

General terms and conditions of software use and maintenance

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APEX TIMING SASU [a simplified joint stock company with a sole shareholder] with authorised capital of €35,000, listed on the Annecy Trade and Companies Register under number 531 976 017, having its registered office at 11 route de La Salle Cran-Gevrier 74960 ANNECY (France), hereinafter the "Service Provider", publishes and markets software solutions for the management of multi-activity leisure centres and motor sports (karting), in the form of software licences installed on the customer's information system, subject to these Service Provider's General Terms and Conditions of Use and Maintenance (hereinafter the "GTCUM"). The Service Provider also provides maintenance services for said software solutions.

The Service Provider markets and sells the hardware necessary to operate and manage karting centres, the sale of which is governed by a separate contract, the Service Provider's General Terms and Conditions of Sale of IT hardware (hereinafter the "GTCS").

After taking cognizance of its characteristics and ensuring the compatibility of the Software with its needs and IT infrastructure, the Customer wished to place an order for the Software, and, where applicable, additional maintenance and/or services from the Service Provider according to the terms hereof and of the Quote. Signature of the Quote by the Customer implies unconditional acceptance of these GTCUM.

Article 1. Definitions

The defined terms below have the meaning as given in the following definition:

Commercial Offering: all products and services offered by the Service Provider.

Contract: as formed collectively by the General Terms and Conditions of Use and Maintenance (GTCUM), the Quote and any appendices sent by the Service Provider, signed by the Customer and returned to the Service Provider, to the exclusion of any other document.

Critical Defect: any Defect making it impossible to use all or part of the Software's main functionalities with no possible work-around.

Customer Site: the place where the Customer's track is located or the place where the Customer is authorised to use the Software.

Customer: any natural or legal person that has signed a Quote with the Service Provider based on the present terms and conditions.

Customer's Priority Contact: person designated by the Customer from among its staff having the necessary skills to centralise all information and questions and communicate with the Service Provider.

Defect: any malfunction affecting the Software that the Service Provider is able to reproduce, provided that it is not attributable to a case of exclusion from Maintenance.

Documentation: the technical and informational documents relating to the Software (user manual, Specifications manual, installation manual) available to the Customer from the Software in the "Help / Customer Area" section.

Functional Specifications: description of the Software sent to the Customer.

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

Incident: Software malfunction arising either from an error in use by the Customer or a Defect affecting the Software. The severity of the Incident is determined during the Support phase, as described in these terms and conditions.

Information System: means all of the Customer's hardware, software and network resources, run under its own

responsibility, on which the Software is installed, meeting the IT pre-requisites required of any Customer to use the Software, as specified in the Quote.

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

New Versions: versions of the Software within which the functionalities have undergone substantial changes.

Non-critical Defect: any Defect whereby it is possible to continue to fully use all of the Software's functionalities and which does not equate to a Critical Defect or a Semi-critical Defect.

Quote: document issued by the Service Provider containing the special terms and conditions accepted by the Customer, namely the Software chosen, the associated Licence conditions, the Service Provider's services (Maintenance or other additional Services), the pricing terms & conditions, etc.

Remote Support: remote connection by the Service Provider to the Software on the Customer Site over the internet by means of which a Defect can be detected and/or corrected.

Scope of use: The Customer's site(s) and number of licences granted to the Customer, as specified in the Quote.

Semi-critical Defect: any Defect causing limitations or restrictions in the use of the Software, without these disruptions or limitations being sufficient for the Defect to be classified as Critical.

Services: all the services included in the Service Provider's Commercial Offering.

Software: refers to the software solution provided and installed on the Customer's Information System, composed of modules developed by the Service Provider chosen by the Customer and designated in the Quote, intended for the business activities of sports event promoters and leisure centre operators and their contractors.

Support Department: the Service Provider's support centre used to centralise all information and communicate with the Customer.

Updates: corrected versions characterised by an identity in terms of functionality.

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

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

Article 2. Object

The present General Terms and Conditions of Use and Maintenance and their appendices (GTCUM) determine the terms and conditions applicable to the provision of the Software in the form of a Licence, and the Services ordered by the Customer.

In the event that the Licence is accompanied by the sale of computer equipment by the Service Provider, signature of this Contract implies unconditional acceptance of the General Terms and Conditions of Sale (GTCS).

Article 3. Contractual documents

The Contract constitutes the entire agreement between the Parties and supersedes all previous documents concluded between them on the same subject matter. The contractual documents are presented in hierarchical order of decreasing legal value:

- (i) The Quote signed by the Customer and received by the Service Provider;
- (ii) These General Terms and Conditions of Use and Maintenance and their appendices (GTCUM);
- (iii) Any appendices sent by the Service Provider.

The signature of the Quote by the Customer implies confirmation by the Customer of their cognizance and unconditional acceptance of these Service Provider's General Terms and Conditions of Use and Maintenance and their appendices (GTCUM).

In the event of contradiction, the higher ranking document takes precedence. The Service Provider may modify these GTCUM. The provisions for amendments as set out in Article 21.7 will then apply.

Article 4. Duration

The Contract will enter into force on the date of receipt by the Service Provider of the Quote signed by the Customer,

for the duration stipulated therein.

Unless otherwise stipulated in the Quote, at the end of the initial period, the Contract is tacitly renewed for successive periods of one (1) year unless terminated by one of the Parties by registered letter with acknowledgement of receipt at least three (3) months before expiry of the contract period running at the time.

Article 5. Quote

The Quote includes a description of (i) the Software, (ii) the Maintenance Services and any other Service ordered by the Customer and (iii) their prices. For Services, the Quote can include appendices indicating estimated budgets and timescales, and the method implemented.

The Customer's order is considered binding from the date of receipt by the Service Provider of the Quote signed by the Customer.

Article 6. Right of use

- **Terms of the Licence**

The Service Provider grants the Customer an individual, non-assignable, non-transferable, non-exclusive right of use over the Software stipulated in the Quote (including any Bespoke Developments), for the sole purpose of its business activity, for the duration and territory defined herein. The right of use is granted for the version of the Software specified in the Quote and any enhancements supplied during the Contract term.

When the Software User Licence is granted for the entire term of protection currently granted or to be granted in the future to authors, by French laws and regulations as well as international agreements, the Customer may only use the Software on the Customer's Site.

When the User Licence is granted for a renewable term of one (1) year or any other term stipulated in the Quote, the Customer may use it on more than one Site; these must be designated in the Quote.

In the event that the Customer wishes to increase the number of Licences they hold, or add a module to the Software that was not originally stipulated, a new Quote or an supplementary Quote must be signed by the Customer, including the number of additional workstations, in consideration for the payment of an additional fee calculated in accordance with the pricing terms & conditions applicable at the time of the Customer's request.

Where a Licence is limited in time, the Customer may ask the Service Provider at any time for an additional Quote to grant the Customer a user licence for the entire period of protection currently granted or which will be granted in the future to authors, by French laws and regulations and by international agreements. In such circumstances, the initial fees paid by the Customer will not be deducted from the price of the new User Licence.

Under the right of use granted by this User Licence, the Customer may:

(i) install and reproduce, permanently or temporarily, the Software, within the limit of the number of permitted workstations and on the Sites stipulated in the Quote;
and (ii) use the Software, implement, display, execute, load and store the Software, within the strict limits of the Customer's needs with regard to its professional activity, in accordance with the Contract, and on the IT environment agreed in the Quote.

The Customer may take a backup copy of the Software, unless such a copy is provided by the Service Provider, exclusively and for the sole purpose of replacing the original copy of the Software if it is destroyed or becomes unusable, subject to identical reproduction of all the intellectual property notices in the copy made, which remains subject to the terms of the Contract.

Any other use of the Software by the Customer is strictly prohibited.

- **Limitations on use**

The Customer will refrain and prohibit users from (i) any temporary or permanent reproduction of the Software not stipulated in the Contract, with the exception of the backup copy stipulated in Article L. 122-6-1 of the French Intellectual Property Code and in accordance with the conditions stipulated above; (ii) any dissemination, distribution, leasing or sub-leasing, marketing, sub-licensing, assignment, direct or indirect making available of the Software; (iii) any modification, adaptation or change to the Software, without prior permissions from the Service Provider; (iv) any translation or adaptation not expressly authorised by the Service Provider; (v) any interfacing or integration with other products without the Service Provider's prior permission; and (vi) any decompilation of the Software whatsoever.

In this respect, it is reiterated that interoperability information that may be provided by the Service Provider at the Customer's request may under no circumstances be used for purposes other than to achieve interoperability of the Software with third-party software, the compatibility of which must be ratified by the Service Provider, nor may it be communicated to third parties, nor used for the development, production or marketing of derivative software or software the purpose, function or expression of which is substantially similar to the Software, nor for any act infringing the rights reserved by the Service Provider. Any use of the Software not expressly permitted is unlawful and may result in legal action.

It is expressly agreed that the Customer will refrain from correcting or procuring from a third party the correction of any Defect whatsoever, as the Service Provider reserves the sole right to maintain the Software. The Service Provider also decides on enhancements to the Software (Updates or New Versions) as it sees fit, provided that they do not result in any functional regression for the Customer.

The Software is used in accordance with its Documentation, in an IT environment that complies with the prerequisites for use and the Contract stipulations.

- **Terms and conditions for provision of the Software and the Services**

The Service Provider will provide the Customer with the Software on the installation date as object code, i.e. as a program readable by the computer, by making it available online. Delivery entails the Service Provider giving the Customer the electronic key to unlock and activate the Software.

Article 7. Undertakings by the Parties

- **Obligations on the Service Provider**

The Service Provider undertakes to provide the Services in accordance with standard professional practice, meeting the indicative dates and timescales specified in the Quote and a general best endeavours obligation. However, given the technical nature of the Services, and the role played by the Customer in their performance, particularly as regards Maintenance, under no circumstances can any lateness by the Service Provider give rise to the application of any penalty, invoice reduction or awarding of compensation, which the Customer expressly acknowledges.

- **Obligations on the Customer**

The Customer undertakes to actively cooperate with the Service Provider and, in this respect, to (i) express its needs in a clear and precise manner, (ii) to immediately run its acceptance procedure for the Software and the Services, (iii) make any material and human resources necessary for the delivery of the Services available to the Service Provider, (iv) to ensure any access to the Customer's premises, data, documents, files, information and programs useful for Contract performance, and (v) to meet the payment obligations defined in these GTCUM and in the Quote.

Under its obligation of cooperation, the Customer is also required to (i) designate a single contact point for the Service Provider to coordinate service requests and be responsible for implementing the Service Provider's instructions, (ii) provide its users with a level of competence and training allowing use of the Software in accordance with its intended purpose and the Documentation, (iii) provide any information or approval necessary for performance

of the Service Provider's Services including Maintenance, (iv) inform and remind the Service Provider's staff, where applicable, of any specific procedures in force at its premises, (v) give the Service Provider and its subcontractors free access to its Information System, particularly in respect of Remote Support, and (vi) take backups of its data prior to any intervention by 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 Customer undertakes in particular to communicate to the Service Provider, upon request, the references of its Maintenance contract and all the data necessary for the Service Provider to reproduce the Defect and will describe in particular the conditions under which the Software is operating when a Defect occurs. In addition, the Customer undertakes to act fairly in all circumstances during its interactions with the Service Provider's teams, whether they are working directly on the Customer Site to provide the Services agreed in respect hereof or interacting with the Customer remotely, including in respect of the support service, available under Maintenance.

The Customer will also immediately inform the Service Provider of any change to the Site. Consequently, the Service Provider shall be authorised to modify the financial terms of the Contract in order to take into account the additional costs associated with this change of Site.

Unless otherwise stipulated in the Quote, the Customer will run an acceptance procedure on the Software and any Services provided by the Service Provider to verify their compliance with the Documentation and their description, as specified in the Quote. The Customer has five (5) days from receipt of the Software and/or the output of the Services ordered to notify the Service Provider in writing of any non-compliance identified, with the Service Provider undertaking to remedy them as soon as possible. In the absence of any such notification within this deadline, the Software and/or the Services concerned will be deemed accepted as of right. Any use of the Software and/or the output of the Services constitutes unconditional acceptance.

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

Article 8. Maintenance

Maintenance is provided by the Service Provider's Support Department under the Contract, billed annually or quarterly as stipulated in Article 11, and covers the following Services:

8.1 Assistance and Support - Corrective Maintenance

In respect of the Assistance service, the Service Provider agrees to:

- intervene at the Customer's request and to disseminate information concerning the features and characteristics of the Software (user assistance),
- determine whether a problem affecting the proper functioning of the Software falls within the scope of the Maintenance provided by the Service Provider,
- resolve Incidents to enable the Customer to use the Software in accordance with its designed purpose, if a resolution can be delivered by telephone or electronic means.

In respect of Support services, the Service Provider agrees to take charge of any Defects that might affect the Software in order to resolve them. Defects will be fixed by means of either an Update or a New Version.

8.2 Monitoring - Maintenance enhancements

The Software enhancements aspect of Maintenance includes the delivery of Updates and New Versions as decided and published by the Service Provider. Software enhancements occur either by delivery of a physical storage medium installed either by the Customer or by the Service Provider, or by Remote Support on the Customer's system.

In respect of monitoring Services, the Service Provider undertakes to provide the Customer with Updates and New Versions and to update the Documentation associated with the Software.

8.3 Maintenance limitations

The Service Provider cannot be held liable for any Defect or Incident caused by (i) use of the Software that does not comply with its intended purpose or the Documentation, (ii) a hardware or software failure in one or more components of the Customer's Information System, unrelated to the Software, (iii) and more generally any deliberate damage, malicious intent or sabotage by a user or any third party.

The following are thus excluded from the scope of the Maintenance provided by the Service Provider:

- Defects caused by improper use of the Software by the Customer or by alterations made to the Software by the Customer without permission from the Service Provider;
- Defects caused by the Customer's refusal to install Updates or New Versions published by the Service Provider;
- Defects caused by the Customer's refusal to allow the Service Provider to access its IT environment as part of Remote Support;
- Defects caused by a breach by the Customer of its obligation to cooperate;
- Defects caused by a change to all or part of the Customer's computer equipment for equipment not compatible with the Software:
- Defects caused by the Customer's computer configuration, or timing equipment (loop, decoder and transponder).

Maintenance Services concern only software maintenance and not equipment maintenance (hardware, network).

8.4 Subscription to Maintenance services during Contract performance

The Customer may subscribe to Maintenance Services at any time during Contract performance, upon request sent to the Service Provider and provided that a Quote has been previously signed by the Parties. Billing for Maintenance Services will be calculated on the basis of (i) the duration subscribed by the Customer defined in the Quote and (ii) the duration of use of the Software since the entry into force of the Contract, not covered by a Maintenance Contract.

Article 9. Additional Services

9.1 Developments at the Customer's request

The Customer may request a development or enhancement for the Software at any time. While under no obligation to build any bespoke developments requested by Customers, the Service Provider agrees to take requests into account according to the usefulness, importance and number of requesters and then potentially to implement them under future Updates.

9.2 Additional Services proposed by the Service Provider

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

The additional services (also referred to as Web Services) are presented in the Service Provider's Commercial Offering and include:

- for the "GoKarts" Software solution:
 - the "Web Pro" subscription package
 - the "Web Premium" subscription package
 - the "Live Timing" subscription package
- for the "GoRacing" Software solution:
 - the "Live Timing" subscription package

- the "Live Graphics" subscription package

Other additional Services can take the form of:

- installation of the Software on users' hardware by the Service Provider;
- reinstalling the Software or restoring data files and software in the event of destruction or deletion by accident or by a virus;
- file backups and operating data entry; modifications or additions to functionalities relating to the Software requested by the Customer;
- changes or additions to functionalities relating to changes in regulations or changes in hardware configuration;
- training, installation, advice or assistance services that may be provided by the Service Provider through training, installation, consultancy or assistance contracts;
- installation of computer equipment not acquired from the Service Provider;
- any travel to or work at the Customer site;
- any new installation of the Software on a new workstation on the Site, requested by the Customer during the Contract following a breakdown of their equipment, is included in the price of the installation services billed by the Service Provider, up to a maximum of two (2) per year and if the installation takes no longer than 30 minutes;
- assistance or Remote Support with no Internet connection.

An additional charge is automatically billed for these services in accordance with the fee, lead times and billing frequency indicated by the Service Provider in a further quote.

Since the Service Provider's Commercial Offering is subject to change, this list is not exhaustive.

9.3 Specific terms and conditions related to sending emails

Email policy and best practices are presented in Appendix 2 and 3 of these GTCUM and are also available in the online help.

9.4 Specific terms and conditions related to online sales

The "Web Pro" and "Web Premium" GoKarts Software subscription packages include an online sales service (the Customer is invited to refer to the Commercial Offering for more details regarding the services provided).

The online sales system will be set up at the Customer's request to the Service Provider.

The costs of establishing the connection between the GoKarts system and the web payment processor, or of changing web payment processor, will be billed in an additional invoice provided in an additional quote. In the event that the Customer's web payment processor is not integrated with GoKarts, the Service Provider reserves the right either to bill the additional time spent on integration in an additional quote, or to refuse integration.

The Service Provider cannot be held liable for any illegal and fraudulent activity on the Service Provider's payment methods, as stipulated in the "Liability" article of the present GTCUM.

Article 10. Arrangements for performance of Maintenance Services

The Service Provider's Support Department is responsible for performing Maintenance services, managed by the Technical Director. The Service Provider's team will also inform the Customer of any event or action that might require additional intervention by the Service Provider.

The arrangements for performing Maintenance Services are detailed in Appendix 1 hereto.

Article 11. Price

In consideration of the Software User Licence, Maintenance Services and/or additional Services, the Customer agrees to pay the Service Provider the lump sum stipulated in the Quote. This price is stated exclusive of taxes, and any taxes

and duties applicable on the invoicing date are added as well as all call charges related to Remote Support and the costs of travel to the Site.

All invoices will be issued as stipulated in the Quote, and are payable in advance.

Invoices for Services renewal (Licence, Maintenance and additional Services) will be issued quarterly or annually sixty (60) days before the due date, all Services being payable in advance, within forty-five (45) calendar days from their issue date.

In respect of the renewal of the Contract and/or all or part of the Services (Licence, Maintenance and additional Services), the Service Provider may revise the price in accordance with the following formula:

$P = P_o \times S / S_o$.

P = price after revision.

P_o = initial price for the first revision, then price from the previous revision for subsequent revisions.

S = most recent Syntec index published on the date the fee is revised.

S_o = value of the Syntec index in application on the date the Contract was issued for the first revision, then value of the Syntec index on the day of the previous revision for subsequent revisions.

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

In any event, any delay in payment will result in the Customer being charged (i) the statutory fixed charge for debt collection costs, in accordance with Article L.441-10 of the French Commercial Code, (ii) a fixed collection charge of forty euros (€40), (iii) late payment interest at a rate equal to three (3) times the legal rate in force, applied in days from the first day of lateness after the due date of the invoice until cleared payment, this penalty not being in full discharge.

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 Customer 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 Customer.

Article 12. Contractual warranty

The Service Provider guarantees that the Software complies with the functional and technical characteristics set out 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, under the conditions stipulated for Maintenance.

The Customer will email the Service Provider a report documenting details of the Defect to:

support@apex-timing.com.

The Service Provider reserves the right to use the most appropriate method to correct Defects, be it sending an email, travel to the Customer Site, etc.

Any travel to the Customer Site will give rise to an additional invoice.

The above guarantee automatically ceases to apply if the configuration and/or the Software have been modified, or where use is other than that described in Documentation and Functional Specifications, and in all cases of exclusion from Maintenance as specified in the present GTCUM.

Any work carried out on a Defect that does not meet the criteria in the above warranty will be billed to the Customer in respect of Maintenance Services.

Moreover, the Customer acknowledges that the Software's performance depends on their ability to use it as intended, and the Service Provider does not guarantee that the Software will meet all the Customer's requirements, including performance or profitability, or that it will operate continuously free from any fault, or that the Software will always work with any product, hardware and/or software not supplied by the Service Provider. The Customer is therefore reminded that it is their responsibility to take all necessary measures to establish appropriate troubleshooting plans and to take all appropriate measures to minimise the harmful consequences caused in particular by a possible interruption of operations or a possible loss of data generated by the Software as a result of its use.

Article 13. Source codes

The Service Provider keeps the Software source code.

The Service Provider guarantees the Customer access to the Software source code in the event of the Service Provider's company failure, for the duration of the Licence granted. For the requirements of this Article, company failure means the following situations:

- compulsory winding-up order being issued against the Service Provider, with business activities discontinued;
- the Service Provider ceases to trade, if the business is not taken over;
- Maintenance Services are discontinued and not taken over by a third party.

Furthermore, where access to the source code applies, the Customer or any third party designated by the Customer is authorised to use the Software source code for the sole purposes of continued corrective Maintenance on the Software, to the exclusion of any subsequent development or any other use, for the Customer's own requirements. The Customer undertakes to maintain the confidentiality of the source code and will refrain from disclosing it to any third party other than the service provider in charge of its Maintenance, that provider being bound by a confidentiality obligation of the same scope.

Article 14. Warranty of quiet possession

The Service Provider warrants that it holds all the intellectual property rights enabling it to provide the Software, in the form of a User Licence, and any generic developments developed by it.

Consequently, the Service Provider agrees to hold the Customer harmless against any loss or harm caused by claims, lawsuits or convictions, instigated by a third party alleging that all or part of the Software infringes its copyright, provided that the Customer immediately notifies the Provider by registered letter with acknowledgment of receipt of the existence of the lawsuit, makes a request for its defence, provides its full cooperation in said defence, and provided also that the alleged violation is not of the Customer's doing and the Customer does not settle without first obtaining the Service Provider's written consent.

The Service Provider shall have sole control over the manner in which the action is conducted and shall have full discretion to settle or continue any procedure of its choice. The Customer shall provide all necessary information, elements and assistance to the Service Provider to enable it to successfully defend itself or reach a settlement agreement.

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 recognises that all or part of the Software is considered to be an infringement, the Service Provider may, as it so chooses and at its own expense, either: (i) modify the component in question so that the Software is no longer infringing; (ii) replace the infringing component with a non-infringing component, with generally equivalent functionalities in performance; (iii) obtain the rights of use so that the Customer can continue to use and operate the Software in accordance with the terms of the Contract.

This warranty does not apply to any open source components that might be integrated or used within any Software. Nor does it apply in the cases of exclusion from Maintenance and/or liability stipulated in these GTCUM and, in any event, to any infringement proceedings resulting from the use, combination, modification, adaptation or operation of the Software or the output of the Service Provider's Services that does not comply with the Documentation, the Contract or is not expressly authorised in advance by the Service Provider.

Article 15. Intellectual Property

The Service Provider is and remains the sole owner of all rights relating to the Software, the Services, its trademark, logo, computer system and all of its resources. Under no circumstances can the Contract have the effect of transferring any intellectual property rights whatsoever in the Software to the Customer. The Customer therefore agrees to maintain any indications of intellectual property appearing on the Software, the Documentation, and more generally to refrain from any action that may directly or indirectly infringe the Service Provider's rights or image.

In respect of changes made under corrective Maintenance (support) and Maintenance enhancements (monitoring), the Customer has the same rights as are granted to it over the Software under the Software User Licence.

The Customer is and remains the sole owner of its own trademarks, logos and Information System. The Customer permits the Service Provider to mention its brand and logo in the context of promoting its services, and to reproduce them as a commercial reference on its promotional material, including online, any other use being excluded.

Article 16. Confidentiality

Each of the Parties undertakes (i) not to disclose to any third party any information, including in particular intellectual property elements, any document, information, data, method or procedural knowledge, disclosed directly or indirectly by the other Party or of which it becomes aware under the Contract (hereinafter referred to as "Confidential Information"), (ii) to use the Confidential Information only for the performance of its respective obligations as stipulated in the Contract, (iii) to disclose Confidential Information only to persons directly involved in the fulfilment of orders, and (iv) to ensure that said persons comply with this article. This confidentiality obligation will remain in force throughout the term of the Contract and for a period of two (2) years after the effective termination date of the contractual relationship.

Confidential Information excludes any information:

- of which a Party was already in possession on the date of disclosure of the information by the other Party;
- which enters the public domain after its disclosure, without this being attributable to either Party;
- lawfully received by a Party from a third party, provided that such third party is not subject to a confidentiality obligation vis-à-vis the Party owning the information; and
- that a Party is required to disclose pursuant to laws, regulations or other legal obligations, provided that this Party informs the other Party without delay.

Article 17. Personal data

Within the meaning of the applicable regulations and in particular European Data Protection Regulation no. 2016-679, the Customer is the "data controller" and the Service Provider is its "data processor".

The terms and conditions under which the Service Provider undertakes to process personal data on behalf of the Customer are defined in Appendix 4 hereto.

Article 18. Liability

It is reiterated that the Software and Web Services are used under the management, control and responsibility of the Customer alone, and the Customer 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 troubleshooting plans, if need be, anticipating replacement procedures and generally taking any appropriate steps to protect itself against any harmful consequences from using the Software or Services.
- ensuring the non-fraudulent use of the Software and the Services offered by the Service Provider, and in particular complying with the email policy stipulated in Appendix 2 hereto.

For the performance of all of its obligations, and taking into account professional practice in its profession, the Service Provider, undertaking to take all possible care in the performance of its obligations, is under a best endeavours obligation.

The Service Provider undertakes to supervise its staff so as to ensure compliance with the Customer's internal policies and procedures, provided that the Customer has in fact sent same to the Service Provider prior to any intervention.

Each Party will be liable for the consequences of its faults, errors or omissions. In the event of a breach by the Service Provider of its obligations in respect hereof, proven by the Customer, the Service Provider is required only to compensate for the financial consequences of direct and foreseeable loss and harm. Consequently, the Service Provider may not under any circumstances be rendered liable for indirect loss or harm, even foreseeable, sustained by the Customer, users or third parties dealing with the Customer, including, but not limited to, any loss of earnings, any loss, inaccuracy or corruption of files or data, commercial loss or harm, loss of revenue or profit, loss of customers or prospects, lost opportunity, or the cost of obtaining a substitute product, service or technology.

The Parties are moreover each responsible for taking out the insurance policies necessary for its business activities and its products. It is reiterated that the Service Provider's contractual liability cannot be incurred if the loss or harm sustained falls under one of the cases stipulated herein under the limitations of use and cases of exclusion from Maintenance. Similarly, under no circumstances can the Service Provider be held liable when interruption of access to the Software is made necessary by overdue payments, breaches of these GTCUM by the Customer, or attacks by a third party on the security of the Software. The Service Provider will thus not be obliged to pay any compensation in the event of temporary interruption of access as described above.

Furthermore, the Service Provider cannot under any circumstances be held liable for any mismatch between the Software and/or the Services and the Customer's specific requirements. The onus is on the Customer to take cognizance, directly or through a service provider of its choice, of the functional and technical characteristics of the Software and the Services sold by the Service Provider, and of compliance with the regulations applicable to its activities. The Service Provider also declines any liability in the event of malfunction of the Software and/or the output of the Services owing to failures in telecommunications, internet services or electronic communications, corruption, security, loss or theft of data, viruses or spyware.

The Service Provider also cannot be held liable in the event of failure of the kart slowdown system, sold by one of its partners under the name "DeHaardt system", over which the Service Provider has no control.

In any event, if the Customer claims the Service Provider is liable in respect of the Contract for direct loss and damage suffered by the Customer, the Customer'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 Customer to the Service Provider for the year during which the Service Provider's liability is incurred. Lastly, the Customer waives any recourse against the Service Provider beyond a period of two (2) years after the occurrence of a cause of loss. This limitation is stipulated with regard to the prices and fees granted and forms part of the economic balance of the Contract.

Article 19. Insurance

Throughout the period that the obligations stipulated in the Contract remain in force, the Parties each confirm they have taken out an insurance policy covering the risks relating to their civil liability, operating risks and professional liability, affording them protection against the risks arising from the obligations for which they are 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.

Article 20. Personnel

The Service Provider, in its capacity as employer, deals with administration, accounting and employment matters relating to its employees, who remain in all circumstances under its hierarchical and disciplinary authority. The Service Provider's employees assigned to performance of the Services remain under the full and sole responsibility of the Service Provider, being the sole Party permitted to issue them with instructions, even if they are working on the Customer's premises or on the Customer's Information System.

Each of the Parties undertakes to refrain from hiring or recruiting, directly or through an intermediary, any employee of the other Party without that Party's prior consent. This undertaking is valid throughout the Contract term and for the twelve months following the end of the Contract. In the event that one of the Parties fails to comply with this obligation, it undertakes to compensate the other Party by paying it immediately on request, a lump sum equal to twelve (12) times the gross monthly remuneration of the employee at the time of his/her departure.

Article 21. Final provisions

21.1 Lead time for entry into service

Lead times indicated in contract documents are not binding. Late entry into service cannot serve as grounds for cancelling an order or for payment of compensation. The Service Provider will be entitled to suspend the Service in the event of non-compliance with the payment terms or failure to produce documents necessary for the fulfilment of an order.

21.2 Termination for breach

The Contract may be terminated in whole or in part by one of the Parties, ipso jure, at the expense of the defaulting Party and without formalities in the event of a breach by the other Party of any of its obligations under the terms of the Contract, if such breach is not remedied within thirty (30) calendar days of receipt by the defaulting Party of a registered letter with acknowledgment of receipt notifying such breach and reminding that, if it is not remedied, the defaulting Party may be subject to termination of the Contract at its expense, and without prejudice to any damages the non-defaulting could claim.

In the event this contractual relationship is terminated for any reason whatsoever, the Customer agrees to either return to the Service Provider within thirty (30) days of the end of the contractual relationship all the elements constituting the Software, including the media and all copies made thereof, guaranteeing in writing the entirety of this delivery, or to provide in writing a certificate assuring the destruction of the Software, its media and all copies that could have been made.

As an exception, the Service Provider reserves the right to automatically terminate the Contract without prior notice or compensation in the event that the Customer or one of its users infringes in any way the integrity of the Software and/or the output of the Services, the Service Provider's intellectual property rights over the Software, or harms the brand image of the Service Provider or its products.

In the event of termination of the Contract for breach by the Customer, the Service Provider retains all sums paid and will invoice all fees due until the end of the Contract (or for the current year if termination occurs after its renewal), and when applicable, the price of any Maintenance Services and/or additional Services up to the amount of their performance at the time, which become immediately payable on the termination date.

21.3 Force majeure

Force majeure is considered to be that usually retained by the courts, namely events of a compelling and unforeseeable nature, beyond the control of the Parties, against which they could not reasonably have protected themselves and against which they could not have mitigated the consequences except by incurring expenses out of proportion to the expectations of financial benefits.

Besides situations more generally matching the above definition, the following circumstances are expressly deemed to constitute force majeure: (i) strike action at the Parties' premises, (ii) strike action elsewhere if the effect is to prevent the Party affected by the strike from conducting its activities, (iii) 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, (iv) the unavailability or shortfall of stock of equipment ordered from the Service Provider's suppliers, (v) inaccessibility or failure of telecommunications networks and/or servers used by the Service Provider, (vi) epidemics, health emergencies, earthquakes, storms, floods, fires, explosions, (vii) wars, whether declared or otherwise, blockades or embargoes, riots, and government restrictions or prohibitions.

The Service Provider undertakes to inform the Customer as soon as possible in the event of force majeure. The performance of the Service Provider's obligations will then be suspended on an on-going basis from the date of sending notification to the Customer until permanent cessation of the force majeure event. However, if a force majeure situation continues for more than thirty (30) calendar days from the date of sending the notification, the order and/or the Contract will be terminated immediately as of right and without formal notice, without either Party incurring any liability with regard to the other.

It is however agreed between the Parties that a case of force majeure does not make performance of the Customer's payment obligation impossible.

21.4 Subcontracting

The Service Provider is permitted to subcontract all or part of the Services incumbent upon it under this Contract. However, the Service Provider remains liable to the Customer for the subcontracted Services, as stipulated in the "Liability" article hereof.

21.5 Assignment

The Customer will refrain from assigning the Contract to a third party without the express consent of the Service Provider. 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 said assignment.

21.6 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.

21.7 Modifications

During the term of this Contract, the Parties shall have the option of amending their agreement, but only by means of a written agreement, or by amendment or appendix to this Contract. Any modification made by other means shall be considered null and void.

The amendments or appendices shall form an integral part of this Contract and shall form an indivisible whole with it. Notwithstanding the foregoing, the Service Provider reserves the right to modify this Contract at any time and without prior notice, subject to informing the Customer by e-mail. The new conditions will take effect as from the notification of this information.

21.8 Independence of provisions

In the event that one or more of the provisions of the Contract are found, for any reason, to be invalid, illegal or unenforceable for any reason whatsoever, such invalidity, illegality or unenforceability will not affect any of the other provisions of the Contract which will remain valid, applicable and enforceable. The Contract shall be interpreted as if such invalidity, illegality or article not subject to enforcement were not part of the Contract. The Parties nevertheless agree that in such an event, they will negotiate in good faith alternative provisions that will be (i) valid, enforceable

and opposable and (ii) consistent with the Parties' original intent.

21.9 Language of the Contract - Applicable law

This Contract is written in French. In the event that it is translated into one or more languages, the French text alone shall prevail in the event of a dispute.

By express agreement between the Parties, this Contract is governed by French law.

16.8 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.

21.11 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.

Appendix 1 - Maintenance Arrangements

Article 1. Assistance and support work

1.1 Service calls during the Hotline Centre's opening hours

The Hotline Centre is open from Monday to Friday from 9 a.m. to 6 p.m. (GMT Paris), excluding French public holidays and non-working days (1 January, Easter Monday, 1 May, 8 May, Ascension Day, 14 July, 15 August, 1 November, 11 November and 25 December).

The Customer's Priority Contact has access to the Service Provider's Hotline Centre, by telephone at +33 (0)4 80 97 09 14, or by email at support@apex-timing.com, to ask any questions relating to use and operation of the Software.

1.2 Service calls outside the Hotline Centre's opening hours

Outside the Hotline Centre's opening times and in the event of an emergency (Critical Defect on the Software only), the support team can be reached from Monday to Friday from 6 p.m. to 10 p.m. and at weekends, public holidays and French non-working days from 9 a.m. to 10 p.m. (GMT Paris).

The Customer's Priority Contact will contact an on-call technician on +33(0)4 80 97 09 14 who will respond as soon as possible.

Support outside of the Hotline Centre's opening hours is reserved for the resolution of Critical Defects on the Software, which could not reasonably be anticipated, after consulting the online help available from the Customer area.

1.3. Operation of the Support Department

The Customer will immediately report any Defect noted and indicate the circumstances in which it occurred. If an Incident can be corrected by Remote Support, the Service Provider undertakes to do so, after informing the Customer, using the terminal installed at the Hotline Centre that will be connected to the Customer's Software. The Customer agrees to not modify and/or delete the software used for Remote Support: Splashtop. Connection time is included in the fee.

Depending on the type of Incident, the correction made may take the form of:

- an oral answer by telephone;
- a written response to the Customer defining the procedure to be followed;
- the provision of additional Documentation;
- a remote correction by the Service Provider.

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

From the time of the Support call or message from the Customer, the Service Provider will endeavour to analyse the nature and cause of the Defect. If analysis establishes the existence of an Defect attributable to the Software, the Service Provider will endeavour to correct it within the time limits set below:

(i) For a Critical Defect, the Service Provider will endeavour to correct the Defect or at least provide a Work-around Solution to the Customer within twenty four (24) business hours of the Customer's call or email to Support.

(i) For a Semi-critical Defect, the Service Provider will endeavour to correct the Defect or at least provide a Work-around Solution to the Customer within forty eight (48) business hours of the Customer's call or email to Support.

(i) For a Non-critical Defect, the Service Provider will endeavour to correct the Defect or at least provide a Work-around Solution to the Customer within twenty (20) business days of the Customer's call or email to Support.

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

- an Update;

- a New Version;
- a Work-around Solution.

For all service requests to which only a Work-around Solution acceptable to the Customer 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 provide enhanced assistance to the Customer to ensure the durability and reliability of the Work-around Solution.

Article 2. Monitoring work

2.1 Updating the Software and Documentation

All corrections and improvements made to the Software take the form of Updates. The Service Provider will provide Software Updates to the Customer as and when they become commercially available after confirming there is no risk of causing any regression relative to the Software's Functional Specifications.

2.3 New Version

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

The Customer may not refuse or delay the installation of the New Versions.

2.3 Installation of Software Updates and/or New Versions

The Service Provider will install an Update and/or New Version of the Software, i) directly on the Customer Site, or ii) remotely on the basis of a schedule planned beforehand, or iii) automatically when the Customer next connects to the internet. Updates are included in the Maintenance service fee.

Article 3. Interruption of access to the Software

The Service Provider reserves the right to temporarily interrupt access to the Software at any time:

- to carry out an update, technical maintenance or improvement work designed to contribute to the proper functioning or to repair a fault;
- if the servers are unavailable for any reason whatsoever.

The Service Provider will not be liable to pay any compensation in the event of a temporary interruption to access as described above.

Appendix 2: Terms of service – Emailing module

Since its creation, Apex Timing has always had for leitmotiv the fight against unwanted emails (Spam) and frauds. This fight, which brings together all the actors of the email (operators and service providers) is paramount for Apex Timing, as it is for you as a transmitter. Email is an incredibly powerful and flexible communication lever. The adoption of clear rules allows us to perpetuate this common asset. The rules that we offer below help us to identify unwanted emails. Their strict observation will allow you to improve your reputation as a sender of emails with the operators, and thus the good routing of your emails to their recipients. The indicators identified below are a good reflection of the compliance with the "quality of the mailings" by the issuer. The sending of "unsolicited" emails will inevitably lead to the deterioration of these indicators. Following the rules below will allow you to stay below the thresholds indicated as acceptable and avoid the suspension, or in some cases the closure of access to this option by our team.

Limited statistics	Acceptable thresholds*	Additional factors
« Bounces »	≤ 8%	Calculated based on the number of messages that were rejected
Unsubscribers	≤ 1.4%	Or 1% if unsubscribes > click-through rate
Blockages	≤ 30%	
Spam complaints	≤ 0.08%	
Spamtrap detections & unwarranted use complaints	≤ 1	

*Apex Timing reserves the right to update the parameters of the acceptable limits of shipments without prior notice.

DEFINITION:

Bounces - For traditional mail, when a fold can not be deposited at the address of a recipient, it is returned to the sender. Similarly, emails declared "bounces" are returned to the sender when the recipient's email address is incorrect or inactive

Unsubscriptions - Recipients who terminate their subscription because they no longer wish to receive communication. There are many reasons why customers may want to unsubscribe: some are no longer interested in the content you publish, others have an inbox loaded with different emails, and others are waiting for content different from You address them.

Blocking - Emails that remain on Apex Timing servers due to a permanent error. These are email addresses that have returned emails previously because they no longer exist or have posted your message as spam. This also includes all email addresses from which complaints originated or that were detected as spam by Apex Timing filters.

Complaints for Spam - Number of recipients who reported your email as spam.

"Spamtrap" Detections - After a certain period of inactivity, email providers use email addresses to make "spamtrap" that detect the authors of emails using obsolete lists or purchased from third-party companies.

Complaint for unwarranted use - When a recipient notifies a sender as having sent a message without its opt-in agreement.

The 10 Commandments

Here are 10 commands to follow to optimize your deliverability, avoid suspending your account and help us in the long term in our fight against spam.

1 – LIMITATION OF SENDING EMAIL

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Bulk mailing is limited to :

- 🕒 25 000 emails / month for each customer who subscribed to the Web Pro
- 🕒 90 000 emails / month for each customer who subscribed to the Web Premium

A counter allows to follow and anticipate the campaigns.

2 – VALIDATION OF EMAILS BEFORE SENDING

Each campaign is validated within 24 hours before being sent in order to avoid any sending that could harm both parties. Sendings are done between 8 a.m. and 9 p.m., customer's hour, as follows : 🕒 1 000 emails / hour for each customer who subscribed to the Web Pro 🕒 2 000 emails / hour for each customer who subscribed to the Web Premium.

3 – ALL SENDING INDICATORS MUST REMAIN UNDER APEX TIMING THRESHOLDS

Regular maintenance of your contact list ensures that you exchange with an interested public and whose email addresses are active. Although this criterion may vary by business, a customer is identified as interested when he has opened or clicked on an email within the last 3 to 6 months. Maintaining a list of clients who read your content regularly and are interested in your messages will reduce the number of your emails marked as "bounce" or blocked. Even if deleting inactive or incorrect email addresses will shorten your contact list, it will greatly increase your longterm deliverability. Other instructions to keep in mind are: give the email an object that reflects the actual content and avoid promotional terms or words associated with spam. Some internet service providers ("ISPs") may decide to suspend the transmission of emails from certain addresses if they detect or suspect dishonest or illegal behavior ("blacklisting"). If your account is blacklisted by an ISP, we will use reasonable efforts to try to re-establish communication with that ISP, and you agree to pay the additional services that we would have been required to perform for that purpose.

4 – PURCHASE OR SENDING TO LISTS OF THIRD-PARTY CONTACTS ARE PROHIBITED

Sending emails to contact lists purchased or leased from third-party companies will penalize your deliverability. The email addresses used should always be addresses whose holder has explicitly chosen to receive your communications. The use of lists purchased, leased or retrieved from a third party company is prohibited by law in most countries, and is strictly prohibited on Apex Timing servers.

5 – EMAILS MAY BE SENT TO RECEIVERS WHO HAVE EXPRESSLY AUTHORIZED THEIR RECEIPT (EXCEPT TRANSACTIONAL EMAILS)

All contacts on your list must have explicitly agreed to receive your communications and you must be able to provide proof at all times. This permission must be given via a double agreement system that clearly describes the subject of registration on an online or offline form containing a check box. This box should not be checked by default.

6 – USERS MUST PROVIDE PROOF OF CONSENT TO THEIR RECIPIENTS IN THE EVENT OF A COMPLAINT

Apex Timing, as an important actor in the fight against spam and phishing, takes very seriously the complaints for spam sent by the recipients. By using this Apex Timing service, you agree to abide by our rules, in particular that of sending your emails only to those who have explicitly agreed to them, and to be able to prove that they have well agreed to receive your messages. Please note that we will ask for your full cooperation. Accounts unable to provide proof of legal approval of their recipients, in the event that these recipients report to our teams complaints for abuse, risk seeing their accounts suspended or even, in some cases, closed.

7 – A DISCHARGE LINK MUST APPEAR IN EACH MARKETING EMAIL

All marketing emails must have a clear and concise link allowing recipients to unsubscribe and thus no longer receive any future communication from you. This link must be easy to recognize, read and understand by all. For your part, the unsubscription must be effective immediately, and no email must be sent to this recipient as of the unsubscription request. In accordance with the Apex Timing email policy, transactional and confirmation emails such as purchase orders, invoices, password resets, account confirmations, etc., do not need to include unsubscribe link. (See the tutorial in the emails section)

8 – THE NAME AND STATUS OF THE SENDER MUST CLEARLY BE INDICATED IN EACH EMAIL

The "From", "To" and "Reply to" fields must clearly and accurately identify the sender's domain name and email address. It is important to make shipments from a domain created more than a month ago, with a public and identifiable domain name that leads to the sender's legal information pages. When sending emails from a different domain name, for a third party partner or organization, the content of the email must clearly specify that the message is sent via a third-party domain. Mailjet has developed adapted plans so that agencies, resellers and advertisers follow the best shipping practices. If you are an agency or a reseller, please contact our Partnerships team.

9 – ONLY LEGAL AND LEGITIMATE INFORMATION MAY BE SENT BY THIS APEX TIMING

Apex Timing does not participate in the distribution of emails that contain, promote, reference or redirect to illegal, illegal, slanderous or defamatory activities. The same principle applies to violence against an individual or group, and to any element that runs counter to human rights in general. In addition, and except for serious warranties given by the issuer, Apex Timing in principle refuses to work with shippers who promote the following activities and products, whether or not legally authorized in accordance with the regulations, but not Exclusively: gambling, pornography or sexually explicit activity, weapons and explosives, tobacco and tobacco products, medicines, politics, piracy, sale of penny stocks, foreign exchange and stock market advice, Salary, sales of "leads", and job offers at home making promises of the type "get rich quick", "increase your wealth" or "become financially independent". In general, no information or content considered in a sovereign manner by Apex Timing as inadequate or detrimental to the reputation of Apex Timing, its affiliates, partners, customers or users should appear in your emails.

10 – THE USE OF THE SERVICES MUST COMPLY WITH THE LAWS IN FORCE AND WITH OUR GENERAL CONDITIONS

Your use of our services must comply with all applicable laws and regulations, as well as with our General Conditions of Use and General Conditions of Maintenance. It is your responsibility to read and understand these conditions, applicable to your use of our services and the emails you send. It is also your responsibility to ensure that you do not represent a compliance risk and we reserve the right to limit your shipping capacity and take other necessary measures until we can determine that you Do not put your recipients and / or Apex Timing at risk.

Appendix 3: Good emailing practices to avoid spam

LOOK AFTER ITS OBJECT

The object is the first element of the emailing to be analyzed by the spam filters but also by the recipient of your operation. It is therefore necessary to respect these very easy rules:

- Avoid the words used by spammers like "win", "free", "promotion", etc.
- Forget CAPITAL LETTERS, except for the first letter.
- Do not overuse special characters (€, etc.) or punctuation (!!!, ???, etc.)
- Your object should not be too long ... but incentive!

THE CONTENT OF THE EMAILING

When creating emailing, in addition to having a well presented email that will attract the reader it is necessary to fulfill certain conditions in order to facilitate the arrival in inbox of the emailing. Graphically, it is strongly advised to respect a correct ratio text / images, that is at least 60% of text and maximum 40% of images, and to avoid the use of background color and videos. Moreover, an essential criterion of the good deliverability of an emailing is to inform the alternative texts of your images. Also favor short, clear and precise emails. The best is also to indicate your postal address in the footer / footer. This is a good practice that reassures the recipient.

TESTING YOUR EMAILS

An emailing is not to be taken lightly as it is sent to a certain number of your customers, which could hurt you in case of error. Once your email is built, it is necessary to test it on different media and different people to check the rendering, the spelling, the links and the information given.

RESPECT UNSUBSCRIPTIONS

IMPORTANT: If you used an alternate emailing solution previously, you will have a list of unsubscribed people. Get back the list and unsubscribe them manually to avoid SPAM. Then, if one of your recipients unsubscribes from your emailings, the software will automatically deactivate the member's email address. It's the law. However, it is always possible to reactivate it manually in case of error or change of opinion of the customer, make sure that this action is carried out only on written request of the customer.

Appendix 4 - Processing of personal data

Article 1. Processing of the Customer's personal data as data processor

• **Description of the processing**

Maintenance Services, Web Services and additional Services involve automatic synchronisation of Customer Data on the Service Provider's servers. The Service Provider consequently may have access, as a data processor, to personal data. The Service Provider may thus be required to process personal data on behalf of the Customer, the data controller, for the sole purpose of performing Maintenance and providing Web Services, or performing additional Services at the Customer's request.

The Customer holds sole rights over the Data collected and processed in respect of the Services and is therefore responsible for ensuring compliance with the standards in force. It is therefore the Customer's responsibility to put in place the necessary measures to make the use of the services offered by the Service Provider compliant with local legislation on the protection and use of personal data. The Customer is also solely responsible for storing backups of its data.

The Customer is responsible for determining the object and purposes of the processing entrusted to the Service Provider, the nature of the operations carried out on personal data, the categories of personal data processed, the categories of data subjects and the duration of processing. Unless otherwise stipulated in the Quote, the categories of personal data collected on the Customer's behalf are as follows: (i) identification data (surname, first name, email address, photographs), (ii) purchasing history, (iii) IP address of mobile application users, concerning the following categories of persons: (i) users of the Software, (ii) customers and prospects of the Customer.

The Service Provider does not keep Customers' payment information (credit or debit cards) in its computer system.

• **Obligations on the Service Provider**

In respect of processing, the Service Provider agrees to:

- process personal data solely for the performance of the Maintenance Services, the provision of Web Services or fulfilment of additional Services;
- process personal data in accordance with the Customer's instructions, unless the Service Provider is required to do so under European Union law or the law applicable to the Contract. In this case, the Service Provider shall inform the Customer of this legal obligation before processing, unless the law concerned prohibits such information on important grounds of public interest;
- immediately inform the Customer in writing if the Service Provider considers that an instruction constitutes a violation of the Regulation or any other provision of Union law or the law of the Member States on data protection;
- ensure that persons authorised to process personal data by virtue hereof:
 - (i) agree to respect confidentiality or are subject to an appropriate legal obligation of confidentiality;
 - (ii) receive the necessary training in personal data protection.
- take into account, with regard to its tools, products, applications or services, the principles of personal data protection from the design stage and data protection by default.

The Service Provider undertakes to take all necessary precautions to maintain the confidentiality and security of personal data, including to prevent it from being corrupted, deleted or disclosed to unauthorised third parties and, more generally, to implement appropriate technical and organisational measures to protect personal data against accidental or unlawful destruction, accidental loss, alteration, and unauthorised dissemination or access.

The Service Provider agrees to take all measures on its Web servers to (i) ensure the confidentiality, integrity, availability and ongoing resilience of processing systems and services, (ii) restore the availability of and access to

personal data within an appropriate time frame in the event of a security incident and (iii) regularly test, analyse and evaluate the effectiveness of these measures.

- **Data processors**

The Customer authorises the Service Provider to use the data processors named below to conduct the following processing activities:

Subcontractor	Location	Services	Description of services
OVH SAS	EU Area	Hosting services	Hosting of the Provider's servers and account data: main servers and backup servers
SAS Icodia	France	SMTP Service	Emailing services

These data processors will be required to process Personal Data in respect of the provision of their services. In the event of a change to one or more of these data processors, the Service Provider undertakes to inform the Customer thereof, giving the Customer the possibility to object within fifteen (15) days of the notification. The Customer's reservations must be expressed in the form of an email sent to dpo@apex-timing.com. In the absence of any objection, the Customer will be deemed to have accepted them at the end of the fifteen (15) day period.

In any event, the Service Provider undertakes to ensure any contract with a data processor contains data protection commitments at least as strict as those stipulated herein.

- **Obligations on the Customer**

The Customer undertakes to:

- collect under its responsibility, in a lawful, fair and transparent manner, that personal data to which the Service Provider may have access, and in particular to check the legal basis for such collection and that the correct information is given data subjects;
- provide the Service Provider with the personal data necessary for the processing, excluding any irrelevant, disproportionate or unnecessary personal data, and excluding any "special category" data within the meaning of the Regulation, unless the processing and purposes justify it, it being the Customer's responsibility to establish these justifications and to take all measures, in particular prior information, the collection of consent and security measures, appropriate for such data;
- document in writing any instructions concerning the processing of personal data by the Service Provider in accordance with the agreed purposes;
- ensure, beforehand and throughout the processing period, that the Service Provider complies with the obligations provided for in the Regulations;
- comply with its obligations as controller under the Regulation.

It is also the responsibility of the Customer to provide information to data subjects of processing operations at the time their personal data is collected.

- **Customer assistance**

In the event that a data subject exercises his/her data protection rights with the Customer requiring the Service Provider's assistance, the latter agrees to assist the Customer as soon as possible so that the Customer is in a position to respond to said data subject. If a person sends a request directly to the Service Provider, the latter must inform the Customer as soon as possible and must act in accordance with the Customer's instructions.

The Service Provider agrees to assist the Customer in carrying out impact analyses relating to data protection and in carrying out prior consultations with the CNIL.

The Service Provider shall communicate to the Customer the name and contact details of the Data Protection Officer, if it has appointed one in accordance with Article 37 of the Regulation. It also agrees, insofar as it meets the conditions for establishing a register in accordance with Article 30.5 of the Regulation, to keep a register of all categories of processing activities carried out on behalf of the Customer including all the elements mentioned in Article 30.2 of the Regulation.

The Service Provider shall notify the Customer of any breach of personal data as soon as possible after becoming aware of it. The notification made to the Customer shall contain at least: (i) a description of the nature of the personal data breach including, if possible, the categories and approximate number of persons concerned by the breach and the categories and approximate number of personal data records concerned; (ii) the name and contact details of the Data Protection Officer or other contact point from which additional information may be obtained; (iii) a description of the likely consequences of the personal data breach; (iv) a description of the measures to be implemented to remedy the personal data breach, including, where applicable, measures to mitigate any negative consequences.

- **Data transfers outside the European Union**

In the event that the Service Provider transfers personal data outside the territory of the European Union, it undertakes to ensure that such transfers are governed by adherence to an adequacy decision by the European Commission, the signing of the European Commission's standard contract clauses or any other appropriate safeguards stipulated in Article 46 of the Regulation.

- **Documentation and audit**

The Customer may audit or have audited the Service Provider's internal personal data protection systems once (1) a year at its own expense, in order to verify the Service Provider's compliance with this article and the Regulations. The Service Provider agrees to provide the Customer with all the information necessary to demonstrate compliance with its obligations.

- **Data retention**

At the end of the Contract, the Service Provider undertakes to destroy the personal data or to return all the Customer's personal data in its possession, as the Customer sees fit. The return shall be accompanied by the destruction of all existing copies in the Service Provider's information systems, unless Union law or applicable law requires the retention of personal data. Once destroyed, the Service Provider shall provide written proof of the destruction of the personal data.

Article 2. Processing of the Customer's personal data as data controller

The Service Provider, in its capacity as data controller, may process the Customer's personal data on its own behalf. For any information concerning the processing of personal data, please refer to the Privacy Policy available at the following address: <https://www.apex-timing.com/en/privacy-policy-c34.html>