

**GENERAL TERMS AND CONDITIONS  
V. 01/01/2020**

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**1. WHEREAS**

These General Terms and Conditions are intended to govern the general contractual relations of the parties, regardless of the Solution(s) subscribed, and apply whenever the Company provides services for the Partner.

For each Service that the Partner wishes to entrust to the Company, the parties shall sign new Purchase Orders. However, in the event of any request to implement a new Solution, the Company reserves the right to submit new General Terms and Conditions, which shall be valid for all the Services and replace the previous conditions, which the Partner expressly accepts.

**2. DEFINITIONS**

The terms defined below shall have the same meaning in both the singular and the plural.

**Subscription:** means the subscription by a End-user to a Recurring Service offered by the Partner. Certain Resources allow the recurring billing of End-users, at a frequency specified in the Purchase Order.

**Per-Item Purchase:** means an item purchase made by a End-user and billed once through the Resources.

**Aggregator:** means any legal entity authorized by the Company, whose business is to lease and/or provide to a third party the Resource(s) for the latter's purposes. It is hereby stated that said third party may not lease and/or provide to a third party said Resource(s) without the prior authorization of the Company.

**API:** means the software used to provide communication between the Partner's platform and the Company's platform.

**Purchase Order:** means the description of the Solutions subscribed to by the Partner and the related financial terms and conditions.

**Code:** means a code issued by the Company and provided to the End-user by the Partner to enable the End-user to make a payment that authorizes them to access the desired Services. A Code is not comparable to a monetary unit or payment instrument.

**Agreement:** means, for each Service ordered by the Partner under the associated Purchase Order, a set consisting of these General Terms and Conditions, the Special Terms and the Purchase Order applicable to the selected Services taken as a whole.

**Publisher:** means any legal entity offering the End-users, directly or indirectly, its Services billed via the Solution(s).

**Digital Virgo Subsidiaries:** means all the legal persons in which Digital Virgo owns more than 20% of the share capital/shares either directly or indirectly.

**Digital Virgo Group:** means all legal entities of which at least 40% of their share capital is directly or indirectly held by Digital Virgo.

**Keywords:** means a series of letters and/or numbers that, associated with an SMS+ Short Number, allow access to an SMS+ Service. The

Keywords implemented for the purposes of this Agreement are referred to in the Purchase Order(s).

**Voice Number(s):** means either the Freephone Number(s), the Value-Added Number(s), the Dynamic Number(s), or the Geographical Number(s) used for the purposes of broadcasting the Partner's Services and stated in the Purchase Order.

**Dynamic Number:** means a Value-Added Number that is temporarily assigned to a End-user and which is indicated on the Site when they decide to call a Partner Service.

**Freephone Number:** means a telephone number that the End-user can call free of charge (except from a mobile phone) and the Partner bears the cost of the call.

**Geographical Number:** means a telephone number that the Calling End-user is charged for calling and which is not surcharged.

**SMS Short Number:** means a Number that End-users can call from their mobile phones and are charged for the call (for which there may be a surcharge).

**Value Added Number:** refers to a number of the 08 AB PQ MCDU type that the End-user is billed for calling (there is generally a call surcharge).

**Operator:** means:

- any electronic communications operator within the meaning of the French Post and Telecommunications Code,
- any natural person or legal entity operating an electronic communications network open to the public or providing the public with an electronic communications service in a country other than France or any payment operator enabling the billing of a End-user,
- any intermediary service provider between the Company and one or more Operators.

**Partner:** means the Company's co-contractor, whether the Publisher or the Aggregator.

**Company:** means either Digital Virgo Entertainment or the Digital Virgo Group company concluding a Purchase Order with the Partner for the provision of Services to the Partner.

**Services:** means the services provided by the Company to the Partner and described in each Agreement.

**Ethics Recommendation(s):** means the documents applicable to the Services that the Partner wishes to offer to End-users via the Internet, telephone or any other medium.

**Resources:** means the resources made available to the Partner for the purposes of performing each Agreement and specified in the Purchase Order(s). The Resources may include Short Text Numbers, Voice Numbers, Internet Resources and Mobile Internet Resources.

**Internet Resource:** means the Internet-accessible Resource made available to the Partner and enabling it to bill for content and/or services in the End-user's invoice from the ISP.

**Mobile Resource:** means the Mobile-accessible Resource made available to the Partner and enabling it to bill for content and/or services in the End-user's invoice from the mobile Operator.

**Payout:** means the Partner's remuneration for the Services provided via SMS Short Numbers, Website Resources, Mobile Resources or Value-Added Numbers.

**Services:** means intangible services (e.g., content, services and intangible goods) that the Partner wishes to offer End-users and which can be billed for in their mobile, fixed and/or ISP invoice.

**SMS+ Session:** means an SMS+ Service session corresponding to an exchange of SMS messages between a End-user and the Company's Service Platform (1 SMS-MO + 1 SMS-MT). An SMS+ Session is considered complete if the time elapsed between the Server Center receiving the End-user's SMS-MO and the Company's Service Platform receiving the SMS response message from said Server Center is less than 24 hours.

**Site:** means the Partner's website or mobile website on which it offers its Services or those of an authorized third party as part of aggregation.

**Solution(s):** means the solution(s) made available to the Partner by the Company. The Solution(s) is/are described in the Special Terms and Conditions and in the Purchase Order.

**End-user(s):** means End-users of the Partner Site(s) and/or Services who:

- have subscribed to an Internet access offering from an ISP, or any person duly authorized by the subscriber themselves; and/or
- have subscribed to a prepaid or postpaid offering with a mobile operator; and/or
- have subscribed to a prepaid offering with a fixed operator.

Access to the Service is reserved for End-users who have paid their invoices to date.

### 3. CONTRACTUAL DOCUMENTS

Each Agreement comprises the following documents, listed in decreasing order of priority:

- the Purchase Order(s),
- the Special Terms and Conditions,
- these General Terms and Conditions.

The provisions of the above contractual documents express the entire agreement between the parties relating to the subject matter of each Agreement. Consequently, for each Agreement, they cancel and replace any proposals (other than one constituting, where applicable, the Special Terms and Conditions) or any prior spoken or written agreement relating to the same subject matter.

It is hereby understood that the Company may refuse any order if the items in the Purchase Order sent by the Company to the Partner for signature have been modified by the Partner without the Company's agreement.

Any request by the Partner to modify the Services or the characteristics of its Service must be the subject of a Purchase Order duly regularized by both parties.

### 4. OBLIGATIONS OF THE COMPANY

The Company undertakes to:

- perform the Services diligently, in accordance with standard practice and the stipulations of the Agreement;
- size the infrastructures, the API and the network elements providing access to the Service according to the volumes communicated by the Partner, on the understanding that the Partner is responsible for agreeing to the financial terms associated with this sizing or, if not, bearing alone the consequences of said items being of insufficient size due to its refusal, and refrain from any recourse if insufficient resources are implemented;
- implement the Solutions as defined in the Agreement and more particularly in the Special Terms and Conditions and the Purchase Order.

Any completion schedule is purely indicative and is, in any event, limited and subject to the deadlines imposed by the Operators and the Partner's compliance with its obligations, notably relating to supply and deadlines.

The use of the Partner's Service(s) is monitored and metered using tools specific to the Company. The Partner shall be assigned access in order to allow it to monitor the traffic generated on its Service.

Moreover, the Company:

- is responsible for the various relations with the Operators in the performance of the Services;
- makes available to the Partner the Resources relating to the Partner's subscribed Solutions specified in the Purchase Orders;
- bills the Partner for the Services provided in connection with the Solution(s) chosen by the Partner;
- depending on the Solution(s) chosen by the Partner, repays to the Partner the sums arising from the traffic carried via the Resources allocated to the Partner under the terms and conditions provided for in the applicable Special Terms and Conditions;
- ensures that its platform complies with the Operators' equipment.

The subscribed Solution and the software included in this Solution are provided as is, i.e. without any other guarantee; the Partner therefore uses the Solution under its sole responsibility.

The Company undertakes, as far as possible, to provide a service of sufficient quality to enable the Solutions to operate correctly. It is expressly specified that given the size of the electronic communications networks and technologies in question, the Company is bound by a best endeavors obligation.

Occasionally, the acts, omissions or absence of third parties may prevent End-users connecting to the networks or limit their ability to do so. The Company shall, as far as possible, seek solutions to improve the situation, but it is hereby understood that in any event, it shall not be held liable for any malfunctions

or unavailability of the electronic and/or electrical communications networks.

It is hereby specified that the Company advises the Partner to seek advice from a professional able to provide it with legal advice as to the Services that it offers to the End End-users. The Company does not provide any tax-related or legal advice on any matter relating to the Solutions provided and/or the Services.

## **5. OBLIGATIONS OF THE PARTNER**

### **5.1. General Obligations**

The Partner undertakes to:

- provide all the information required in the Purchase Order and inform the Company of any changes concerning this information;
- take all useful measures with any third party of its choice with a view to ensuring proper operation of the IT service and the Partner's tools and, where applicable, their updating to ensure the proper provision of the Service by the Company. The COMPANY shall not be liable for the malfunction of the Solution due to one of the above elements.
- comply with all the instructions and technical specifications applicable to the Solution provided by the Company and comply with any new indications and/or technical instructions;
- and, more generally, not to do anything that delays or hinders the performing of the Services for which the Company is responsible, or which makes doing so more difficult or costly, and not to make requests that are clearly submitted with unrealistic deadlines;
- pay the invoices issued by the Company for the Services provided, by the deadlines and in accordance with the terms and conditions set out in the Agreement.

The Partner shall be solely responsible for:

- the content of its Service or the data, information and brands concerning its products, such as statements regarding the characteristics, performance, price and terms and conditions of sale, as well as the data, including any personal information, stored by it or transmitted to both its End-users and the Company, as well as the results produced by its Service;
- conducting its business;
- the choice of the subscribed Solutions;
- API or software operating incidents due to error or negligence by it or its employees or subcontractors;
- obtaining worldwide authorizations to use and/or disseminate pictures, text, videos, music, sounds and documents of any kind that are incorporated into the Service or which may be made available to the End-users, and authorizations to use the software used to enable the Service to operate and not provided by the Company, as well as the payment of any associated fees;
- any advertising edited by it, notably relating to its Website and its Services;
- any advertising published by it or through service providers;
- the referencing of its Website and Services on search engines, notably those accessible on the Internet and mobile phones;
- the distribution of its Services;

- all of its reporting obligations to the competent authorities;
- the payment of all taxes and fees relating to its business and to the sale or leasing of any intangible content and/or Services that it offers;
- the obsolescence of the equipment(s) supporting the operation of its Site(s). Consequently, it is responsible for bearing the cost of any changes to this equipment and, failing this, for solely bearing the consequences.

The Partner undertakes to:

- use the Resources made available to it solely via the URLs that it has previously stated to the Company;
- at the Company's request, provide any advertising relating to its Site and/or Services and/or information on any medium about its business and the Service within two (2) business days;
- at the Company's request, provide any useful information (such as description, details, etc.) on its Site or Services within two (2) business days;
- forward any End-user claims relating to the subscribed Solution within a period of two (2) business days;
- prior to the provision of the Service to the End-user, it shall be responsible for the information relating to the General Terms and Conditions of Use of the Service and its acceptance of said terms and conditions. Said conditions shall be transparent and notably specify the conditions of provision, the prices, the deadlines and the limits of use.

### **5.2. Obligations Relating to the Published Service**

The Partner warrants and declares that it alone assumes editorial responsibility for the Service that it offers to End-users and that it is fully informed of the legal and regulatory provisions applicable to its business and the provision of the Service and, in particular, the Ethical Recommendations that may be applicable to the Services, said Recommendations being included herein simply for reference. It expressly undertakes to fully and scrupulously comply with these provisions, including the Ethical Recommendations. In this respect, the Partner undertakes, on its own behalf and on behalf of its partners, to:

- use the subscribed Solutions in accordance with their intended use and in accordance with the regulations and rules of professional conduct in force. In this context, the Partner undertakes, on its own behalf and on behalf of its partners, notably not to use the Solutions:
  - in the context of business activities that do not comply with the legislation and/or the Ethical Recommendations applicable in the territory concerned,
  - more generally, to access or sell goods or services contrary to the laws in force, public order and ethics, and notably representing child pornography, or violations of human dignity,
  - to bill for all or some of the sale of tangible goods or intangible services not actually provided,
- to comply with and ensure compliance with the obligations imposed by the Operators in their latest version in force,
- to inform End-users that their access to the Service has been terminated at the end of the Agreement for any reason whatsoever.

The Partner undertakes, on its own behalf and on behalf of its partners, to provide End-users of the Service with the information or Service promised on its access page, as soon as the End-user purchases or subscribes to a Subscription. The Partner also undertakes, on its own behalf and on behalf of its partners, to inform the public of its identity, contact details and any other information required by legislation, in all promotional media. Similarly, the Partner undertakes to clearly inform the End-users of the prices of its Services, including all taxes, in the local currency and the billing method chosen, in all its promotional media. To this end, it shall specify that the fixed or mobile operator or the Internet service provider bills the End-user for the Service in addition to the cost of calls or Internet access. The Partner shall be responsible for managing and assuming responsibility for all disputes and/or refund requests that may be made by End-users, unless it is proved that the Company is liable, within the limits provided for in these General Terms and Conditions. The Partner is nevertheless informed that the Operators reserve the right to make refunds to the End-users; such refunds shall be deducted from the payments pursuant to the terms of the Purchase Order.

The Service Provider represents that it has been informed that if a End-user fails to pay its bills for a landline and/or mobile line and/or Internet access, the Operator may suspend or terminate the plan entered into by the End-user or provide limited access to the Service. Consequently, the Service Provider hereby agrees not to contest the measures that may be taken by the Operators against their subscribers.

The Partner is exclusively responsible for taking all necessary measures to prevent fraud in the Service. In the event of fraud and/or suspected piracy, the Company may ask the Partner to take the necessary measures to eliminate the fraud or piracy and, at its own expense, to check with its End-users the origin of their calls, SMSs, fixed and mobile Internet connections or to analyze code lists, which the Partner hereby accepts. The Partner therefore undertakes to provide the Company with a copy of the End-user's order confirmation in accordance with the applicable legislation. Failure by the Partner to provide supporting documents may result in the corresponding payout being deleted.

### **5.3. Provisions Applicable to Resources Provided by the Company**

#### **5.3.1. Resources Enabling Per-Item Purchases and/or Subscriptions**

The Resources may be used to bill the End-users for Per-Item Purchases or Subscriptions. Specifically, the Partner undertakes to use the Resources in accordance with the payment method chosen.

#### **5.3.2 Configuring of the Resources**

The Partner hereby undertakes to configure and use the Resources allocated to it by the Company in accordance with the technical documentation provided by the Company and the legislation in force. It shall therefore refrain from using any other Resource held by the Company.

In the event of non-compliance with the obligations set out in Articles 5.3.1 and 5.3.2, the Company reserves the right not to pay the Partner any amounts resulting from the trafficking of Resources other than those allocated to the Partner or to suspend performance of the Agreement. Furthermore, if said non-compliance is repeated, the Company hereby reserves the right to suspend without notice or, if necessary, to terminate the Agreement without notice at the exclusive fault of the Partner.

#### **5.3.3 Use of the Resources**

The provision of Resources by the Company shall not give the Partner any ownership right or any other right whatsoever over the Resource(s) used.

The Partner undertakes not to make fraudulent use of the Resources belonging to the Company. Similarly, the Partner shall refrain from using any resources belonging to the Company other than those specified in the Purchase Order(s) or from disrupting in any way the operation of the Resource(s) made available by the Company. Should the Partner fail to comply with this prohibition, it shall be fully liable for the consequences of any kind resulting therefrom for the Company and shall hold the Company harmless for the resulting direct and indirect financial consequences, including penalties.

Unless the Partner is an Aggregator authorized by the Company, the Partner shall refrain from transferring, renting and/or making available the Resources to a third party (unless the Company has agreed otherwise in the Purchase Orders, in the latter case), by any means whatsoever.

If the Partner is an authorized aggregator and makes the Resources available to third parties, it shall remain solely liable for any use made of the Resource(s) so assigned, leased and/or made available and shall hold the Company harmless against any harmful consequences that may occur. In addition, it undertakes not to sell the Resources made available to it.

The Partner hereby acknowledges being informed that the Resource(s) may be modified for service reasons beyond the control of the Company, such as a decision by a competent and/or legal authority or body and/or an Operator. The Partner declares that it hereby accepts the possibility of such a change. Should such a change occur, the Partner shall be informed in a simple letter or e-mail one (1) week before it takes effect, as far as possible. In any event, the withdrawal of the Resource(s) shall not entitle the Partner to any compensation.

The Partner acknowledges and expressly accepts that the Company reserves the right, at all times, to make available the Resource(s) to any other Partner, including if the latter has a business activity similar to and/or competing with that of the Partner. It shall therefore refrain from making any claim in this respect.

The Partner expressly acknowledges and accepts that the Company may not be held liable in the event of the Operator cutting off the shared Resources.

In the event of non-payment by a End-user of the invoices issued by its Operator, the Operator in question shall retain full discretion, notably, to suspend or terminate the subscription agreement that the End-user signed with this operator or to provide a minimum, restricted service to the End-users. These measures shall have the effect of depriving the End-users of access to the Resources, which the Partner hereby accepts and recognizes. The Partner therefore agrees in advance not to make any claim against these measures.

#### **5.3.4. Economic Sanctions**

The term **Sanction** shall mean any economic or commercial sanction, law, regulation or restrictive measure (including but not limited to sanctions or measures relating to an embargo or to the freezing of funds and economic resources) enacted, administered, imposed or applied by the United States of America, including OFAC Regulations, the United Nations, the European Union, the French Republic and/or the British Treasury.

The Partner hereby declares that neither it nor any of its subsidiaries as defined in articles L233-1 and L233-3 of the commercial code and/or intermediaries:

- are subject to Sanctions; or
- are controlled by a person subject to Sanctions, or
- are engaged in activities subject to Sanctions, regardless of their geographical location, or
- have engaged in any activity, acted or behaved in a way liable to violate the anti-money laundering, terrorist financing or corruption laws and regulations of any jurisdiction in the areas in which it conducts its business.

The Partner warrants and declares that it has taken the necessary measures and implemented adequate procedures and guidelines to prevent any violation of these laws, regulations and rules.

The Partner warrants and declares that the remuneration provided by its Services is not intended to finance the activities of a person who/that is, to the best of its knowledge, subject to Sanctions or controlled by a person subject to Sanctions that could lead to the Company being engaged in activities subject to Sanctions.

#### **5.4. ABNORMAL TRAFFIC GENERATED BY THE PARTNER'S SERVICE**

The Partner warrants and declares that certain Services, in particular those relating to surcharged Value-Added Numbers, may result in abnormal types of traffic or calls that may not allow the collection of the sums due by End-users in respect of these calls or traffic produced using the Resources.

The Partner acknowledges and accepts that the volume of calls or data may be qualified as "Abnormal Traffic" as a result of detailed criteria set out in the agreements binding the Company to the Operators.

These criteria include the following:

- Concentrated traffic from a limited number of callers;
- Calls lasting less than two (2) seconds (known as Hyper Short Calls, or HSC), insofar as the Service cannot be provided over the length of the call;

- An unbalanced profile of calling lines: calls only to Value Added Numbers, no calls received, etc.;
- Calls from stolen or fraudulently recharged cards or from pirated lines;
- Calls generated in response to "ping call" operations;
- Calls to an unfair Value-Added Number service within the meaning of the Ethics Recommendations and, in general, any type of traffic flow and/or calling lines that could herald an attempted fraudulent Payout.

The Partner is hereby informed that this list is given for information purposes and is subject to change. In addition, any Abnormal Traffic indicated as such by an Operator or an authority shall produce the same effects.

If Abnormal Traffic is detected, the Company shall inform the Partner as soon as possible, indicating the Value-Added Numbers concerned and providing information on the Abnormal Traffic detected.

The Company reserves the right to suspend Payouts relating to Abnormal Traffic and to notify the Partner of the Value-Added Numbers or tranches of Value-Added Numbers not giving rise to Payouts, informing the Partner of the type of traffic seen.

In any event, the Company reserves the right to apply, without any further formality, the following protective measures:

- Suspend access to the Added Value Numbers generating the Abnormal Traffic from all or some of the End-users;
- Close the Value-Added Number tranche concerned;
- Retain some or all of the Payouts.

If Abnormal Traffic is seen, the Parties undertake to use their combined best efforts to study and implement the appropriate measures in good faith in order to normalize the situation and to take any necessary appropriate measures, notably legal ones, if fraudulent actions by a third party are suspected.

#### **5.5. Failure of the Partner to Comply With its Obligations**

A failure of the Partner to comply with one or more of these obligations may lead to the Company applying a penalty for each such failure reported by an Operator and/or by a competent body, and/or seen by the Company, and/or reported by several End-users.

Failure of the Partner to meet its obligations may, in addition to the application of the above penalty, result in the deletion of the corresponding Payout (or the equivalent of the corresponding Payout) for the failure reported by the Operator and/or by a competent body and/or the termination of the Agreement for default under the terms of Article 13.2 or immediately by the Company.

In the event of the Partner failing to comply with an exclusivity obligation stipulated in the Purchase Order, it shall be liable to pay the Company compensation equivalent to:

- the amount of the sums actually billed to the Partner during the six (6) months preceding the Partner being informed of the Company's failure to comply with the obligation, or
- monthly compensation payable until the end of the Agreement corresponding to ten percent (10%) of the average ex-tax revenue generated under the Agreement, whereby this average revenue is calculated on the basis of the ex-tax revenue generated during the last three (3) months preceding the date of the failure to comply.

Should the Company be held liable as a result of an item for which the Partner is responsible or, more generally, as a result of an action or omission by the Partner, the latter shall also render the Company harmless and compensate it for all the financial consequences resulting therefrom. This notably relates to any penalties applied by the Operators and other financial consequences that the Company may incur as a result of the Partner's failure to comply with its obligations.

The Company shall not be held liable for any performance delays, non-performance or defective performance of the Services that may be caused, wholly or in part, by the Partner's failure to comply with the above obligations.

Lastly, the Partner acknowledges that the Company has the right to perform tests in order to verify that the Partner is complying with its contractual commitments and/or in order to check that the subscribed Solution is operating properly. Said tests shall not entitle the Partner to a Payout.

## **6. COLLABORATION AND COOPERATION**

The parties shall agree to work closely together in the context of their relationship. Each of the parties hereby undertakes to maintain an active and regular collaboration by providing the other party with all items and information that it may request in the context of this Agreement and the drafting of any amendments. If the Partner's request for information from the Company requires the latter to perform a technical study or work that is not within the scope of the Services entrusted as defined in the Special Terms and Conditions, the Company may bill for the Services thus provided to the Partner on the basis of an amendment signed by the parties or new Purchase Orders signed by the parties.

## **7. FINANCIAL TERMS AND CONDITIONS**

The prices and payment terms applicable to each Service are defined in the Purchase Order(s) concluded by the Partner. The same applies to the Payout schedules that may be applicable.

It should be noted that, barring any special regulations requiring that prices be stated inclusive of taxes, prices shall be defined in euros excluding taxes and increased by any taxes in force on the billing date. The Company undertakes to provide the Partner, when requested, with a certificate indicating that it has met its tax obligations in

accordance with the applicable legislation, notably as regards VAT.

## **7.1 Terms of Operator Payouts to the Partner**

### **7.1.1 General Clauses**

If the Partner has subscribed to a Solution generating traffic on one or more Resources made available to it, the Company shall transfer part of the Operator payments to it in accordance with the following terms.

The Company shall repay to the Partner the amounts resulting from the traffic carried on the Resources allocated to it, subject to having received by post the Purchase Order duly initialed and signed by it, as well as bank account details, a company registration certificate (KBis for Partners established in France) for the Partner, as well as the duly completed KYC document, and, for companies not established in France, a document certifying that they are subject to tax.

The Payout schedules are set out in the corresponding Purchase Order.

The Company shall send the Partner a request for a provisional invoice showing the amounts due to the Partner in respect of the Payouts, less the costs indicated in the Purchase Order. These calls for invoices shall be calculated on the basis of the Company's statistics.

Upon receipt of this call for an invoice, the Partner shall issue its invoice.

The Partner acknowledges that any dispute relating to the payment statements (or calls for provisional invoices) must be sent by registered letter with acknowledgement of receipt to the Company within a maximum period of three (3) months when such statements are sent by the Company.

As the payment of the Partner's invoices is linked to the payment of the Payouts from the Operators to the Company, said payment shall be made by bank transfer within sixty (60) days of the invoice issue date subject to the Company collecting the payments from the Operators and subject to any compensation via a receivable that the Company or a company in the Group to which the Company belongs for the Partner.

Should the Company have made Payouts to the Partner on the basis of one or more calls for provisional invoice(s) and a difference appears between the Payouts made by the Company to the Partner and those calculated on the basis of the Payouts actually made by the Operators, the Company reserves the right to regularize by any means the Payouts due to the Partner.

Should the Operators withhold sums in respect of one or more penalties as a result of the Partner not complying with the Ethics Recommendations and/or the Company's recommendations as to their application, the Company may deduct these sums from the amount due to the Partner after informing the latter accordingly.

Furthermore, the payments actually received by the Company from the Operators may be less than those paid in advance by the Company to the Partner. The Company may then regularize any uncollected Payouts, notably those due to End-user fraud.

In this case, the Company shall withhold or suspend said sums and pass them on to the Partner by any means, notably by withholding them on future payments due to the Partner.

In addition, the Company may withhold the Payout due to the Partner in the following cases and pass it on to the Partner by any means, along with any costs and penalties billed by the Operators for which the Partner is responsible:

- non-compliance with the undertakings made by the Partner with regard to the Ethical Recommendations applicable to the Service;
- the Abnormal Traffic referred to in article 5.4;
- non-compliance with the applicable legal provisions, particularly those relating to consumer law;
- collective proceedings taken against an Operator;
- cases specified by the Operators.

In such cases, the Company undertakes to inform the Partner by e-mail.

Payments shall always be made for a minimum amount of one thousand (1,000) euros excluding taxes. If the revenue generated by the Partner does not reach the sum of one thousand (1,000) euros excluding taxes for a continuous period of one (1) month, the calculation shall extend to the following month and an overall Payout may be made in the month in which the cumulative amount of one thousand (1,000) euros excluding taxes has finally been reached. It should be noted that under this minimum amount of one thousand (1,000) euros excluding taxes, calls for invoices are not issued and that, as a result, the Partner may not claim any payment from the Company. By way of derogation, this clause is not applicable to DV LIVE Purchase Orders.

If the price list contained in the Purchase Order is in a foreign currency or if the Company makes Payouts in a currency other than that used by the Operators at the PARTNER's request, the foreign exchange rate used when issuing the Call for Provisional Invoices for the calculation of Payouts due to the PARTNER shall be the foreign exchange rate stated by the European Central Bank (ECB), or the national bank in the Purchase Order, for the last day of the month of operation in question increased by 1% (one per cent).

However, the PARTNER expressly agrees that any fluctuation in the value of the local currency affecting the financial conditions shall be used for the calculation of payments, in which case a percentage greater than one percent (1%) of the exchange rate may be applied. The PARTNER shall be informed by email and/or any other means of communication chosen by the COMPANY of changes made to the percentage of the exchange rate

applied to payments.

The PARTNER shall be entitled to agree that these exchange rate changes are applied to it by the COMPANY on the effective date specified by the COMPANY, or to terminate the Contract within thirty (30) days.

Wire transfers may only be made to the PARTNER who entered into these General Terms and Conditions. No payment delegation shall be authorized. In addition, payment by wire transfer shall be made via bank located in the country in which the PARTNER is registered.

Any bill which does not contain the identification of the call for bill generated, the period covered by the call for a call for a temporary bill and all the mandatory information pursuant to the applicable law shall not be taken into consideration and shall not be paid. In this case, the PARTNER must submit to the COMPANY a new bill that complies with the above provisions.

The payment amounts shall be stated in the calls for bills and in the bills in the currency used by the Operators for payment of the payments. If the PARTNER requests payment in another currency, the COMPANY may make payment in that other currency by applying the foreign exchange rate stated by the Central European Bank (CEB) or the rate stated by the national bank stated in the Purchase Order on the day the COMPANY makes the payments owed to the PARTNER. Unless specifically indicated in the Purchase Order, the payment shall be made to the PARTNER in the currency stated in the call for a temporary bill.

### **7.1.2 Special Clauses Relating to Value Added Numbers**

Billing shall be done as follows:

- The Company shall provide the Partner with the fee statements for month M between the 1st and 15th day of month M+1;
- the monthly Payout for month M based on the fee statements shall be billed by the Partner to the Company during month M+1.

### **7.1.3 Special Clauses Relating to SMS Short Numbers**

The Company shall send the Partner a statement of SMS+ Sessions eligible for Payout (as indicated in the price list in the Purchase Order) starting from the 15th day of the month following completion of the SMS+ Sessions and the calculation of the resulting Payouts.

The Partner's Payout invoice is issued monthly by the Partner and drawn up on a calendar month basis.

Payouts are calculated on a pro rata basis.

The pro rata calculation is based on the number of monthly SMS+ Sessions generated as part of the operation of the Services by the Keywords attributed to the Partner for the total number of

SMS+ Sessions generated on each of the Short Numbers.

In the event of a End-user not paying the invoices issued by its Mobile Operator, the Operator in question shall have full discretion, notably, to suspend or terminate the subscription agreement subscribed by the End-user with this Operator or to provide a restricted service. The effect of these measures shall be to deprive the End-users of access to Short Numbers, which the Partner duly accepts and acknowledges. The Partner therefore agrees in advance not to make any claim against these measures.

#### **7.1.4 Special Clauses Relating to National and International Termination**

The Partner shall bill the Company for the Service on a monthly basis at the beginning of each month, for the traffic corresponding to the previous month, by determining the traffic recorded and the amount due. The Company may, however, bill for any call that has not been billed on the invoice date stipulated above in the following invoices.

By convention regarding proof, the Parties hereby agree that invoices shall be drawn up on the basis of the Call Detail Records (CDR) issued by the Company's billing system, which shall prevail between the Parties until fraud or a manifest error in the Company's system is proven.

It is hereby understood that the CDRs may not be used by the Partner for purposes other than checking the invoices issued by the Company and/or, if applicable, drawing up the Partner's invoices for its own customers.

#### **7.2 Billing Terms and Conditions for the Services Provided by the Company**

The prices and payment terms applicable to each Service are defined in the corresponding Purchase Order.

The Partner expressly agrees that the invoices issued by the Company shall be paid by direct debit via the bank account details provided by the Partner, before the deadlines indicated in the Agreement or on the Purchase Order.

Unless specified otherwise in a higher-ranking document, the implementation Services, i.e., those provided by the Company prior to the date on which the Services first go online, shall be billed as follows:

- First 50% down payment with the order,
- the balance on receipt of the Services.

Recurring Services shall be billed in accordance with the terms provided for in the Purchase Orders and these General Terms and Conditions. However, in the event of a delay or failure to put the Services online due to the Partner and despite the Company implementing all useful means, the Company shall be entitled to demand payment for the recurring Services, notably those dependent on the online publication of the Services.

Unless specified otherwise in a higher-ranking document, the invoices sent by the Company to the Partner are payable within thirty (30) days of the invoice issue date.

In the event of default or late payment at its due date, the Company shall no longer be bound by its contractual obligations until the payment is regularized by the Partner.

If invoices are not disputed within 45 days of receipt by the Partner, the latter shall be deemed to have definitively accepted the invoices and the latter shall no longer be able to dispute them.

If the Partner is made up of several entities/subsidiaries and if the amounts billed are less than one hundred and fifty euros (€150) per month and per entity/subsidiary, the Company may issue a single overall invoice to the Partner for all entities/subsidiaries that will carry out the internal rebilling to its entities/subsidiaries, or the Company shall send the Partner quarterly invoices "in advance".

If the disputed amount is less than five percent (5%) of the total value of the invoice to which the dispute relates, the total amount specified in the invoice shall be paid by the Partner to the Company on its due date.

If, on the other hand, the disputed amount exceeds five percent (5%) of the total invoice value to which the dispute relates, it may be deducted from the invoice payment until the dispute is resolved. In any event, the balance of the invoice shall remain payable on its due date.

Should the Parties have not resolved a dispute within a period of ten (10) days following the notification of the Partner, each Party may notify the other Party in writing of its wish to submit the dispute to an expert ("the Expert") chosen by mutual agreement between the Parties or, failing agreement, within a period of five (5) working days from said notification, appointed by the President of the Paris Commercial Court. The Expert shall act as joint representative of the Parties and not as arbitrator and the Expert's decision shall be final and without recourse, unless there is evidence of manifest error. Said Expert shall issue their decision within twenty (20) days of being appointed.

The Parties shall cooperate with the Expert and immediately provide the latter with the documents and information that they deem necessary to enable them to reach their decision.

Any sum owed by one Party to the other under the Expert's decision shall be payable within ten (10) days of said decision. The discharged Party shall pay, in addition to the sums due, late payment interest calculated between the due date of the amount concerned and the effective date of payment. It shall also bear the cost of the Expert.

#### **7.3. Deposit**

The Company may ask the partner to provide a financial guarantee. The financial guarantee shall take the form of a deposit for an amount fixed in the Purchase Order.

The Company shall automatically implement the deposit in the event of non-payment and after formal notice to pay is sent to the Partner by registered letter with acknowledgement of receipt



and has remained unpaid for eight (8) calendar days from its date of receipt. The implementation of a partial amount of the deposit does not result in the total amount of the deposit being extinguished but merely reduced by the amount called for.

After the sums due to the Company by the Partner have been deducted, the deposit shall be reimbursed to the Partner after the Agreement is terminated (unless it was terminated for default by the Partner or because the Partner failed to pay an invoice). The deposit shall be repaid within two (2) months of the Agreement being terminated.

If the Partner fails to pay the deposit, the Company may suspend or terminate the Agreement.

#### **7.4 Late Payment Interest**

It is expressly agreed between the parties that failure by the Partner to pay on the due date, unless the Company formally grants a postponement, shall result, without prior notice, in:

- the payment of all sums owed by the Partner and their immediate payability being forfeit, regardless of the payment method provided for;
- the billing of late payment interest, due solely as a result of the due date of the contractual term representing three (3) times the legal interest rate based on the amount of the debt not paid by the due date. The rate is calculated *pro rata temporis* per monthly period. The aforementioned amount shall be capitalized at the same rate, on the first day of each month,
- by the billing of fixed compensation for recovery costs amounting to €40 including tax.

#### **7.5 Changes in Financial Terms and Conditions**

The Partner acknowledges being informed that the price of the Services, and the amount of the payments, depend in particular on the financial terms and conditions of the third-party Operators. As a consequence, the Partner expressly agrees that changes to the financial terms and conditions that these Operators apply to the Company, which have an impact on the financial terms and conditions under which the Company provides the Services to the Partner, as well as changes applied by the Operators to the Payout scales, shall be reflected in the price of the Services and the amount of the Payouts. The Partner shall be informed of changes to the above items by e-mail and/or any other means of communication chosen by the Company. The Partner expressly accepts that these price changes will be passed on by the Company on the effective date indicated in the information e-mail or any other means of communication chosen by the Company, retroactively if required by the said third party. The above provisions shall also apply in the event of a change or evolution in the distribution of the subscriber base between the various Operators.

However, the Partner retains the option to terminate this Agreement within one (1) month of receipt of the first call for invoice or invoice noting a change mentioned above, if it rejects the tariff changes. Unless the Partner objects before the aforementioned deadline, the price change shall be deemed to have been accepted.

#### **7.6 Compensation**

The cost of the development, implementation, rental and transfer of the Services shall be compensated in full no later than six (6) months after the Services go online. If the amount of the Payouts at the end of these six (6) months does not provide full compensation for these costs, the outstanding balance shall be billed to the Partner; said invoice shall be paid within thirty (30) days of issue.

The Partner hereby agrees to provide compensation for any debts that may occur between its company, or companies belonging to the same group of companies as it, and the companies belonging to the Digital Virgo Group.

In addition, the parties expressly agree that all obligations relating to the payment of sums of money arising between them that are not subject to discussions regarding their validity or amount shall be offset, automatically and without formality, irrespective of whether or not the conditions for legal compensation are met. However, said compensation shall not have the effect of releasing the parties from their accounting obligations relating in particular to the issue of reciprocal invoices.

#### **7.7 Discount**

Subject to the express prior agreement of the Company by way of derogation from the provisions governing the terms and conditions of the Operator Payouts to the Partner as set out above, and starting only from the fourth month after the Agreement is signed, the Company may make early payment to the Partner. Said early payment shall be systematically subject to the application of a discount to the Company, the conditions of which shall be specified in the Purchase Order. The Company reserves the right to no longer apply the discount to the Partner at any time.

#### **7.8 Requisitions**

The Partner acknowledges and accepts that the Company reserves the right to bill costs amounting to fifty (50) euros excluding taxes as a legal requirement and undertakes to pay them, in accordance with the provisions of the financial terms and conditions.

#### **7.9 Taxation**

Each of the parties remains liable for the payment of the taxes and duties incumbent on its business, with joint liability being excluded in this regard. The Partner shall be responsible for taking all necessary measures to fulfill all its obligations with regard to income tax declarations and/or tax payments, and duties of any kind whatsoever. Similarly, it shall be responsible for taking all necessary measures with its partners based outside France to ensure that the latter fulfill all of their obligations relating to income tax declarations and/or payments as well other duties.

In addition, the Partner shall ensure that the structure of its company and its business activities comply with French tax regulations.

The Partner is therefore informed that the Company may be required to withhold a percentage of the amounts payable to the Partner and to pay the

corresponding withholdings to the French tax authorities. Consequently, said withholdings shall be deducted from the sums payable by the Company to the Partner.

### **7.10 Statistics**

In principle, the Operator's statistics shall prevail between the parties, but if the Partner is unable to obtain statistics on individual Operators, notably for certain shared resources, the parties hereby agree that the Company's statistics shall prevail.

## **8. PROVISIONS APPLICABLE TO SERVICES THAT GIVE RISE TO INTELLECTUAL PROPERTY RIGHTS**

### **8.1. Items Provided by the Company**

The items made available to the Partner and/or created by the Company for the purposes of performing the Services that are protected by intellectual property rights shall remain the exclusive property of the Company or of the third-party holder of the corresponding rights.

With regard to these items, the Company grants the Partner a personal, non-exclusive and non-transferable right to use said items solely for the purposes of the Service and solely for the term of the Agreement under which they are made available. This right is valid for France.

In the event of an express transfer of the intellectual property rights for the items created by the Company for the purposes of performing the Services, the Company shall pay only the full corresponding price.

### **8.2. Items Provided by the Partner**

The items that the Partner provides to the Company and which are protected by an intellectual property right shall remain the exclusive property of the Partner or third party holding the corresponding rights. Consequently, the Partner undertakes to compensate the Company and hold it harmless against any financial consequences of any kind that may result from third-party proceedings or claim asserting that the items provided by the Partner, or the use made thereof, constitute an infringement of its rights. The Company may suspend the Agreement in whole or in part as a result of the aforementioned proceedings and claims.

## **9. PROVISIONS APPLICABLE TO THE SERVICES SUBJECT TO ACCEPTANCE**

The Services used to implement a Service may be subject to an acceptance procedure before the Service goes online. The procedure may, if applicable, take place in one or more phases as specified in the Purchase Order, on the understanding that the Partner's action of putting the Services online shall constitute final acceptance of said Services.

Any request made by the Partner to put the Service online, or to put the latter into production, even though the Partner has not announced or recorded any reservations within the allotted time shall

constitute tacit acceptance of the implementation Services.

## **10. PROVISIONS APPLICABLE TO MAINTENANCE**

The operation of the Solution may be interrupted to enable the Company to perform the maintenance and servicing work on the IT system (API and software) comprising its technical platforms that underpin the supply of the Services, in order to enable the Service to be maintain its quality.

This work shall be carried out, giving forty-eight (48) hours' notice, at times when the Service is least used by End-users. The length of this work, for each Solution, shall not exceed a total of twelve (12) hours a month or be more than four (4) consecutive hours.

Any interruption of the IT system for a period of more than two (2) hours that is not scheduled as set out above may be explained later by the Company in writing (by fax, letter or e-mail) at the Partner's request.

The Service may also be interrupted for the purposes of any changes that the Partner may request from the Company.

## **11. PROVISIONS APPLICABLE TO SERVICES INCLUDING THE PROVISION OF AN API, APPLICATIONS OR SOFTWARE**

The API and the software belonging to the Company and made available to the Partner, including on rental, shall be and remain the exclusive property of the Company or the third-party holder of the related property right.

It is the Partner's sole responsibility to install the API and/or the applications in accordance with the technical specifications provided to it by the Company, as well as any updates thereof, at the Company's request. In this respect, the Partner undertakes to strictly comply with the technical specifications provided by the Company for the purpose of using the API and/or applications. The technical specifications may change in line with technical developments and/or requirements relating to API and/or application management, in which case the Partner shall be notified by any means by the Company and shall comply with said specifications. The Partner undertakes to provide the Company with its IP address ranges for the purpose of enabling proper use of the API and/or applications.

The Partner shall comply with the instructions for use given by the Company and, in particular, use the scripts provided by the Company. The Partner shall refrain from any intrusion into the programs made available to it under this Agreement.

It is the Partner's responsibility to ensure that its IT and Internet environment is and remains compatible with the API and/or the applications.

The Solution subscribed to by the Partner and the software included in this Solution are provided as is, i.e. without any other guarantee; as a result, the Partner uses the Solution under its sole responsibility.

## **12. SOLUTION CHANGES**

The Company reserves the right to modify all or part of the subscribed Solution at any time at its sole discretion. In this respect, the Company may propose to the Partner new financial terms and conditions including, for example, new Payout terms or new means of payment, may suspend and/or withdraw certain services offered and/or payment methods for the subscribed Solution or withdraw or suspend certain Solutions, without the Partner being able to oppose them. The Partner may not consider the changes in the subscribed Solution as any form of default by the Company of its essential obligations, and it may not claim damages. Should changes in the subscribed Solution not be suitable for it, the Partner shall be free to terminate the Agreement by registered letter with acknowledgement of receipt no later than fifteen (15) days after the Company sends the information by e-mail or any other means. A lack of response from the Partner during this period constitutes acceptance of the changes to the subscribed Solution.

## **13. TERMINATION AND SUSPENSION**

### **13.1. Termination on the Due Date**

Each Solution may be terminated by either party on its due date. The Partner may terminate the Agreement by registered letter with acknowledgement of receipt, notifying the Company at least three (3) months before the expiry date of the current contractual period. The Company may terminate the Solution at any time by giving three (3) months' notice by registered letter with acknowledgement of receipt. The Solution shall terminate automatically at the end of this notice period.

### **13.2. Termination for Default**

Each party may, as of right, terminate the Agreement in the event of the other party defaulting on one of its essential obligations, if said default is not remedied no later than thirty (30) days after a registered letter with acknowledgement of receipt is sent stating the default in question. However, the Company may also terminate the Solution as of right and without notice if its liability may be brought into question because the Partner has defaulted on one of its essential obligations. Such terminations shall be without prejudice to any damages to which the party affected by the default may be entitled.

In addition, if the fault for the termination lies with the Partner, the Partner shall remain obliged to pay for the Services performed as at the effective date of the termination, as well as paying compensation equal to the price of the Services over the remaining period up to the end of the terminated Agreement, said compensation corresponding to the revenue calculated by multiplying (a) the average monthly amounts owed to the Company under the Agreement during its effective performance period, with (b) the number of months remaining until the end of the contractual period. This compensation may, where applicable, be increased by the amounts referred to in the intellectual property and liability clauses.

### **13.3 EARLY TERMINATION BY THE PARTNER**

In the event of early termination by the Partner, with the exception of termination for default by the Company or due to a case of force majeure, the Company shall be liable to pay:

- fifteen percent (15%) of the average monthly Operator Payout made in the six months preceding the termination, multiplied by the number of months remaining to run, or
- fifteen percent (15%) of the average monthly amount billed in the six months preceding the termination, multiplied by the number of months remaining to run.

In the event of early withdrawal by the Partner between the date the Agreement was signed and the agreed commissioning date, all technical services performed prior to said commissioning (studies, installations, purchase of equipment, etc.) shall be billed for by the Company.

The Partner shall also be liable for the fixed costs chargeable by the Company, as well as all duly justified penalties and compensation applied to the COMPANY by the Operators or third parties such as ARCEP [French electronic communications regulatory authority] with which the Company has been obliged to conclude agreements in order to provide the Services terminated by the Company.

In the event of the Services failing to go online or doing so late, due to the Partner and despite the Company employing all useful means, the Company shall be entitled to demand payment for recurring Services, including those dependent upon the Services going online.

### **13.4 Termination because of inadequate traffic**

The Company reserves the right to terminate the Agreement as of right for insufficient traffic if the Payouts to the Partner are less than:

- Six thousand euros (€6,000) accumulated during the first six (6) months following the effective date of the Agreement, or
- One thousand euros (€1,000) per month in the sixth month following the effective date of the Agreement, or
- Six thousand euros (€6,000) for a continuous period of six (6) months during the performance of the Agreement.

Notwithstanding the above, termination for insufficient traffic shall not apply to the Partner(s) whose assigned numbers belong to the "Machine-to-Machine" type.

### **13.5. Termination FOR PROLONGED NON-USE OF THE SERVICE**

In the event that the Company finds that all or part of the subscribed Solution is not used for a prolonged period of one (1) year, it reserves the right to terminate the Agreement relating thereto, subject to giving fifteen (15) days' notice, and reserves the right to delete all accounts and the data associated with said accounts. Notwithstanding the above, termination for prolonged non-use of the

Service shall not apply to Partners whose assigned numbers belong to the "Machine-to-Machine" type.

### **13.5 Other Terminations**

If a decision is issued by a legal or administrative authority and/or an Operator, or regulations prevent or restrict use of the subscribed Solution, the Company may terminate the Agreement as of right by any means and without notice; said termination shall not give rise to any damages of any kind whatsoever.

If there is no or insufficient use of one of the Services by the Service Provider, the COMPANY may suspend the provision of the Services for the relevant Service or suspend or stop access to the said Service after formal notice served in writing that has not been answered within five (5) business days from the sending of the formal notice or without prior notice when there is a likelihood that the COMPANY's liability may be incurred by not suspending the service.

### **13.6 Effects of the End of the Agreement**

In the event of this Agreement being terminated or ending for any reason whatsoever:

- the Partner shall delete from its Site(s) and/or equipment the API of the subscribed Solution and any other software/applications made available by the Company;
- the Partner shall destroy all information and/or documentation relating to the subscribed Solution;
- the Partner shall refrain from using the subscribed Solution, the Company's trademarks, the Resources and any other resource used in performing the subscribed Solution, as well as any other item supplied by the Company under this Agreement;
- the Company shall send the Partner a payment settling all outstanding amounts.

The information relating to the Agreement and the financial flows shall be kept for five (5) years starting from the end of this Agreement.

### **13.7 Suspension**

**13.8.1** In the event of the Partner defaulting on its contractual obligations, its obligations compelling it to comply with legal, regulatory, professional or other requirements, the Ethical Recommendations applicable to the Services, or the rights of third parties, the Company reserves the right to suspend supplying the Services, or to suspend or interrupt access to the Services if written formal notice has gone unremedied for two (2) business days starting from said formal notice being sent or without notice if the Company is likely to become directly liable as a result of failing to implement said Suspension.

Similarly, in the event of (i) suspension of all or part of the Operator Agreements due to default by the Partner, or (ii) a decision issued by a legal or administrative authority, and/or an Operator, or a regulation causing the suspension of the use of the subscribed Solution, the Company reserves the right to suspend the supply of the Services, or to suspend or interrupt access to the Services while respecting, as far as possible, a notice period that takes into account the urgency and/or deadline set

by any competent legal, administrative or inspection authority.

No compensation or redress of any sort shall be owed by the Company to the Partner as a result of such Suspension, and the Partner shall remain obliged to perform its financial obligations under the Agreement throughout the duration of the Suspension. In addition, if the Suspension affects all of the Services or the Service and lasts for more than one (1) month, the Company shall be entitled to terminate the Agreement with the fault lying with the Partner, without prejudice to any damages that it may claim.

In the event of criminal proceedings initiated by the Public Ministry against the Partner, its representative or any person referred to in article 43-10 of law no. 86-1067 of September 30, 1986, amended, relating to the freedom of communication as a result of the content of the Partner's Service or advertising for said Service, the Company may suspend the performance of all or part of the Services without any right to compensation for the Partner until the date of the future final court decision.

In the event that the Partner, its representative or any person referred to in Article 43-10 of the aforementioned law no. 86-1067 or of publicity for said Service provided by the Partner, the Company may terminate all or part of the Services as of right. This hypothetical termination has the same consequences as early termination by the Partner, namely the payment of all billed fixed costs and early withdrawal compensation as provided for in article 13.3 above.

### **13.8.2 Special Clauses Relating to LAN-to-LAN**

The Company may suspend or terminate all or part of the Services as of right without prior notice in the event of (i) proven fraud on the part of the Partner, and/or (ii) manifest disloyalty observed by the Company and if there is an urgent need to stop the actions concerned, and/or (iii) when an advertisement of any kind clearly shows that the Partner's Service is prohibited.

The Company may, in any event, refer the matter to the interim judge in order to obtain a decision to suspend the Service(s) immediately. In this case, the formal notice procedure shall not apply.

The suspension and/or termination of all or part of the Services under the terms of this clause shall not entitle Customer to any compensation.

In the event of suspension and/or termination under the above conditions, the Customer shall be liable for all costs and compensation provided for in article 13 hereof. A penalty of ten thousand (10,000) euros shall also be payable by the Partner to the Company, without prejudice to the Company's right to claim full compensation from the Customer for any loss it may have suffered.

### **13.8.3 Special Clauses Relating to SMS Short Numbers**

In the event of non-compliance with the Ethical Recommendations listed in the Special Terms and

Conditions relating to SMS+ Short Numbers, the notice period of three (3) business days shall be reduced to one (1) business day.

In the event of failure by the Partner to comply with the Ethics Recommendations, the Company shall inform the former by any means, and reserves the right to pass on the Penalty(s) imposed by the Operators or authorities having authority, for the non-compliance in question. The Company shall, as of right, deduct the amount of the financial penalty from the Partner's next invoice.

If the penalty(s) imposed by the Operators or authorities having authority for the default in question are accompanied by the suspension or cut-off of the SMS Short Number, the Company declines all liability for the consequences of said suspension or cut-off. The Partner shall bear all the consequences relating to said suspension or cut-off.

In the event that the SMS Short Number suspended or cut off is shared, then an additional penalty of ten thousand (10,000) euros shall be applied as of right, without prejudice to the Company's right to claim compensation from the Partner for all the damages that the Company may have suffered. The penalties applicable in the event of default are described in the Special Terms and Conditions. When these Penalties are applicable, the Company shall, if applicable, offset the amount of the Payouts owed to the Partner in respect of the Service against the amount of the penalties.

The Company may, as of right, suspend or terminate all or part of the Services without prior notice in the event of (i) proven fraud on the part of the Partner, and/or (ii) manifest disloyalty observed by the Company and if there is an urgent need to stop the acts concerned, and/or (iii) when an advertisement of any kind clearly shows that the Partner's Service is prohibited either in general or at the tariff at which it is offered or by the code or number giving access thereto.

The Company may, in any event, refer the matter to the interim judge in order to obtain a decision to suspend the Service(s) immediately. In this case, the formal notice procedure shall not apply.

The suspension and/or termination of all or part of the Services under the terms of this article shall not entitle the Partner to any compensation.

#### **13.8.4 Special Clauses Relating to Value Added Numbers**

In the event that the Partner fails to comply with any of the obligations entered into for the Surcharged Value Added Services, the Company may, after formal notice has been sent to the Partner by e-mail or registered letter with acknowledgement of receipt and gone unremedied for a period of three (3) business days from receipt thereof, suspend or terminate all or part of the Service as of right.

In particular, the Company may suspend all or part of the Services (including suspending the allocation and technical opening of new Added Value Service Numbers in the Added Value Number tranches stipulated in a Purchase Order) after formal notice has gone unremedied for two (2) business days after said formal notice is sent, or without prior notice when the liability of the Company may be directly incurred if said Service(s) is/are not suspended (i) in the event of proven fraud by the Partner, and/or (ii) if the Company observes any manifest disloyalty and there is an urgent need to stop the actions concerned, and/or (iii) if an advertisement, of any kind whatsoever, reveals that the Partner's Service is forbidden either in general, or at the tariff at which it is offered or by the code or Added Value Number providing access to it, and/or (iv) in the event of the Partner or a customer of the Partner manifestly failing to comply with the Ethical Recommendations and/or in the event of the AFMM and/or the Operators notifying the End-users that said ethical recommendations and the law have been breached, and/or (v) in the event of an abnormally high number of notifications, i.e., a number of notifications (under the meaning of the provisions of the Consumer Code) collected on the platforms "infosva.org" and "33700" for all of the Partner's Services over the course of two (2) consecutive months that is higher than the average number of notifications for these platforms during the same period for all of the Company's partners, the Company shall then inform the Partner of the abnormally high number of notifications, giving it 48 hours' formal notice before suspending the Services.

If, within fifteen (15) days of such suspension, the cause of the suspension has not disappeared and/or has not been corrected, the Company may terminate the Agreement in whole or in part.

The suspension and/or termination of all or part of the Services under the terms of this article shall not entitle the Partner to any compensation.

If a penalty is applicable, the Company shall, if applicable, offset the amount of the Payouts owed to the Partner in respect of the Service against the amount of the fixed penalty.

#### **13.9 Suspension in the Event of a Lack of New End-users for a Given Service**

If there is no traffic for a period of six (6) months or there is no or insufficient acquisition and/or traffic by the Partner for one of the Services, the Company reserves the right to suspend the supply of the Service in question, or to suspend or interrupt access to said Service after written formal notice has gone unremedied for five (5) business days after said formal notice has been sent. By way of derogation, this clause shall not apply to the Partner(s) whose assigned numbers belong to the "Machine-to-Machine" type.

## **14 LIABILITY**

Each party shall be liable to and compensate the other party for any damages it may suffer as a result of non-performance and/or improper performance by it of any of its obligations under this Agreement.

The Solution subscribed to by the Partner is used under its sole management, control and liability. Under no circumstances shall the Company be held liable for errors, data corruption or failures caused by misuse of the subscribed Solution.

Should the Company be held liable as a result of an item placed under the Partner's responsibility, or more generally as a result of an action or omission by the Partner, the latter shall compensate the Company for all the financial consequences resulting therefrom. This also includes the penalties applied by the Operators and the other financial consequences that the Company may incur as a result of the Partner failing to comply with its obligations.

The Partner also acknowledges and accepts that the subscribed Solution is subject to change. Consequently, the Partner waives any right to seek the liability of the Company for any change to the Solutions and, notably, in the event of a service and/or method of payment being suspended and/or withdrawn.

In the Company's capacity as a technical service provider between the Operators and the Partner, the parties expressly agree that if the liability of the Company is brought into question, whatever the nature or basis of the action:

- only direct damages may give rise to compensation. Consequently, all indirect damages, and in particular any business harm or losses by the Partner, any business problems, and any loss of brand image by the Partner, its End-users and/or a third party, may not entitle the Partner to compensation;
- the amount of compensation that the Company may be asked to pay is expressly limited, over the entire term of an Agreement, to the smaller of the following two amounts: the amount of remuneration actually received by the Company or the amount of the sums actually billed to the Partner during the six (6) months preceding the date of the event that caused the damages, or 15% of the sums actually paid during the six (6) months preceding the date of the event that caused the damages and shall in no event exceed ten thousand euros (€10,000).

## **15 FORCE MAJEURE**

For the purposes of the Agreement, a case of force majeure shall be understood to mean any irresistible and unforeseeable external event preventing one of the parties from performing the obligations incumbent upon it under the Agreement, such events including fires, floods and other natural disasters, or the default of an Operator (in France or abroad) or a supplier provided that it is shown that it was irresistible, or the modification of any regulation applicable to the execution of this Agreement presenting these characteristics.

The occurrence of a case of force majeure invoked by one of the parties must be reported to the other party by registered letter with acknowledgement of receipt within fifteen (15) business days from the occurrence of this event, and shall, initially, suspend the execution of the Agreement.

Subsequently, and unless the parties agree otherwise, if they see that the case of force majeure remains after a period of two (2) months, the Agreement shall be terminated automatically without this giving rise to any compensation whatsoever being paid by either party to the other.

## **16 CONFIDENTIALITY**

The parties to the Agreement undertake, throughout its term and for two (2) years after its termination for any reason whatsoever, to maintain the confidentiality of the other party's confidential information.

The Parties agree to keep the information shared as part of the Service Agreement confidential. Each of the Parties agree to treat as confidential all the information and knowledge on the other Party to which it may have had access as part of the negotiation, performance or termination of the Service Agreement or in any other manner, including technical information, specifications, sales, financial or name information or generally, any other information on the other Party and its businesses.

Except as required by law and unless authorized in writing by the other Party, each of the Parties agrees not to disclose any information of that type to any person whomsoever and in particular to the competitors of the other Party and not to use such information as part of any other mission on behalf of any other person or for personal purposes.

This confidentiality obligation shall subsist for twenty-four (24) months after the end of the Service Agreement regardless of the reason thereof.

To this end, the Parties shall take all the required steps vis-à-vis their personnel or other subcontractors they use to keep such information confidential. The Parties agree to limit the circulation of such information to their personnel or the subcontractors who need such information to perform their duties for the performance of the Service Agreement.

This confidentiality obligation shall not apply to information known at the time of its disclosure by one of the Parties or to information that is public domain on the date it is disclosed.

Prior to the official press release of the signing of this Service Agreement, a Party may only disclose the existence of the Service Agreement to third parties provided it obtains a prior written consent from the other Party. In any event, before and during the entire term of the Service Agreement, the content of said Agreement shall remain confidential.

## **17 CORRESPONDENCE**

All e-mails shall be sent to the address indicated by the Partner when subscribing to the Agreement.

## **18 PROOF**

Any recording, timestamping or referencing performed on the Company's IT systems pursuant

to this Agreement shall serve as proof by and between the parties.

## **19 GROUP OF EDITORS**

When the Partner acts as Aggregator on behalf of a group of publishers or third parties, it shall undertake to make the provisions of this Agreement known to each of the publishers or third parties that have commissioned it. Said publishers or third parties shall comply with these provisions and hold the Company harmless against all adverse consequences that it may suffer as a result of their failure to comply.

## **20 SUBCONTRACTING**

The Company reserves the right to subcontract all or part of the Services to any company. The Company shall remain solely liable to the Partner for the services thus subcontracted.

## **21 TRANSFER**

Under no circumstances may the Agreement be assigned, in whole or in part, for consideration or free of charge, by either of the parties, without the express prior authorization of the other party. However, the Agreement may be freely transferred by the Company to any company in the Digital Virgo Group and/or to any company that, in the restructuring of its capital or of its activities, replaces its rights and obligations and in particular in the event of a transfer resulting from a merger, a partial contribution of assets or a transfer of assets. In the event of the Partner asking to transfer the Agreement to another party, the Company reserves the right to bill for processing costs amounting to €300 excluding VAT.

## **22 CHANGES IN GENERAL CONDITIONS**

The Company reserves the right to amend or change the Agreement at any time. Use of the Service implies that the Partner fully accepts any revision and/or modification of the Agreement.

## **23 COMMERCIAL REFERENCE**

The Company may freely use the Partner's reference (including the Partner's trademark(s) and/or logo(s)) as a commercial reference, which the Partner hereby accepts unless it sends a registered letter with acknowledgement of receipt requesting that said trademark(s) and logo(s) are not used in the future.

## **24 INSURANCE**

Each of the parties declares that it is insured with a reputedly solvent insurance company, established in France or in the country in which the Partner has established its registered office, for all the harmful consequences of the acts for which it could be held liable under the Agreement. Each party warrants and represents that it has paid all premiums due and undertakes to pay future premiums.

## **25 DATA**

As regards the Services, the Partner also undertakes to comply with all legal and regulatory requirements

relating to data processing, files and individual liberties as they result from the European Regulation 2016/679 on the Protection of Personal Data and from the amended Act No. 78-17 of January 6, 1978, or from any text that might amend or replace it and, in particular, to perform all procedures prescribed by such texts. As a result, the Partner undertakes, on its own behalf and that of its partners, to comply with the provisions relating to cookies and pop-up windows.

The Partner undertakes to comply with the obligations relating to the protection of personal information as set out in the Special Terms and Conditions of each Solution. The information collected in connection with the Services shall remain the property of the Partner.

The information collected in this way is only intended for the Company's exclusive use in performing the Services and is not transferred or communicated to third parties other than the technical service providers involved in performing the Services. Said service providers undertake to respect the confidentiality of this information and not to use it other than for the purposes of this Agreement.

However, the Company may communicate said information concerning the Partner or the End-user in order to comply with current legislation, in the context of legal proceedings, an application by an Operator or a competent authority such as the CNIL to respond to complaints relating to the infringement of third party rights or to protect the rights or interests of the Company.

## **26 ANTI-CORRUPTION MEASURES**

The Partner undertakes to comply with all national, European and international legal and regulatory provisions applicable to its anti-corruption activities.

The Partner undertakes that, on the effective date of the Agreement, its directors, officers or employees have not offered, promised, given, authorized, solicited or accepted any monetary or other benefit of any type whatsoever and in any way whatsoever, and that it has taken reasonable measures to prevent subcontractors, agents or other third parties, under its control or significant influence, from doing so.

If the Company provides proof that the Partner has committed acts of corruption as described above, it shall inform the Partner accordingly and ask it to take the necessary corrective measures within a reasonable time and to inform it of such measures. If no corrective measures are taken, the Company may, at its discretion, suspend or terminate the Agreement, on the understanding that all amounts contractually due at the time of suspension or termination of the Agreement shall remain payable, to the extent permitted by applicable law.

## **27 SEVERABILITY**

If any of the stipulations of this Agreement is held to be null and void with respect to a current rule of law or a definitive legal decision, it shall be deemed to be unwritten without voiding this Agreement or changing the binding nature of its other stipulations.

## **28 WAIVER**

Failure by either of the Parties to claim enforcement of any clause of this Agreement or acquiescence to its non-enforcement either permanently or temporarily shall not be construed as a waiver by that Party to the rights stemming from that clause.

## **29 GOVERNING LAW AND JURISDICTION**

These General Terms and Conditions as well as the Special Terms and Conditions agreed between the Company and the Partner are subject to French law.

IN THE EVENT OF A DISPUTE BETWEEN THE PARTIES OVER THE INTERPRETATION AND/OR EXECUTION OF AN AGREEMENT, EXPRESS COMPETENCE SHALL BE ATTRIBUTED TO THE PARIS COMMERCIAL COURT, NOTWITHSTANDING MULTIPLE CLAIMANTS OR THIRD-PARTY APPEALS, INCLUDING FOR EMERGENCY PROCEEDINGS OR FOR SUMMARY, INTERIM OR REQUESTED PROCEEDINGS.