

**BMI LEISURE**  
**TERMS & CONDITIONS**

**1. General & Scope**

**1.1.** The present BMI Leisure terms and conditions, together with its Annexes, are applicable to each Order Form executed between BMI Leisure and the Client and to all Software, Hardware and Services rendered by BMI Leisure to the Client.

**1.2.** The Client agrees to waive its own general and special terms and conditions, even where it is stated therein that only those conditions may apply and even if such terms and conditions were not protested by BMI Leisure.

**2. Definitions**

Capitalised notions used throughout these Terms and Conditions shall have the meaning given to them below, unless stated otherwise:

**2.1. Agreement** means the entire contractual relation between BMI Leisure and the Client, consisting of (i) the Terms and Conditions, (ii) the relevant Order Forms and (iii) the Annexes.

**2.2. Account** means the personalised log-in credentials with which the User accesses the Software.

**2.3. Annex** means any annex, schedule, appendix or other complementary document which forms a part of the Agreement.

**2.4. Business Day** means any weekday other than a bank or public holiday in Belgium.

**2.5. Business Hours** means the hours of 08:30 to 17:30 CET on a Business Day.

**2.6. BMI Leisure:** means Business & Marketing Improvement NV, a company organized and existing under the laws of Belgium having its registered office in Melseweg 160, 2440 Geel (Belgium) and registered with company number BE0562.755.594.

**2.7. BMI Leisure Dedicated Instance** means hosting services purchased by BMI Leisure which are used by the Client to access the Software.

**2.8. Client** means the legal entity entering into contractual relations with BMI Leisure, as identified on the Order Form.

**2.9. Client Data** means all data proprietary to or held by the Client which is processed by BMI Leisure as described in the Agreement and as a result of the Client using the Software.

**2.10. Client Personal Data** means all Personal Data proprietary of or held by the Client.

**2.11. Confidential Information** of a Party means the information of such Party disclosed to the other Party during the negotiation of this Agreement and the cooperation between both Parties under this Agreement, whether in written, oral, electronic or other form and which (i) is explicitly marked as confidential or proprietary, (ii) should reasonably be considered confidential, or (iii) is traditionally recognized to be of a confidential nature, regardless of whether or not it is expressly marked as confidential, and including but not limited

to all material, papers, databases, drawings, diagrams, calculations, figures, procedures, processes, business methodologies, contracts (including these Terms & Conditions), financial, technical and legal information, budgets, sales marketing, public relations, advertising and commerce plans, ideas, strategies, projections, business plans, strategic expansion plans, products and product designs. For the avoidance of doubt, Confidential Information shall include the Software (in object code and source code form).

**2.12. Customized Services** means the delivery of specific project services, specifically agreed between Parties and as further specified in a Statement of Work.

**2.13. Data Processing Agreement** means the document attached to these Terms and Conditions in Annex 1 setting out the terms and conditions governing the processing of Personal Data under the Agreement.

**2.14. Data Protection Laws** means all relevant regulation, national or international, concerning privacy and data protection, including but not limited to the General Data Protection Regulation ("GDPR").

**2.15. Deliverable** means any concrete output of a task or activity that BMI Leisure is obligated to deliver under this Agreement.

**2.16. Documentation** means the information provided by BMI Leisure to the Client in documentary form, including without limitation the description of the Software and user manual.

**2.17. Effective Date** means the date of last signature of the Agreement.

**2.18. Fees** means any and all amounts payable by the Client to BMI Leisure under the Agreement.

**2.19. Force Majeure** means a temporary or permanent inability of a Party to fulfil its obligations, resulting from unavoidable, unforeseeable and external facts and circumstances reasonably beyond the control of that Party. Shall in any case be considered Force Majeure (without being exhaustive): war or war risk, insurrection or public revolt, fire caused by an outside calamity, an import or export embargo imposed by the government, internet failure, hosting failure, floods, explosion, weather conditions, strike or social action and all other circumstances generally qualified as a Force Majeure.

**2.20. Hardware** means any physical devices and materials, such as servers and timing systems provided by BMI Leisure to Client, if and where applicable, as set out in the Order Form. All Hardware shall be considered Third Party Materials.

**2.21. Hosting** means the storage of data on a server or a computer so that it can be accessed over the internet.

**2.22. Implementation Services** means the services provided by BMI Leisure online or on premise with respect to the installation and setup of the Software and the Hardware, which shall be detailed in the relevant Order Form(s).

**2.23. Intellectual Property Rights** means all intellectual or industrial property right or equivalent, whether registered or unregistered, including but not limited to: (i) copyright (including moral rights), patents, database rights and rights in trademarks, logos, designs, other artwork, know-how and trade secrets and other protected undisclosed information; and (ii) applications for registration, and the right to apply for registration, renewals, extensions, continuations, divisions, reissues, or improvements for or relating to any of these rights.

**2.24. Invoice Date** means the date indicated on the invoice from which the payment term will be calculated.

**2.25. Installation Date** means the date on which the Implementation Services are executed by BMI Leisure.

**2.26. License and Support Fee** means the fee paid by the Client to BMI Leisure as determined in the Order Form for access to the respective Modules, as determined in clause 3, and the provision of Support Services, provided by BMI Leisure in accordance with the Service Level Agreement.

**2.27. Maintenance Services** means the works needed from time to time to ensure a correct functioning of the Software.

**2.28. Module** means any of the specific modules which are available for use within the Software and to which the Client can subscribe by means of paying the License and Support Fee and purchasing a One-off Registrations Package or a Recurring Registrations Package.

**2.29. Module subscription** means the applicable subscription to the Software by the Client and which shall consist of a monthly subscription to the agreed Module(s) which shall be detailed in the relevant Order Form(s), together with the level of the subscription ("Premium", "Pro", etc.). The notion "Subscribe" and "Subscribed" shall be interpreted accordingly.

**2.30. Order Form** means a written document signed by both Parties, regardless of its entitlement (e.g. "quotation" or "product order"), indicating the nature, number and other specifics of the Services and Software subscribed to by the Client, including the specific conditions under which such order is made, and which forms an integral part of the Agreement.

**2.31. One-off Registrations Package** means the specific bundle purchased by Client for a certain number of Registrations, which can be used across the Modules, which shall be detailed in the relevant Order Form(s).

**2.32. Party** means a party to this Agreement.

**2.33. Personal Data** has the meaning given to it in article 4 (1) of the General Data Protection Regulation.

**2.34. Purchase Order** means the agreement between BMI Leisure and any Third Party in which Third Party Materials are acquired.

**2.35. Registration** means the registration of a new unique entry in the Client's database in the

Software, which can be used across the Modules (subject to the terms of the relevant Order Form)

**2.36. Renewed Term** shall have the meaning attributed to it in clause 17 of these Terms and Conditions.

**2.37. Services** means the professional services delivered by BMI Leisure to the Client as further detailed on the Order Form and the applicable Statement of Work (if applicable), including – amongst others – Customized Services, Implementation Services and Training Services.

**2.38. Service Fees** means the Fees due by the Client to BMI Leisure for and as a counterpart of BMI Leisure's delivery of the Services to the Client under the Agreement.

**2.39. Service Level Agreement / "SLA"** means the service level agreement added as an Annex to these Terms & Conditions.

**2.40. Software** means the BMI Leisure on premise or SaaS software for the entertainment business, as made available by BMI Leisure to its customers and which is subdivided in different Modules.

**2.41. Source Code** means the set of instructions and statements written by a programmer using a computer programming language.

**2.42. Statement of Work or SOW** means documents that Parties may enter into from time to time describing the Services that BMI Leisure is to provide in connection with the Software.

**2.43. Recurring Registrations Package** means the applicable data management package in the form of a predefined number of Registrations by the Client, calculated and revised on an annual basis in accordance with clause 18. which can be used across the Modules, which shall be detailed in the relevant Order Form(s)

**2.44. Subscription Fees** means the sums payable by the Client to gain access to the respective Modules, which will be grouped in a License & Support fee

**2.45. Support Services** are the support services described as such in the Service Level Agreement.

**2.46. Taxes** shall have the meaning attributed to it in clause 16.8 of these Terms and Conditions

**2.47. Third Party Materials** means Hardware products for which BMI Leisure is solely acting as a reseller.

**2.48. Term** shall have the meaning attributed to it in clause 17 of these Terms and Conditions.

**2.49. Terms and Conditions** means the present BMI Leisure terms and conditions including, where relevant, its Annexes.

**2.50. Territory** means the territory as defined in the Order Form.

**2.51. Third Party** means any natural or legal person who is not a Party to the Agreement.

**2.52. Training Services** means the services provided by BMI Leisure with respect to the training of the personnel of the Client which shall be detailed in the relevant Order Form(s).

**2.53. Third Party Supplier** shall have the meaning attributed to it in clause 8.1 of these Terms and Conditions

**2.54. Third Party Warranty** shall have the meaning attributed to it in clause 8.1 of these Terms and Conditions

**2.55. User** means an individual within the organisation of the Client that is allowed by the Client to access and use the Software .

### **3. Right to access the Modules**

**3.1.** In consideration of the Client's compliance with the provisions as set out in this Agreement (including timely payment of all Fees), BMI Leisure grants the Client a personal, restricted, non-exclusive, non-transferrable and non-assignable, renewable and revocable, worldwide license to access and use (through its Users) the Modules as specified in the Order Form.

**3.2.** Any such access and use by the Client and its User(s) shall be strictly subject to the terms as set out in these Terms and Conditions and in the remainder of this Agreement.

**3.3.** The right to access and use the Modules as set out in this clause 3 is granted only for the modules to which the Client has subscribed

**3.4.** For the avoidance of doubt, if Client wishes to add new Modules within the Software, a new Order Form shall be agreed, including an amended License and Support Fee (adapted to the new Modules).

### **4. One-Off Registrations Packages and the Recurring Registrations Packages**

**4.1.** Any access to and use of one or more Module(s) requires the purchase of (i) a certain One-Off Registrations Package of limited Registrations or (ii) a Recurring Registrations Package for Registrations, as specified in the relevant Order Form in accordance with clause 18.

**4.2.** Any additional One-Off Registrations Packages or Recurring Registrations Packages (in terms of number of Registrations) shall require the completion of a new Order Form.

### **5. Use of the Modules**

**5.1.** All access to and use of the Modules shall at all times be in accordance with (a) the applicable Documentation; (b) the provisions of the Agreement; and (c) any reasonable instruction of BMI Leisure in relation to the use of such Modules.

**5.2.** Access to and use of the specific Modules is only permitted for Users identified by the Client.

**5.3.** The Client explicitly agrees (and shall procure that its Users) not to, directly or indirectly (including, without limitation through the actions of any affiliate, agent, subcontractor, User or, in general, any Third Party): (i) use the Software other than in accordance with the Modules' intended purpose and for the Client's internal business purposes, (ii) distribute, sell, lease, commercialize,

rent, display, license, sublicense, transfer, provide, disclose, or otherwise make available to, or permit the use of, or access to, the Software, in whole or in part, to any Third Party, whether or not related to the Client, except as expressly permitted in the Agreement or otherwise, (iii) modify the Software or develop any derivative works based on the Software or any Confidential Information of BMI Leisure, (iv) use the Software except as expressly authorized herein, (v) decompile, disassemble, translate, reverse engineer or attempt to reconstruct, identify or discover, copy, create derivative works based upon the Source Code of the Software (unless permitted by law), underlying ideas, underlying user interface techniques or algorithms of the Software by any means whatsoever (except to the extent such restriction is prohibited under applicable law), or disclose any of the foregoing, (vi) encumber or suffer to exist any lien or security interest on the Software, (vii) take any action that would cause the Software, or the Source Code to be placed in the public domain, (viii) use the Software in any computer environment not expressly permitted under this Agreement, (ix) work around any technical limitation in the Software, (x) make (backup) copies of the Software (unless permitted by law or elsewhere in this Agreement), (xi) remove proprietary notices (including copyright notices) of BMI Leisure.

**5.4.** The Client shall comply with all applicable laws relating to the use of the Software. The Client or the User must not use the Software: (a) in any way that is unlawful, illegal, fraudulent or harmful, or (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.

**5.5.** The Client shall use reasonable endeavours, including reasonable security measures relating to Account access details, to ensure that no unauthorised person may gain access to the Software using an Account.

**5.6.** The right to access and use the Modules within the Module Subscription is expressly restricted to the rights, limitations and other terms set forth in the Agreement and the Client shall not be able to invoke any alleged implied rights which are not expressly set out under the Agreement.

**5.7.** The Client acknowledges and agrees that any access to and use of the Software outside the scope of the respective Module Subscription and / or in breach of the terms as set forth in this Agreement (unless such access and / or use has been expressly approved in writing by a duly authorized representative of BMI Leisure), shall entitle BMI Leisure to immediately terminate (or alternatively, at BMI Leisure's option, suspend) one or more Module Subscriptions entire Agreement for material breach by the Client, without any formalities being required and without prejudice to any other right or remedy available to BMI Leisure pursuant to this Agreement or under applicable law. For the avoidance of doubt, termination under this clause 5.7 shall also terminate all Module Subscriptions .

## 6. Delivery of the Services and Acceptance

**6.1.** BMI Leisure shall make the respective Modules available to the Client on the Installation Date as indicated in the Order Form or relevant SOW, provided the then outstanding License and Support Fee and Service Fee has been paid correctly.

**6.2.** Any Deliverable delivered by BMI Leisure under this Agreement shall be accepted in accordance with the terms of the relevant SOW.

**6.3.** In any case shall the Deliverables be deemed accepted if (i) the Client proceeds to use any of the content included in such Deliverables, or if (ii) the Client does not give notice of rejection within ten (10) days after delivery of the Deliverable.

## 7. Evolution and Availability of the Software

**7.1.** BMI Leisure may periodically update and improve the Software. Updated versions of the Software will be made available to the Client via automatic updates and upgrades or via new releases (if applicable). BMI Leisure reserves the right to make operational or technical changes to the Software, and to modify, add or remove certain functionalities.

**7.2.** BMI Leisure shall use all reasonable endeavours to maintain the availability of the Software to the Client

**7.3.** Client acknowledges that in order to ensure a correct functioning of the Software, Maintenance Services are needed from time to time. BMI Leisure shall carry out such Maintenance Services at its sole discretion and shall use all reasonable endeavours to minimise the impact on the Client's day to day business. Where practicable, BMI Leisure shall give to the Client prior written notice of scheduled Maintenance Services that are likely to affect the availability of the Software or are likely to have a material negative impact upon the Software. BMI Leisure shall not be liable for costs incurred by the Client as a result of any non-availability of the Software due to Maintenance Services for which prior written notice has been given.

## 8. Third Party Materials (Hardware)

**8.1.** Third Party Materials are subject to the delivery conditions, guarantees, maintenance conditions and any other contractual terms ("**Third Party Warranties**") of the supplier concerned ("**Third Party Supplier**"). By signing an Order Form, the Client explicitly accepts the applicability of the specific conditions for Third Party Materials. The Client shall, where possible, address any claims exclusively to the Third Party Supplier in view of obtaining the repair of any visible and/or hidden defects in the Third Party Materials in accordance with such third party warranties.

**8.2.** The Third Party Materials are shipped Ex Works (INCOTERMS latest version) via FedEx or such other third party appointed by BMI Leisure. The delivery of the Third Party Materials shall occur

at the Client's risk and cost. Any applicable customs costs shall be borne by the Client. BMI Leisure shall arrange minimum insurance during transportation of the Third Party Materials under the applicable FedEx (or such other third-party delivery service) insurance conditions. If and to the extent explicitly requested by Client, the Third Party Materials are shipped without any insurance (at the full risk of the Client). If and to the extent explicitly requested by Client, Client will be responsible for the shipment of the Third Party Materials, in which case the shipment and delivery of the Third Party Materials shall fully occur at the Client's risk and cost.

**8.3.** If the Purchase Order for Third Party Materials do not allow the Client to address the Third Party Supplier directly, the defects must be notified to BMI Leisure, and BMI Leisure will undertake its reasonable efforts to have the defects corrected.

**8.4.** The Client acknowledges and agrees that, to the extent permitted by applicable law, BMI Leisure does not accept obligations, nor provide any warranties, with respect to the Third Party Materials in addition to the Third Party Warranties.

**8.5.** To the extent the Third Party Supplier provides BMI Leisure with the possibility to transfer any Third Party Warranties to the Client, BMI Leisure will transfer these Third Party Warranties to the Client. The Client shall, where possible, exclusively direct itself to the Third Party Supplier for the execution of any Third Party Warranties.

## 9. Intellectual Property Rights

BMI Leisure is and remains the sole and exclusive proprietary owner of all Intellectual Property Rights related to the Software, the Services and the Documentation (including any new versions, updates, customizations, enhancements, modifications or improvements made to the Software or Documentation). Nothing in the Agreement shall convey any title or proprietary right or Intellectual Property Rights in or over the Software, the Services and the Documentation to the Client or any Third Party. The Client shall not in any way acquire any title, rights of ownership, copyright, intellectual property rights or other proprietary rights of whatever nature in the Software, the Services or Documentation. The Client agrees not to remove, suppress or modify in any way any proprietary marking, including any trademark or copyright notice, on or in the Software, or visible during its operation, or on media or on any Documentation. The Client shall incorporate or reproduce such proprietary markings in any permitted back-up or other copies.

## 10. Client Data

**10.1.** All Client Data shall remain property of the Client.

**10.2.** The Client hereby grants to BMI Leisure a non-exclusive licence to copy, reproduce, store, distribute, publish, export, adapt, edit and translate

the Client's Data to the extent reasonably required for the performance of BMI Leisure's obligations and the exercise of BMI Leisure's rights under this Agreement. The Client also grants to BMI Leisure the right to sub-license these rights to its hosting, connectivity and telecommunications service providers to the extent reasonably required for the performance of BMI Leisure's obligations and the exercise of BMI Leisure's rights under this Agreement, subject always to any express restrictions elsewhere in this Agreement.

**10.3.** The Client warrants to BMI Leisure that the Client's Data when used by BMI Leisure in accordance with this Agreement will not infringe the Intellectual Property Rights or other legal rights of any Third Party, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.

### **11. Third Party equipment and Hosting**

**11.1.** The Client expressly acknowledges that the operation of the Software may require that the Client has or obtains, at Client's sole cost and expense, appropriate hardware, networks, operating systems, data transmittal lines with appropriate communication software, environments and/or other Third Party software, as further detailed in the Order Form. Where these are not agreed to be delivered by BMI Leisure, they shall be the sole responsibility of the Client.

**11.2.** The Software shall be hosted, as determined in the Order Form, on a BMI Leisure Dedicated Instance or on premise.

### **12. Control of the Registrations**

BMI Leisure has the right to monitor and inspect the usage and amount of Registrations of the Software by the Client under a Recurring Registrations Package or a certain One-Off Registrations Package.

### **13. Audit**

**13.1.** BMI Leisure has the right to perform audits at any time during Business Hours upon reasonable notice, in order to inspect the Client's compliance with the license grant. Any such audit shall not unreasonably interfere with the normal business operations of the Client. The Client undertakes to make available all useful documentation and provide all reasonable access and assistance to enable BMI Leisure, as applicable, to perform the audit.

**13.2.** Such audit shall be undertaken at BMI Leisure's cost, unless in the event of the Client's non-compliance with this Agreement as determined by the audit, in which case the Client shall pay the costs of such audit within fifteen (15) days of notice of the audit results. The Client agrees that BMI Leisure shall not be responsible for any of the Client's costs incurred in cooperation with the audit.

### **14. Support Services**

Subject to timely payment of all Fees, the Support Services will be performed on a best efforts basis as set out in the SLA (as annexed) and subject to the required access to the premises or network of the Client.

### **15. Services**

**15.1.** If Parties have agreed to the provision of certain Services (including but not limited to the Implementation Services or Training Services), the following provisions will apply.

**15.2.** BMI Leisure shall provide the Services in complete independence and shall plan its activities as it sees fit. This independence constitutes an essential element of the Agreement, without which the Parties would not have concluded it. In no case shall the Agreement be interpreted as an employment contract between the Client and BMI Leisure or its employees.

**15.3.** The Services shall be provided by BMI Leisure through designated persons, identified in the Order Form.

**15.4.** The Client will promptly inform BMI Leisure of any delay or particular problem in connection with the performance of the Services.

**15.5.** The Client acknowledges and agrees that in order for BMI Leisure to effectively perform the Services in a proper, timely and efficient manner, the Client must cooperate with BMI Leisure by (i) making available on a timely basis management decisions, information, and approvals; and (ii) at no cost to BMI Leisure, providing timely and appropriate access to the Client facilities, personnel, equipment, resources and systems, and any relevant information and documentation (to be accurate and complete) as necessary to facilitate performance of the Professional Services.

**15.6.** BMI Leisure shall be entitled to reassign or remove any of its resources assigned at BMI Leisure's sole discretion.

**15.7.** BMI Leisure shall provide the Services in accordance with generally accepted industry standards and shall exercise reasonable care and skill in doing so.

### **16. Fees & Payment Terms**

**16.1.** The License and Support Fee and recurring registrations packages shall be invoiced and payable upfront on a three-month basis, unless otherwise agreed between the Parties.

**16.2.** The invoicing of the License and Support Fee and recurring registrations package shall start on the prior of (i) the Installation Date and (ii) maximum six (6) months after the signature date of the relevant Order Form.

**16.3.** The One-Off Registrations Packages shall be invoiced and be payable 100 % upfront.

**16.4.** The Fees for any one-time Implementation Services or Training Services shall be invoiced and for 100% be payable upfront, 50 % at the moment of signature of the relevant Order Form and 50 % on the Installation Date.

**16.5.** Hardware shall be invoiced and payable upfront before delivery.

**16.6.** The Services Fees will be invoiced monthly or tri monthly or in accordance with invoicing milestones as specified in the relevant Statement of Work.

**16.7.** During the Term, BMI Leisure reserves the right to annually revise the Fees on either the 1<sup>st</sup> of January or the 1<sup>st</sup> of July, on the basis of the PC-200 index by applying the following formula:  $p = P0 * I$ , whereby:  $p$  = the revised price;  $P0$  = the initial price as determined in the most recent quarterly invoice;  $I$  = the PC-200 index as determined by the *Federaal Planbureau* of Belgium, with a weighting factor of 0.8. The Fees will be revised for the first time on the one (1) year anniversary of the Effective Date. Such price adjustment shall become effective on either the 1<sup>st</sup> of January or the 1<sup>st</sup> of July after the mentioned revision and BMI Leisure shall inform the Client thereof at least one (1) month prior to the price adjustment becoming effective. In the event the Client does not agree to such price increase, the Client may terminate the Agreement in accordance with this Agreement. The Client's continued use of the Software or the Hardware after such price revision will constitute acknowledgment and acceptance of the modified Fees.

**16.8.** Taxes. Client agrees to pay any sales, use, value-added taxes and any other applicable tariffs or duties, whether domestic or foreign, imposed directly or indirectly ("**Taxes**") upon BMI Leisure, its personnel or subcontractors, or their properties (including their equipment, materials, and supplies), the Deliverables or any portion thereof, or the Fees set forth hereunder. Taxes do not include any taxes imposed on BMI Leisure's net income. Client will reimburse BMI Leisure for any Taxes paid by BMI Leisure or, prior to payment, provide BMI Leisure with valid tax exemption certificates. If Client is required by law to make any tax deduction, withholding or payment from any amount paid or payable by Client to BMI Leisure under this Agreement, the amount paid or payable to BMI Leisure shall be grossed-up to the extent necessary to ensure that BMI Leisure receives and retains, free of liability, a net amount equal to the amount that BMI Leisure would have received.

**16.9.** All invoices are payable within thirty (30) calendar days after the Invoice Date. If a Client disputes an invoice (or any portion thereof), the Client must notify BMI Leisure in writing of the nature of such dispute within five (5) Business Days, after the Invoice Date. Failure to notify BMI Leisure within such period shall result in the invoice deemed accepted by the Client. The undisputed portion of the invoice shall be paid as set forth in the Agreement. For the avoidance of doubt, any impact from defects to the Third Party Materials on the provision of the Services or the Software, cannot be grounds to dispute any invoice.

**16.10.** Payments made by the Client to BMI Leisure under the Agreement shall be final and non-refundable.

**16.11.** All Fees payable to BMI Leisure under the Agreement shall be paid without the right to set off or counterclaim and free and clear of all deductions or withholdings whatsoever unless the same are required by law, in which case the Client undertakes to pay BMI Leisure such additional amounts as are necessary in order that the net amounts received by BMI Leisure after all deductions and withholdings shall not be less than such payments would have been in the absence of such deductions or withholding.

**16.12.** Invoices shall be sent in PDF-format to the Client's email address, specified in the Order Form.

**16.13.** Any amounts of undisputed invoices that have not been paid within thirty (30) days after the Invoice Date shall automatically and without notice be subject to a late payment interest equal to the highest amount allowable under the applicable law. The interest shall be compounded daily as of the due date until receipt of full payment by BMI Leisure. In addition, the Client shall pay all costs incurred by BMI Leisure as a result of the (extra)judicial enforcement of the Client's payment obligation under this clause.

## **17. Term of the Agreement**

The Agreement is entered into for an indefinite term (the "**Term**") until a Party provides a written notice to terminate of six (6) months to the other Party.

## **18. Term of the Recurring Registrations Packages**

Each term of the Recurring Registration Fee Package shall start on the Effective Date as indicated in the relevant Order Form and shall continue for one (1) year. On the anniversary of the Effective Date, the Registrations under each Recurring Registrations Package shall be calculated by BMI Leisure. In case of usage of the specific Recurring Registrations Package is less than 50% or more than 150%, the Recurring Registrations Package will automatically be adapted to – respectively – a Recurring Registrations Package with a pricing model for – respectively – less or more Registrations.

## **19. Termination**

**19.1.** BMI Leisure may, at its sole discretion, suspend the services or terminate the Agreement, partially or wholly, by written notice to the Client, if the Client fails to pay to BMI Leisure any amount due under the Agreement and the Client fails to cure such failure to pay, and if no payment plan has been agreed between 2 parties, within twenty (20) days from the date of the expiration of the invoice. BMI Leisure will provide a written notice of default within a reasonable time.

**19.2.** Either Party may immediately terminate the whole or any portion of the Agreement without any judicial intervention, without being liable for compensation and without prejudice to its rights to damages and any other rights, remedies and/or claim to which it may be entitled by law, upon providing the other Party with written notice of termination if: (i) the other Party performs a material breach to any provision of the Agreement and fails to cure such material breach within thirty (30) calendar days after receipt of written notice of the material breach, (ii) the other Party becomes insolvent, is subject to voluntary or involuntary bankruptcy, insolvency or similar proceeding or otherwise liquidates or ceases to do business, or (iii) the other Party breaches clause 5 (Use of the Modules), clause 9 (Intellectual Property Rights) or clause 24 (Confidential Information).

**19.3.** For the avoidance of doubt, termination by BMI Leisure under these clauses 19.1 and 19.2 shall also immediately terminate all then-running Recurring Registrations Packages- and on-going One-Off Registrations Packages of Registrations.

**19.4.** Moreover, except as provided under clauses 23.4, no Fees shall be refunded by BMI Leisure due to termination of the Agreement under any circumstances by any Party.

## **20. Effects of Termination**

**20.1.** Upon termination of the Agreement: (i) the Client's right to use the Software will , automatically cease and all licenses granted to the Client pursuant to the Agreement shall automatically terminate; (ii) each Party will return, within reasonable time of such termination or expiration, all Confidential Information, except as required to comply with any applicable legal or accounting record keeping requirement; (iii) BMI Leisure will return all Client Data stored in the Software, subject to the condition that invoices are paid in full; (iv) the Client shall promptly pay BMI Leisure all Fees and other amounts due to BMI Leisure in respect of the Software, up to and including the date of termination, except in case of termination triggered by a material breach proven to be attributable to BMI Leisure.

## **21. Warranties**

**21.1.** The Client acknowledges that the Software and Services are provided "as is" and BMI Leisure makes no additional warranties, implied or express (including warranties of merchantability and fitness for a particular purpose).

**21.2.** BMI Leisure shall not be responsible for any error or non-conformity of the Software if the same is attributable to: (a) the Client's or any Third Party's actions (including specific developments, con and customisations required by the Client), services, software or equipment not provided by BMI Leisure under or pursuant to this Agreement; (b) any changes, modifications, updates, alterations or enhancements to the Software not provided by BMI

Leisure under or pursuant to this Agreement, or caused by the incorrect use, abuse, neglect, improper installation or operation, accident misconfiguration and/or alteration, or corruption of the Software or by the use of the Software with other computer programs or on equipment or with services which BMI Leisure did not approve; (c) any inaccuracies, delays, interruptions, or errors occurring as a result of incorrect data or data which does not conform to required input formats; (d) the Software being used or subject to actions by the Client or its Users, in deviation of the stipulations or provisions set out in the latest version of the Documentation and this Agreement or in any way which is not compatible with the Software's normal use.

## **22. Privacy And Data Protection**

**22.1.** Each Party shall comply with the Data Protection Laws with respect to the processing of the Client Personal Data. The Client warrants to BMI Leisure that it has the legal right to disclose all Personal Data that it does in fact disclose to BMI Leisure under or in connection with this Agreement and that the Client has obtained sufficient consent from all data subjects concerned (if applicable).

**22.2.** The Client shall only supply to BMI Leisure, and the BMI Leisure shall only process, in each case under or in relation to this Agreement, the Personal Data of data subjects falling within the categories specified in the Data Processing Agreement as concluded between the Parties and as attached hereto.

**22.3.** If any changes or prospective changes to the Data Protection Laws result or will result in one or both Parties not complying with the Data Protection Laws in relation to processing of Personal Data carried out under this Agreement, then the Parties shall use their best endeavours promptly to agree such variations to this Agreement as may be necessary to remedy such non-compliance.

## **23. Infringement Claims by Third Parties**

**23.1.** BMI Leisure shall indemnify and defend the Client against any claims brought by Third Parties to the extent such claim is based on an infringement of the Intellectual Property Rights of such Third Party by the Software in the Territory.

**23.2.** Claims resulting out any of the following are excluded from clause 23.1 : (i) the Client's unauthorized use of the Software; (ii) the Client's or any Third Party's modification of the Software; (iii) the Client's failure to use the most recent version of the Software made available to the Client; (iv) the Client's failure to integrate or install any corrections to the Software issued by BMI Leisure, if BMI Leisure indicated that such update or correction was required to prevent a potential infringement, or (v) Client's use of the Software in combination with any non-BMI Leisure Software or services.

**23.3.** The indemnity obligation under this section shall be conditional upon the following: (i) the Client

promptly notifies BMI Leisure in writing of any such claims; (ii) the Client grants BMI Leisure sole control of the defense and settlement of such claim; (iii) the Client fully cooperates with BMI Leisure upon request; (iv) the Client makes no admission as to BMI Leisure's liability in respect of such claim, nor does the Client agree to any settlement in respect of such a claim without BMI Leisure's prior written consent.

**23.4.** If, in BMI Leisure's reasonable opinion, the Software is likely to become the subject of a Third Party claim, BMI Leisure shall, at its sole discretion, have the right to: (i) modify parts of the Software so that they become non-infringing, provided equivalent functionality is preserved; (ii) obtain for the Client a license to continue using the Software in accordance with the Agreement; or (iii) terminate the relevant license and pay to the Client an amount equal to a pro-rata portion of the License and Support Fee.

**23.5.** The Client acknowledges and agrees that the foregoing states the entire liability and obligation of BMI Leisure and the sole remedy of the Client with respect to any infringement or alleged infringement of any Intellectual Property Rights caused by the Software or any part thereof.

## **24. Confidential Information**

**24.1.** Parties shall treat all Confidential Information received from the other Party as confidential, keep it secret and shall not disclose it to any Third Party, other than its agents, employees, advisors or consultants where such disclosure is necessary for the performance of the Agreement and only in case such agents, employees, advisors or consultants are bound by a confidentiality obligation at least as strict as included in the Agreement.

**24.2.** Confidential information disclosed in the execution of this Agreement shall not be used for any purpose other than as required for the performance of either Parties' obligations under the Agreement.

**24.3.** Both Parties shall take sufficient measures to maintain the confidentiality of all Confidential Information. Parties in particular agree that they: (i) shall not copy or otherwise exploit any component of the Confidential Information other than as herein provided, nor make any disclosures with reference thereto to any Third Party; (ii) shall promptly notify the other Party if it becomes aware of any breach of confidentiality and give the other Party all reasonable assistance in connection with the same.

**24.4.** For the purposes of this section, shall not be considered Confidential Information, information that: (i) is published or comes into the public domain other than by a breach of the Agreement, (ii) can be proven to have been known by the receiving Party before disclosure by the disclosing Party; (iii) is lawfully obtained from a Third Party other than by a confidentiality breach of such Third Party; or (iv) can be shown to have been created by the receiving Party independently of the disclosure.

**24.5.** If and to the extent required in accordance with a judicial or other governmental order, the receiving Party may disclose Confidential Information, provided that the receiving Party (i) gives the disclosing Party reasonable notice prior to seek a protective order or equivalent, unless the receiving Party is legally prohibited from doing so; (ii) reasonably cooperates with the disclosing Party in its reasonable efforts to obtain a protective order or other appropriate remedy; (iii) discloses only that portion of the Confidential Information that it is legally required to disclose; and (iv) uses reasonable efforts to obtain reliable written assurances from the applicable judicial or governmental entity that it will afford the Confidential Information the highest level of protection available under applicable law or regulation.

**24.6.** The obligations set out in this clause shall enter into force as from the start of negotiations between the Parties and shall survive during five (5) years after the termination or expiration of the Agreement. The confidentiality obligations in the Agreement replace any prior non-disclosure agreement signed between the Parties.

## **25. Limitation of Liability**

**25.1.** BMI Leisure shall have no obligation to indemnify the Client in respect of any claim arising from the Agreement unless such claim exceeds two thousand five hundred (2,500) euro.

**25.2.** Subject to the maximum extent permitted under applicable law, BMI Leisure's liability under the Agreement shall: (i) per event (or series of connected events) not exceed the Fees paid by the Client to BMI Leisure under the Agreement for a period of twelve (12) months prior to the date of the event (or last of the series of connected events) giving rise to the claim.

**25.3.** BMI Leisure shall under no circumstances be liable to the Client for any indirect, punitive, special consequential or similar damages (including damages for loss of profit, lost revenue, loss of business, loss or corruption of data, loss of customers and contracts, loss of goodwill, the cost of procuring replacement goods or services, and reputational damage) whether arising from negligence, breach of contract or of statutory duty or otherwise howsoever, and third parties' claims. Each Party shall have the duty to mitigate damages. The exclusions and limitations of liability under this clause shall operate to the benefit of BMI Leisure's affiliates and subcontractors to the same extent such provisions operate to the benefit of BMI Leisure.

**25.4.** BMI Leisure cannot be held liable in any way, neither contractually nor extra-contractually, for discontinuing an older release of the Software or for damages caused by the wrongful (or out of scope) use of the Software.

## **26. Miscellaneous**



**26.1. Entire agreement** – The Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes all prior oral or written agreements, representations or understandings between the Parties relating to the subject matter hereof. No statement, representation, warranty, covenant or agreement of any kind not expressly set forth in the Agreement shall affect, or be used to interpret, change or restrict, the express clauses of the Agreement.

**26.2. Waiver** – The terms of the Agreement may be modified or amended only by written agreement executed by a duly authorized representative of both Parties hereto. The terms of the Agreement may be waived only by a written document signed by both Parties. Each such waiver or consent shall be effective only in the specific instance and for the purpose for which it was given, and shall not constitute a continuing waiver or consent.

**26.3. Severability** - If any provision of the Agreement is determined to be illegal, void, invalid or unenforceable, in whole or in part, the remaining provisions shall nevertheless continue in full force and effect. The provisions found to be illegal, invalid or unenforceable shall be enforceable to the full extent permitted by applicable law. Each Party shall use its best efforts to immediately negotiate in good faith a valid replacement provision with an equal or similar economic effect.

**26.4. Survival** - Expiration, termination or cancellation of the Agreement shall be without prejudice to the rights and liabilities of each Party which have accrued prior to the date of termination, and shall not affect the continuance in force of the provisions of the Agreement which are expressly or by implication intended to continue in force, including, without limitation, the provisions relating to Intellectual Property Rights, Confidential Information and Limitation of Liability.

**26.5. Assignment** - BMI Leisure may assign, transfer and/or subcontract the rights and obligations under the Agreement to any Third Party. The Client shall not assign or otherwise transfer any of its rights or obligations under the Agreement without BMI Leisure's prior written consent. BMI Leisure's consent should be requested by registered letter, disclosing the identity of the prospective transferee. Subject to any restrictions on assignment herein contained, the provisions of the Agreement shall inure to the benefit of and shall be binding upon the Parties hereto and their respective heirs, legal representatives, successors and assignees.

**26.6. Force Majeure** - Neither Party will be responsible or liable for any failure or delay in the performance of its obligations under the Agreement arising out of or caused by Force Majeure. In the event of Force Majeure, the Party shall inform the other Party at least within reasonable time about the nature of the Force Majeure and the fact that it wants to rely on this clause. The Party must, within

reasonable time, provide the other Party with the evidence of the existing of the Force Majeure, the date when the Force Majeure comes or has come into effect, and also when it will have ceased to exist. In case of Force Majeure, the Party is obligated to mitigate damage, and must use its best efforts to keep the consequences to a minimum. In the event of failure to comply with the abovementioned procedure, the Party shall be prevented to rely on the Force Majeure event and the Force Majeure clause.

**26.7. Publicity** - BMI Leisure shall have the right to use any trademarks, logos or other marks of the Client (including the Client's corporate name) for client references on BMI Leisure's website, social media announcements and sales presentations. Upon both Parties explicit consent, they shall jointly issue a press release in which they announce the partnership between the Client and BMI Leisure.

**26.8. Relationship between the Parties** - The relationship between BMI Leisure and the Client is that of independent contractors. Neither Party is agent for the other and neither Party has any authority to make any contracts, whether expressly or by implication, in the name of the other Party, without that Party's prior written consent for express purposes connected with the performance of the Agreement.

**26.9. Notices** - Any notice required to be served by the Agreement shall in first instance be given by electronic mail. Notices given to the Client shall be done to the email address set out in the Order Form (or in case no email address is available via post to the Client's registered address). Notices to BMI Leisure shall be done by email to [administration@bmileisure.com](mailto:administration@bmileisure.com). All notices given by electronic mail, shall only be valid in case confirmation of receipt was expressly given by electronic mail by the receiving Party. In case no confirmation of receipt was given by BMI Leisure within five (5) Business Days, all notices can be done in writing and served by personal delivery, registered letter, facsimile transmission (confirmed by registered letter) addressed to either Party at its address given in the Order Form or to such other address as a Party may designate by notice hereunder. All notices shall be deemed to have been given either (i) if by hand, at the time of actual delivery thereof to the receiving Party at such Party's address, (ii) if sent by overnight courier, on the next Business Day following the day such notice is delivered to the courier service, or (iii) if sent by registered or certified mail, on the fifth (5<sup>th</sup>) Business Day following the day such mailing is made.

**26.10. Conflict** - In case of conflict between the provisions of the contractual documents executed between the Parties, the first document shall prevail on the latter: (i) the Order Form, (ii) the Terms and Conditions (iii) the annexes, unless explicitly agreed otherwise in written between the Parties.

**26.11. Interpretation** – The terms of the Agreement shall be interpreted as follows (unless

the context shall otherwise require or permit): (i) Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted; (ii) Words importing the singular include the plural, words importing any gender include every gender and words importing persons include bodies corporate and incorporate; and each case vice versa; (iii) The headings or captions to the clauses are for ease of reference only and shall not affect the interpretation or construction of the Agreement.

**26.12. Language** – The Agreement is entered into in the English language only; which language shall be controlling in all respects. Furthermore, all communications and notices made or given pursuant to the Agreement shall be in the English, French or Dutch.

**26.13. Applicable law and jurisdiction** – The Agreement shall be governed by and construed in accordance with the laws of Belgium and the Parties hereto submit to the exclusive jurisdiction of the courts of Antwerp, division Turnhout. The United Nations Convention for the International Sale of Goods shall not apply to the Agreement.