

# ACTILITY TERMS AND CONDITIONS OF SALE

These Standard Terms and Conditions apply to any proposal and agreement and/or purchase order relating to equipment, services or license sold and /or granted by Actility or its Affiliates including but not limited to Abeeway to a customer ("Customer"). These terms and conditions, together with the related proposal and agreement and/or purchase order shall constitute the entire agreement ("Agreement") between the parties.

## 1. Scope

If Customer has agreed, either electronically or via a signed document with Actility to terms and conditions applicable to this sale of Products and Services or Software license, then those terms and conditions ("Specific Terms and Conditions") shall apply to this sale of Products and/or Services and Software license. In the event of a contradiction, the Specific Terms and Conditions shall prevail. If no Specific Terms and Conditions exist, then the terms and conditions contained herein- including any information made available via an hyperlink herein (together "Terms and Conditions") shall apply to all quotations ("Quotations") made by Actility and shall therefore constitute a sale agreement ("Agreement") entered into between Actility and Customer, irrespective if whether Customer accepts these Terms and Conditions by a written acknowledgement by implication, or by acceptance of Products and/or Services hereunder. The terms and conditions shall form part of any order placed by Customer ("Order"). Any term or conditions of any Order or other document submitted by Customer shall be of no force or effect whatsoever. In particular, acceptance by Actility of an Order sent by Customer shall not be deemed an acceptance of any conflicting or additional terms and conditions. Actility specifically rejects any different or additional terms and conditions propose by Customer, unless those terms and conditions are mutually agreed in writing.

## 2. Orders

All Orders must quote the single Quotation Number provided by Actility. The Actility General Terms and Conditions of Sale will prevail.

Information contained in a Quotation or which are given to Customer by Actility's agents or employees constitutes an invitation to treat but does not constitute an offer by Actility to supply Products and/or Services or grant a license to the Software. By placing an Order, Customer makes an offer to Actility to purchase the Products and/or Services. Any Order shall be subject to acceptance by Actility and Actility may decline any Order in whole or in part, for any lawful reason whatsoever. If Actility accepts Customer's Order, Actility will notify Customer of its acceptance by sending an Order Confirmation.

Whilst Actility will make every effort to supply Customer with the Products and/or Services listed on the Order Confirmation, there may be occasions where Actility is unable to supply these Products and/or Services because, for example, (i) such Products or Services are no longer being manufactured or available, (ii) Actility is unable to source relevant components or (iii) there was a significant pricing update from a third party hardware supplier. In such circumstances Actility will contact Customer immediately and will suggest alternative Products or Services that Customer might wish to purchase (at the same or at a different price). If Customer does not accept Actility's proposed substitution, then Actility will cancel the Order and refund any money that Customer may have paid to Actility with respect of the Order. Repayment of such monies will be the extent of Actility's liability to Customer if Actility is unable to deliver the Products and/or Services ordered by Customer. Once Actility has sent the Order Confirmation to Customer, Customer may not cancel the Order.

### **3. Delivery, shipment and Payment terms.**

Actility will supply to Customer (but not install) the Products and/or Services indicated on the Order Confirmation.

Delivery dates which might be specified in the Order, the Order Confirmation, or in any other communication from Actility (whether oral or in writing) are estimates only.

### **4. Risk and Title**

4.1. Unless otherwise notified by Actility in writing, title to and the right to retake possession of the Products purchased from Actility shall remain with Actility until all sums owing to it by Customer in respect of the Products shall have been paid in full. Actility may, at Customer's expense, retake possession of the unpaid Products. So long as such title to and rights over Products remains with Actility, Customer shall keep the Products stored in such a manner which enables them to be identified as the Products and, wherever required by Actility, identify the Products to Actility.

4.2. Risk of loss or damage to all Products hereunder will pass to Customer upon Actility's delivery of the Products to the Customer or any party authorized to receive Products on behalf of customer.

### **5. Acceptance**

Unless otherwise agreed in writing all shipments (which for the purpose of this clause shall be deemed to include the contents of packaged Products as well as the packages themselves and the number of packages) shall be deemed correct and undamaged unless at the time of delivery Customer specifies on Actility's copy of the delivery documentation the precise shortfall or error in delivery or inform Actility of such shortfall or error in writing within fourteen (14) business days after the original delivery date of the given shipment. Customer's failure to inform Actility in this way shall constitute a waiver of any such claim. All communications with Actility must include the single Quotation Number provided in Actility's Quotation, and the exact nature of the discrepancy between the order and shipment in number or type of Products shipped. For under-shipments, Actility shall, at its sole discretion, issue a replacement shipment, or a credit to Customer's account if Actility has granted credit terms to Customer within thirty (30) days of receipt of Customer written notice.

### **6. Price**

The price for the Products and Services will be the price indicated in the Order Confirmation. Prices do not include value added tax or other local taxes or duties (collectively "Taxes"). All Taxes if any, due on account of purchases hereunder shall be paid by Customer. All prices are EXWORKS Paris. All amounts shall be paid in Euros or in US Dollars. Freight and insurance may be ordered by Customer.

### **7. Invoicing and Payment**

Unless stated otherwise in the purchase order:

- a. Actility will invoice 60% of charges for the sale of Hardware upon the coming into force of a purchase order or any duly executed commercial proposal and the remaining 40% upon delivery of Hardware;
- b. Actility will invoice 100% of charges for the license of Software upon the activation keys;
- c. Actility will invoice 100% of charges for the Right to use the Software upon or access to SaaS credentials;
- d. Actility will invoice 100% of charges for the sale of Support and Maintenance Services (if any) upon the coming into force of a purchase order;
- e. Actility will invoice 50% of charges any other non-recurring initial charges (for instance professional services), upon the coming into force of a purchase order or any duly executed commercial proposal and the remaining 50% of the remaining of any other non-recurring initial charges;
- f. Actility shall invoice any other charges not covered by a, b and c, d and e as and when incurred;

The Customer shall pay all charges, within thirty (30) days of the receipt of the relevant invoice.

All invoiced sums shall be paid in full in the currency of the invoice without deduction or set off (statutory or otherwise) and in cleared funds. Actility reserves the right to set off any amount owed by Actility to Customer against any amount due to it by Customer. All invoices must be paid within the payment terms agreed with Actility. Where no credit facility has been granted to Customer or where this has been withdrawn payment will be required in full in cleared funds prior to shipment.

If Actility has reasonable grounds to believe that Customer will fail to comply with the present payment terms or with the agreed credit terms, Actility shall be entitled to postpone or to refuse delivery of an Order.

Any payments by Customer that are not paid on or before the date such payments are due under this Agreement shall bear interest at the lower of (a) nine percent (9%) yearly and (b) the maximum rate allowed by law. Interest shall accrue beginning on the first day following the due date for payment and shall be compounded quarterly. The damaging effect of a late payment on Customer credit scores may result in more stringent invoicing terms and conditions.

#### **8. Taxes**

All fees payable under any purchase by Customer are exclusive of tax. Customer shall be responsible for paying Taxes arising from the purchase of all or part of the Deliverables. If applicable, valid exemption documentation for each taxing jurisdiction shall be provided to Actility prior to invoicing, and Customer shall promptly notify Actility if their exemption is revoked or modified. All payments made by Customer shall be net of any applicable withholding tax. Customer will provide reasonable assistance to Actility in connection with such withholding taxes by promptly providing Actility with valid tax receipts and other required documentation showing Customer's payment of any withholding taxes; completing appropriate applications that would reduce the amount of withholding tax to be paid; and notifying and assisting Actility in any audit or tax proceeding related to transactions hereunder. Customer shall comply with all applicable tax laws and regulations, and Customer will promptly pay or reimburse Actility for all costs and damages related to any liability incurred by Actility as a result of Customer's non-compliance or delay with its responsibilities herein. Customer's obligations under this Section shall survive termination or expiration of this Agreement.

#### **9. Renewal of pre-packaged service subscription**

Subscription Actility's pre-packaged service terms and conditions have a minimum of one-year terms. Customer will be invoiced for the initial year of Services that Actility provides. The Subscription services shall automatically renew for successive one-year periods, unless and until Customer provides written notice of non-renewal to Actility at least one (1) business day prior to the end of the then-current Subscription Term. Actility shall invoice Customer for the initial year of Services at list price of the Support Option selected less applicable discounts. Renewal date will start one (1) day after the end of the prior subscription period. If Customer selects a multi-year Support Option in advance, Customer will pay Actility for the entire term of the selected Service Option in advance. Actility may provide further 5 (five) % discount for every payment in advance corresponding to 3 (three) years.

When Customer has selected a multiyear engagement, the license shall automatically renew for successive period which term will be identical to the initial period of engagement. If the renewal period desired by the Customer is different than the initial period (that shall not be less than one (1) year), then the updated order has to be sent to Actility at least one (1) business day prior to the end of the then-current Subscription Term.

The invoice will be sent automatically by Actility within a few days from the date of the renewal for the entire new period.

#### **10. GDPR and Data protection**

10.1. By placing an Order, Customer agrees and understands that Actility may store, process and use data collected from Customer's Order form or phone/fax/email Order for the purposes of processing the Order. Actility may also share such data globally within the Actility group of companies. All Actility companies shall protect Customer's information in accordance with the Actility Customer Privacy Policy available upon request.

10.2. With regards to Personal information owned by Actility and in the course of performing Services, Actility and its affiliated entities are responsible for processing Customer personal information. As to Personal information owned by Actility customers, Actility is a data processor of the ThingPark online services on behalf of its Customers. Personal data recorded into the system by Customer is owned by Customer and remain under his responsibility. Personal data managed by European Customer on ThingPark has to be compliant with GDPR regulations.

10.3. If Customer wishes to have access to the information that Actility holds concerning Customer, or wants to make any change, or does not want to receive information from Actility or third-party companies, Customer is required to contact Actility's Data Protection Officer.

10.4 Actility has undertaken critical actions against GDPR compliancy such undertaking a systematic review of the personal data it stores, manages, maintains, collects, processes and controls.

## **11. License and Right to Use**

11.1 Customer, as an end -user, is licensed to use any software subject to the terms of the license accompanying the Product, if any, and the applicable patent, trademark, copyright and other intellectual property laws. With regards to Actility Software, the license will be subject to the then current Actility End User License Agreement, available upon request. Purchaser shall not separate any end user license from a Software Product.

11.2 If Actility SaaS is delivered, Actility hereby grants to the Customer, in return for the compensation, a limited, non-exclusive and transferable right to allow its End -user access to the. It is expressly understood that said right is limited to the scope of the Services. The Customer commits not to assign to its End -user more rights than it possesses by the terms of the Agreement.

## **12. Equipment and Access**

Actility may require installing Equipment on the Customer's Premises to enable Actility to provide the Services. Subject to the provisions of this Agreement, Customer hereby grants to Actility the right to set up, install and operate such Equipment at the Customer's Premises and will use its best effort to provide Actility, its employees, representatives and authorized agents, as may be reasonably required, network access to the Equipment, 24 hours a day, 7 days a week in accordance with the access procedures agreed between the Customer and Actility. Customer shall furnish reasonable, appropriate environmental conditions for the Equipment (including, without limitation, protection from weather, security, availability of power, including a back-up generator, ventilation, heating, and cooling). If Customer reasonably requires to temporarily disconnect the power supply to the Equipment, except in an emergency, Customer will give Actility at least fourteen (14) written days' notice in advance of such disconnection and will use all reasonable efforts to ensure minimum disruption.

The Customer undertakes (a) not to replace Equipment located on the Customer Premises, (b) not to make any modification, alteration or connection to the same other than by prior agreement in writing with Actility (c) make any disconnection therefrom otherwise than agreed in writing with Actility and (d) provide Actility with the evidence of the insurance relating to the Equipment located on its premises and if Equipment located in other premises, will do its best efforts to give the evidence of such insurance.

## **13. Proprietary Rights**

Customer shall not use Actility's name, logo, trademarks, trade names, trade dress, design, look and feel or other proprietary rights (together "Proprietary Rights") in any of its advertising, communications, publications or other work without the prior written permission of Actility. Customer must not remove, obfuscate, deface, cover or alter any Actility mark or other mark nor add any Actility mark or other mark to any materials provided by Actility nor to any Product or its packaging. Neither Customer nor its agents will register or use any trademark that may cause confusion with Actility Proprietary Rights.

## **14. Warranty**

**14.1.** One (1) year limited warranty for Hardware

And three (3) months limited warranty on Actility – branded Software products.

The Actility limited warranty covers Actility-branded hardware and Software products only. It does not cover third parties' products and/or services. Purchaser shall not be entitled to make any claim against Actility in respect of the breach of the Actility limited warranty unless the claim is made within two (2) months of discovering or learning of the defect. Actility shall not accept any liability for loss of data caused by warranty service.

Actility warrants that for the applicable Warranty Period, the Actility hardware purchased by Customer ("Hardware") shall be free of defects in material and workmanship under normal authorized use consistent with the Product instructions. In the event that Actility receives notice during the Warranty Period that any Hardware does not conform to this Limited Warranty, Customer's sole and exclusive remedy, and Actility's sole and exclusive liability, shall be for Actility, at its sole option, to: (1) repair the Hardware at no charge, using new or refurbished replacement parts; (2) exchange the Hardware with new or refurbished Hardware; or (3) refund the purchase price of the Hardware. Actility's obligations hereunder are conditioned upon Customer's return of the Hardware to Actility in accordance with the terms of this Limited Warranty.

Actility Software – The sole warranty, if any, for Actility Software purchased under this Agreement shall be as set forth in the software license agreement or documentation that accompanies each Actility Software (End User License Agreement). Subject to the terms of Actility's End User License Agreement, Actility warrants for a period of 90 days from the Start Date that: (i) the media on which the Software is delivered will be free of defects in material and workmanship under normal authorized use consistent with the Product instructions; and (ii) the

Software will perform substantially in accordance with Actility's standard specifications. Actility does not warrant that the Software will operate uninterrupted or error-free. In the event that Actility receives notice during the warranty period for Software that any Software does not conform to this Limited Warranty, Customer's sole and exclusive remedy, and Actility's sole and exclusive liability, shall be: (1) for Actility to replace the defective media; or (2) for Actility, at its sole option, to repair, replace or refund the Fees paid for such Software. Actility's obligations hereunder are conditioned upon Customer's compliance with the terms of Actility's End User License Agreement.

No warranty or maintenance will apply if the Hardware or Software (i) has been altered in any way, including, but not limited to, the removal or alteration of the original identification marks, except when such alterations are made by Actility; (ii) has not been installed, operated, repaired, or maintained in accordance with the Documentation; (iii) has not been imported in compliance with relevant Laws; (iv) has been serviced by parties not trained by or on behalf of Actility; or (v) has been subjected to unreasonable physical, thermal or electrical stress, misuse, negligence, or accident or (vi) use by Customer of Materials and Work Products in combination with any software, hardware or other products, which leads to total or partial malfunction of the Products or (vii) non coverage of the network or (viii) failure relating to card or mis-installation of the card or (ix) absence of GPS position, or (x) product malfunction during instruction transmission or (xi) failure into the connection of the product to the Network or (xii) Damage to Products caused by abrasive materials, corrosion due to aggressive fluids, lightning, improper voltage supply, mishandling or misapplication or ) breakdowns, and voltage pikes in charging voltage (e.g. lightning induction spikes) or damages related to consumable parts, including batteries. In addition, Hardware or Software is not designed or intended for use in and Actility disclaims any express or implied warranty of fitness for uses of the Hardware or Software in (A) the design, construction, operation or maintenance of any nuclear facility, (B) navigating or operating aircraft; or (C) operating life-support or life-critical medical equipment. Actility is not responsible for backing up programs and data to protect against loss or corruption of such programs or data. Actility's warranty obligations do not include installation support. This limited warranty does not cover damages caused by lightning strikes or a power supply surge.

#### **Abeeway Products specific**

Customer must: always charge the devices using chargers certified under USB implementers forum specifications, which will never exceed 5V, and will be properly protected against voltage spikes; never used (discharged follow exactly the firmware upgrades procedures, particularly never interrupt power supply during a firmware upgrade or never interrupt a firmware upgrade/disconnect the connector before a firmware update is completed; use only service providers/resellers for maintenance or repair which have been authorized or appointed by Abeeway. Unauthorized use of the Product or software can impair the Product performance and may invalidate this Limited Warranty; and ensure that: (i) the device is never charged outside the 0°C to 45°C temperature range;(ii) the device is) outside of the -10°C, 65°C temperature range;(iii) the battery is never left fully discharged for an extended period of time. Devices must be recharged as soon as fully discharged; (iv) in addition, the system is warranted for a maximum of 300 charging cycles.

Violation of any of the above conditions for a given equipment will void warranty for this equipment.

The device uses an internal and built-in rechargeable lithium-polymer battery that should last the lifetime of the Material. If Customer suspects battery may be dead, Customer shall try and charge it several times. If the battery does not recharge, Actility shall be notified. Removal of the built-in battery invalidates the warranty and may destroy the Material.

Customer must not: disassemble or attempt to disassemble the Material. This equipment comes with protection class IP64. It is splash resistant but must not be immersed at any time, or in contact with water or other liquids; spill chemical products on the Material; leave the device in a humid or steamy area which can cause condensation inside the casing; short or damage the battery as it might result in a risk of fire, explosion or chemical burn; expose the Materials to excessive heat such as direct sunlight, fire, heating equipment such as microwaves, ovens, stoves. The battery may get severely damaged or explode.

#### **Dead on Arrival.**

For purposes of this DOA policy, "fail to operate" shall mean a material failure to substantially perform in accordance with Documentation so that it was not possible to connect to the network and shall not include cosmetic or other deficiencies that do not materially affect Hardware performance and Customer must send notification to Actility within fourteen (14) days after the date of Product shipment from Actility's manufacturing facility. For up to a maximum of sixty (60) days after the date of Product receipt of the faulty products at Actility (provided they are returned in their original packaging and have not been installed, Actility will provide to

Customer expedited replacement or repair of affected field replaceable units of Hardware that fail to operate. Activity will bear all the costs of delivery and return.

#### **Hardware replacement**

With respect to Hardware purchased through Activity, the replacement of the Hardware is handled by Activity in accordance with Return Material Authorization Policy available upon request.

**14.2 Third-party products (hardware)**– All third-party Hardware products are sold “as is” will be accompanied by a manufacturer’s warranty, as provided in any documentation or license agreements that accompanies such products and/or services.

**Third Party Software** Third-party software will be provided with the accompanying license(s), of its respective owner(s) that will comprise the relevant warranty.

**Open Source Software** Activity informs Customer that certain open source software may be included into the Software being delivered to Customer in compliance with open source conditions and list may be available upon request.

**14.3** Activity makes no other warranty to customer, either express or implied, with respect to the products and services, to the fullest extent permitted by law. Activity specifically disclaims the implied warranties of merchantability and fitness for a particular purpose as well as any statutory warranty on hidden defect.

#### **15. Support and Maintenance Services**

Additional Maintenance and Support can be ordered for onetime payment software license. Though a subscription yearly model, Activity provide curative and evolutive maintenance to the Software during the End User subscription period (1 year).

#### **16 Liability**

In no event shall the aggregate liability of each party together with all of its affiliates arising out of or related to this agreement exceed the portion of the total amount actually paid by Customer and its affiliates hereunder for the deliverables giving rise to the liability in the twelve months preceding the first incident out of which the liability arose. This limitation is cumulative and not per incident; the portion of the total amount will vary depending on the deliverables giving rise to the liability.

- a. if hardware give rise to the liability, then the portion will be 50% of the amount paid for the hardware affected by the claim.
- b. if software delivered on one time license fee based, give rise to the liability, then the portion will be 25% of the amount paid for the software affected by the claim.
- c. if software delivered on right to use recurring subscription based, give rise to the liability, then the portion will be 3 (three) months paid for recurring subscription services affected by the claim.

The foregoing limitation will apply whether an action is in contract or tort and regardless of the theory of liability but will not affect Customer's and its affiliates' payment obligations under the “fees and payment” section above. Notwithstanding anything to the contrary contained in this agreement, in no event shall either party have any liability or obligation whatsoever for any lost profits, loss of data or costs of procurement of substitute goods or services, or for any special, incidental, indirect, exemplary, or consequential damages arising out of or under this agreement or any transaction contemplated hereunder, whether arising by contract, tort or, under any other theory of liability, including, without limitation, those resulting from the use of product purchased hereunder, or the failure of products or services to perform, or for any other reason, even if either party is informed in advance of the possibility of such damages occurring. These limitations shall apply notwithstanding the failure of the essential purpose of any limited remedy.

#### **17 Anti bribery**

Each Party hereby undertakes that, at the date of the entering into force of the Agreement, itself, its directors, officers or employees have not offered, promised, given, authorized, solicited or accepted any undue pecuniary or other advantage of any kind (or implied that they will or might do any such thing at any time in the future) in any way connected with the Contract and that it has taken reasonable measures to prevent subcontractors, agents or any other third parties, subject to its control or determining influence, from doing so.

The Parties agree that, at all times in connection with and throughout the course of the Agreement and thereafter, they will comply with and that they will take reasonable measures to ensure that their subcontractors, agents or other third parties, subject to their control or determining influence, will comply with the following provisions:

Parties will prohibit the following practices at all times and in any form, in relation with a public official at the international, national or local level, a political party, party official or candidate to political office, and a director, officer or employee of a Party, whether these practices are engaged in directly or indirectly, including through third parties: a) Bribery is the offering, promising, giving, authorizing or accepting of any undue pecuniary or other advantage to, by or for any of the persons listed above or for anyone else in order to obtain or retain a business or other improper advantage, e.g. in connection with public or private procurement contract awards, regulatory permits, taxation, customs, judicial and legislative proceedings. Bribery often includes: (i) kicking back a portion of a contract payment to government or party officials or to employees of the other contracting Party, their close relatives, friends or business partners or (ii) using intermediaries such as agents, subcontractors, consultants or other third parties, to channel payments to government or party officials, or to employees of the other contracting Party, their relatives, friends or business partners. b) Extortion or Solicitation is the demanding of a bribe, whether or not coupled with a threat if the demand is refused. Each Party will oppose any attempt of Extortion or Solicitation and is encouraged to report such attempts through available formal or informal reporting mechanisms, unless such reporting is deemed to be counter-productive under the circumstances. c) Trading in Influence is the offering or Solicitation of an undue advantage in order to exert an improper, real, or supposed influence with a view of obtaining from a public official an undue advantage for the original instigator of the act or for any other person. d) Laundering the proceeds of the Corrupt Practices mentioned above is the concealing or disguising the illicit origin, source, location, disposition, movement or ownership of property, knowing that such property is the proceeds of crime. "Corruption" or "Corrupt Practice(s)", as used in this ICC Anti-corruption Clause, shall include Bribery, Extortion or Solicitation, Trading in Influence and Laundering the proceeds of these practices. 4 ICC Anti-Corruption Clause

With respect to third parties, subject to the control or determining influence of a Party, including but not limited to agents, business development consultants, sales representatives, customs agents, general consultants, resellers, subcontractors, franchisees, lawyers, accountants or similar intermediaries, acting on the Party's behalf in connection with marketing or sales, the negotiation of contracts, the obtaining of licenses, permits or other authorizations, or any actions that benefit the Party or as subcontractors in the supply chain, Parties should instruct them neither to engage nor to tolerate that they engage in any act of corruption; not use them as a conduit for any corrupt practice; hire them only to the extent appropriate for the regular conduct of the Party's business; and not pay them more than an appropriate remuneration for their legitimate services.

If a Party, as a result of the exercise of a contractually-provided audit right of the other Party's accounting books and financial records (such audit right provided by the current Agreement, or otherwise, brings evidence that the latter Party has been engaging in material or several repeated breaches of above, it will notify the latter Party accordingly and require such Party to take the necessary remedial action in a reasonable time and to inform it about such action. If the latter Party fails to take the necessary remedial action or if such remedial action is not possible, it may invoke a defence by proving that by the time the evidence of breach(es) had arisen, it had put into place adequate anti-corruption preventive measures, as described in Article 10 of the ICC Rules on Combating Corruption 2011, adapted to its particular circumstances and capable of detecting corruption and of promoting a culture of integrity in its organization. If no remedial action is taken or, as the case may be, the defence is not effectively invoked, the first Party may, at its discretion, either suspend or terminate the Contract, it being understood that all amounts contractually due at the time of suspension or termination of the Contract will remain payable, as far as permitted by applicable law and be reimbursed for direct, indirect and consequential damages including any expenditure associated with an investigation if such an investigation into an alleged act of bribery or corruption is substantiated. Neither limitation of liability nor consequential damages waiver will be in effect in the event the above anticorruption clause would be violated by any Party

Any entity, whether an arbitral tribunal or other dispute resolution body, rendering a decision in accordance with the dispute resolution provisions of the Contract, shall have the authority to determine the contractual consequences of any alleged non-compliance with this ICC Anti-corruption Clause.

#### **18. Audit**

Customer shall maintain accurate records as necessary to verify compliance with this Agreement. Upon request by Actility, Customer shall furnish such records to Actility and certify its compliance with this Agreement. Customer shall give access to its platforms for Software delivered on Customer premises for the purpose of assessing the licensing conditions compliance.

## 19. Governing Law

These terms and conditions shall be interpreted in accordance with and governed by the laws of France without reference to the conflict of laws provisions thereof. All claims shall be brought before the courts of Paris, France.

## 20. Confidentiality

Except where required by law, Customer and Actility will not without the written agreement of the other party disclose to third parties any technical or commercial information received from the other party which is designated and clearly marked as confidential. However, the following information will not be considered to be confidential or subject to the foregoing restrictions: (i) information presently in the public domain or which becomes part of the public domain except as a result of a breach of the foregoing restrictions; and (ii) information independently developed by the recipient of the information.

The Parties agree that aspects of the Software and associated documentation are the confidential property of Actility. As such, Customer shall exercise all reasonable commercial efforts to maintain the Software and associated documentation in confidence, which at a minimum includes restricting access to the Software to Customer employees and contractors having a need to use the Software for Customer's internal business purposes.

## 21. Export Law

Customer agrees to comply with all applicable export laws and restrictions and regulations of any United States and any applicable foreign agency or authority, and not to export or re-export the Software or any direct product thereof in violation of any such restrictions, laws or regulations, or without all necessary approvals. Customer shall be liable for any such violations. The version of the Software supplied to Customer may contain encryption or other capabilities restricting Customer's ability to export the Software without an export license.

## 22. Entire Agreement

These Terms and Conditions constitutes the entire and sole agreement between Actility and the Customer with respect to the Software, and supersedes all prior and contemporaneous agreements relating to the Software, whether oral or written (including any inconsistent terms contained in a purchase order), except that the terms of a separate written agreement executed by an authorized Actility representative and Customer shall govern to the extent such terms are inconsistent or conflict with terms contained herein. No modification to this Agreement nor any waiver of any rights hereunder shall be effective unless expressly assented to in writing by the party to be charged. If any portion of this Agreement is held invalid, the Parties agree that such invalidity shall not affect the validity of the remainder of this Agreement. This Agreement and associated documentation have been written in the English language, and the Parties agree that the English version will govern.

## 23. General Terms

**23.1 Force Majeure** –Neither party will be responsible for any failure or delay in performance due, in whole or in part, directly or indirectly, to any contingency, delay, failure, or cause of any nature beyond its reasonable control, including, without in any way limiting the generality of the foregoing, fire, terrorism, epidemic, earthquake, storm, flood or other weather, unavailability of necessary utilities or raw materials, strike, pandemic confinement, lockdown due to legal authorities lockout, unavailability of components, war, riot, regulation, ordinance, or instructions of government or other public authorities, or judgment or decree of a court of competent jurisdiction (not arising out of breach by such party of this Agreement) or other event that is traditionally recognized by courts of France as an event of force majeure. In the event of any such delay, performance of the affected obligation shall be suspended for a period of time equal to the time of such delay save that in the event that the delay continues for more than two (2) months, Actility may elect to terminate this Agreement with immediate effect without incurring any liability.

**23.2 No waiver** – The waiver by either party of any default by the other party shall not waive subsequent defaults by such other party of the same or different kind.

**23.3 Severability** – If any of the provisions, either in part or in full, of this Agreement is held by a court or other tribunal of competent jurisdiction to be unenforceable or invalid, such provision shall be enforced to the maximum extent possible or permissible and this Agreement will be adjusted, if possible, so as to give maximum effect to the original intent and economic effect of the parties with respect to the unenforceable provision and the remaining portions of this Agreement shall remain in full force and effect.



23.4 **No assignment** – Customer may not assign this Agreement, nor any Order related thereto, and Customer may not delegate its duties under the Agreement without Actility’s prior written consent which shall not be unreasonably withheld. Actility may assign the Agreement without Customer’s consent and upon written notification.

23.5 **Modification** – No modification to this Agreement shall be binding unless in writing and signed by an authorized representative of each party.