



## GENERAL TERMS AND CONDITIONS OF SOFTWARE USE AND MAINTENANCE

### **Article 1. Definitions**

Each of the terms below will take the meaning of its adjacent definition.

Defect: Any failing, discrepancy, error or bug in the Software relative to the Functional Specifications causing the Software to not comply with said Functional Specifications or online documentation.

Critical Defect: any Defect making it impossible to use all or part of the Software's functionalities. (Excludes display features)

Non-critical Defect: any Defect whereby it is possible to continue to fully use all of the Software's functionalities, even if this is achieved through an unconventional procedure implemented by the Client itself.

Semi-critical Defect: any Defect whereby it is not possible to use some of the Software's functionalities, excluding display features.

Helpdesk: call centre run by the Service Provider from which the services stipulated in the Contract are provided.

Client: any natural or legal person that holds a Software User Licence, also referred to as a Licence Holder in this specific instance, and receiving maintenance services.

Source Code: collection of annotated Software programs able to be read and interpreted by any individual knowing the language in which they are written, together with the detailed design documentation.

Charging Terms & Conditions: the prices charged for each service provided by the Service Provider, as stated in the Quote.

IT Configuration: the Client's computing and hardware system on which the Software is installed, and the Client's network and internet equipment, meeting the IT pre-requisites required of the Client before using the Software, as stipulated in the Quote.

Contract: formed of the following contract documents listed in decreasing order of legal value: the Quote; the present General Terms and Conditions of Software Use and Maintenance; then the Appendices sent by the Service Provider. In the event of inconsistency between one or more provisions in any of the abovementioned documents, the higher ranked document prevails.

Quote: document issued by the Service Provider containing the special terms and conditions accepted by the Client, namely the services to be provided by the Service Provider (User and/or Maintenance Licence), the Charging Terms & Conditions, etc.

Documentation: technical and information documents related to the Software (user manual, Specifications manual, installation manual) available to the Client from the Software under the "Help / Client Area" section.

Incident: Software malfunction arising either from an error in use by the Client or a Defect affecting the code. The severity of the Incident is determined during the Support phase.

Priority Contacts: persons designated by each Party from among its staff having the necessary skills, for the purpose of centralising all information and questions and communicating with the other Party.

User Licence: non-exclusive granting by the Service Provider to the Client of the right to use the Software.

Software: software solution comprising software developed by the Service Provider designated in the Quote, the function of which is management and timekeeping adapted to the activities of sports event promoters and circuit operators and their contractors.

Maintenance: services and actions carried out by the Service Provider in respect of support and monitoring to assist the Client in correct use of the Software, in order to correct and improve the Software.

Upgrades: corrected versions characterised by an identity at the functionality level.

New Versions: also referred to as Releases, versions of the Software within which the functionalities have undergone substantial modifications.



Party: the Client or the Service Provider.

Use Scope: Client site(s) and the number of licences granted to the Client, as stated in the Quote.

Service Provider: company granting User Licences for the Software, also referred to as the Licensor in this specific instance, and providing maintenance services, namely: **APEX TIMING, Société par Actions Simplifiée** [a French simplified joint stock company] with authorised capital of €35,000, having its registered office at 464 route des Prés Rollier, 74330 Sillingy, France, listed on the Annecy Trade and Companies Register under number 531 976 017, represented by its President, Pierrick Bottollier Depois.

Client Site: the place where the Client's circuit is located.

Work-around Solution: also referred to as a By-pass, any unconventional procedure making it possible to use all the Software's functionalities despite the existence of a Defect.

Functional Specifications: a description of the Software emailed to the Client.

Remote Maintenance: connection by the Service Provider to a test version of the Software on the Production Site by means of modems and the PSTN making it possible to detect and/or fix Defects.

### **Article 2. Subject Matter**

These General Terms and Conditions of Use and Maintenance are intended to govern the contractual relationship between the Service Provider and the Client, to the exclusion of any other provisions. The Client's general terms and conditions of purchase, if any, must be agreed in writing by the Service Provider. The subject matter of this Contract is to determine the Parties' obligations under the non-exclusive granting to the Client by the Service Provider of the right to use the Software (User Licence) and the services and actions carried out by the Service Provider in respect of support and monitoring to assist the Client in correct use of the Software, in order to correct and improve the Software (Maintenance).

### **Article 3. User Licence**

#### **3.1 Entry into force - Term**

The User Licence enters into force on the installation date stated in the Quote or that confirmed after signature of the Quote by an email from the Service Provider.

Unless otherwise stated in the Quote, the User Licence runs for an initial term of one (1) year, commencing from its entry into force. After this initial period, the User Licence will be renewed by successive one-year periods unless notice to terminate is given by either Party by registered mail with proof of delivery at least three (3) months before expiry of the term running at the time.

#### **3.2 Software usage rights**

The Software User Licence permits the Client to use the Software in accordance with its intended purpose and for its own requirements on the configuration or on any other computer system that might come to replace it.

When the Software User Licence is granted for an indefinite term, the Client may use the Software only on Client Site.

When the User Licence is granted for a one-year, renewable term, the Client may use it on an unlimited number of Sites, also designated in the Quote.

If the Client wishes to increase the number of licences available to it, a new or additional Quote will need to be signed by the Client, including the number of additional workstations, in consideration for which an additional fee is to be paid calculated in accordance with the Charging Terms & Conditions applicable at the time the Client submits the request.

In respect of the usage rights granted by the present User Licence, the Client may permanently or temporarily reproduce the Software for loading, display, execution, transmission or storage purposes.

The Client may take a backup copy of the Software, unless such a copy is provided by the Licensor. The Client possesses the same rights and obligations relative to the backup copy as it does over the copy of the



Software granted under the User Licence.

The Client may study or test how the Software works in order to determine the ideas and principles forming the basis of any aspect to the Software for loading, display, execution, transmission or storage purposes.

The Client may reproduce the Software code or translate the form of the code when such is essential to obtain information necessary for the interoperability of the Software with other software, provided always that the following conditions are met:

- such actions must be conducted by the Client or on the Client's behalf by a person authorised to do so;
- the information necessary for interoperability must not have been made accessible to the Licence Holder;
- such actions must be limited to those parts of the Software necessary for said interoperability.

Information obtained in this way cannot be:

- used for purposes other than achieving interoperability with independently produced software;
- disclosed to third parties unless doing so is necessary for interoperability with independently produced software;
- used to develop, produce, or market and sell a software package presenting substantially similar features, or used for any other activity infringing the Service Provider's copyright.

Outside of the rights granted above and without prejudice to same, the Client is not permitted to:

- copy, print, transfer, transmit or display all or part of the Software;
- sell, lease, sub-license or distribute the Software in any way whatsoever;
- use the Software to supply data processing services, office services, time-sharing operations or other similar services of any kind whatsoever, to any other natural person, company or entity;
- modify the Software and/or merge all or part of the Software in other computer programs;
- compile, decompile, disassemble, translate, analyse or reverse engineer the Software or attempt to do so, except within the limits allowed by law.

It is expressly agreed that the Client will refrain from correcting or procuring the correction of any Defect whatsoever; the Service Provider reserves the sole right to do so.

This granting of usage rights applies both in France and elsewhere throughout the term of the User Licence.

### **3.3 Delivery**

On the installation date, the Service Provider delivers the Software to the Client in the form of object code, i.e. a program readable by the computer, made available on line. Delivery entails the Service Provider giving the Client the electronic key to unlock and activate the Software.

### **3.4 Warranty of quiet possession**

The Service Provider guarantees quiet use and enjoyment of the Software, as regards its own actions.

In this respect, the Service Provider undertakes to protect the Licence Holder at its own expense against any proceedings initiated by a third party for infringement by the Software of copyright or any other intellectual property rights, provided that the Client has immediately warned the Service Provider by registered letter with proof of delivery and that the alleged infringement is not the result of any action by the Client.

The Service Provider alone will direct how proceedings are conducted, and will have complete leeway to settle or continue with any proceedings of its choosing. The Client is to provide all the information and assistance necessary to the Service Provider to enable the latter to successfully conduct its defence or agree on a settlement.

If all or part of the Software is recognised by a final legal ruling as constituting a property rights infringement or if the Service Provider believes that all or part of the Software is likely to constitute an infringement, the Service Provider may, as it so chooses, i) procure non-infringing software for the Client having the same functionalities, or ii) obtain the right for the Client to continue to use and operate said Software, or iii) refund the Client the price paid for the User Licence.



### **3.5 Prices**

In consideration of the granting of the User Licence for the Software, the Client undertakes to pay the Service Provider the fixed charge stipulated in the Quote. This charge is stated exclusive of taxes and any applicable taxes and rights are added on the invoicing date.

All invoices are issued annually, stating charges in advance, and are payable within thirty (30) calendar days of the invoice issue date.

If the fee is not paid within the stipulated deadline, sums due to the Service Provider in this respect will automatically accrue interest at three (3) times the statutory rate. The Client will furthermore be liable to pay a statutory fixed charge for debt collection costs of forty euros (€40) without prejudice to the Service Provider's entitlement to terminate this Contract with the Client held at fault, as stipulated hereinafter.

Partial or total failure to pay any sum due on time will moreover have the effect of entitling the Service Provider to suspend performance of any service stipulated in the Contract from that date until settlement in full of the sums owed, notwithstanding any right to claim compensation for loss or harm sustained.

Once any payment becomes thirty (30) calendar days late, the Contract will be terminated automatically with no further formality with the Client held to be at fault, notwithstanding the Service Provider's right to claim compensation for loss or harm sustained. The Service Provider will retain all sums previously paid by the Client.

Installation of the Software by the Service Provider on hardware within the Use Scope incurs an additional charge in accordance with the Charging Terms & Conditions appended to the Quote.

### **3.6 Contractual warranty**

The Service Provider warrants that the Software complies with the technical and functional characteristics stated in the documentation and the Functional Specifications.

In this respect, there will be no charge for work undertaken by the Service Provider on fixing Defects for three (3) months commencing from the Software delivery date.

The Client will email the Service Provider a report documenting details of the Defect to [contact@apex-timing.com](mailto:contact@apex-timing.com)

The Service Provider reserves the right to use the most appropriate method to fix Defects, be it dispatching magnetic storage media, remote upload or an onsite service call.

The Service Provider will do its utmost to start work on fixing Defects without undue delay.

Any visit to a Client Site will be billed as stated in the Charging Terms & Conditions appended to the Quote.

The above guarantee automatically ceases to apply if the configuration and/or Software have been modified, or where use is other than in accordance with the contract documentation.

Any work involved on a Defect that does not meet the criteria in the above guarantee will be billed to the Client at the relevant rate stipulated in the Charging Terms & Conditions appended to the Quote.

The Service Provider does not guarantee that the Software is free of Defects, or that operation of the Software will be uninterrupted. It is therefore reiterated that the Client is responsible for making all necessary arrangements to prepare suitable repair plans and for taking all appropriate steps to minimise harmful consequences including from system downtime or from possible data loss caused by using the Software.

### **3.7 Source Code**

The Service Provider keeps the Software Source Code.

The Service Provider guarantees the Licence Holder access to the Software Source Code in the event of the Service Provider's company failure. For the requirements of this Article, company failure means the following situations:

- incapacity of the Service Provider to meet its contractual guarantee obligations within thirty (30) calendar days of official notice being sent by the Client by registered letter with proof of delivery;





- compulsory winding-up order being issued against the Service Provider, with business activities discontinued;
- the Service Provider ceases to trade, including its maintenance services, if the business is not taken over.

Furthermore, where access to the Source Code applies, the Client or any third party designated by the Client is authorised to reproduce and adapt the Source Code of the Software for the sole purposes of corrective maintenance on the Software, and/or adapting the Software to another operating system and/or the Software's interoperability with other software products, for the Client's own requirements, this provision applying for as long as the Client uses the Software.

### **Article 4. Maintenance and additional services at the Client's request**

#### **4.1 Entry into force - Term**

Maintenance provisions enter into force on the date stipulated in the Quote.

Unless otherwise stated in the Quote, the User Licence runs for an initial term of one year, commencing from its entry into force. After this initial period, the User Licence will be renewed by successive one-year periods unless notice to terminate is given by either Party by registered mail with proof of delivery at least three (3) months before expiry of the term running at the time.

#### **4.2 Maintenance scope**

Maintenance provided by the Service Provider in respect of the Contract covers the following services:

##### **4.2.1 Assistance – Preventative maintenance**

In respect of Assistance services, the Service Provider undertakes to:

- intervene at the Client's request and disseminate information concerning how the Software works and its features (user help);
- determine whether a Defect affecting the Software's proper operation is the result of an Incident or Error;
- resolve Incidents to enable the Client to make suitable use of the Software in accordance with its designed purpose, where such resolution can be delivered by telephone or electronic means.

##### **4.2.2 Support – Corrective maintenance**

In respect of Support services, the Service Provider undertakes to take charge of Defects reportedly affecting the Software in order to fix them. Defects will be fixed by means of either an Upgrade or a New Version.

##### **4.2.3 Monitoring – Enhancements**

In respect of Monitoring services, the Service Provider undertakes to:

- revise and improve the Software;
- supply Upgrades and New Versions to the Client;
- ensure the documentation associated with the Software is up-to-date, likewise the Client's skills in terms of using Upgrades and New Versions.

Aspects included within the Monitoring service include revisions to all or part of the Software made necessary as a result of changes to the regulations in force or developments in Hardware or operating systems.

##### **4.2.4 Limitations on Support and Maintenance**

The following exclusions apply to the services covered by the present Article:

- services connected to correcting malfunctions caused by improper use of the Software by the Client or by alterations made to the Software by the Client without permission from the Service Provider;
- services that are not directly linked to the Software;
- restoration of data files in the event of destruction or deletion by accident or by a virus;



- backups of files and data entries; changes or additional functionalities relating to the Software requested by the Client;
- changes or additional functionalities relating to regulatory developments or to changes made to the hardware configuration;
- services related to any failure to comply with the specifications, procedures, security measures and the prudence principle, or the miscellaneous guidance and warnings contained in the Software documentation;
- training, installation, consultancy or assistance services that might be offered by the Service Provider through specific training, installation, consultancy or assistance contracts;
- any visit to a Client Site;
- any change or addition to the configuration on which the Software is used, made necessary by implementing an Upgrade;
- problems related to the Client's IT Configuration;
- Assistance or Remote Maintenance with no internet connection.

An additional charge is automatically billed for these services.

### **4.3 Maintenance service provision fulfilment arrangements**

#### **4.3.1 Service Provider personnel**

The Service Provider team responsible for supplying Maintenance services is headed by the Priority Contact who furthermore informs the Client of any action or event that might require the Service Provider's further involvement.

The Service Provider undertakes to notify the Client whenever the Priority Contact or the deputy contact changes owing to permanent or temporary unavailability by communicating the replacement's name. Replacements must possess at least the same knowledge and skills as their predecessors at the time replacement takes effect, and the Service Provider is to ensure continuity of service provision of the same quality within the same timescales.

#### **4.3.2 Service call terms and conditions**

##### **4.3.2.1 Assistance service calls**

Under the Assistance service, the Client's Priority Contact has access to the Service Provider's Helpdesk by telephone on +33 (0)4 80 97 09 14, to ask the Service Provider's Priority Contact any question relating to using and operating the Software. Access to the Helpdesk is available during business hours, from 9 a.m. to 6 p.m., excluding public holidays and non-working days.

If an Incident can be corrected by Remote Maintenance, the Service Provider undertakes to do so, after informing the Client, remotely, using the terminal installed at the Helpdesk that will be connected to the Client's Software. Connection time is included in the fee.

Depending on the Incident type, the fix carried out might take the form of:

- an oral response by telephone;
- a written response sent to the Client describing the procedure to follow;
- supplying additional documentation;
- a remote fix by the Service Provider.

The Client will refrain from altering or removing the Splashtop software used to provide Remote Maintenance.

If telephone support or Remote Maintenance has failed to resolve the issue, the Service Provider undertakes to make an on-site service call to the Client's Production Site without undue delay. The Client will be billed for travel costs.

##### **4.3.2.2 Support service calls**

The Service Provider's Helpdesk works in the same way for Support calls as for Assistance calls described above.

If an emergency arises outside the Helpdesk's opening times (i.e. a Critical Defect affecting the Software)



Support can be contacted via the Service Provider's website at [www.apex-timing.com](http://www.apex-timing.com), under the Support tab or via telephone messaging at +33 (0) 4 80 97 09 14, briefly explaining the Defect, so a member of the Service Provider's technical staff can contact the Client as soon as possible.

After providing Assistance services, when an event covered by the Support service occurs, the Service Provider will then intervene either at its own initiative after informing the Client beforehand, or at the Client's request, either remotely or on the Production Site.

From the time of the Support call or message from the Client, the Service Provider will endeavour to analyse the nature and cause of the Defect and to intervene within the deadlines below:

For a Critical Defect, to either fix the Defect or at least provide a Work-around Solution to the Client within 24 business hours from the time of the Support call or message from the Client

For a Semi-critical Defect, to either fix the Defect or at least provide a Work-around Solution to the Client within 48 business hours from the time of the Support call or message from the Client

For a Non-critical Defect, to either fix the Defect or at least provide a Work-around Solution to the Client within 20 working days from the time of the Support call or message from the Client

For all the above situations, the fix provided might take the form of:

- an Upgrade;
- a New Release;
- a Work-around Solution.

For all service call requests to which only a Work-around solution acceptable to the Client has been provided, the Service Provider will determine an action plan within seven (7) calendar days to fix the Defect permanently. During this period, the Service Provider will offer enhanced assistance to the Client to ensure the durability and reliability of the Work-around Solution.

### **4.3.2.3 Monitoring service calls**

#### **4.3.2.3.1 Upgrading the Software and Documentation**

All fixes and improvements brought about to the Software will form the subject of Upgrades. The Service Provider will supply Software Upgrades to the Client as and when they become commercially available after confirming there is no risk of causing any regression relative to the Software Specifications.

The Service Provider guarantees:

- the transparency of the Software relative to upgrades in this Hardware, otherwise the Service Provider warrants to the Client that it will bear the cost and carry out the modifications necessary with no increase in fees;
- forward compatibility of the Software between successive versions, the Service Provider ensuring that subsequent versions will not result in any changes or modifications in the Client's Hardware being required.

#### **4.3.2.3.2 New Versions**

All new functionalities will form the subject of New Versions of the Software that will be supplied to the Client as and when they become commercially available.

The Client may not refuse or delay installation of New Versions.

#### **4.3.2.3.3 Installation of Software Upgrades and/or New Versions**

The Service Provider will install Upgrades and/or New Versions of the Software, with no additional fee, i) directly on the Client Site, or ii) remotely on the basis of a schedule planned beforehand, or iii) automatically when the Client next connects to the internet.

### **4.3.3 Quality of service**

The Service Provider undertakes to fulfil the Services incumbent on it in respect hereof in accordance with standard professional practice and implement quality controls agreed with the Client.

## **4.4 Obligations on the Client**

The Client will designate a Priority Contact responsible for Maintenance who will possess the necessary skills, and will be the only individual permitted to contact the Service Provider other than in the event of an



emergency. The Client will also designate a deputy. They can be replaced by new contacts by means of the Client emailing the Service Provider indicating the name of the new designated contact.

The Client undertakes to ensure the Service Provider's personnel have free access to its Production Site, in particular as regards its communication and computing equipment and data necessary for the Service Provider to perform its role.

The Client undertakes to take necessary backups of all documents and files before any intervention from the Service Provider.

Generally speaking, the Client is to co-operate in good faith to facilitate fulfilment of Services by the Service Provider. In this respect, the Client undertakes to communicate to the Service Provider, at the latter's request, its Maintenance contract reference details and all the data necessary to enable the Service Provider to reproduce the Defect, along with a description of the conditions under which the Software is operating when a Defect occurs.

The Client will also inform the Service Provider immediately of any change of Site. The Service Provider will then be permitted to amend the financial terms and conditions of the Contract to take due account of any additional costs incurred by the change of Site.

The Client undertakes to keep a logbook of errors in which it will record Defects of all kinds arising with the Software, and to make said logbook available to the Service Provider.

#### **4.5 Liability**

The Service Provider undertakes to fulfil Maintenance services with all required care in accordance with standard professional practice.

It is nonetheless reiterated that the Software is used under the management, control and responsibility of the Client alone, and the Client alone is therefore responsible for:

- ensuring that any computer program used in conjunction with the Software presents no fault having harmful consequences for the Software;
- installing the copy of the Software on the hardware planned, establishing adequate operating controls and implementing appropriate operating methods;
- establishing suitable repair plans, if need be, anticipating replacement procedures and generally taking any appropriate steps to protect the organisation against any harmful consequences from using the Software.

Under no circumstances can the Service Provider be held liable for indirect or unforeseeable loss or harm that might result from the Contract.

The Parties expressly agree that indirect loss or harm is deemed any financial or commercial loss or harm, lost profits, the loss of data, orders or customers, and any proceedings opened against the Client by a third party.

In any event, if the Client claims the Service Provider is liable in respect of the Contract for direct loss and damage suffered by the Client, the Client's right to redress will be limited, for all heads of loss combined, to the amount of the annual Maintenance fee excluding taxes paid by the Client to the Service Provider for the year during which the Service Provider's liability is incurred.

Furthermore, under no circumstances is the Service Provider liable for loss or harm ensuing from failure by the Client to meet one of its obligations or from any use of the Software in contravention of the Documentation.

Neither Party can be rendered liable in the event of failure to meet its obligations in respect hereof where this is the result of a force majeure situation (supervening impossibility) as defined hereinafter.

#### **4.6 Insurance**

Throughout the period that the obligations stipulated in the Contract remain in force, the Service Provider confirms it has taken out an insurance policy covering the risks relating to its public liability, operating risks and professional liability, affording the Service Provider protection against the risks arising from the





obligations for which it is responsible by virtue of the Contract.

Such insurance must be taken out with a reputable insurance company no later than the time the Contract is signed, and must offer cover per claim event per annum of at least €15,000 for the various heads of loss. A statement from said insurance company stating the extent of cover will be provided at the Client's written request.

#### **4.7 Prices**

The Client undertakes to pay the Service Provider the fixed annual Maintenance fee the amount of which is set for one year commencing on the date the Contract comes into force, as per the Charging Terms & Conditions appended to the Quote.

In the event that Maintenance services do not start on 1 January in the first year, the fee will be reduced pro rata.

Beyond this first period and assuming the Maintenance services are renewed, the charge is revised using the following formula:

$$P = P_0 \times S / S_0$$

P = price after review

P<sub>0</sub> = for the first review this is the initial price; for subsequent reviews, it equals the price resulting from the previous review

S = the most recent published Syntec (IT services industry association) index on the revision date

S<sub>0</sub> = for the first review this is the value of the Syntec index on the date the Contract was prepared; for subsequent reviews, it equals the Syntec index on the date of the previous review.

If an index is discontinued, the Parties will agree on a new index or indices to produce a formula with comparable effect.

All invoices are issued annually, stating charges in advance, and are payable within thirty (30) calendar days of the invoice issue date.

In addition to the Maintenance fee, the Client will have to pay any tax or other duty in force on the invoice date, plus communication charges in relation to Remote Maintenance and the costs of staff travel to the Site.

If payment is late for any reason whatsoever, interest will be charged on the sums owed by the Client as of right commencing on the due date of payment and with no requirement to issue prior notice, calculated daily at a rate of three (3) times the statutory interest rate. The Client will furthermore be liable to pay a statutory fixed charge for debt collection costs of forty euros (€40) without prejudice to the Service Provider's entitlement to terminate this Contract with the Client held at fault, as stipulated hereinafter.

Partial or total failure to pay any sum due on time will moreover have the effect of entitling the Service Provider to suspend performance of any service stipulated in the Contract from that date until settlement in full of the sums owed, notwithstanding any right to claim compensation for loss or harm sustained.

Once any payment becomes thirty (30) calendar days late, the Contract will be terminated automatically with no further formality with the Client held to be at fault, notwithstanding the Service Provider's right to claim compensation for loss or harm sustained. The Service Provider will retain all sums previously paid by the Client.

#### **4.8 Intellectual property**

As regards developments brought about in respect of Monitoring services or fixes supplied under Support services, the Client has the same rights as those granted over the Software in respect of the Software User Licence.

#### **4.9 Client data**

Maintenance services entail an automatic synchronisation of Client data on the Service Provider's servers.



The Client holds sole rights over the data processed in respect of the Services. The Client grants, as the need arises, a non-exclusive, assignable, worldwide licence to the Service Provider and its subcontractors free of charge, permitting the Service Provider to host, cache, copy and display said data for the sole purpose of fulfilling Maintenance service provision and exclusively in connection with or when performing said services. Said licence will automatically come to an end when the present Contract comes to an end. The Client hereby warrants that it possesses all the necessary authorisations to make use of the data held in respect of Maintenance service provision and that it is able to freely grant the licence to the Service Provider and its subcontractors under the abovementioned terms and conditions.

### **Article 5. Additional services at the Client's request**

The following services may be performed by the Service Provider at the Client's request. An additional charge is billed for these services in accordance with the fee and lead times indicated by the Service Provider in a further Quote.

The provisions regarding payment and revision of prices stipulated in Article 4.7 hereof also apply to these additional services.

The "Service & Web Basic" and "Web Pro" services entail an automatic synchronisation of Client data on the Service Provider's servers, and are governed by Article 4.9 hereof.

### **5.1 Development at the Client's request**

The Client may request a development or enhancement to the Software at any time. The Service Provider undertakes to deal with the request on the basis of its usefulness, size and number of requesters, and potentially implement it in a future Upgrade.

### **5.2 "Service & Web Basic" services (available with the GoKarts software package)**

The Service Provider may, at the Client's request, display results live on an HTML web page either locally (with no internet connection) or on the internet itself. Such pages may be incorporated in the Client Site depending on the Service Provider's recommendations.

#### **5.2.1 Profiles and rankings**

→ Online display of profiles and rankings.

#### **5.2.2 Online kiosk**

→ Online registration of members.

#### **5.3.3 Automated emails**

→ Automated sending of birthday and results emails

*Please refer to the email policy.*

#### **5.3.4 Manual emails**

→ Manual sending of emails from the software (limited to 100 / day)

*Please refer to the email policy.*

### **5.3 "Web Pro" services (available with the GoKarts software package)**

#### **5.3.1 Schedule**

→ Client and manager online schedule display

#### **5.3.2 Online ticketing service**

→ Online ticketing displayed on the Client's web site, excluding service activation charge.

#### **5.3.3 Automated emails**

→ Automatic sending of basic web service emails (email and birthday) plus other triggers for automated emailing (last visit, credit, loyalty points, etc.)

*Please refer to the email policy.*

#### **5.3.7 Manual emails**

→ Manual sending of emails from the software (limited to 500/day)



*Please refer to the email policy.*

### **5.3.8 Emailing module**

→ Emailing service: the Client undertakes to meet the obligations of the Email Policy, and recognises that it has been informed that in the event that the Client infringes said Email Policy, including if emails are sent to recipients who have not specifically opted in to receiving them, or if the Service Provider receives an unusual number of complaints, the Service Provider has the option to quarantine the Client account, and/or terminate the subscription and/or close any master account or associated sub-account without such action giving the Client entitlement to claim any form of refund or compensation.

### **5.4 Live Timing**

→ Real time display of timings.

## **Article 6. Final provisions**

### **6.1 Termination for breach**

Either Party is able to terminate the Contract as of right with no further formalities in the event of a breach by the other party of any of its obligations arising under the terms hereof, if said breach is not made good within thirty (30) calendar days of receipt by the party in breach of a registered letter with proof of delivery serving notice of said breach. This provision applies without prejudice to any compensation that might be claimed by the party initiating the termination.

In the event that the contractual relationship created herein is discontinued for any reason whatsoever, the Client undertakes to either i) return to the Service Provider within thirty (30) days of the end of the contractual relationship, all elements comprising the Software including storage media and all copies made of the Software together with a written assurance that all such elements have been returned, or ii) provide a written guarantee that the Software, storage media and all copies made thereof have been destroyed.

If Maintenance services are stipulated in addition to the User Licence, the present Contract is deemed to comprise two inseparable contractual relationships, implying that the nullity or termination of the User Licence will result in the Maintenance agreement becoming null and void.

### **6.2 Force majeure**

Force majeure is deemed to mean those circumstances generally accepted by established legal precedent in French courts, namely events of an unpreventable and unforeseeable nature, outside of the Parties' control, against which the Parties could not reasonably protect themselves, and the consequences of which could not be overcome without incurring expenditure disproportionate to the hopes of financial return.

Besides situations more generally matching the above definition, the following circumstances are expressly deemed to constitute force majeure: strike action both at the Parties' premises and elsewhere if the effect is to prevent the Party affected by the strike from conducting its activities, blockades affecting transport systems if they have the effect of preventing performance of the obligations incumbent on a Party under the terms of the present Contract or various application contracts, the unavailability or shortfall of stock of equipment ordered from the Service Provider's suppliers, inaccessibility or failure of telecommunications networks and/or servers used by the Service Provider.

The Parties hereby agree that force majeure constitutes grounds for suspending the obligations on the Parties. Consequently, neither Party can be held liable for non-performance, breach or late performance of any of its obligations where such is the result of a force majeure situation occurring.

The effect of force majeure is to suspend the obligations arising in respect hereof while the relevant circumstances last. However, if a force majeure situation persists for longer than three (3) months, either Party may bring the present Contract to an end. Such termination will be deemed free of any fault.

Notice of termination for force majeure is to be served by registered letter with proof of delivery and termination will take effect on the date said letter is received, failing that on the date of delivery.



### **6.3. Subcontracting**

The Service Provider is permitted to subcontract all or part of the services incumbent on it in respect hereof, provided the subcontractor possesses the same knowledge and skills as the Service Provider and that the Service Provider undertakes to ensure continuity of service provision of the same quality within the same timescales.

### **6.4 Contract transfer**

The present Contract can be transferred by either Party provided that the other Party expressly agrees to said transfer.

### **6.5 Forbearance**

Failure by either Party at any time whatsoever to require performance by the other Party or to enforce any provision whatsoever of the present Contract, cannot under any circumstances be construed as an express or implied waiver by that same Party of its right to require performance of the other Party's contractual obligations, or potentially that same Party's right to terminate the Contract for any breach of the same or a different nature.

### **6.6 Amendments**

The Parties will have the option to amend their agreement throughout the term hereof, but only by means of a written agreement, amendment or appendix hereto.

Amendments and appendices form an integral part of the present Contract and are inseparable from it.

### **6.7 Language of the Contract and Applicable law**

This Contract is drawn up in French. If it is translated into one or more languages, only the French version will have any legal force in the event of a dispute.

The parties expressly agree that this Contract is governed by the laws of France.

### **6.8 Dispute resolution**

The Annecy Commercial Court will have exclusive jurisdiction over all disputes to which the present Contract might give rise, including as regards its validity, interpretation, performance, discontinuation or transfer, even in the event of additional applications, third party proceedings or multiple respondents.

### **6.9 Address for service**

The address for service for each of the Parties for the requirements hereof is given on the first page of the Contract. All official and other notices, and more generally all correspondence to be sent by one Party to the other Party pursuant hereto must be sent to the address for the Party concerned shown on the Quote, unless an exception to this rule is expressly stipulated.