EMAKINA

Article I. Purpose

The purpose of these general terms and conditions of sale (hereinafter the "**General Terms and Conditions**") is to define the terms and conditions under which the company EMAKINA.FR SA (hereinafter "**EMAKINA**") will provide services to its clients acting as professionals (hereinafter the "**CLIENT(S)**"). EMAKINA and the CLIENT are hereinafter referred to individually as a "**Party**" and together as the "**Parties**".

Article II. Effective date, duration, renewal and termination of the Agreement

1. "**Order**" refers to the document in which the CLIENT entrusts to EMAKINA the performance of a service.

2. The Order is valid only if it refers to a quote issued by EMAKINA to the attention of the CLIENT (hereinafter the "**Quote**") and if it is placed within the period of validity of said Quote.

3. The CLIENT'S Order is final unless otherwise indicated by EMAKINA within a period of fifteen (15) working days from the date on which the Order is received.

4. The General Terms and Conditions are applicable where the Quote explicitly refers to them. In placing the Order the CLIENT fully accepts the General Terms and Conditions. The CLIENT must note any reservations that it may have in the Order.

5. The General Terms and Conditions, the Quote, the Order, the Calendar (as the term is defined at Article VI of the General Terms and Conditions) and any other specific conditions that have been expressly agreed by the Parties constitute the agreement between the Parties relating to the performance of the Order (hereinafter the "**Agreement**"), without prejudice to any amendment that the Parties may agree, and excluding any clauses to the contrary or complementary clauses set out in the Order that are not accepted by EMAKINA or that are set out in any other document such as the general terms and conditions of purchase or correspondence of the CLIENT.

6. Unless the Parties have agreed specific conditions in writing, the Agreement may be terminated unilaterally by the CLIENT, at any time for convenience, as of right and without any judicial formalities, by registered mail with acknowledgement of receipt, in consideration for the full payment of a sum corresponding to the total value of the services set out in the Agreement.

7. The duration of the Agreement is set out in the Quote and/or the Order. If no duration is specified in the Quote and/or the Order, the Agreement will come into effect on the date on which the Order is signed by the CLIENT and will come to an end when EMAKINA has fully performed the services and deliverables set out in the Agreement and they have been fully paid by the CLIENT.

8. In the event that the Order is for a recurring service, the Agreement is concluded for a renewable period, the starting date of which is the date on which the CLIENT signs the Order. If the Parties have not agreed specific conditions in writing, the Agreement will be renewed by tacit agreement, for an identical period and under the same terms and conditions as those set out in the Quote and/or the Order. The undertaking for a particular period is a standing commitment.

9. In the event of recurrent services, the CLIENT may terminate the Agreement as of right and without any judicial formalities by registered mail with acknowledgement of receipt, at least one (1) full month before the effective renewal date. Only those sums committed for services to be performed during the next renewal period will be reimbursed to the CLIENT, excluding all other sums.

10. Expiry or termination of the Agreement for any reason whatsoever shall not affect those clauses that are intended to be effective even in the case of expiry or termination, in particular Articles XI to XV, XVII to XX, XXIII, XXVI to XVIII of the General Terms and Conditions.

Article III. General terms and conditions for performance of Orders

1. Unless the Parties have agreed specific conditions in writing, EMAKINA is bound by an obligation of means (*obligation de moyens*) and not by an obligation of result (*obligation de résultat*).

2. Performance of an Order by EMAKINA is the result of a series of different stages, each of which concludes with the delivery and validation of different deliverables. A stage must necessarily be completed before moving on to the next one.

3. Unless the Parties have agreed specific conditions in writing, EMAKINA reserves the right to choose and use the human, hardware and software resources, as well as the technologies required to perform the Order. EMAKINA will implement the methodologies described in the Quote. The Quote serves as reference in terms of deliverables and methodologies, without prejudice to any specific conditions agreed between the Parties in writing. EMAKINA alone is responsible for assigning members of its staff to the performance of the services.

EMAKINA can freely subcontract all or part of its obligations to partners of its choice, for whom EMAKINA will vouch.

4. The services subject of the Orders will be carried out principally on the premises of EMAKINA. For services carried out on the CLIENT premises, this latter undertakes to provide the best possible working conditions for the staff of EMAKINA or of its sub-contractors. EMAKINA staff called upon to work on CLIENT premises will comply with the provisions of applicable internal

regulations relating to health and safety on those premises and which will have been provided to them in advance. However, all members of EMAKINA staff assigned in whole or in part to the services in question remain, under all circumstances, under the authority of EMAKINA in terms of hierarchy and discipline.

5. Working and steering meetings will be planned and organised on the premises and according to the terms set out in the Order or by amendment, and generally speaking pursuant to provisions confirmed jointly between EMAKINA and its CLIENT.

Article IV. Specific conditions for the performance of fixed-rate Orders

1. EMAKINA and the CLIENT have agreed on a service scope, period, price and terms of performance. Together they have determined the means that are to be used to perform the Order, in the scenarios set out in the Quote.

2. In order to satisfy its obligation of means, EMAKINA will use all necessary means, as regards the scenarios set out in the Quote. As part of its duty to advise, EMAKINA will inform the CLIENT about any questions that may arise as to the scenarios that have been provided for and any other factors that are not of its making and which will require an increase in the means initially agreed. On its part, the CLIENT will inform EMAKINA of any breaches of its obligation of means.

3. In the event that the means provided are insufficient to achieve the intended objectives, EMAKINA will notify the CLIENT and invite it to subscribe for additional means that will allow the objectives set out in the Order to be achieved. Performance of the Agreement may be suspended by EMAKINA pending agreement. If no agreement is reached within a period of thirty (30) calendar days from the date on which EMAKINA sends the notice, EMAKINA may terminate the Agreement in accordance with Article XXIV §1 hereunder.

4. In the event of breaches by EMAKINA of its obligation of means of which the CLIENT has given notice to EMAKINA, EMAKINA will implement additional means at its sole discretion in order to remedy said breaches, at no extra cost to the CLIENT.

Article V. Validity of deadlines and Calendar, delays

1. EMAKINA's deadline commitments are defined as part of a calendar which determines all of the operations that will be required in the performance of the Order (hereinafter the "**Calendar**"). The Calendar binds both EMAKINA and the CLIENT, in particular as far as deliveries, decisions and special mobilisation stages are concerned.

2. The Calendar is drawn up by EMAKINA and validated by the CLIENT. If this latter should reject the proposed Calendar, performance of the Agreement may be suspended by EMAKINA pending agreement. If no agreement is reached within a period of thirty (30) calendar days from the date on which the CLIENT rejects the proposed Calendar, EMAKINA may terminate the Agreement in accordance with Article XXIV §1 hereunder.

3. The Calendar is linked to a limited scope of services set out in the Quote. Any changes to this scope will affect the Calendar.

4. Generally, it is the responsibility of the CLIENT:

- to formally set out its needs and requests;
- to deliver, on time, in terms of quality and quantity, information, documents and, generally, all deliverables and contents that it must supply to EMAKINA for the proper performance of the services;
- to be present at planned meetings and to take decisions when expected to do so;
- to be available and mobilised in order to comply with the requirements of mutual collaboration set out at Article IX of the General Terms and Conditions.

5. If the CLIENT thinks it is not or no longer able to comply with these obligations, it must notify EMAKINA without delay in order that, together, a new Calendar and action plan can be drawn up in line with the reported situation.

6. If the CLIENT should breach any one of its obligations under this Article V, the provisions provided at Article IX §9 of the General Terms and Conditions may be applied by EMAKINA, without prejudice to the right of EMAKINA to terminate the Agreement as provided at Article XXIV of the General Terms and Conditions.

7. Neither the CLIENT nor EMAKINA will be held liable by the other Party in the event that an obligation under this Agreement is not performed or in case of a delay in performance following the occurrence of a force majeure event, as is usually defined by case law. The force majeure event will suspend obligations arising under the Agreement for the entire period of its existence. However, if the force majeure event should continue for a period of more than thirty (30) consecutive calendar days, the Agreement may be terminated, as of right and without any judicial formalities, by either of the Parties, eight (8) working days after notice of such decision has been sent by registered mail with acknowledgement of receipt.

Article VI. Delivery and delivery acceptance procedures

1. Delivery of deliverables will be made to the premises and according to the procedures provided and jointly agreed by the Parties.

2. Deliverables at each stage of the Order must be expressly validated by the CLIENT, by any means of communication existing between the Parties and in particular through the use of electronic communication tools and other collaborative electronic

spaces made available by EMAKINA as part of the project. Nevertheless, if the CLIENT should order the next stage to be started before the deliverables from the previous phase have been validated, this decision shall be deemed to be formal validation of said deliverables.

3. In the event that deliveries are made to servers hosted by the CLIENT or by third party operators, external to the commitments of EMAKINA for the services ordered, it is the responsibility of the CLIENT to ensure that EMAKINA can make delivery and that the servers in question work in accordance with the conditions set out in the Order or with the recommendations validated by the CLIENT. Unless the Parties have agreed specific conditions in writing, deliveries are made remotely, which means that EMAKINA must receive all required technical means and information within a sufficient timeframe of at least five (5) working days before the target commissioning date.

4. In the event that the commissioning of the deliverables is to be made by the CLIENT or by third-party operators, external to the commitments of EMAKINA for the services ordered, EMAKINA will first deliver a "**Deployment Notice**" setting out the operation procedure for said commissioning. Validation by the CLIENT of the Deployment Notice releases EMAKINA from any liability in case of failure of the commissioning itself.

Article VII. Specific Acceptance procedures

1. "**Acceptance**" refers to all of the operations verifying the satisfactory performance of the deliverables (in particular products and software) that have been delivered, including any corrections arising therefrom.

2. The Calendar jointly agreed with the CLIENT sets a fixed period, calculated from the date of delivery, during which the CLIENT may dispute the delivery. If the Calendar contains no such period, it will be set at seven (7) working days from the date of delivery. In order to be valid, refusal by the CLIENT to accept delivery must be based on detailed observations gathered in a rejection report. These can only be based on malfunctions that only block the complete performance of the operation scenarios that were provided. In the event of a valid refusal, it is the responsibility of EMAKINA to make a new delivery without these malfunctions, excluding those not related to the Order.

3. In the event that the CLIENT accepts delivery, Acceptance is carried out. The CLIENT will then have the time limit set out in the Calendar, drawn up jointly and in advance, to make observations and findings. From these, only those that fall within the strict scope of the Order will be deemed to be legitimate and covered by EMAKINA. The others will be processed as part of additional orders or of specific development processing provisions. When these legitimate observations and findings are reported to have been resolved, delivery will be validated, sanctioned by an acceptance report.

4. The CLIENT is presumed to be able to make observations and findings during the course of the Acceptance procedure and to have appropriate staff. The failure or inability of the CLIENT to carry out the verification procedures incumbent upon it, or the refusal of the CLIENT to do so, will under no circumstances call into question the Acceptance procedure as scheduled.

Article VIII. Specific procedures relating to content

1. The input or supply of existing or future information using tools and systems produced by EMAKINA as part of the services are specific operations that are duly defined in the Order.

2. The CLIENT will deliver its content in standard format, defined with EMAKINA in the Order, or failing that at the design stage.

3. Generally, content delivered by the CLIENT to EMAKINA is deemed to have been validated by the CLIENT and to be fit for integration, with no requirement to carry out corrections, including spelling or grammar. If these should be required, EMAKINA will issue an additional invoice at a rate of one hundred (100) euros per hour spent to this end.

Article IX. Duty of mutual collaboration

1. The CLIENT is perfectly aware that the services that it orders require active and ongoing cooperation on its part and, by consequence, undertakes to work actively and continuously so that EMAKINA can perform its obligations under this Agreement.

2. Despite having a certain number of skills, the CLIENT cannot be deemed to be a professional in the same domain as EMAKINA. Thus, within the limit of the services and work required for the performance of the Order, EMAKINA is bound by an ongoing duty to advise, to warn and to inform the CLIENT and undertakes, on a general basis, to:

- check with the CLIENT that EMAKINA has all necessary information for the proper performance of the Order;
- provide the CLIENT with all information that EMAKINA deems necessary for the proper performance of the Order;
- reply in a timely manner to any request for information that it receives from the CLIENT;
- provide the CLIENT with advice or warnings;
- notify the CLIENT, in writing and as soon as it becomes aware, of any element, event or act likely to affect the proper performance of its obligations.

3. Conversely, the CLIENT cannot deem EMAKINA as having express or tacit knowledge of all matters relating to its targets, its business and its operation. The CLIENT is therefore bound:

- to express its needs as clearly and exhaustively as is necessary;
- to reply in a timely manner to any request for information or explanation made by EMAKINA, that is to say to acknowledge receipt within five (5) working days of the request and to reply within fifteen (15) working days of the request itself;
- on the dates and at the times agreed upon in the project schedule, to mobilise those of its own resources and means that are required for the completion of the project.

4. If the CLIENT should disregard the recommendations and advice that EMAKINA has provided in writing under this Agreement, EMAKINA shall not be held liable for the consequences that may arise thereof, regardless of their nature.

5. If the CLIENT should reconsider the decisions that it has made, the work required to be in compliance with this decision to reconsider, that is to say the work that will have to be done after this decision to reconsider, will be assessed and notified to the CLIENT, so that an additional order can be placed aimed at covering such changes.

6. For the performance of the Order, EMAKINA will appoint a project manager responsible for the smooth running of the Order in relation to the CLIENT, and steering the different stages of the project.

7. In order to ensure proper performance of the Order, the CLIENT, as part of its duty to collaborate, will appoint a representative, qualified in the profession and in project management, to represent it in relation to EMAKINA. Said representative will be duly authorised to take all decisions with regard to the solutions proposed by EMAKINA.

8. If a difficulty should arise during the course of performance of the Agreement, the Parties are compelled by their joint duty of collaboration to keep each other informed as quickly as possible and to work together to promptly put into place the best possible solution.

9. If the CLIENT should breach any one of its obligations whatsoever, including in the event that an invoice has not been paid by its due date, and in case of failure to respond to requests for regularization made by EMAKINA in any way whatsoever, EMAKINA may revoke the Calendar and/or suspend performance of all or part of its obligations under this Agreement pending the correction of the reported breaches, without prejudice to its right to early suspension of its obligations in accordance with article 1220 of the French Civil code and its right to terminate the Agreement, in particular according to Article XXIV of the General Terms and Conditions. This applies in particular to on-going work, hosting services and access to Internet services offered by EMAKINA. EMAKINA may also suspend the CLIENT user account. The CLIENT will be given notice of the date on which performance of the obligations under the Agreement is to be suspended in writing by registered mail with acknowledgement of receipt, leaving the CLIENT at least seven (7) working days in which to regularize the situation. A non-definitive penalty payment of one thousand (1,000) euros excluding taxes per week of suspension may be applied by EMAKINA to the CLIENT, in order to compensate EMAKINA for changing its team planning. At the end of the suspension period the CLIENT will be under an obligation to negotiate a new Calendar with EMAKINA in good faith, taking into account the corrective or evolutionary requests made by the CLIENT in relation to the deliverables if any.

Article X. Communication and notices

1. By accepting these General Terms and Conditions, EMAKINA and the CLIENT give probative value to electronic mail exchanges, as well as to messages and comments published on electronic communication tools and on other collaborative spaces by electronic means made available by EMAKINA. Acceptances and validations given in these ways shall be deemed to be as such under the Order.

2. EMAKINA warrants to its CLIENTS a total integrity of the messages and comments that they would publish on those tools and spaces to which EMAKINA would give them access for the purposes of communicating and giving notices as part of the performance of the Order. The codes and means of access provided for the use of these tools and spaces are guaranteed throughout the duration of orders placed and the resulting warranty periods. Where appropriate, EMAKINA will extract this information for archiving purposes.

Article XI. Price and payment

1. Prices are stipulated in the Quote referred to in the Order. They are exclusive of taxes, notably exclusive of VAT at the applicable rate, and payable in euros.

2. In the event of recurrent services, and if the Parties have not agreed specific conditions in writing, prices evolve according to the tariffs that EMAKINA will communicate to the CLIENT at least two (2) months before the date on which they will take effect. Services paid in advance are purchased at the tariff applicable at the date on which they were paid.

3. EMAKINA reserves the right to pass on any new tax or any increase in existing taxes without delay.

4. Invoices are payable under the conditions and within the time limits specified in the Quote and, by default, upon receipt. Derogation by the CLIENT requires the written consent of EMAKINA. Any additional period granted shall not constitute novation. Failure to meet a single instalment will automatically result in all sums due becoming immediately payable, with no need to give notice thereof.

5. Any claim or dispute must be made within eight (8) working days of receipt of the invoice in question, by registered mail with acknowledgement of receipt. However, no claim or dispute will authorize the CLIENT to take the initiative to suspend payment of the invoice or to offset it in any way whatsoever.

6. Any incident and/or delay in payment of an invoice by its due date will give rise, as of right, to payment by the CLIENT to EMAKINA of a late payment penalty calculated on the basis of the interest rate applied by the Central European Bank to its most recent re-financing operations, plus 10 percentage points, as well as a compensation for the recovery costs incurred by EMAKINA, which shall not be less than the lump sum compensation for recovery costs provided for at article L. 441-6 I 12° of the French Commercial code and its implementing decree (40 euros), it being specified that EMAKINA may request additional compensation on justification, without prejudice to the suspension and/or termination of the Agreement and/or any damages that may be claimed.

Article XII. Retention of title

1. The goods and services delivered and unpaid, whether they are tangible or intangible, shall remain the property of EMAKINA until full payment by the CLIENT.

2. As long as full payment has not been made, the use of, assignment of, as well as any technical intervention by a third party or by the CLIENT itself on the goods and services delivered will require the prior, formal and express agreement of EMAKINA.

3. Notwithstanding this retention of title clause, all risks related to the goods or services delivered are the responsibility of the CLIENT as soon as they are handed over to the CLIENT or to a carrier. From that moment, the CLIENT will be held liable for all risks of deterioration, loss, partial or total destruction, regardless of the cause of the damage. The CLIENT undertakes to subscribe an insurance policy covering itself for these risks.

Article XIII. Responsibilities

a) Domain names

For services including the filing of a domain name, EMAKINA acts simply as an intermediary between the CLIENT and the competent organizations and/or registrars (ICANN, AFNIC, etc.). The CLIENT confirms that it is aware of the terms and conditions defined by these latter, and that it accepts them.

EMAKINA cannot guarantee that the domain name requested by the CLIENT will be registered, and the CLIENT must not, under any circumstances, use a domain name before receiving notice of its registration from EMAKINA.

Orders for the registration of domain names are accepted and carried out by EMAKINA on behalf of and in the name of the CLIENT, it being understood that the CLIENT alone will have all rights over the domain name and warrants EMAKINA that this domain name is not breaching the intellectual property rights or any other rights of a third party. At the CLIENT's request, EMAKINA can give advice only as to the rules, terms and conditions of registration and choice of suffix for a domain name. Under no circumstances will EMAKINA provide an opinion as to the breach or the risk of breaching any type of right whatsoever that the filing and registration of a domain name may entail.

EMAKINA cannot, under any circumstances whatsoever, be held liable for the failure or refusal of a domain name registration, or for the breach of third party rights pursuant to the filing, registration or use of a domain name.

b) Third party claims

Under no circumstances will EMAKINA be held liable in case of a third party action or claim, in particular as a result of: information, images, sounds, texts, videos contrary to applicable legislation or regulations, contained in or distributed on the CLIENT's Internet site(s); breach of intellectual property rights relating to works published, in whole or in part, on the CLIENT's Internet sites without the explicit permission of their author; breach of property rights relating to the names filed for the domains; the suspension and/or the termination of the CLIENT's user account, particularly pursuant to the non-payment of sums payable for performance of the Agreement; and, more generally, as a result of the non-performance of any of the obligations of the CLIENT whatsoever as defined herein.

c) Obligations of the CLIENT towards third parties

EMAKINA shall not be held liable for commitments made by the CLIENT itself to its own clients, suppliers and partners.

d) CLIENT's obligations

In the absence of a specific mandate being entrusted to EMAKINA, the CLIENT will be responsible for requesting all legal and administrative authorizations required for the use of the goods and services delivered by EMAKINA.

The CLIENT undertakes to use these goods and services in compliance with applicable laws, particularly relating to copyright, intellectual property and morality, and will refrain in particular from sending unsolicited electronic mail (spam) using the electronic communication tools and other collaborative spaces by electronic means made available to it and/or the deliverables produced by EMAKINA under this Agreement. The CLIENT guarantees EMAKINA against any potential judgment against it in this regard.

Moreover, due to the very nature and limitations of the Internet, which the CLIENT hereby declares to be fully conversant with, EMAKINA shall not be held liable for, in particular:

- difficulties in accessing hosted services due to saturated network at certain times;
- contamination by virus of the CLIENT's data and/or software, the protection of which is the responsibility of this latter;
- malicious third party intrusions on the CLIENT's Internet site(s), despite the reasonable security measures implemented by EMAKINA;
- damage to equipment connected to the host server, which is the sole responsibility of the CLIENT;
- possible misuse of passwords, confidential codes, and more generally of any information of a sensitive nature for the CLIENT.

e) Access codes

As part of its services EMAKINA provides the CLIENT with access codes to a user account, consisting of a user name (usually called a login) and a password.

These access codes are issued once to the CLIENT by electronic mail. Any request for a new issuance must be made in writing.

Access codes are confidential. The CLIENT must implement security rules, in particular never to write this information down clearly, in a place to which third parties have access. The CLIENT alone is responsible for transmitting these access codes to its employees, collaborators or third parties. All actions performed using these access codes shall be presumed to have been performed by the CLIENT.

If the CLIENT becomes aware of the unauthorized use of these access codes, it must inform EMAKINA immediately, giving all of the information that it has. Upon receipt EMAKINA will block the use of these access codes and will attribute others.

EMAKINA reserves the possibility to change the CLIENT's conditions of access and confidential codes at its own initiative.

Article XIV. Warranties

1. Unless the Parties have agreed specific conditions in writing, deliverables produced by EMAKINA under the Agreement are guaranteed for **one (1) month** from final delivery confirmed by an acceptance report or a delivery note, against any hidden defect or malfunction that is the fault of EMAKINA, these having been evidenced by EMAKINA upon written request by the CLIENT detailing the problems reported. The guarantee is likely to be extended for a longer period if the CLIENT subscribes to a fixed-rate service offered by EMAKINA.

2. Unless the Parties have agreed specific conditions in writing, the guarantee does not apply in the event that third parties or the CLIENT itself has worked on the deliverables, regardless of the reason, including for repair.

The same shall apply if the deliverables are used in a technological environment that differs from that which was scheduled when said deliverables were produced. In this regard, the CLIENT is required to comply with the conditions of use of the deliverables in accordance with the operating conditions communicated by EMAKINA. Deliverables produced by EMAKINA operate on standard computer configurations, cleared of any hardware or software. EMAKINA cannot be held liable for any malfunction associated with hardware or software used by the CLIENT that does not come from it.

3. Deliverables produced by EMAKINA cannot be guaranteed with regard to evolutions in the technological environment used by the CLIENT to run the deliverables. EMAKINA is not bound to ensure that its deliverables will adapt to evolutions in technology.

4. In the event that the deliverables are Internet sites or software applications using resources from computer networks, EMAKINA can not be held liable for problems associated with services that it does not supply, such as Internet access, hosting, etc.

EMAKINA cannot be held liable for difficulties in accessing or momentary impossibility in accessing the CLIENT's Internet site(s) due to problems with the telecommunications network or failure of hosting services or other services that are not provided by EMAKINA. The CLIENT is informed that worldwide networks are complex, and that at certain times there is a surge in the number of Internet users.

5. EMAKINA is not liable for direct or indirect damages, such as commercial prejudice, loss of clients, loss of order, or loss of brand image due to misuse of the deliverables that have been produced, and in particular software applications that have been produced.

6. EMAKINA is not liable to compensate the CLIENT for the destruction of its files or data, it being the responsibility the CLIENT to make a back up copy.

Article XV. Documentation and training

1. EMAKINA draws the CLIENT's attention to the necessity of having a trained staff to use the deliverables. Where applicable, the CLIENT must expressly inform EMAKINA of its documentation and/or training needs.

2. The delivery of user or technical documentation, as well as the performance of a training programme on the use of the software tools that have been produced, is not included by default in the services provided by EMAKINA in the performance of the Order. In order to benefit from this, the CLIENT must have expressly ordered it on the basis of the proposals formulated by EMAKINA following the needs that the CLIENT expressed.

3. In the event that the CLIENT has not ordered these additional services, the CLIENT cannot hold EMAKINA liable for any damages whatsoever resulting from the absence of documentation and/or training.

4. The formulation of comments by EMAKINA in the software codes, in accordance with the rules, a referential or a basic required level expected from the CLIENT, is deemed to be documentation.

Article XVI. Quality provisions

Specific quality systems, such as compliance with referentials, standards or requirement frameworks specific to certain labels, can only be implemented by EMAKINA as part of undertakings or services explicitly set out in the Quote or in the Order and accepted by EMAKINA. When the CLIENT takes decisions that prevent EKAMINA from complying with these quality provisions, it must inform EKAMINA immediately as part of its duty of joint collaboration provided for at Article IX of the General Terms and Conditions.

Article XVII. Intellectual property

1. Any use by the CLIENT of trademarks, trading names, acronyms and logos, regardless of the colour or graphics, owned or filed by EMAKINA, or by companies that have assigned or licensed them to EMAKINA, is subject to the prior written consent of EMAKINA.

2. The CLIENT warrants that it holds all of the authorizations and rights that are required for the use of all works and other elements used at its request, or supplied by it, for the purposes of performing the Agreement.

3. Any intervention carried out by EMAKINA, in order to obtain the rights and/or authorizations to use a work or any other element in the name of and on behalf of the CLIENT, shall not release this latter from complying with its obligations to the authors and any third parties affected, EMAKINA not being liable in case of breaches by the CLIENT.

4. All deliverables are produced by EMAKINA, as far as it is concerned, in compliance with legislation relating to intellectual property rights, and do not constitute unfair or parasitic competition. However, if, in spite of the precautions that have been taken, all or part of a deliverable is found to constitute an infringement or otherwise breach the rights of a third party due to the actions of EMAKINA, EMAKINA shall either provide the CLIENT with another deliverable with identical functions, or obtain at its own expense authorization for the CLIENT to continue to use the deliverable, or reimburse the CLIENT the price that it was paid for the deliverable. These choices are at the discretion of EMAKINA.

5. It is reminded that, unless an agreement for the assignment of intellectual property rights and in particular copyright is duly entered into between the Parties, the CLIENT has only a right to use the deliverables (in particular the graphic designs and software development) produced by EMAKINA under the Agreement. The Quote sets out each right that has been granted, together with the scope, the destination, the territory and the duration of use for the rights that have been granted. This right to use, personal and non-transferable, is limited solely to the CLIENT. The CLIENT cannot, therefore, assign or license the deliverables to third parties without the agreement of EMAKINA. Neither can it modify them, unless the Parties have agreed specific conditions in writing.

6. This being said, EMAKINA undertakes, in principle, to enter into an agreement of assignment of its rights, at the CLIENT's request and after full payment of invoices by the CLIENT.

7. Delivery of source codes or files can only take place after an agreement for the assignment of rights has been entered into between EMAKINA and the CLIENT.

8. Such assignment can only relate to the creations made by EMAKINA under this Agreement. Software, tools and other pre-existing means or elements used by EMAKINA for the purposes of performing the Agreement cannot be the subject of assignment or transfer.

9. It is reminded that deliverables made from works under license, and in particular licensed software, are subject to the terms and conditions of said license, in particular concerning modifications or additions to said works. Considering that these works are stipulated in the Quote and/or the Order, the CLIENT is presumed to be aware of and to have accepted the resulting implications.

Article XVIII. Confidentiality

1. Each Party undertakes to keep confidential and not to disclose to anyone whatsoever, either directly or indirectly, all or part of the information of any nature whatsoever, and in particular, but not limited to, of a business, industrial, technical, financial, etc. nature (including the terms of this Agreement), and in any form whatsoever (hereinafter the « **Confidential Information**»), that it has received from the other Party, or of which it has become aware in any way

whatsoever while performing the Agreement, without prejudice to the right of EMAKINA to make reference to and to make citations as provided at Article XIX of the General Terms and Conditions.

2. By consequence each Party undertakes:

- not to use, either in whole or in part, Confidential Information of the other Party for any purpose other than performance of the Agreement;
- not to disclose Confidential Information of the other Party to the public or to any other natural or legal persons, except (i) to its own employees, only to the extent that such disclosure is necessary for the performance of the Agreement; (ii) to service providers, sub contractors, companies in its group, the names of which will be provided to the other Party in writing, only to the extent that such disclosure is necessary for the performance of the Agreement; (iii) in the event that the Party to whom the Confidential Information belongs has given its express and written agreement; (iv) to its counsel and accountants; (iv) to ensure performance of the Agreement; (v) to courts and/or administrations, upon prior and express request thereof; (vi) where such disclosure is the result of a legal obligation or a court decision that has become final, provided that the Party concerned by the disclosure (a) promptly informs the other Party, prior to such disclosure, that said obligation and/or decision exists, and (b) provides assistance such that the Confidential Information is not made public, to the extent that this is lawful;
- to take all necessary measures to protect the confidentiality of the Confidential Information of the other Party and to avoid any unauthorised use of the Confidential Information of the other Party. Without limiting the foregoing, each Party undertakes to:
  - take measures at least equivalent to those that it would take to protect its own Confidential Information; and
  - ensure that all persons having access to the Confidential Information of the other Party are bound by an obligation of confidentiality and/or have signed, prior to disclosure of such Confidential Information, a non-disclosure agreement containing similar obligations to, and offering at least as much protection of the interests of the other Party, as those arising from this Article XVIII, it being specified that each Party will warrant that the persons to whom it discloses Confidential Information of the other Party will comply with the obligations set out in this Article XVIII.

3. Shall not be deemed to be Confidential Information, information that:

- was already in the public domain at the time that it was disclosed to the recipient Party;
- fell into, or will fall into, the public domain after it has been disclosed to the recipient Party, without being attributable to any act or omission whatsoever on the part of that Party;
- was lawfully obtained by the recipient Party prior to its disclosure by the other Party, the recipient Party being able to prove it by any document in its possession; or
- was developed independently by the recipient Party without the use of, or reference to, the Confidential Information of the other Party, the recipient Party being able to prove it by any document in its possession.

4. None of the provisions of this Agreement, or any action taken pursuant to it, can be interpreted as compelling a Party to transmit Confidential Information to the other Party. In the same way, the Parties explicitly agree that disclosure of Confidential Information by one of the Parties under this Agreement can under no circumstances be interpreted as conferring on the other Party, either expressly or implicitly, any sort of intellectual property right or any other right whatsoever relating to that Confidential Information, unless explicitly agreed to the contrary and provided for in this Agreement.

5. All of the Confidential Information provided by one Party to the other Party is provided « as is » and the Parties provide no warranty, statement or other, express or implied, as to the accuracy, the content and/or the relevance of the Confidential Information. Each Party shall not be liable for the use made by the other Party and/or by any third party of the Confidential Information.

6. The Parties shall not make copies of the Confidential Information transmitted without the prior written authorization of the other Party. In the event that copies of the Confidential Information are authorized, each Party undertakes to reproduce identically on such copies any notice as to the property rights of the other Party that appears on the original.

7. All documents and other material objects containing or representing Confidential Information disclosed by one Party to the other Party, as well as any copy that may be in the possession of that other Party, are and remain the property of the Party or the third party that transmitted them, and must be returned spontaneously at the end of the Agreement term and/or immediately upon simple written request from that Party, accompanied by a certificate attesting that all of the Confidential Information has been returned.

8. Each Party acknowledges that any disclosure of Confidential Information in breach of this Article XVIII would harm the interests of the other Party and would incur its liability.

9. This Article XVIII shall remain in effect as long as the Parties have an interest in protecting their Confidential Information and, in any case, for at least ten (10) years from expiry or termination of this Agreement for any reason whatsoever.

Article XIX. Right to reference and communication

1. EMAKINA has the right to be mentioned in the legal notices of any Internet site that it may produce under this Agreement.

2. EMAKINA has the right to cite the name of the CLIENT and to refer to the nature of the project carried out as one of its references.

3. When the services contained in the Order have been performed in full, EMAKINA has the right to issue a press release. This will be drawn up in collaboration with the CLIENT, which cannot refuse.

Article XX. Non-solicitation of personnel

1. The CLIENT shall not hire, or employ in any way, directly or indirectly, any current or future member of staff of EMAKINA or of subcontractors of EMAKINA. This clause shall apply regardless of the specialty of the staff member in question, and even if the solicitation is initiated by the staff member. This clause shall remain in effect during the entire period of performance of the Orders placed with EMAKINA and for a period of two (2) years from the term of the last Order performed by EMAKINA for the CLIENT.

2. In case of breach of this Article XX, the CLIENT shall have to pay to EKAMINA immediately a final lump sum indemnity equal to one hundred and fifty per cent (150%) of the annual gross salary of the person recruited or solicited.

Article XXI. CLIENTs obligation to inform

The CLIENT undertakes to inform EMAKINA immediately and in writing of any change to its situation (in particular a change of address, modification of equipment, modification of bank details, etc.).

Article XXII. Personal data

1. Personal data collected by EMAKINA SA, as the data controller, under this Agreement will be processed by EMAKINA for the purpose of performing the Agreement and, more generally, of managing its relationship with the CLIENT. EMAKINA may transfer this data to subcontractors, and in particular to specialized consulting firms or partners with a specific technological solution, where necessary, in order to perform certain services for the Customer under the Agreement. The personal data collected are not transferred to third parties and are not transferred to a non-EU country. This personal data collection is compulsory: if this personal data is not provided, the Agreement cannot be performed by EMAKINA.

2. This personal data is retained by EMAKINA for the duration of the Agreement, without prejudice to any other shorter or longer retention period and any archiving possibility provided for by applicable law or regulation (in particular by simplified standard n°48 related to customer-prospect files).

3. The CLIENT must inform any person (employees, third parties, etc.) whose personal data is transmitted to EMAKINA of the processing carried out by EMAKINA and the rights that they have in that respect.

4. Each person concerned may, for all of the personal data transmitted to EMAKINA that concerns them, exercise their rights with the Data Protection Officer (DPO) (« *Correspondant Informatique et Libertés* ») at EMAKINA, the coordinates of whom feature hereunder, in accordance with the provisions of law n°78-17 of the 6th of January 1978 and General Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 applicable from the 25th May 2018, in particular the right to access, rectify their personal data, restriction of processing or erasure of personal data (« the right to be forgotten »), the right to object to their processing on legitimate grounds as well as the right to data portability and the right to give instructions as to the right of storage, erasure and communication of this personal data after their death.

5. The coordinates of the DPO (« *Correspondant Informatique et Libertés* ») at Emakina are as follows:

Alexis MONS

4 rue Atlantis

87068 Limoges

France

Mail: hello@emakina.fr

Tel: +33 (0)5 55 35 04 36

6. Each person concerned has the right to lodge a complaint to the CNIL for any failure by EMAKINA to comply with the regulations in force, and in particular with the provisions of Law No 78-17 of 6 January 1978 and General Regulation 2016/679 of the European Parliament and the Council of 27 April 2016 applicable from the 25th May 2018.

7. The CLIENT or any person concerned, whose personal data is processed by EMAKINA, must immediately inform EMAKINA of any violation of personal data or any security incident of which it is aware of.

Article XXIII. Exclusion and limitation of liability

1. In the event of suspension of all or part of its obligations under this Agreement in accordance with the provisions set out in the Contract, and in particular in accordance with Articles IV §3, V §2 and §7 and IX §9 in the General Terms and Conditions, EMAKINA shall under no circumstances be held liable for direct or indirect damages suffered by the CLIENT as a result of said suspension.

2. The contractual liability of EMAKINA shall only arise in the event of direct damages caused to the CLIENT (excluding any indirect damages of any kind whatsoever, such as loss of profit, loss of clients, loss of opportunity, harm to image, any kind of financial, business or intangible harm, the costs incurred in turning to another service provider) and is in any case limited to fifteen per cent (15%) of the total amount of the Order in question, to the fullest extent permitted by law.

Article XXIV. Early termination

1. In the event of a persistent blockage of the performance of the Agreement due to the CLIENT or to a third party involved in the project and under the responsibility of or subordinate to the CLIENT, or in case of a breach by the CLIENT of any one of its contractual obligations whatsoever (in particular in case of breach by the CLIENT of its duty to collaborate or of its obligation to pay), EMAKINA reserves the right to terminate the Agreement as of right and without any judicial formalities, without prejudice to any claim for damages, by sending notice to remedy said breach within a period of thirty (30) calendar days, in writing by registered mail with acknowledgement of receipt, which remains unanswered.

"**Persistent blockage**" refers to any act, inaction, disagreement or absence of agreement on the part of the CLIENT that prevents EMAKINA from performing all or part of its obligations under the Agreement.

2. In the event of an irreparable breach by the CLIENT of any one whatsoever of its contractual obligations, or of the repeated breach of one same obligation, EMAKINA reserves the right to terminate the Agreement immediately, as of right and without any judicial formalities, without prejudice to any claim for damages, by reason only of the non-performance on the part of the CLIENT of this obligation or of the repeated breach of an obligation, by giving notice sent to the CLIENT in writing by registered mail with acknowledgement of receipt, without prior formal notice.

3. In these cases, the amount due under the Agreement by the CLIENT shall correspond to the progress made on performance of the Order with regard to the means and resources that have been committed by EMAKINA and will be payable in the form of a lump sum payment to, in particular, enable the conclusion of a contract for the assignment of rights on the deliverables produced as part of the Agreement, in accordance with Article XVII §6 of the General Terms and Conditions.

Article XXV. Transfer of the Agreement

EMAKINA is free to transfer all or part of its rights and obligations under this Agreement to any third party of its choice and in any form whatsoever, to bring it into a company as a contribution to its capital and/or have its obligations performed by a third party in any form whatsoever (subcontracting, etc.), on condition that it gives the CLIENT prior notice thereof, the present clause constituting agreement by the CLIENT within the meaning of article 1216 of the French Civil Code. The transfer by EKAMINA of all or part of its obligations under the Agreement will release it from all of these obligations in the future, the present clause constituting the express consent of the CLIENT in this respect within the meaning of article 1216-1 of the French Civil Code.

Article XXVI. Miscellaneous

1. This Agreement expresses the entire agreement between the Parties. The Agreement replaces and supersedes all earlier provisions relating to the same subject, regardless of origin.

2. Nothing in this Agreement shall be deemed to have been set aside, completed or amended by either of the Parties in the absence of a prior written document signed by the duly authorized representatives of the Parties and taking the form of an amendment, specifically referring to the decision to set aside the application of a clause, to complete it or to amend it.

3. The fact that one of the Parties is late in exercising any one whatsoever of its rights provided for in the Agreement, or does not exercise said right, shall not be deemed to be a waiver of said right, whether it be related to a past or future event.

4. Nothing in the body of this Agreement shall constitute or be deemed to constitute an association, a cooperation agreement or a *de jure* or *de facto* company, between the Parties. In the same way, at no time and in no way whatsoever and for no reason

whatsoever shall either of the Parties be deemed to be an agent or employee of the other Party, and no Party shall have the authority or the power to bind the other Party or to contract in its name or to create any liability whatsoever for it, in any way whatsoever and for any purpose whatsoever.

5. If one or more of the provisions of this Agreement should be deemed to be invalid, null, non-applicable or unenforceable in application of a law, a regulation or pursuant to a final decision of a competent court, the remaining clauses shall retain their full force and effect.

Article XXVII. Applicable Law

All contractual relations between the CLIENT and EMAKINA are subject to French law. Further, only the French language version of the contractual and pre-contractual documents shall be legally binding on the Parties.

Article XXVIII. Competent Jurisdiction

Any dispute relating to the validity, interpretation and/or performance of the Agreement and its consequences shall be within the jurisdiction of the Commercial Court of Limoges, even in case of plurality of defendants, warranty claims or incidental claims, which the CLIENT expressly accepts.