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## SaaS platform - Amanote GTCU

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### 1 IDENTIFICATION

**Amanote (hereinafter the “Platform”)** is an online service provided by Amaplex Software SPRL, a company with corporate capital of €253,500, whose registered office is at 24 avenue de Hony, 4130 Esneux, registered under No. BE0661870887 and represented by Mr Adrien Fery, its Manager.

### 2 PREAMBLE

The Provider has designed and developed a standard and configurable platform (the “**Platform**”), accessible online on a computer. This Platform gives Customers, schools, universities, businesses, training centres, the ability for their learners to take notes online and to access podcasts created by the teachers depending on the offer the Customer has selected.

The list of features is contained in the quotation.

The Customer wishes to be able to use the Platform for the needs of its own students and, in general, benefit from the services offered by the Provider according to the conditions stated below.

The Customer acknowledges that the service is an online service, identical for all customers. It is its responsibility to check that the specified features meet its need before placing its order or to contact the Provider if it would like more information.

Before any use of the Platform, the Customer must ensure that it has the technical and computer resources for using the Platform and that its browser allows secure access to the Site. The Customer must also ensure that the computer configuration of its hardware/equipment is in good condition and does not contain viruses.

The Customer must approve the General Terms and Conditions (“GTC”) before any payment of its online access to the service. Signature of the quotations is deemed acceptance of these GTC. The GTC applicable are those in force on the date of signature of the quotation.

Any condition to the contrary laid down by the Customer would therefore, in the absence of express acceptance, be unenforceable on the Provider regardless of when the Provider is made aware of it.

The fact that the Provider does not at a given time require the performance of any provision of these GTC, may not be construed as a waiver to rely on any provision of the said GTC at a later time.

### 3 DEFINITIONS

In addition to the terms defined as needed in the Contract, the terms whose first letter is written in uppercase, in the Contract, have the meaning given to them below.

#### **Bug**

Means any malfunction of the Service specifically related to a problem affecting the Platform. A “Blocking” Bug is one which entirely prevents the use of the Platform by the Customer. A “Major” Bug is one which prevents use of one or more features of the Platform considered as priorities for the Customer's activity and which cannot be worked around without a maintenance service being carried out.

#### **Customer**

Means the legal person whose legal representative has accepted the GTC by signing a quotation and paying the subscription.

## **Contract**

Means all the stipulations set out in the quotation, the General Terms and Conditions of Sale and Use (or "GTC"), as well as any rider which may supplement, modify or replace them, it being specified that the preamble and the annexes form an integral part thereof. The parties acknowledge that the Contract is bilateral, in return for payment, and with successive performance.

## **Start Of Production (or "SOP")**

Means the date from which the Service is accessible online for the Customer's benefit. A new start of production is made necessary after each maintenance operation.

## **Hosting Company**

Means AWS, the subcontractor service provider, which hosts the platform and, in some cases, the Customer's data. The servers chosen by the Provider are located in Ireland.

## **Maintenance**

Means the corrective maintenance service of the Platform and of the assistance/support for using the Platform. The cost of this service is included in the Fee. The Provider's commitments in relation to Maintenance are restrictively defined in the Contract.

## **Parties**

Means the Provider and the Customer.

## **Fee**

Means the amount payable by the Customer to the Provider in consideration of the right to benefit from the Service. The Fee is chargeable and payable under the conditions laid down herein.

## **Service**

Means the Customer's right, for the fixed duration of the Contract (i) to use the Platform and its features and (ii) to access the Maintenance services. The services included in the Service form an indivisible whole. The list of services comprising the Service, with the levels of service and the list of the Platform's features, describe the essential qualities of Service performed by the Provider.

## **Users**

Means any natural person to whom the Customer has authorised access to the Service and who has a member's account on the Platform.

## **4 OBJECT OF THE CONTRACT**

The object of the Contract is to set out the conditions under which the Provider provides, through the use of the Platform, the Service for the benefit of the Customer in consideration of payment of the Fee. Use of the Service is granted to the Customer to the benefit of only those Users to whom the Customer has granted access and of whom it guarantees compliance with the conditions of use of the Platform. The maximum number of Users is indicated in the quotation, if applicable. When data are hosted by the Provider, the maximum storage is 5 GB per User.

The object of the Platform is to enable students to take notes online and to access podcasts created by the teachers, according to the options that have been selected by the Customer.

All the features are specified on the Platform and have been presented to the Customer before acceptance of the quotation.

Depending on the characteristics of the Service selected by the Customer, the Customer's data shall be hosted on its own servers, or in a cloud of a hosting company chosen by the Provider.

The Platform may be customised with the Customer's logo or brand name.

Any other service or request having to be performed by the Provider must be contained in a quotation from the Provider and written and express acceptance from the Customer before any action by the Provider. These services shall attract additional invoicing.

The Contract enters into force between the Parties once the Customer's registration has been paid. The GTC applicable are those in force on the day of the signature of the quotation by the Customer.

## 5 INFORMATION FOR USE OF THE PLATFORM

The Customer states having noted the characteristics and limitations of the Internet described below:

- That data transmissions over the Internet are only of relative technical reliability and that no one can guarantee the proper operation of the Internet;
- That the Provider has taken important measures to secure access to the Platform, according to an obligation of means, but that data communicated via the Internet may be hijacked and that the communication of passwords, confidential codes, and more generally, any information of a sensitive nature is made by the Customer at its own risk;
- That the Internet is an open network and that the information transmitted by this means is not protected against the risk of hijacking, fraudulent, malicious or unauthorised intrusion into the Customer's information system, hacking, alteration or unauthorised retrieval of data, modifications, alterations of malicious programs or files or infection by computer viruses. That it is therefore the Customer's responsibility to take all appropriate measures to protect its own data and/or software stored on its servers from infection by viruses and attempts at intrusion into its computer system by third parties via the access service.

In the light of the foregoing, and in full knowledge of the characteristics of the Internet, the User waives the right to invoke the Provider's liability with regard to one or more of the said situations or events, except for a failure to fulfil an obligation of means.

The User acknowledges having been sufficiently informed about the computing conditions required for access to the Platform.

The browsers for which the SaaS service is optimised: Google Chrome Firefox, Safari. The browsers must be up-to-date. The Desktop version of the Platform is accessible under MacOS and Windows.

The formats handled by the Platform are PDF and AMA (Amanote files). The Customer is informed that operation of the service is not guaranteed for PDF files larger than 50 MB.

Name of the hosting provider acting as the Provider's processor: AWS. The Platform is hosted in Ireland. Details of the services offered by AWS in its DataCenter may be requested by the Provider (security, backup, etc.) if the Customer has opted for Cloud hosting of its own data (identity of the students, notes, podcasts, etc.).

Support times for the Administrator: between 10.00 and 17.00, Monday to Friday, except public holidays in Belgium.

The Customer acknowledges having been sufficiently informed about the computing conditions required for access to the Platform.

In order to access the Platform, the Customer must download a Plugin. This allows the Platform to be integrated into the Customer's Learning Management System. The Code of the plugin belongs to the Provider which grants a use licence for it (download and reproduction on the Customer's information system) that is non-exclusive, worldwide and for the term of the Contract. The Customer shall make no use of it other than for the implementation of this Contract.

## 6 STRICT LIMITS OF USE OF THE PLATFORM

The Service includes the right to use the Platform only for the term of the Contract defined below, non-exclusively and non-transferably, and it may not be sub-licensed, assigned, transferred or made available to a third party, free-of-charge or for a fee, according to any practical or legal arrangement whatsoever. The Platform may be used:

- (i) via remote access only over the Internet, in accordance with the rules of identification and allocation of the Customer's rights (the "**Credentials**") which alone decides which Users that it authorises it to use the Service;
- (ii) only for processing Users' data by the Customer under the conditions exhaustively set out in the Contract. Use of the Platform is limited under the conditions specified below and according to the offer selected by the Customer.

The Platform is a work of the mind of which the Provider keeps full ownership and the Customer and any User are prohibited, in particular:

- From, directly or indirectly: reverse engineering, decompiling, disassembling or otherwise attempting to discover the source code, the object code or the underlying structure, ideas, know-how or algorithms relating to the Platform or any software, documentation or data relating to the Services
- From copying or reproducing, representing, modifying, transmitting, publishing or adapting it in whole or in part by any means and in any form;
- From using it other than according to the strictly interpreted stipulations of this Contract;
- From translating or transcribing it in any other computer language or human language, or adapting it or appending any object to it that does not comply with its specification.

This clause regards any element of the Platform and of the Site (images, databases, etc.) other than those belonging to the Customer or to the Users to which the Customer has granted access.

Any attempt by the Customer to use the Platform under conditions not set out in the Contract, without the Provider's prior written agreement, is deemed to be a sufficiently serious breach by the Customer of its obligations and shall result in the Provider being able to suspend the Service immediately and automatically after formal notice given in accordance with the conditions of article "Termination".

The Users' Credentials are personal and confidential and are the Customer's responsibility. They may only be changed on the User's request. Each User undertakes to implement all the necessary measures to keep his Credentials secret and not to disclose them in any form whatsoever. The Customer shall ensure that no person not expressly empowered by it has access to the Service. Generally, the Customer is responsible for the physical and logical security of individual terminals for access to the Service. Should the Customer become aware of a non-authorised person having access to the Service, the Customer undertakes to inform the Provider of this situation promptly. In the event of the loss or theft of one of Credentials, the Provider shall transmit a link allowing the User to change his password.

When the Customer's data storage is provided by the Provider, the storage is limited to 5 GB per user. The maximum number of Users may be limited in the quotation.

## 7 THE USERS' RESPONSIBILITY

The Customer is responsible for the actions of the Users that it has authorised to use the Platform.

The Users that the Customer may allow to use the Platform are natural persons, students or teachers.

Each User must undertake to comply with the conditions of use of the Platform and not disclose his login and password.

The Customer is responsible for the content uploaded and transmitted via the Platform. The Customer states that it is the author or has all the rights or necessary permissions to all of the Content uploaded or used for the Service.

In this respect, the Customer states that the users hold the intellectual property rights and/or authorisations for the reproduction and representation of the Content they download and for which they make use of the Platform. The Provider may not be held responsible for non-compliance with this clause.

The Customer undertakes not to upload content that contains or that may contain viruses or programs that destroy the data, nor illegal content or content that may undermine the public order and good morals. The Customer also undertakes to verify that the content that it uses does not contain viruses or programs that may, in particular, disrupt the operation of the service or harm other users of the Service.

The User undertakes, in particular, without this list being considered exhaustive:

- not to use any content and not to disseminate any message or information of an abusive, defamatory, racist, xenophobic or revisionist nature or that is harmful to the honour or reputation of others, that incites discrimination, hatred of a person or a group of persons because of their origin or of their membership or non-membership of an ethnic group, nation, race or religion, that is threatening to a person or a group of persons, pornographic or paedophile, that encourages an offence, a crime or an act of terrorism to be committed or other action that infringes the rights of others or the security of people and property;
- to respect the rights of others, and in particular: rights of personality (such as image rights, privacy rights), trademark rights, author's rights and similar copyright rights, and generally the rights of persons and goods;
- to respect image rights when uploading a photo or a video.

The Customer guarantees generally that its contents comply with the regulations in force and do not infringe the rights of others.

The Customer is entirely responsible for any creation, transmission or publication of Content through the Platform and the consequences of its actions.

Use of the Service, and in particular the storage of Content, is carried out under the sole responsibility of the Customer and within the limits of the intellectual property rights held and/or obtained by the Customer. It is the Customer's responsibility to comply with the rights of third parties.

The Customer acknowledges and accepts that Content considered to contravene the laws or regulations in force may be submitted by the Provider to the authorities responsible for enforcing the law. If the Provider is informed of contents contravening this article, the Provider shall be able to remove the content and take action against the Customer.

It is expressly agreed that should the Provider's liability be sought, in whatever capacity, in any country whatsoever, by a third party on the basis in particular of an industrial and/or intellectual property right relating to an element directly or indirectly provided by the Customer, including by any User, the Customer undertakes to indemnify the Provider in full for the direct and/or indirect economic and financial consequences (including costs of proceedings and defence) that may result from these claims.

The Customer shall ensure that the data are sent to the Platform. The Customer shall not be able to criticise the Provider, regardless of the basis or reason, for non-receipt or loss of transmitted data. The Customer shall endeavour to keep a backup of the transmitted data.

### **Ownership of the content**

The Content transmitted by the Customer to the Platform remains the Customer's property. The Customer authorises the Provider to make it visible to Users of the Platform.

The Provider reserves the right to refuse the presence on its servers, of files imported by the Customer which are considered technically non-compliant with the servers or which affect their performance or unlawful content if the latter has been reported by a User.

### **The Customer's responsibility**

The Customer guarantees compliance by the Users to which it authorises access to the Service of this Contract and of the General Terms and Conditions of use of the Platform.

The Provider's role is limited to making the platform available to the Customer, and hosting Content if applicable.

The Customer shall ensure that the use it makes of the Platform is in line with the statutory provisions and regulations. The Provider gives no guarantee to the Customer with respect to compliance of the use of the Platform, that it makes or that it plans to make, with the statutory provisions and regulations.

The Customer is responsible for the messages that it communicates on the Platform and for the impact that they may have on the public.

The Customer may not in any case be able to claim the Provider's liability for any malfunction due to a failing by the Customer or a User, a third party or a case of force majeure.

## **8 CONTRACT TERM**

The Contract is formed and takes effect from the date of the first payment by the Customer. The Contract is concluded for the duration mentioned in the offer. If no duration is mentioned, the Contract is concluded by default for a duration of one (1) year term.

## **9 AVAILABILITY OF THE SERVICE**

The Provider shall do everything possible to ensure that the service is accessible on business days according to an obligation of means but it makes no commitment regarding an availability rate. Once a Blocking Bug is reported, the Provider shall inform the Customer of the time needed for recovery of the service.

The Customer acknowledges that the Provider may not in any case be held liable for any interruptions in the operation of the Internet. The Service may also be unavailable due to maintenance operations. The Provider shall inform the Customer of these no later than 24 hours beforehand by a message made available on its account.

Nevertheless, if the Customer's Site were to be unavailable for a period exceeding ninety-six (96) hours in a month, the month shall be refunded to the Customer or the following month not charged, unless the unavailability cannot be linked to a fault of the Provider.

The Provider reminds the Customer that the provision of a connection between the Platform and the Customer's information system is not included in the Service and that it is the Customer's responsibility to have a connection to a communication network that allows it to actually receive data from the Platform and to send data to it and that the costs relating to its Internet connection and its computer system are expenses that the Customer must itself take into account.

THE PROVIDER REMINDS THE CUSTOMER THAT THE INTERNET, WHICH ALLOWS THE SERVICE PROVIDER TO PROVIDE THE SERVICE, IS AN OPEN AND INFORMAL NETWORK, CONSTITUTED BY THE INTERCONNECTION AT THE INTERNATIONAL LEVEL OF COMPUTER NETWORKS USING THE TCP/IP STANDARD, WITHOUT THERE BEING ANY OBLIGATION OF PROVISION OR THE QUALITY OF PROVISION BETWEEN THE OPERATORS OF THESE NETWORKS. ACCORDINGLY, THE PROVIDER CANNOT GUARANTEE AVAILABILITY OF THE SERVICE WHICH TAKES ACCOUNT THE OPERATION OF THE INTERNET, OR THAT THE USE OF THE SERVICE WILL BE UNINTERRUPTED.

The Customer recognises that (i) the description of the Service, (ii) the list of the features of the Platform and (iii) the availability of the Service described in this article constitute together the Service by the Provider of a quality that complies with the Customer's legitimate expectations, in consideration of the nature of the services, uses and the amount of consideration that the Customer undertakes to pay the Provider for the services together, indivisibly, forming the Service.

## **10 ACCESS - FINANCIAL TERMS**

The Customer shall select on the Quotation, the subscription formula that is suited to it.

The amount and terms of payment of the Fee (and other sums due by the Customer for additional services) are expressed exclusive of VAT and inclusive of VAT. The Customer alone is responsible for payment of the Fee and the payment of any tax and/or fee linked to the performance of the Contract. The fees are payable in advance on the day of the registration for a year and then the day of each renewal for the next year.

Invoices are payable in euros by bank transfer or bank card.

The Fee includes:

- access to the Platform's features;
- hosting of the content where appropriate;
- maintenance and update expenses.

The offer selected by the Customer may be changed during the Contract, with the new tariff then being applicable on the day of the change *pro rata temporis*.

Invoices are payable within thirty (30) days of the invoice issuance date.

The Provider gives no discounts.

In accordance with Article L.441-6 of the Commercial Code, in the case of non-payment of all or part of the Fee (or any other sum due by the Customer under the Contract) within the contractual deadlines, (i) any unpaid amount shall automatically generate late interest on a daily basis until the date of payment in full of the principal, interest, costs and accessories, at a rate equal to three (3) times the legal interest rate, without a reminder being necessary and without prejudice to the damages that the Provider reserves the right to seek judicially; (ii) in accordance with Article L.441-6 of the Commercial Code, fixed compensation for recovery expenses of €40 shall be payable automatically for each invoice concerned. In accordance with Article L.441-6 of the Commercial Code, the recovery expenses, supported by an invoice, of the unpaid amounts by the Customer (procedural expenses, costs, disbursements and counsel and bailiff fees) are deemed to be an accessory to the Provider's claim and shall be borne entirely by the Customer.

In accordance with Article 1195 of the Civil Code, the Provider declares that it does not accept the risk of fluctuation of increased costs in performing the Contract, in particular the cost of hosting and storage of the Platform and the Customer's data which are charged by the hosting company which performs these specific services as a subcontractor of the Provider. Accordingly, any increase of more than fifteen (15) % in the cost of the performance of this Contract that the Provider is able to provide evidence of in writing to the Customer is deemed to constitute an unpredictable circumstance making performance of the Service excessively expensive for the Provider. In this case, the Parties undertake to renegotiate the Contract in good faith. If a written agreement is not reached within thirty (30) days of the notification referred to above, either of the parties may terminate the Contract, without compensation of any kind for any of the parties. Before agreement on the new price, or termination of the Contract under the foregoing conditions, the Provider shall perform the Contract, under the financial conditions and according to the terms agreed with the Customer.

The invoice shall be sent to the Customer by email, and the Customer may also access it on its account.

Any late payment by the Customer after the contractually agreed payment date is deemed to constitute a sufficiently serious non-performance by the Customer and results in the right for the Provider to suspend the service after formal notice by email or postal mail that has remained unremedied for a period of ten (10) days.

## **11 DUTY OF INFORMATION**

As a professional provider, the Provider undertakes to provide information to the Customer throughout the performance of the Contract.

The Provider draws the attention of the Customer to the fact that the proposed Service is a standard service designed for variable sized structures. It is therefore the Customer's responsibility, prior to signing the

quotation, to check that the Service matches the definition of its needs and that the Service is sufficiently sized to allow it to fulfil its own objectives that the Provider cannot know. Unless the Customer has communicated to the Provider a written and detailed expression of its needs, the Customer acknowledges that the Provider's commercial proposal is deemed to be an expression of its needs.

The Provider does not guarantee compatibility and interoperability of the Platform with the Customer's other software. It is the Customer's responsibility to ask the Provider questions prior to the conclusion of the Contract, so that the Provider is able to inform it whether the Platform is compatible.

Should this be proposed to the Customer, the Platform must be able to connect to the Customer's information system in order to retrieve data relating to the Users.

## **12 GUARANTEES ABOUT THE SERVICE AND THE PLATFORM**

The Provider guarantees (i) that the Platform is original, (ii) that it holds all the intellectual property rights to the Platform, but that it may include modules of the Platform which benefit from a non-contaminating "Open Source" type of licence or that it has the right to grant a use licence to the Customer for any additional modules of the Platform chosen by the Customer and integrated into the Service, whose intellectual property rights are held by a third party which has granted use to the Provider so that the latter may validly in its turn grant use of it to the Customer in accordance with the conditions contained in the Contract.

During the Contract term, the Provider indemnifies the Customer against any action or proceedings on the grounds of a possible infringement by the Platform of a third party's intellectual property rights. The Provider shall, at its expense and its choice, be responsible for the defence of the action taken against the Customer by a third party alleging an infringement of its rights. The Provider shall pay all the damages to which the Customer would be ordered to pay by a judicial decision having the authority of res judicata in the main proceedings and having the effect of res judicata, the Customer having to provide its own defence in the event of a criminal action. The Provider guarantees the Customer the quiet enjoyment of the use of the Platform and of any additional modules, provided the Customer notifies it promptly of any threat of action or proceedings against it, allows the Provider to defend itself and collaborates with the Provider for this defence at the latter's expense (except in criminal matters as stated above). The Provider shall have total control of defence in civil matters, including appeal, negotiation and the right to agree a transactional settlement within the meaning of Articles 2044 and following of the Civil Code.

In the case of the civil conviction of the Provider by a judicial decision having the authority of res judicata in the main proceedings and having the effect of res judicata or in the event of a transactional settlement concluded by the Provider, the Provider may, at its choice and at its expense, either (i) obtain for the Customer the right to continue to use the Platform and/or possible additional modules - without an increase in the monetary consideration paid by the Customer and without an interruption in use of the Service for the Customer - possibly, amending all or part of the Platform (and/or an additional module) so that it no longer constitutes an infringement of the rights of a third party, or (ii) if the right to continue to use the Platform (and/or a possible additional module) cannot be obtained or if the Platform and/or an additional module cannot be replaced or modified for a reasonable cost so that it no longer constitutes the infringement of the rights of a third party, terminate the Contract and reimburse the Customer for the total amount of the Fees paid by the Customer to the Provider for the period after the last service not having received its consideration.

## **13 PERSONAL DATA PROTECTION**

### **The Customer alone is responsible for processing the data for which it uses the Platform**

The Customer alone is responsible for processing data, in particular personal data, that are processed via the Service for itself. All the rights of the persons concerned (right of access, rectification, limitation, portability) must be exercised by these persons directly in relation to the Customer, the Provider undertaking to comply with any written instruction from the Customer in this regard.

In accordance with European and French legislation on the protection of personal data before any use of the Platform or the Service by the Customer throughout the Contract, the Customer guarantees the Provider:



- (i) that it has collected and that it processes the personal data in a lawful, fair and transparent way, for specified, explicit and legitimate purposes of which the Customer declares having duly informed the persons concerned;
- (ii) that it alone is responsible for processing the personal data that it collects, enters or processes on the occasion of its use of the Service;
- (iii) that it alone determines the purposes and means used for processing its personal data, in particular, by use of the Service. Accordingly, it is the Customer's responsibility, prior to using the Service, to check that the processing of personal data requested from the Provider is in line with the purpose and the personal data processing means implemented by the Customer, such that the Provider's liability is excluded in this regard, on whatever basis. Should this not be the case, the Customer undertakes to release and indemnify the Provider, without restriction or reservation, for any consequence thereof, in particular pecuniary, charged to the Provider.

#### **The Provider is a processor of the personal data that the Customer uses on the platform**

The Provider acts in the capacity of a processor for processing the Customer's personal data within the meaning of Article 28 of EU Regulation 2016/679 for the personal data that the Customer uploads to its Site or to the Platform (in particular the Users' last names, first names and email addresses). Accordingly, the Provider undertakes (i) not to process the Customer's data otherwise than under the terms and conditions of the Contract and (ii) not to carry out any processing of the Customer's personal data which is not provided for in the Contract, except on the Customer's written instructions.

The Provider reserves the right to refuse any instructions from the Customer which appear to it to be unlawful within the meaning of Articles 82.2 and 82.3 of EU Regulation 2016/679. A written and documented refusal by the Provider under these circumstances is not a valid reason for the Customer to terminate the Contract, unless the latter evokes the Provider's liability.

The Provider only technically processes the Customer's data to provide the Service, to the exclusion of any other use to the benefit of the Provider or of third parties. In accordance with the GDPR, when personal data are stored and processed by the Provider (and its subcontractor), they are on servers located on the territory of the European Union and are not subject to any transfer outside the European Union. Should the data be hosted outside the EU the Provider guarantees that the legal guarantees shall be respected.

The Provider undertakes, according to an obligation of means, to ensure the security and protection of the confidentiality of the Customer's personal data, in order, in particular, to prevent them from being altered, damaged or communicated to unauthorised third parties. The details of the technical measures for ensuring the security and confidentiality of the Customer's data are contained in the "Maintenance - Assistance/Support - Hosting" article. The Provider undertakes to provide, and to ensure the respect by any technical provider responsible for implementing the Service, in particular the Hosting Company acting as a sub-processor for the Provider, of the confidentiality and security of the process of processing and storing the Customer's personal data, in accordance with the rules of the art and according to an obligation of means.

In accordance with Art.33.2 of EU Regulation 2016/679, the Provider undertakes to inform the Customer promptly of any personal data "violation" (unauthorised access, unauthorised copying, corruption of personal data files, etc.) of which it becomes aware, it being the Customer's responsibility to inform (i) the supervisory authority on which it depends, and (ii) when this violation "*is likely to result in a high risk to the rights and freedoms*", the persons concerned.

The Customer authorises the Provider to subcontract all or part of the processing. The Provider shall inform the Customer of any planned change regarding the addition or replacement of sub-processors, thus giving the Customer the ability to raise objections to these changes.

#### **The Provider is responsible for processing the personal data of the person representing the Customer**

The information that must be transmitted by the Customer's representative are: last name, first name, telephone, email address.

In accordance with the GDPR, the personal information requested from Customers is required for processing its registration, in order to provide the Service, invoice, manage the relationship with the Customer and transmit all information to it. It may also be sent to the Provider's administrative services, to computer service providers or other sub-contractors and to legal professionals in the event of litigation.

The legal basis of the processing carried out by the Provider is contractual and formalised by these GTC of sale and the Quotation that the Customer must accept. The data are kept for the term of the Contract and for up to three years from the date of the last contact with the Customer for a canvassing purpose.

The Customer is informed that it may exercise its rights of access, rectification, erasure, opposition and request limitation of the processing and portability of its data by contacting the Provider by telephone or email.

The Customer may, if necessary, appeal to the Belgian internal supervisory authority.

## **14 LIABILITY**

The Provider is liable for direct and predictable damage caused by poor performance of the Service in part or in all, proved by the Customer. The Provider disclaims all liability for direct and predictable damage caused by poor partial or entire performance of the Service, in particular loss of turnover, loss of customers, or any other indirect damage.

The Provider is in no event liable for damage caused by the Customer's own actions of that of a third party or by a case of force majeure.

The Provider is in no case liable for data losses (in particular podcasts, notes, etc.) particularly when these data are not stored, or not yet stored, on the Provider's hosting system (AWS). In general, Users undertake to keep a copy of the data used on the Platform, the object of this Contract not being data storage.

In any event, the total amount of the Provider's financial liability is limited to the amount of the Fees paid by the Customer during the last twelve (12) months of actual use of the Service paid by the Customer, except in the event of (i) personal injury, (ii) gross or intentional negligence or fraud by deceit of the Provider.

## **15 TERMINATION**

### **Non-renewal**

Either Party may terminate the Contract by sending a recorded delivery letter with acknowledgement of receipt to the other Party at least one month before the renewal date in the first year, two months in the second year and three months as of the third year.

### **Termination for non-performance**

The Contract shall automatically end if a party does not rectify any non-performance of one of its essential or substantial contractual obligations, after a thirty-day (30) period that starts from the date of the notification by the other party of the obligation to put an end to the said non-performance that has remained unsuccessful.

### **Consequences of the termination**

On the effective date of expiry of the Contract, whatever the cause, the Customer undertakes to immediately discontinue use of the Service and the Provider shall then be entitled to end the Service for the Customer and of its Users without any formalities.

Termination, regardless of the cause, shall not give an entitlement to any refund. The Customer's data may be returned to it on simple request, in the JSON format within a maximum period of thirty (30) days from the request and then totally erased by the Provider at the end of this thirty-day (30) period.

## **16 MAINTENANCE - ASSISTANCE/SUPPORT - HOSTING**

### **Assistance / support with using the Service**

The Provider provides assistance (support) with using the service in the French and English languages, by email for the Customer's benefit, at the times set out below. The cost of this service is included in the Fee.

By express agreement between the Parties, the Provider cannot guarantee that the Platform will operate with no errors. The parties acknowledge that the state of the art does not allow the Provider to guarantee that it will be able to correct all possible bugs that may affect the Platform. In accordance with Art.1133 Civil Code,, by signing the Contract, the Customer expressly acknowledges accepting this vagary, inherent in the techniques using for developing and operating Platforms. Bugs that are neither blocking nor major shall not necessarily give rise to a repair.

Notification is taken into account if it is made between 10.00 and 17.00 on business days (therefore excluding weekends and holidays).

For any Bug experienced, the Customer undertakes to describe it as accurately as possible and to indicate to the Provider the user pathway made by the Customer which results in the bug.

Once the above alert has been received, the Provider shall make a diagnosis of the Bugs reported by the Customer and shall makes its best efforts to provide corrections or workarounds either via telephone or written instructions (by email or fax) that it shall give to the Customer, or by remote maintenance, according to the procedure that it considers to be the most appropriate. The unavailability is taken into account in the calculation of the 96 monthly hours of unavailability allowing for the refund of the month in question only from the time that the Bug has been identified by the Provider.

The assistance service expressly excludes any malfunction of the Platform that is due directly or indirectly to an error of use by the Customer, including any User or any Third party, or any defect in the Internet or a third-party software program.

Bugs relating to Servers are addressed by AWS under the terms and conditions of AWS's SLA, which may be sent to the Customer on request.

### **Updates and new versions**

Updates and/or new versions of the Platform are provided to the Customer, installed and implemented on the Platform by the Provider, without the Customer's intervention, at a frequency of which the Provider alone remains the judge. The conditions of the Contract, including the right of use of the Platform granted to the Customer, shall apply to any update or new version installed by the Provider.

## **17 GENERAL PROVISIONS**

### **Non-disclosure**

Information relating to the contract and the terms contained therein, and the Customer's data processed by the Service, and in generally, and without this list being exhaustive, the parties' business project and their present and future activities, their staff and their know-how is considered to be confidential information, whether such information is obtained directly or indirectly from the other party, from its employees, subcontractors, agents or service providers. The confidential information is provided "as is", without any express or tacit warranty, regarding its accuracy or integrity. Confidential information is not:

- (i) information accessible to the public with no breach of the terms of the Contract by the party which discloses or uses it;
- (ii) information validly held by one party before its disclosure by the other one;
- (iii) information validly obtained from a third party authorised to transfer or disclose such information, with no breach of a confidentiality obligation.

Each party undertakes (i) not to use the confidential information, for whatever reason, except for the performance of the rights and obligations arising from the Contract, (ii) not to disclose the confidential

information to anyone, by any means whatsoever, except to those employees, service providers or subcontractors to whom this information is required for the performance of the Contract, throughout the Contract and for a period of five (5) years after its termination, regardless of the cause.

For the protection of the other Party's confidential information, each Party undertakes to take the minimum protective measures that it would take to protect its own confidential information, and undertakes to ensure that its employees, service providers and any subcontractors having access to the confidential information have signed, prior to any disclosure to their benefit, a confidentiality agreement whose obligations are equivalent to those contained in this article.

Each Party acknowledges that if it uses or discloses confidential information obtained from the other party on the occasion of the negotiations, its liability may be sought under the conditions of ordinary law.

### **Force majeure**

Neither of the parties may be held responsible for the non-performance of one of its contractual obligations due to the occurrence of a case of force majeure understood to be an event (i) that is not controllable by the party which suffers it (ii) which could not be reasonably anticipated at the time of the conclusion of the Contract and (iii) the effects of which cannot be avoided by appropriate measures.

During the period of the force majeure, if the impediment is temporary, the force majeure event shall suspend for the party invoking it, the performance of its obligations, unless the delay that results from it justifies the cancellation of the Contract (except for the obligation to pay the amounts due under the Contract on the date of the occurrence of the force majeure event). If the impediment is permanent, the Contract shall be cancelled and the Parties released from their obligations, subject to notification of this cancellation by the first Party of the two Parties to act. In all cases, the Party affected by the force majeure shall do everything in its power to avoid, eliminate or reduce the causes of the delay and to resume the performance of its obligations as soon as the event that is invoked has disappeared.

### **Use of the Customer's name as a reference**

The Customer expressly authorises the Provider to use the Customer's name / logo / brands, in strict compliance with the Customer's graphic charter, only as a commercial reference (list of the Provider's customer references and public announcements on the Provider's professional social networks), excluding any other use for which prior permission from the Customer must be obtained.

### **Labour obligations and concealed work**

The Provider undertakes to comply with Articles L.8222-1 and D.8222-5 of the Labour Code (mandatory statements to the social security agencies or to the tax authorities) and certifies on its honour of the performance of its services by employees lawfully employed with respect to Articles L.1221-10, L.3243-2 and R.3243-1 of the Labour Code.

### **Independence of the clauses**

The Contract cancels and replaces all previous verbal or written agreements or contracts made between the parties regarding the same services. Should any provision of the Contract be considered void or non-written by a judicial decision having the authority of res judicata in the main proceedings and having the effect of res judicata, the parties agree to attempt to limit, as far as possible, the scope of this invalidity so that the other contractual provisions remain in force and that the structure of the Contract is respected. In this event, the Parties undertake to renegotiate in good faith, the drafting of a new clause to replace the clause thus declared null and void.

### **Assignment of the Contract**

The Contract may only be assigned, fully or partially, free-of-charge or for a fee, by the Customer except (i) with the Provider's written and prior agreement, or (ii) assignment of the Contract by the Customer to the benefit of a company that it Controls or under its Control within the meaning of Article L.233-3 Commercial Code, subject to written notice to this effect given to the Provider which shall be deemed to be an unrestricted and unreserved commitment by the successor to inherit all of the Customer's rights and

obligations with respect to the Provider. The Customer shall remain jointly and severally liable, with the successor, for full compliance of the rights and obligations of the successor with respect to the Provider.

#### **Notification and calculation of deadlines**

Any notification (formal notice, report, approval or consent) required or needed for the Platform of the Contract must be made in writing by email or letter. Except for a specific provision in an article of the Contract, deadlines are calculated per calendar day, with a week containing six (6) working days and five (5) business days. Any deadline calculated as of a notification runs from the date of the first attempt to deliver it to the recipient, as evidenced by the postmark, as well as the receipt of the express courier service and the handwritten date on the letter delivered by hand. If a measure must be taken or a notification made on a particular date or by a particular deadline and this date is not a business day, the measure or notification in question may be postponed until the next business day.

#### **Agreement about evidence**

By express derogation to the provisions of Article L.110-3 of the Commercial Code, the parties acknowledge that any amendment to the Contract may be agreed only in a written rider, possibly in the form of an electronic written document, signed by a duly authorised representative of each of the parties (authorisation by the corporate articles or by a special authority) (a "Rider").

### **18 APPLICABLE LAW AND JURISDICTION**

The Contract is subject to Belgian law for the rules governing both its form and substance. Should the Contract be translated into a foreign language, only the version of the Contract in the French language shall be considered authentic between the parties.

**IN THE ABSENCE OF A MUTUAL AGREEMENT BETWEEN THE PARTIES REGARDING ANY DISPUTE ABOUT THE INTERPRETATION, PERFORMANCE OR TERMINATION OF THIS CONTRACT, ATTRIBUTION OF COMPETENCE IS MADE EXPRESSLY TO THE COMPETENT COURT OF LIEGE EVEN FOR INTERIM MEASURES, EXCEPT IN THE EVENT OF MATERIAL OR TERRITORIAL JURISDICTION OF ASSIGNMENT FROM WHICH IT WOULD NOT BE POSSIBLE TO DEROGATE CONTRACTUALLY.**

THE PARTIES UNDERTAKE TO ATTEMPT A CONCILIATION BEFORE ANY JUDICIAL ACTION.