response to a valid order of a court or any other governmental body having jurisdiction over the Agreement, or (ii) such disclosure is otherwise required by law or mandatory stock market regulations, provided that the receiving Party first has given prior written notice to the disclosing Party and made reasonable effort to protect the Confidential Information in connection with such disclosure. Supplier shall further be entitled to share Confidential Information with its mother company.

11.4 However, nothing in the Agreement shall prevent the receiving Party from using - in its own business activities - general know-how acquired, general principles learned, and general experience gained during any work performed under or in connection with the Agreement, provided that such use does not constitute a breach by the receiving Party of its undertakings of confidentiality as set out in the Agreement.

## **12 UPDATES AND NEW VERSION**

12.1 As Part of the Supplier's ongoing effort to improve and develop the Service, the Supplier is entitled to update and make other changes to the Service. Any change which results in the removal of, or any drastic reduction in key-functionality that existed at the Effective Date of this Agreement, must be notified within reasonable time from when the applicable change is to be implemented. Provided that the change involves a clear and substantial functionality impairment or restriction for the Customer, the Customer may object to such change within fourteen (14) days from the date of the notification and the Customer has upon such objection the right to terminate the Agreement effective from the day on which the change is to be implemented and to be refunded any advance payments for the license paid for the period from the date of the implementation of the change. The Supplier shall however always be allowed to implement changes necessary due to legal and/or regulatory requirements.

12.2 From time to time, Supplier may invite you to try services and functionality that are not generally available on a beta, pilot or limited release ("Exploratory Services") You may accept or decline such trial at your sole discretion. Any Exploratory Services will be clearly designated as exploratory, beta, pilot, limited release, developer preview, non-production or by a similar description. Exploratory Services are provided for evaluation purposes and not for production use, are not supported, may contain bugs and errors, and may be subject to additional terms. Exploratory Services are not considered part of the "Services" hereunder and are provided "as is" with no express or implied warranty or liability.

## **13 TERM AND TERMINATION**

13.1 The Agreement shall enter into force upon the Effective Date and shall remain in force until terminated. The term for each Agreement is stated in the Main Agreement.

13.2 Both Parties shall be entitled to immediately terminate the Agreement if:

13.2.1 the other party enters into bankruptcy, reorganization, composition negotiations or liquidation proceedings.

13.2.2 the other Party commits a material breach of the Agreement which remains un-remedied thirty (30) days after the Party has notified the breaching Party of the applicable breach. Repeated failures to pay invoices in due time and breaches of the Intellectual Property Provisions shall always be considered a material breach.

13.3 Upon the termination of this Agreement, for whatever reason, Customer's right to use the Services will automatically terminate and Customer shall return all documentation regarding the Service to Supplier.

13.4 Upon termination of this Agreement, Supplier shall after Customer's request provide the Customer Data in a standardised format at Customer's cost. Supplier will store the Customer Data four-teen (14) days after the termination of this Agreement after which all Customer Data will be deleted.

13.5 Sections naturally intended to survive the termination of this Agreement, such as Section 6 (Intellectual Property Rights) Section 8 (Liability and Limitation of Liability), Section 11 (Confidentiality) and Section 18 (Applicable law and Disputes) shall continue in full force and effect and survive the termination of this Agreement.

13.6 Termination shall not affect the Supplier's right to payment up until the date of termination.

#### **14 PERSONAL DATA**

14.1 For the processing of personal data, the Parties have entered into a data processing agreement. The Customer is responsible, as data controller, for the lawful processing of personal data that takes place by means of the Customer's use of the Services as described in the data processing agreement. Customer is further responsible to ensure that all personal data has been obtained in a lawful manner and that it has all necessary consents, permits and approvals (as applicable) for the processing, Customer may not provide or collect any personal data which may be regarded as sensitive and may only use the Services in accordance with the purposes described in this Agreement.

#### **15 SUB-CONTRACTORS**

15.1 The Supplier is entitled to use sub-contractors for the provision of the Services to the Customer. Supplier shall however remain fully liable for such sub-contractors. All use of any sub-processors is governed by the Data Processing Agreement.

#### **16 MODIFICATIONS OF THE AGREEMENT**

16.1 The Supplier is entitled to modify the Agreement if deemed necessary due to regulatory requirements, changes regarding sub-contractors or company policies. The Customer must be notified of such modifications no less than sixty (60) days before the modification enters effect. If the Customer objects to the modification within thirty (30) days from receiving the notification, the Customer is entitled to terminate the Agreement and be refunded fees for any pre-paid Services concerning the time after the implementation of the change.

#### **17 AUDIT**

17.1 Supplier or a third party appointed by Customer, however not a competitor to Customer, may, at any time during Customer's normal business hours and upon reasonable advance notice, conduct an audit at Customer's premises to ascertain if Customer's use of the Services is in compliance with this Agreement. The audit will be conducted on Supplier's expense, but Customer shall reasonably assist Supplier in the conduct of such audit and shall grant Supplier reasonable access to Customer's premises and computer equipment solely for the purpose described herein. In the event an audit should reveal that Customer is in breach of the terms of this Agreement, Customer shall promptly reimburse Supplier for the costs of such audit.

#### **18 MISCELLANEOUS**

18.1 Neither Party shall be held liable or deemed in default under the Agreement for any failure of or delay in performance of its obligations to the extent that and for so long as such performance is prevented or delayed by causes beyond its reasonable control, such as fire, flood, earthquake, war, embargoes, blockades, strikes, riots, governmental interference and defects or delays in deliveries by Supplier or subcontractors if caused by any circumstance referred to in this Section 18.1. A Party cannot be held liable for loss or damage caused by stoppage or other disturbance of automatic data processing, data transfer, telecommunications, other electronic communication or power supply or for any other similar reason beyond that Party's control. The Party whose performance is so prevented or delayed shall promptly inform the other Party of the occurrence of any such event and such Party shall use reasonable efforts to avoid the effect of such event and to mitigate damages to the extent reasonably possible. Upon termination of such event, the prevented Party shall forthwith resume its obligations under the Agreement.

18.2 The Agreement, and any agreement incorporated herein via mutual written consent among the Parties, constitutes the entire agreement between the Parties hereto with respect to its subject matter and annuls and replaces any and all other previous oral and written agreements, understandings and

communications which may have existed between the Parties with respect to such subject matter. No modification, amendment, alteration or waiver of any provision hereof will be valid or binding unless made in writing and either signed or accepted electronically by the Party against whom the modification, amendment, alteration or waiver is to be asserted.

18.3 Any waivers hereunder shall be in writing and the failure of any Party at any time to require the other Party's performance of any obligations under the Agreement shall not affect the right subsequently to require performance of the obligation. Any waiver of any breach of any provision of the Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision or a waiver or modification of the provision.

18.4 Unless otherwise stated in the Agreement, Customer shall, in order not to forfeit its right to assert a claim, submit its demand for compensation not later than one (1) month after becoming aware, or reasonably should have become aware, of the claim, however no later than twelve (12) months after the expiry or termination of the Agreement.

18.5 The Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors but shall not be assignable by any of the Parties without the prior written consent of the other Party. Supplier shall however be entitled to assign the Agreement to an affiliate and be entitled to assign the right to payment under the Agreement to a third party.

18.6 If due to a change in any applicable law or due to a decision or other act (including failure to act) by any competent authority one or more of the provisions of the Agreement shall be invalid, illegal or unenforceable in any respect or an amendment of one or more of the provisions of the Agreement is required, the remainder of the Agreement shall be valid and binding and the Parties agree that they shall replace or amend such provision or provisions with a valid, legal and enforceable arrangement which in its economic and other effects shall be as close as possible to the contractual situation existing prior to such a change, decision or act.

## **19 GOVERNING LAW AND DISPUTE**

19.1 This Agreement shall be governed by Swedish law, except for its rules regarding international private law. Any dispute, controversy or claim arising out of or in connection with this contract, or the breach, termination or invalidity thereof, shall be finally settled by arbitration administered by the Arbitration Institute of the Stockholm Chamber of Commerce (the "SCC").

19.2 The Rules for Expedited Arbitrations shall apply, unless the SCC in its discretion determines, taking into account the complexity of the case, the amount in dispute and other circumstances, that the Arbitration Rules shall apply. In the latter case, the SCC shall also decide whether the Arbitral Tribunal shall be composed of one or three arbitrators. The seat of arbitration shall be Stockholm and the language for the proceedings shall be English or Swedish. Any judgements, material or documentation subject to the proceedings shall be subject to confidentiality.

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