

Incadea General Terms and Conditions

These General Terms and Conditions (the “**GTC**”) together with the specific terms and conditions set out in the appendices identified below (collectively, the “**Agreement**”) shall govern the sale of computer-related products and services by incadea to Customer (as defined below).

1. Definitions

1.1 Capitalized terms shall have the meanings set forth in the specific terms or as defined below:

1.2 “**Acceptance Criteria**” means the acceptance criteria, requirements and/or specifications set out in or described in Appendix B. If no such specific criteria, requirements or specifications are provided for particular Deliverables, then the Acceptance Criteria is that such Deliverables shall operate in all material respects as specified in the Documentation.

1.3 “**Affiliate**” means an entity that owns or controls, is owned or controlled by or is or under common control or ownership with either Customer or Incadea (as the context allows), where control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise.

1.4 “**Confidential Information**” means all information disclosed by either Party in connection with the Agreement concerning the business, affairs, the products or services, research and technologies of the disclosing Party and/or its customers that is not publicly available at the time it is disclosed to, or learned by the receiving Party. To the extent disclosed in connection with the Agreement, Confidential Information includes but without limitation to specifications; data; Know-how; formulas; compositions; processes; designs; prints; sketches; photographs; samples; prototypes; test vehicles; inventions; concepts; ideas; past, current and planned research and development; past, current and planned manufacturing or distribution methods and processes; the identity of or other information about actual or potential customers, customer contacts and customer sales strategies; market studies, penetration data and other market information; sales and marketing plans, programs and strategies; sales, costs and other financial data; sources of supply for the products or services, raw materials, and components; descriptions of plants and production equipment; price lists; business plans; financial reports and statements; computer software and programs (including object code and source code); databases; internal reports, memoranda, notes, analyses, compilations, studies and other data, information, materials or intangible asset that relate to the disclosing Party’s business and/or products/services. Confidential Information also includes any materials or information that contains or is based on any other Confidential Information, whether prepared by the disclosing Party, the receiving Party or any other person.

1.5 “**Customer**” means the individual or entity set forth on the first page of this GTC.

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- 1.6 “Customized Software”** means the software program or modules to be developed by incadea pursuant to Agreement in accordance with specifications set out in Appendix B, together with user manuals, other documentation and any other ancillary materials to be developed by incadea in relation thereto. For the avoidance of doubt, Customized Software does not include incadea Standard Software and/or Third Party Software.
- 1.7 “Data Protection Laws”** means applicable legislation protecting the personal data of natural persons, including in particular the national legislation implementing Directive 95/46/EC (and, from 25 May 2018, the GDPR, and any national legislation with supplements the GDPR), together with binding guidance and codes of practice issued from time to time by relevant supervisory authorities.
- 1.8 “Deliverables”** means designs, drawings, plans, prototypes, samples, specifications, software, program, reports, other documents and things produced in the course of the provision of the Hardware/Products/Services and included in the scope of work and any deliverables specified in the Agreement.
- 1.9 “Documentation”** has the meaning set out in clause 14.1.
- 1.10 “GDPR”** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.
- 1.11 “Goods”** means the Hardware and Software.
- 1.12 “Hardware”** include the tangible goods, including hardware, spare parts and any related documentation that may accompany the hardware.
- 1.13 “incadea Standard Software”** means the international and national core version of incadea software.
- 1.14 “Intellectual Property Rights”** means any and all intellectual property rights arising under statutory law, common law or by contract including without limitation (i) patents, trademarks, design rights, copyrights (registered and unregistered), rights in databases, domain names, know-how, look and feel, rights in Confidential Information; (ii) any rights analogous to the foregoing; (iii) application filing, renewal and extensions of the foregoing.
- 1.15 “Know-how”** means technical information and technical design related information (including but not limited to automotive design, product design, graphic design, web design, corporate identity design, interior design, branding and user experience design) incorporated in the work results and/or necessary to commercially adequately exploit the work results achieved by incadea and/or on behalf of incadea, in particular and including (whether in written or electronic or magnetic form), trade secrets, unpatented inventions and other tangible or intangible information such as all documentation on research & development (encompassing without limitation documentation on research materials, test data, product data and safety data).
- 1.16 “Law”** means any and all applicable rules of law, statutes, statutory instruments, directives, regulations, orders and other instruments having the force of law and any applicable codes of conduct, guidance, directions and/or determinations with which Customer and/or incadea is bound to comply.

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- 1.17 “Material Defect”** means a defect in any item, whether tangible or intangible, or in the provision of a service, that substantially prevents the item or service from operating or functioning as designed or according to its specifications. The term "material defect" does not include a defect that:
- (A) has an insignificant or de minimis effect on the operation or functioning of an item or computer program;
 - (B) affects only a component of an item or program that, as a whole, substantially operates or functions as designed; or
 - (C) has an insignificant or de minimis effect on the efficacy of the service provided
- 1.18 “Open Source Code”** means Open Source Software, or the code thereof. Open Source Software and Open Source Code include software and code, respectively, that is licensed under any license that conforms to the Open Software Initiative (OSI) definition of open source software, and e.g. – including, but not limited to - any versions of the, Mozilla License, Common Public License, Apache License, BSD License, Artistic License or Sun Community Source License
- 1.19 “Parties”** means incadea and Customer, and a **“Party”** means either incadea or Customer as the case may be.
- 1.20 “Product”** means software of the incadea suite provided by incadea for which incadea provides support in accordance with this Agreement for Supported Release(s) of such product(s) only.
- 1.21 “Services”** means the maintenance and support services in relation to the Goods, as further specified in Appendix C.
- 1.22 “Software”** means the incadea Standard Software Software and the Customized Software, if applicable, set forth in Appendix B.
- 1.23 “Statement of Work”** shall refer to Appendix B and/or Appendix C, together or individually, as the context requires.
- 1.24 “Supported Release”** is an official release of one of incadea’s products.
- 1.25 “Third Party Software”** means any software, including, but not limited to, Open Source Code, that may be required for the operation and use of the Software and that (i) is manufactured by a party other than incadea and (ii) which may or may not have been incorporated into the Software by incadea.
- 1.26** The terms **“Controller”**, **“Processor”**, **“Data Subject”**, **“Personal Data”**, **“Personal Data Breach”** and **“Process/Processing”** have the same meaning as described in the Data Protection Laws.
- 2. Agreement and Order of Precedence**
- 2.1** The legal relationship between incadea and Customer shall be governed exclusively by this Agreement, including this GTC and all related Appendices, including all future transactions with Customer relating to the subject matter of this Agreement. Any terms to the contrary are hereby expressly excluded.

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3. In the event of any conflict between this GTC and other legal documents concluded by Customer and incadea, the conflict shall be resolved in accordance with the following order of precedence:
 1. this GTC;
 2. followed by each Appendix according to its numbering.
4. Scope of Goods/Services
 - 4.1 incadea shall provide Customer with the Goods/Services specifically set forth in the Appendices.
 - 4.2 Customer acknowledges and agrees that this Agreement does not constitute an exclusive agreement between Customer and incadea. Accordingly, incadea may provide such Goods/services to customers other than Customer.
5. Cancellations/Modifications
 - 5.1 Once Customer has placed an order or accepted the Statement of Work / Appendix B and/or C and/or D, Customer cannot cancel it.
 - 5.2 Customer may not change work in progress, except with incadea's written consent and agreement as to appropriate adjustments to be made and the effect, if any, of such changes on the price and time of delivery, provided that when Customer requires expedited service involving overtime, overtime charges will be added at incadea's sole discretion to the price specified on the face hereof or in an attached schedule.
6. Provision of Services
 - 6.1 incadea will provide the Services in accordance with Appendix A1, these GTC and the applicable specific terms.
 - 6.2 incadea may use third party contractors to perform incadea's duties. incadea will be responsible for the performance of the Services of such third-party contractors to the same extent as for its own employees.
 - 6.3 If any Service, in whole or in part, cannot be provided by incadea due to a Customer issue and Customer fails to provide incadea with reasonable advance notice, the time spent by the Consultants on such Service will be charged to Customer.
 - 6.4 The selection of individuals assigned or deployed to deliver the Services is at incadea's sole discretion and incadea reserves the right to replace any individual at any time at its sole discretion with an individual with substantially similar skills.
 - 6.5 Any Services, Deliverables, and Work Products provided by incadea to Customer prior to the execution of an Appendix B, C and D are the sole property and Confidential Information of incadea and shall be governed by the terms of these GTC and the applicable specific terms. If no Appendix B, C or D is completed, all Services, Work Products and Deliverables must be returned or deleted and must not be used.
 - 6.6 All dates with respect to performance of the Services are estimated and time shall not be deemed of the essence.

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7. Customer's Obligations

Customer shall:

- 7.1** ensure that the terms of any Statement of Work are complete and accurate and in accordance with the actual requirements;
- 7.2** co-operate with incadea in all matters relating to any Agreement;
- 7.3** provide incadea with such information and materials as incadea may reasonably require in relation to any Agreement, and ensure that such information is complete and accurate in all material respects;
- 7.4** make available to incadea all relevant resources (including personnel), instructions, information, data, documents, specifications, plans, drawings and other materials required for the delivery and implementation of the Goods and Services;
- 7.5** keep all materials, equipment, documents and other property of incadea (incadea Materials) at Customer's premises in safe custody at its own risk;
- 7.6** maintain incadea materials in good condition until returned to incadea, and not dispose of or use any incadea materials other than in accordance with incadea's written instructions or authorization.
- 7.7** If incadea's performance of any of its obligations under any Agreement is prevented or delayed by any act or omission by Customer or failure by Customer to perform any relevant obligation (Customer Default): (a) without limiting or affecting any other right or remedy available to it, incadea shall have the right to suspend performance of the Services until Customer remedies Customer Default, and to rely on Customer Default to relieve it from the performance of any of its obligations in each case to the extent Customer Default prevents or delays incadea's performance of any of its obligations; (b) incadea shall not be liable for any costs or losses sustained or incurred by Customer arising directly or indirectly from incadea's failure or delay to perform any of its obligations as set out in this clause 7.7; and (c) Customer shall reimburse incadea on written demand for any costs or losses sustained or incurred by incadea arising directly or indirectly from Customer Default.

8. Delivery of Hardware

- 8.1** Delivery dates of Hardware specified in Appendices are approximate and dependent upon (i) prompt receipt by incadea from Customer of all information necessary to permit incadea to proceed with its work immediately and without interruption; (ii) Customer's compliance with all terms and obligations of this Agreement, including payment terms and continued solvency. Incadea is not responsible in any delivery delay due to force majeure, as detailed in Section 18.
- 8.2** incadea shall deliver the Hardware FCA incadea designated facility or FCA place of shipment of incadea's supplier, export packing not included (INCOTERMS® 2010).
- 8.3** Partial deliveries shall be permitted.
- 8.4** Upon delivery, risk of holding such Hardware shall pass to Customer, provided that title to such Hardware shall not pass until the conditions specified in Section 8.8 are satisfied.

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- 8.5** Customer shall promptly inspect all Hardware for quantity differences, damages and nonconformity. Customer shall be deemed to have accepted all Hardware not rejected within fourteen (14) days following delivery.
- 8.6** Following acceptance, all claims of defect or non-conformity shall be governed by the warranty provisions herein.
- 8.7** In the event Customer requests an extension of the delivery date and incadea, in its sole discretion, agrees to extend such date, incadea may upon written notice place such Hardware in storage either at a incadea operated facility or at another location. In such events, (1) all costs incurred by incadea in connection with such storage, including, without limitation, costs of preparing such Hardware for storage, placement into storage, handling, storage/demurrage, inspection, preservation and insurance (or if storage shall be at a incadea operated facility, reasonable storage costs not to exceed five percent (5%) of the total price of the Hardware being stored for each month of storage), shall be due and payable by Customer upon receipt by Customer of incadea's invoices, and (2) incadea's delivery obligations shall be deemed fulfilled and title and risk of loss to the Hardware shall pass to Customer, if it has not already passed, and (3) when conditions permit and upon payment of all amounts due hereunder, the Parties shall arrange for shipment in accordance with delivery terms of the Order.
- 8.8** Title in and to the Hardware shall be transferred to Customer upon full and timely payment of any and all invoices issued under Appendix D. See 8.4
- 9. Acceptance of Software**
- 9.1** The conditions of acceptance of Software shall be as expressly that such Appendix does not otherwise specify an acceptance procedure, the following acceptance procedure applies:
- 9.2** Upon delivery by incadea of a completed Deliverable, Customer shall have fourteen (14) calendar days to accept or reject ("Acceptance Period") the Deliverable, due to a Material Defect based on the Acceptance Criteria for that Deliverable. In case the Customer neither accepts or rejects the Deliverable within fourteen (14) calendar days the Deliverable shall be deemed accepted.
- 9.3** If the relevant Deliverable passes the Acceptance Criteria set forth in Appendix B, Customer shall accept the Deliverable. Acceptance shall not be unreasonably withheld by Customer. If Customer notifies incadea that it rejects the Deliverable due to a Material Defect, Customer shall provide written notice, within the Acceptance Period, specifying the basis of the Material Defect.
- 9.4** incadea shall have a reasonable period to cure and redeliver the Deliverable for an additional Acceptance Period. If Customer fails to reject any Deliverable within the Acceptance Period, in a written document specifying the Material Defect, Customer shall be deemed to have accepted such Deliverable as of the fourteenth (14th) day of the Acceptance Period.
- 9.5** Upon acceptance of a Deliverable, all Services associated with such Deliverable shall be deemed accepted. Customer shall not make productive use of a Deliverable, unless it has been accepted by Customer (either expressly or by passage of time) and in the event that it does make productive use of a Deliverable without acceptance, Customer shall be deemed to have accepted such Deliverable as of the fourteenth (14th) day of delivery.

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- 10.1** The specific scope of the training services to be performed is set forth in the Statement of Work.
- 10.2** The training courses will be held in the language specified in the Statement of Work (“Course Language”) and will take place on the days (Monday to Friday with the exception of bank holidays) and at the times specified in the Statement of Work.
- 10.3** The Customer’s employees who attend the course (“Course Participants”) must have sufficient background knowledge related to the topics to be covered in the training course and must also have an adequate command of the Course Language. If the Course Participants do not have an adequate command of the Course Language, the Customer must provide an interpreter at its own expense. For reasons of quality assurance training requirements with regard to the prior knowledge of the Course Participants, e.g. with regard to the Course Language, previous completion of other training courses, levels of difficulty, etc. (training requirements), are specified in the Statement of Work. The Customer is obliged to ensure that the Course Participants who attend the course fulfil these training requirements.
- 10.4** The courses will be held at the locations specified in the Statement of Work. If the Customer and incadea have not agreed on a different location, the courses will be held at the incadea facilities.
- 10.5** Additionally, incadea may offer to the Course Participants remote training courses as set forth in the Statement of Work. To be sure this remote training course runs smoothly, the Customer will be responsible for giving access to a computer with internet connection at its facilities to the Course Participants .
- 10.6** In case of classroom trainings, the number of Course Participants and the training program are stated in the Statement of Work. If the agreed number of Course Participants is exceeded, incadea will be entitled to invoice the Customer for the additional Course Participants on a pro rata basis. If the maximum number of Course Participants has already been reached, however, incadea will not be obliged to allow additional participants to attend the Training Course.
- 10.7** If the Training Course is held at facilities of the Customer, the Customer shall be responsible for the provision of the infrastructure required for the performance of such training (e.g. allocation of work rooms and common rooms, sufficient number of workstation computers, including required software, video projector, flip chart/whiteboard, and ancillary technical equipment). Such infrastructure shall be provided by the Customer at its own expense.
- 10.8** Both the Customer’s employees and incadea’s training staff must comply with the house rules at the facilities where the Training Course is held.
- 10.9** The documentation and materials provided by incadea to the Customer in the course of the training (“Training Materials”) are protected under incadea’s or a third-party’s Intellectual Property and Copyrights. Any preexisting marking, copyright notices or indications of ownership may not be deleted or modified by the Customer. incadea grants Customer the rights to use the Training Materials upon payment of the agreed fee and only for the use by the Customer. The Customer may not use the Training Materials for any other purposes or pass them on to a third-party with prior written authorization by incadea.

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10.10 incadea warrants that the Training Services will be performed using reasonable skill and care consistent with generally accepted computer software industry practices.

10.11 Unless expressly set forth otherwise in the applicable Statement of Work, incadea disclaims all other express, implied or statutory warranties, including but not limited to warranties related to compatibility with software or hardware, non-existence of errors, non-existence of viruses, merchantability or fitness for a particular purpose.

11. Change Requests

11.1 The procedure described in this Section 11 shall apply to the following:

11.2 any changes in the Statement of Work, including, but not limited to, any changes to the Specifications, the Project Plan, the Fees (as defined in Appendix A1); and

11.3 any other changes that are, pursuant to the Statement of Work may be subject to this change request procedure.

11.4 Each Party may request a change at any time in accordance with the following procedure. A change request shall be in writing and shall contain sufficient information to enable the addressee to reasonably evaluate the change request, including (where applicable) the following:

- project identification;
- originator's name and title;
- the date of the change request;
- a description of the proposed change; and
- the reason for the proposed change.

11.5 incadea will assign a number to and log each change request.

11.6 All change requests will be categorized by the originator and to the extent practicable, processed by incadea in accordance with the following descending order as priority 1 (urgent), priority 2 (ordinary) or priority 3 (low).

11.7 If the Party submitting a change request cannot provide sufficient information using its own resources, the submitting Party can request the other Party to provide reasonable assistance without undue delay.

11.8 incadea will investigate the impact of the change request on the price, timetable and relevant obligations under the Statement of Work within ten (10) business days.

11.9 If not agreed otherwise in writing in the applicable Statement of Work, in case Customer is the originator of the change request and incadea estimates that the investigation will take more than half (0,5) man day of effort to prepare, then incadea will inform Customer, if incadea wishes to charge Customer for any incadea services in conducting the investigation. Customer will then decide whether incadea should conduct the investigation.

11.10 Except as otherwise provided herein, each Party shall bear its own cost incurred in connection with the change request procedure.

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11.11 A change request will only become binding, if and when it has been agreed by authorized parties of both Customer and incadea. No Party is under an obligation to perform work under a change request prior to the agreement of such change

12. Payment

12.1 Customer agrees to pay incadea in respect of the Goods/Services to be provided hereunder the fees set forth or determined in Appendix B and Appendix C and Appendix D.

12.2 All Fees are due in accordance with the payment schedule set forth in Appendix B and Appendix C and Appendix D. All Fees are quoted and payable in the currency stated in Appendix B and Appendix C and Appendix D.

12.3 The Fees are exclusive of all applicable sales, VAT or other taxes or duties and Customer shall pay all such taxes.

12.4 Any payment not received from Customer by the due date shall accrue interest (except with respect to charges then under reasonable and good faith dispute), of nine (9) percent points above the base interest rate published by the German Federal Bank from the date such payment is due until the date paid, or the maximum amount allowable by law. Customer acknowledges that incadea reserves the right to suspend or interrupt Customer's use of the Software, cease providing updates and/or suspend delivery of support to Customer for any period during which any payment due in accordance with the terms of this Agreement remain unpaid for fifteen (15) days after incadea provides advanced written notice (including by way of email) of such unpaid payments to Customer. In such event, incadea shall not be precluded from exercising any additional remedies that might be available to it under the terms of this Agreement or otherwise.

13. Customs

13.1 Unless otherwise agreed by both Parties, each Party shall respectively be responsible for all customs arising out of its transactions.

14. Documentation

14.1 Upon delivery of the Goods and Services, incadea shall provide a copy of all available documentation relating to the Goods and Services at no additional charge, cost or fee (the "Documentation"). In the event further documentation will be available at a later stage, incadea shall furnish additional copies of any such Documentation to Customer at no additional charge, cost or fee.

15. Warranty

15.1 incadea expressly represents and warrants to Customer, Customer's successors and assigns, that

15.2 as the date hereof, the Software and Services, including all components thereof, their specifications, and any other materials, including updates and revisions of the foregoing, provided pursuant to this Agreement, do not infringe any third party rights which would impair the contractually agreed use of the Services;

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- 15.3** the Services provided hereunder shall be performed by incadea in a professional manner by qualified personnel trained and skilled in the performance of the specific services involved;
- 15.4** the Services provided hereunder shall be provisioned by incadea in accordance with the terms of Customer service warranties or service level Agreement (if any), set forth in Appendix D and agreed by the Parties; and
- 15.5** all Hardware delivered to Customer shall (i) conform to the specifications, set forth in the relevant Agreement; (ii) be free from material defects in workmanship and material and shall be new (unless otherwise specifically agreed with Customer); (iii) Customer shall receive title to the Hardware that is free and clear of any mortgages, liens, or encumbrances; and (iv) be adequately contained, packaged, marked and labelled.
- 15.6** Hardware delivered to the Customer may be rejected by Customer and returned at incadea's risk and expense, if at any time found defective, deficient or non-conforming in the above mentioned respects during the warranty period set forth in the relevant Appendix D. Without limitation, incadea shall have no liability to Customer or any third party arising out of defects or non-conformance caused or attributable to the Customer. In case the warranty period is not set forth in the relevant Appendix D, the warranty period shall be twelve (12) months.
- 15.7** Unless set forth otherwise in the relevant Appendix D, the warranty period shall commence upon the date of delivery of the respective Hardware.
- 15.8** During the warranty period incadea, at its sole option, shall at its own cost, repair the Hardware or replace them with new Hardware that are free from defects, unless Customer cancels the Purchase Order concerned, wholly or in part. The Parties acknowledge that the repair and/or replacement includes only the OEM specified warranty, and does not include reconfiguration, setup or data restoration. Repair and replacement shall be carried out without undue delay upon demand.

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15.9 For greater certainty, other than the conformance with the Acceptance Criteria set out in Section 9, no other warranty is made with respect to the Software.

15.10 To the maximum extent permitted by applicable law, the Goods and Services, including the Software, Third Party Software and Hardware, as applicable, are provided “as is” and “with all faults”, and incadea disclaims all other warranties, representations, guarantees or conditions, express or implied, including the implied warranty and condition of merchantability, satisfactory quality, fitness for a particular purpose or the use of reasonable skill and care. Without limiting the generality of the foregoing, incadea makes no express or implied warranties, representations, guarantees or conditions of merchantability, fitness for a particular purpose, the use of reasonable skill and care, non-infringement, satisfactory quality, accuracy, freedom from error or that the Software, Third party Software, Services or hardware will meet all of the Customer’s requirements. incadea makes no express or implied warranties, representations, guarantees or conditions with respect to any Third Party Software or third party services provided with or as part of the Software, Hardware or related Services. incadea’s limited warranties do not apply to any Software which has been modified or altered in any manner by anyone other than incadea or its authorized agent. Some jurisdictions may not allow the exclusion of certain or any express or implied warranties, representations, guarantees or conditions, so the above exclusion may not apply to such Customer. In that event, such warranties, representations, guarantees or conditions are limited in duration to the warranty period to the extent legally permissible.

15.11 Nothing in this Agreement excludes, restricts, or modifies any right or remedy, or any guarantee, representation, warranty, condition or other term, implied or imposed by any applicable law which cannot lawfully be excluded or limited. This may include any consumer law which contains guarantees that protect the purchasers of goods and services in certain circumstances. If any guarantee, representation, warranty, condition or other term is implied or imposed concerning this Agreement under any consumer law or any other applicable law and cannot be excluded (a “Non-Excludable Provision”), and incadea is able to limit the Customer’s remedy for a breach of the Non-Excludable Provision, then the liability of incadea for breach of the Non-Excludable Provision is limited to one or more of the following, at incadea’s option: (a) in the case of Goods, the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired; or (b) in the case of Services, the supplying of the services again, or the payment of the cost of having the services supplied again.

15.12 The parties agree that it is the Customer’s responsibility to determine whether the Software is suitable for the Customer’s requirements. No other terms, conditions, representations, warranties or guarantees, whether written or oral, express or implied, will form a part of this Agreement or have any legal effect whatsoever.

16. Limitation of Liability

16.1 Customer assumes sole responsibility for results obtained from use of the Goods or Services and any conclusions drawn from such use. incadea shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to incadea by Customer in connection with the Goods or Services, or any actions taken by incadea at Customer’s direction.

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16.2 Subject to clause 16.1, and except in respect of (i) loss or damage from acts causing death, bodily injury or illness, or (ii) Section 17.2 (incadea indemnification):

16.2.1 incadea's liability shall in no case exceed the aggregate of 12 months fees received by incadea directly from Customer immediately preceding the event giving rise to such claim.

16.2.2 incadea will not be liable for, even if incadea is advised, or may reasonably supposed to have been aware, of the possibility of such damages in advance, (i) special, punitive, indirect, incidental or consequential damages, nor (ii) any loss of revenue, profits, goodwill or data, or data use (including as a result of a virus), business interruption, failure to realize an expected saving, corruption of data, or claims against them by any third party . Such limitations will apply regardless of how the claim arises, whether arising based on contract, tort, negligence, or otherwise and will apply to all order forms, schedules, addenda, agreements and attachments related to this Agreement. The foregoing limitations of liability allocate the risks between the parties and form a material basis of the bargain between the parties. incadea's pricing reflects this allocation of risk and the limitation of liability specified herein.

16.3 Subject to clauses 16.1 and 16.2 above, any other liability of incadea is excluded.

16.4 Any exclusion or limitation of liability in favor of incadea pursuant to this Section 16 applies for the benefit of incadea's employees if Customer seeks redress directly against any of incadea's employees.

17. Indemnification

17.1 Cross-Indemnity Claims. incadea and Customer (each an "Indemnifying Party") will indemnify, defend and hold harmless the other Party, its directors, officers, employees, affiliates and agents ("Indemnified Party(ies)") from all Claims, damages, liabilities, costs and expenses, including actual, out-of-pocket reasonable attorneys' fees and expenses, relating to:

17.1.1 the death or personal injury of third parties, including invitees or employees of the Indemnified Party, in any way resulting from the negligent or willful acts or omissions of the Indemnifying Party or any of its employees, consultants, subcontractors, agents and/or representatives;

17.1.2 the damage or destruction of real or tangible personal property of the Indemnified Party or third parties, including invitees or employees of the Indemnified Party, in any way resulting from the negligent or willful acts or omissions of the Indemnifying Party or its employees, consultants, subcontractors, agents and/or representatives;

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17.1.3 Claims asserted by any employee or former employee of a Party, attributable to any period while the employee was employed by the Party and arising out of the employer Party's employment of the employee, including Claims for (a) a violation of Law for persons of a protected class by the employer Party, including unlawful discrimination, (b) any work-related injury or death caused by the employer Party, except if the Claim can be covered by workers compensation coverage, (c) accrued employee benefits not expressly provided for by the other Party, (d) any representations, oral or written, made by the employer Party to the other Party's employees, and (e) any other aspect of the employees' employment relationship with the employer Party or the termination of the employment relationship (including Claims for breach of an employment contract).

17.2 incadea Indemnification.

17.2.1 incadea will indemnify, defend and hold harmless the Customer, its directors, officers, employees, affiliates and agents ("Customer Indemnified Party(ies)") from all Claims, damages, liabilities, costs and expenses, including actual, out-of-pocket reasonable attorneys' fees and expenses, relating to any action brought against the Customer Indemnified Parties by a third party based upon a claim that the Customer's use (within the scope of this Agreement) of the Software provided by incadea to the Customer under the Agreement infringes upon or misappropriates the proprietary rights held by a third party (except as may have been caused by a change by the Indemnified Party or its employees, consultants, subcontractors, agents and/or representatives in the operation or use of such Licensed Product, services, data or programs without authorization or consent of the Indemnifying Party); provided that the Customer notifies incadea promptly in writing of such claim, provides incadea with the sole control and authority to defend or settle such action or claim, and gives incadea the authority, information and assistance necessary to settle or defend such claim.

17.2.2 In the event a claim of infringement is made, or incadea believes that such a claim is likely to be made, then incadea shall at its expense: (a) procure the right for the Customer to continue using the Software; (b) replace or modify the Software so that it becomes non-infringing, without materially decreasing the functionality of the Software; or (c) if neither (a) or (b) above is commercially practical, then at incadea's sole option, terminate this Agreement upon three (3) months written notice, and either issue to the Customer a credit equal to, or promptly refund to the Customer, the annual fee for the then-current annual period, less an appropriately prorated amount for use, reflecting the number of months during which the Customer enjoyed uninterrupted use of the Software during that annual period.

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- 17.2.3 Notwithstanding the foregoing, incadea shall have no obligation to defend the Customer Indemnified Parties or to pay any costs or legal fees for any action, claim or settlement, based upon: (a) use of a version of the Software that was not, at the time that the claim arose, the current unaltered version of the Software provided by incadea hereunder, including, without limitation, failure of the Customer to install updates containing modifications to make the Software non-infringing; (b) combination, operation, integration or interfacing of the Software with third party materials, other than Third Party Software with which the Software was intended to operate as specified in the Documentation associated with the Software if such claim would not have arisen but for such combination, operation, integration or interfacing (regardless of whether or not incadea has advised the Customer that such use would likely result in a claim of infringement by a third party); (c) use of the Software in a manner other than as authorized by the Documentation, the Statements of Work or this Agreement; (d) incadea's compliance with the designs, plans, or specifications furnished by or on behalf of the Customer; (e) modifications to the Software by any person other than incadea or its authorized agents or subcontractors; or (f) the Customer's failure to accept any procured right to continue using the Software.
- 17.2.4 The foregoing states incadea's sole and exclusive liability and the sole and exclusive remedy of Customer Indemnified Parties with respect to any claim of infringement or misappropriation of intellectual property rights or proprietary rights of any third party.
- 17.2.5 The Customer shall defend, indemnify and hold harmless incadea from and against any and all third party claims, actions, causes of action, liabilities, damages, costs and expenses, including reasonable legal fees, arising from or related to the exclusions (a) through (f) set out in the third paragraph of Section 17.2.3.

18. Excusable Delays (Force Majeure)

- 18.1** Neither Party hereto shall be responsible for delays or failures in performance resulting from acts beyond its reasonable control and without its fault or negligence. Such excusable delays or failures may be caused by, among other things, war (including preparation period), riots, rebellions, accidental explosions, floods, storms, acts of God and similar occurrences.
- 18.2** The Party claiming such force majeure condition shall notify the other Party as promptly as practicable after such Party becomes aware of the occurrence of such force majeure condition. If there is any such delay, then the periods for the completion of the Parties obligations hereunder shall be automatically extended by the period of such delay.
- 18.3** Notwithstanding the foregoing, either Party may terminate the Agreement in the event that the other Party is unable to fulfill its obligations pursuant to the Agreement because of such excusable delays which continue in effect for thirty (30) consecutive days.
- 18.4** Notwithstanding the provisions hereof, in every case, the Party claiming excusable delay shall exercise all reasonable efforts to mitigate the extent of such delay or failure.

19. Data Protection

If and insofar as incadea is required to process personal data on behalf of Customer and/or third parties in connection with the provision of the Services, the following terms shall apply.

Incadea General Terms and Conditions**19.1** Description of Personal Data Processing

19.2 In Exhibit 1 to this GTC, the Parties have set out their understanding of the Personal Data to be Processed by Incadea pursuant to this Agreement.

19.3 Data Processing Terms

19.4 In the course of performing their mutual obligations pursuant to the Agreement, both Parties shall duly observe their respective obligations under the Data Protection Laws.

19.5 The Parties agree that Incadea Processes Personal Data for Customer as a Processor. In respect of such Processing of Personal Data, Incadea shall:

19.6 process the Personal Data solely on the documented instructions of Customer, for the purposes of providing the Services, unless required by European Union or Member State law to which Incadea or any Incadea Affiliate is subject, in which case Incadea shall inform Customer of that legal requirement before such Processing, unless that law prohibits such information on important grounds of public interest;

19.7 process only the types of Personal Data, relating to the categories of Data Subjects, and in the manner required to deliver the Services, as is set out in Exhibit 1, or as otherwise agreed in writing by the Parties;

19.8 take all measures reasonably appropriate in accordance with Article 32 of the GDPR to ensure the security of the Personal Data;

19.9 take reasonable steps to ensure the reliability of any staff who may have access to the Personal Data, and their treatment of the Personal Data as confidential;

19.10 be generally authorized to permit third parties to Process the Personal Data ("Sub-Processor"), subject to Incadea meeting the conditions set out in Article 28 (2) and (4) of the GDPR;

19.11 promptly notify Customer of any communication from a Data Subject regarding the Processing of their Personal Data, or any other communication (including from a supervisory authority) relating to either Party's obligations under the Data Protection Laws in respect of the Personal Data;

19.12 notify Customer without undue delay of any Personal Data Breach, such notice to include all information reasonably required by Customer to comply with its obligations under the Data Protection Laws;

19.13 provide Customer on request, via correspondence, with all information reasonably required in order to demonstrate compliance with this clause 19.2, and, where Customer still has reasonable doubts regarding Incadea's compliance, permit Customer, on reasonable prior notice, and on no more than one occasion per calendar year (except where there is reasonable suspicion that Incadea is in breach of the terms of this clause 19.2), to inspect and audit the facilities used by Incadea to Process the Personal Data, and any and all records maintained by Incadea relating to that Processing, subject to Incadea withholding access to any records containing confidential information pertaining to other clients of Incadea and Customer bearing the reasonable costs of Incadea incurred in facilitating the audit;

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- 19.14** provide commercially reasonable assistance requested by Customer in relation to (i) any communication received under clause 19.11, as well as any similar communication received by Customer directly; and (ii) any Personal Data Breach, including by taking any appropriate technical and organizational measures directed by Customer; and (iii) any data protection impact assessment which Customer is required to perform under Article 35 of the GDPR in respect of Processing undertaken by Incadea, taking into account the nature of the Processing and the information available to Incadea;
- 19.15** cease Processing the Personal Data upon the termination or expiry of this Agreement and, subject to Customer expressly exercising such option in writing, either return, or delete the Personal Data upon Customer's request.
- 19.16** Customer shall ensure that, wherever it discloses Personal Data to Incadea, it is authorized to do so in accordance with the Data Protection Laws for the purposes of Incadea processing that Personal Data to provide the Services.
- 19.17** The Parties agree that the Customer shall serve as a single point of contact for Incadea and be solely responsible for internal coordination, review and submission of any Processing instructions in respect of which any Customer Affiliate is the Controller.

20. Term

- 20.1** This Agreement shall commence on the Effective Date set forth above, and shall continue in effect until the last period specified in any Appendix, unless previously terminated in accordance with the below.

21. Termination

Termination by Material Default

- 21.1** If a Party commits a material default of any of its undertakings under the Agreement, the other Party shall notify the Party in default of the default in writing, stating a reasonable time, within which the Party in default shall remedy said default.
- 21.2** Should the occurred default remain unremedied after the expiry of the reasonable period stated in the above mentioned notice, the other Party is entitled to terminate the Agreement by giving written notice of termination to the Party in default, the date of such written notice being the termination date.

21.3 Termination by Specific Defaults

A Party shall have the right at any time by giving notice in writing to the other Party to terminate any Agreement forthwith if:

- 21.4** a bankruptcy or composition procedure is initiated against the other Party, or a receiver is appointed to control the assets of the other Party, or a winding up order is made against the other Party; or
- 21.5** the financial position of the other Party deteriorates to such an extent that in the opinion of the Party the capability of the other Party adequately to fulfill its obligations under the Agreement has been placed in jeopardy.

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- 21.6** In the event of a termination of this Agreement, the following shall occur:
- 21.7** Customer shall be obligated to continue paying all fees owed or owing under the applicable period, in accordance with the payments set out in this Agreement.
- 21.8** Any license to use the Software granted herein shall terminate and the Customer shall have no further access to the Software.
- 21.9** Incadea shall not be under any Services obligations for support or maintenance hereunder;
- 21.10** Each party shall return to the other all proprietary and Confidential Information of the other; and
- 21.11** Customer shall return to incadea or destroy all written materials, documents, media items or other materials containing, comprising, embodying or relating to incadea property (including source code), including on any electronic storage media or devices, possessed by Customer, Customer's employees and/or Customer's independent contractors.
- 21.12** The provisions of the Agreement concerning incadea's proprietary rights, trade secrets, and confidentiality shall survive termination.

22. Confidentiality

- 22.1** During the term of the Agreement, the Parties acknowledge that Confidential Information may be mutually disclosed.
- 22.2** The Parties agree that Confidential Information shall be used only for the sole purpose of discussions or implementation of the Agreement and shall not disclose such Confidential Information, whether directly or indirectly, to any third party without prior written approval of the other Party.
- 22.3** Such restrictions on the use or disclosure of such Confidential Information shall not apply to such information which:
- 22.4** prior to the receiving Party's receipt thereof was publicly available or in the receiving Party's possession from a source other than the disclosing Party, or
- 22.5** after the receiving Party's receipt thereof becomes publicly available other than as a consequence of a breach of the receiving Party's obligations hereunder, or
- 22.6** is independently developed by the receiving Party and such independent development can be proved without doubt, or
- 22.7** is required to be disclosed pursuant to statutory regulations or regulations under administrative law or by reason of a non-appealable judicial decision, and the receiving Party makes this requirement known to the disclosing Party without undue delay and the extent of the disclosure is restricted as far as possible; the receiving Party will ensure confidential handling of the Confidential Information by the court or the authorities to the best of its ability.
- 22.8** Each Party agrees to exercise reasonable care in protecting the Confidential Information to prevent the disclosure of such Confidential Information to outside parties.

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22.9 Notwithstanding the foregoing, Customer may disclose incadea's Confidential Information to the extent necessary for Customer to use Goods in the manufacture, use or sale of Customer's products, provided Customer uses reasonable efforts by contract or otherwise with third parties to preserve confidentiality of such information. Incadea may disclose confidential information to the extent required by legal obligations in particular in accordance to underlying license agreements with Microsoft and execution of this Agreement shall constitute Customer's express consent to the foregoing .

23. Intellectual Property

23.1 Customer agrees that the Goods and Services, including but not limited to the content, graphics, scripts and software used to implement the Services, contain proprietary information and material that is owned by incadea and /or its licensors, and is protected by applicable intellectual property and other laws, including but not limited to copyright. Customer agrees that he will not use such proprietary information or materials in any way whatsoever except for use of the Goods and Services in compliance with this Agreement.

24. No Corrupt Practices

24.1 incadea agrees that in performance of its obligations hereunder, it will not make or offer to make any payments to, or confer, or offer to confer any benefit upon any employee, agent or fiduciary of any third party, with the intent to influence the conduct of such employee, agent or fiduciary in relation to the business of such third party, in connection with any Agreement or the provision of services thereunder.

24.2 incadea represents and warrants that none of Customer's officers, directors, employees or immediate family members thereof (collectively, the "Customer Personnel") has received anything of value of any kind from incadea, or its officers, directors, employees or agents in connection with any Agreement; and that no Customer Personnel has a business relationship of any kind with incadea's officers, directors, employees or agents.

25. Relationship of the Parties

25.1 incadea and Customer are independent contracting Parties. Nothing in this Agreement shall make either Party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either Party any authority to assume or to create any obligation on behalf of or in the name of the other.

26. Assignment

26.1 Unless otherwise specifically permitted herein, no Party shall assign any of its obligations under the Agreement without the prior written consent of the other Party, however incadea shall be entitled to assign its rights and obligations under this Agreement without consent to any entity within its corporate group.

26.2 To the extent that incadea assigns to third parties any of its obligations set forth in any Agreement, incadea shall remain fully responsible for such obligations and for all acts or omissions of its assignees or agents.

27. Notices

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27.1 Any notice, request, waiver, consent or approval shall be in writing in English and shall be deemed to have been duly given or made when it is delivered by hand or by prepaid registered post or facsimile to the Party to which it is required or permitted to be given and made at such Party's address or to such facsimile number set forth in this GTC or such other address or facsimile number as may be communicated in writing to the other Party.

27.2 The Parties shall promptly notify the other of any change of address or facsimile numbers.

28. Entire Agreement

28.1 These GTC together with the applicable specific terms in the Appendices, together with all addenda, schedules, and exhibits constitutes the entire agreement between the Parties and supersedes all prior or contemporaneous agreement and understandings between the Parties relating to the subject matter hereof.

29. Written Form

29.1 Any modification of these GTC and/or any Appendix shall be valid only if in writing and signed by the authorized representatives of the Parties. A contractual waiver of this clause must also be in writing and signed by the Parties.

30. Governing Law

30.1 The validity, construction and enforcement of these GTC (including this Section) the specific terms, any Appendix, and the interpretation of the rights and duties of the Parties hereto shall exclusively be governed by, and be construed in accordance with, the Laws of the Federal Republic of Germany, without regard to principles of conflicts of laws and without regard to the UN Convention on the Sale of Goods (CISG).

31. Dispute Resolution and Jurisdiction

The Parties will use their reasonable best efforts to resolve any dispute hereunder through good faith negotiations. A Party must submit a written notice to the other Party and any such dispute that cannot be resolved within forty-five (45) calendar days of receipt of such notice (or such other period to which the Parties may agree) may be submitted to the courts of Munich (Landgericht München I), Germany

31.1 Any and all disputes, claims or litigation arising from or related in any way to these GTC and/or the specific terms, any Appendix, including its formation, shall be exclusively submitted to and resolved by the courts of Munich (Landgericht München I) , Germany.

32. Severability

32.1 If any provision of this Agreement should be or become wholly or partially void, ineffective or unenforceable, the validity, effectiveness and enforceability of the other provisions of this Agreement shall not be affected thereby. Any such invalid, ineffective or unenforceable provision shall be deemed replaced by such valid, effective and enforceable provision as comes closest to the economic intent and purpose of the invalid, ineffective or unenforceable provision as regards subject-matter, extent, time, place and scope. The aforesaid shall apply *mutatis mutandis* to any gap in this Agreement.

Incadea General Terms and Conditions**Appendix A1 -****Terms and Conditions for the Licensing of incadea Software****(License – permanent Model)**

This Appendix A1 - Terms and Conditions for the Licensing of Software (“Appendix A1”) together with the General Terms and Conditions for Sales and Services (the “GTC”) apply to any agreement regarding the licensing of Software (the “Software”) by incadea and the Customer (as defined in the GTC).

By accessing or using the Software or authorizing or permitting any individual to access or use the Software, Customer agrees to be bound by the GTC and this Appendix A1.

1. Definitions

Capitalized terms shall have the meanings set forth in the GTC and as defined below:

- 1.1 **“Activation Date”** means the date the Software is first made available to Customer in connection with the terms set forth in Appendix B.
- 1.2 **“Customized Software”** means the software program or modules to be developed by incadea pursuant to Agreement in accordance with specifications set out in Appendix B (**“Specifications”**), together with user manuals, other documentation and any other ancillary materials to be developed by incadea in relation thereto. For the avoidance of doubt, Customized Software does not include incadea Standard Software and/or Third Party Software.
- 1.3 **“incadea Standard Software”** means the international and national core version of incadea software.
- 1.4 **“Software”** means the incadea Standard Software and the Customized Software, if applicable, set forth in Appendix B.
- 1.5 **“Location”** means the site(s) at which the Software is installed and which is set forth in Appendix B.
- 1.6 **“Open Source Code”** means Open Source Software, or the code thereof. Open Source Software and Open Source Code include software and code, respectively, that is licensed under any license that conforms to the Open Software Initiative (OSI) definition of open source software, and e.g. – including, but not limited to - any versions of the, Mozilla License, Common Public License, Apache License, BSD License, Artistic License or Sun Community Source License
- 1.7 **“Privacy Policy”** means incadea’s Privacy Policy which can be found at www.incadea.com.

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- 1.8 **"Production Use"** means the earlier of i) one or all of the Software applications is put into commercial use, or ii) 15 days after incadea provides notice that one or all of the Software applications is ready for commercial use.
- 1.9 **"Project Plan"** means the project plan for the development of the Customized Software as set forth in Appendix B.
- 1.10 **"Release"** means an aggregation of updates resulting in functional, operational or performance changes to the Software, and any related Documentation provided to Customer from time to time.
- 1.11 **"Territory"** shall mean the territory set forth in Appendix B.
- 1.12 **"Third Party Services"** means any services that (i) are provided by a party other than incadea and (ii) has not been incorporated into the Services by incadea.
- 1.13 **"Third Party Software"** means any software, including, but not limited to, Open Source Code, that may be required for the operation and use of the Software and that (i) is manufactured by a party other than incadea and (ii) which may or may not have been incorporated into the Software by incadea.
- 1.14 **"Updates"** means a correction or revision, or a series of corrections or revisions, to the Software and any related Documentation provided to Customer from time to time.
- 1.15 **"Upgrades"** means the upgrade to the next product version

2. License Grant

- 2.1 Subject to this Appendix A1, including the restrictions set forth in Section 3, incadea grants to Customer a non-exclusive, non-transferable right and license to use object code versions of the Software and the Documentation in the Territory solely for Licensee's internal operations and in accordance with the Documentation.
- 2.2 Customer acknowledges that this Appendix A1 do not apply to the licensing of Third-Party Software. Customer agrees that the rights and licenses with respect to Third Party Software and Third Party Services shall be under terms set forth in the pertinent purchase, license or services terms and conditions of the vendors of such Third Party Software or Third Party Services. Customer shall comply with appropriate purchase, license, or services agreements with respect to any Third Party Software or Third Party Services. Any amounts payable to third party vendors or service providers under such agreements are the sole responsibility of Customer and shall be paid directly by Customer to such third party vendors or service

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providers. Customer shall indemnify, defend and hold harmless incadea, its directors, officers, employees, affiliates and agents (the “Indemnified Party”) from any and all claims, damages, liabilities, costs and expenses, including actual, out-of-pocket reasonable attorneys’ fees and expenses, relating to any damage suffered by an Indemnified Party caused by Customer’s non-compliance with appropriate purchase, license, or services agreements with respect to any Third Party Software or Third Party Services.

3. Maintenance & Support Services

3.1 For any support period for which the Fees have been paid, incadea shall provide maintenance and support services for the Software which shall commence as from the Activation Date, as detailed in Appendix C.

3.2 Subject to Section 3.5, below, the maintenance and support services to be provided hereunder are comprised of the following (collectively, the “Maintenance/Support Services”):

3.2.1 General support, including:

3.2.1.1 Issues diagnostics;

3.2.1.2 Responding to Software functionality questions that are not covered in the Software Documentation;

3.2.1.3 Problem determination including the identification of problems as related to the Software;

3.2.2 Issues Correction. Subject to Appendix C incadea will use commercially reasonable efforts to correct all verifiable and reproducible Issues in the Software reported by Customer in writing to incadea. Incadea shall identify and provide Issue Corrections for Issues on the timelines defined in Appendix C hereto.

3.2.3 Update. Incadea shall provide Customer with Updates and Releases that incadea offers to other Software customers during any period that this Agreement is in effect. All such Updates and Releases are issued by incadea in its sole discretion, and shall become part of the Software for the purposes hereof. Customer agrees to use such updated version.

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- 3.2.4 Upgrades. From time to time during the term of this Agreement, incadea may prepare and offer Upgrades to the Customer. Any such upgrade will be subject to additional charges.
- 3.3 Incadea is under no obligation to provide support services for non-incadea Software related problems.
- 3.4 Exclusions. incadea shall have no obligation to provide Maintenance/Support Services to:
- Version of the Software other than the current version installed at the installation Location.
 - Errors not reported by Customer in writing to incadea or reported to incadea after termination of this Agreement.
 - Errors resulting from misuse, negligence, revision, modification, or improper use of all or any part of the Software; or to or caused by Third Party Software or Licensee's or other third party products.
 - Problems caused by: **(i)** problems connecting to the Internet; **(ii)** improper browser usage; **(iii)** Licensee's failure to provide a suitable operating environment, **(iv)** non-employee usage, or **(v)** discontinuation of Maintenance/Support Services.
 - Data or data input, output, accuracy, and suitability, which shall be deemed under Customer's exclusive control. Data integrity, storage, and back-up and any use of or reliance on data or data output are Licensee's sole responsibility.
 - Additional services (e.g., installation and training), or equipment or software not specifically covered under the Software License Agreement such as (but not limited to) operating systems, hardware, databases, product licenses or, installation.
- 3.5 Any services or requests by Customer not explicitly contemplated herein may be performed by incadea at incadea's then current additional services rates.
- 3.6 Maintenance/Support Services shall be provided for the term specified in Appendix C, commencing on the Effective Date provided that Customer prepays the Fees applicable thereto and till December 31st of the year following the commencing year . Such term shall renew automatically for one (1) year periods (each a "Renewal Period") thereafter unless

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terminated in accordance with this Agreement. If Customer fails to prepay Maintenance/Support Services Fees for any Renewal Term in a timely manner, Maintenance/Support Services shall not automatically renew and shall terminate on the expiration of the prior term. For the avoidance of doubt, any termination or failure to prepay under this section shall be a breach of this Agreement and incadea shall have no obligation to provide Maintenance/Support Services. incadea shall have the right to change the Maintenance/Support Services Fee upon sixty (60) days written notice to Customer prior to the expiration of the initial or any renewal term.

4. Implementation and Hosting.

- 4.1 Implementation of the Software shall be performed in accordance with Appendix B and shall be deemed accepted upon Production Use.
- 4.2 Customer shall take responsibility for hosting and agree to abide by the restrictions and responsibilities set out in Appendix B incadea has no liability for failure of the Software based upon Customer's failure to comply with such system requirements. Alternatively, if applicable, hosting services will be provided in accordance with Appendix E.

5. Training

- 5.1 Training shall be provided according to specific scope of training services set forth in Appendix B, and subject to the terms in the GTC.

6. Development of Customized Software

- 6.1 Customer may engage incadea to design and develop Customized Software. If applicable, the Project Plan, Specifications and Fees in relation thereto shall be separately set out in Appendix B.
- 6.2 If applicable, incadea hereby agrees to design and develop the Customized Software in accordance with the Project Plan and the Specifications, and the Parties shall work together in a joint effort to accomplish the tasks and objectives set forth in the Specifications.
- 6.3 incadea shall be responsible for delivering and performing only those professional services specifically identified in the Specifications.
- 6.4 Any modifications to the Specifications shall be pursuant to the Change Order process set forth in the GTC.
- 6.5 The terms of the license granted to the Customer in Section 21 shall apply *mutatis mutandis* to any Customized Software.
- 6.6 Notwithstanding any provision in this Agreement to the contrary, any routines, methodologies,

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processes, libraries, tools or technologies created, adapted or used by incadea in its business generally, including all associated intellectual property rights (collectively, the “Development Tools”), shall be and remain the sole property of incadea, and Customer shall have no interest in or claim to the Development Tools, except as necessary to exercise its rights in the Products. In addition, notwithstanding any provision of this Agreement to the contrary, incadea shall be free to use any ideas, concepts, or know-how developed or acquired by incadea during the performance of this Agreement to the extent obtained and retained by incadea’s personnel as impression and general learning. Subject to and limited by Customer’s intellectual property rights described in Section 2 above, nothing in this Agreement shall be construed to preclude incadea from using the Development Tools for use with third parties for the benefit of incadea.

7. Restrictions and Responsibilities

- 7.1 The licenses granted in Section 2 are explicitly conditioned on Customer’s adherence to the following restrictions and compliance with its responsibilities as set forth herein.
- 7.2 Customer must comply with all restrictions set forth in this Appendix A1, the Privacy Policy, and any and all other applicable incadea guidelines as published from time to time in all uses of the Software and the Services.
- 7.3 If incadea believes, in its sole discretion, that Customer has violated or attempted to violate any term, condition or the spirit of this Appendix A1, the license afforded Customer pursuant to this Appendix A1 may be temporarily or permanently revoked, with or without notice to Customer.
- 7.4 Customer will not conceal, remove or alter any proprietary notice or legend regarding incadea’s proprietary rights in the Services.
- 7.5 Customer shall not, and shall not attempt to: (a) interfere with, modify or disable any features, functionality or security controls of the Software, (b) defeat, avoid, bypass, remove, deactivate or otherwise circumvent any protection mechanisms for the Software, (c) reverse engineer, decompile, disassemble or derive source code, underlying ideas, algorithms, structure or organizational form from the Software; (d) rent, lease, sell, sublicense or otherwise transfer the Software to third parties; or (e) make the Software available in any form to any person other than the Customer’s employees, agents and contractors whose job performance requires such access.
- 7.6 The Customer shall use reasonable care and protection to prevent the unauthorized use, copying, publication or dissemination of the Software. The Customer shall not allow access to the Software by any service bureau, third party outsourcer, or other similar third party service provider unless incadea consents to such access in writing.
- 7.7 Customer acknowledges that it shall contract for and have active sufficient number of licenses under active maintenance to support the maximum number of users accessing the solution.

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8. Fees

- 8.1 Customer agrees to pay the fees and charges mutually agreed upon by the Parties and set forth in Appendix B (collectively, “Fees”).
- 8.2 All Fees are due in accordance with the payment schedule set forth in Appendix B.
- 8.3 The licenses granted in Section 2 granted are conditional on Licensee’s payment of the Fees.

9. Ownership

- 9.1 As between incadea and Customer, all right, title and interest in the Software, including Customized Software, and all modifications and enhancements thereof by incadea, including all copyright rights, patent rights, trademark rights, and other intellectual property rights in each of the foregoing, belong to and are retained solely by incadea or incadea’s licensors and providers, as applicable.
- 9.2 Except for the express licenses granted in Section 2 (License Grant), there are no other licenses granted to Customer, neither express nor implied.
- 9.3 All rights in the Software, including Customized Software, not granted in this Appendix A1 are reserved by incadea.

10. Audit

- 10.1 During the Term and for a period of three (3) years after its expiration or termination, Customer shall maintain complete and accurate records of Customer’s use of the Software sufficient to verify compliance with this Agreement.
- 10.2 No more than once per twelve (12) month period, Customer will allow incadea and its auditors the right to examine such records and any applicable books, systems (including incadea product(s) or other equipment), and accounts, upon reasonable advanced notice, during Customer’s normal business hours, including for greater certainty, at local affiliate or branch offices of the Customer.
- 10.3 If the audit discloses underpayment of license fees, Customer will pay such license fees plus the reasonable cost of the audit within thirty (30) days of receipt of written notice.

11. Term and Termination

- 11.1 The license set out in Section 2 shall commence as from the Activation Date and shall continue for an unlimited term, unless terminated by either Party in accordance with this Agreement.
- 11.2 The term for Maintenance/Support Services shall be specified in Appendix C, as contemplated in Section 3.

12. Disclaimers

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- To the maximum extent permitted by applicable law, nothing in this Agreement shall grant any direct warranty by Microsoft to the Customer.
- 12.1 To the maximum extent permitted by applicable law, the liability of Microsoft for any damages, whether direct, indirect, incidental or consequential, as a result of the use or the installation of the Software is excluded.
- 12.2 This Agreement does not grant any rights to copy, modify, or distribute the Microsoft software source code. These rights may be available directly from Microsoft under a separate agreement.
- 12.3 (iv) The Microsoft software may not be (i) used to develop and/or (ii) offered in conjunction with new applications, databases or tables other than those contained in the Software.
- 12.4 In case the Software is provided in a subscription model and/or hosted environment, the following terms shall apply:
- Customer expressly acknowledges the following:
- 12.4.1 The subscription duration is for a limited term. Upon expiration or termination of the subscription, Customer will no longer have the right to use the Software, and if Customer has an on premise subscription license then Customer will remove the copies of the Software received under the subscription. Customer's use of the Software after expiration or termination of the subscription is a violation of international copyright laws and the End User Agreement.
- 12.4.2 Incadea may terminate Customer's subscription. Microsoft will not be liable in any manner whatsoever to Customer arising out of incadea terminating Customer's subscription. Microsoft reserves the right to terminate a subscription, at any time in response to an intellectual property infringement claim against Microsoft according to a court or other governmental order

Incadea General Terms and Conditions**Appendix A2 –****incadea Terms and Conditions for the Use of incadea Standard Software
(Subscription Model)**

This Appendix A2 - Terms and Conditions for the use of incadea Software (“Appendix A2”) together with the General Terms and Conditions for Sales and Services (the “GTC”) apply to any agreement regarding the use of incadea Standard Software **based on a subscription model** between incadea and the Customer (as defined in the GTC).

By accessing or using the incadea Software or authorizing or permitting any individual to access or use the incadea Software, Customer agrees to be bound by the GTC and these this Appendix A2.

1. Definitions

Capitalized terms shall have the meanings set forth in the GTC and as defined below:

- 1.1 **“Activation Date”** means the date the incadea Software is first made available to Customer in connection with the terms set forth in Appendix B.
- 1.2 **“Customer Data”** means all data coming from and provided by the Customer including but not limited to all data directly linked to the Customer as well as the Customer’s customers data stored in the incadea Software subject to this Agreement.
- 1.3 **“Named Users”** means any individuals affiliated with Customer who Customer authorizes to use the Services and which are set forth in Appendix B.
- 1.4 **“incadea Software”** means the incadea Software set forth in Appendix B.
- 1.5 **“Open Source Code”** means Open Source Software, or the code thereof. Open Source Software and Open Source Code include software and code, respectively, that is licensed under any license that conforms to the Open Software Initiative (OSI) definition of open source software, e.g. – including, but not limited to – any versions Mozilla License, Common Public License, Apache License, BSD License, Artistic License or Sun Community Source License;
- 1.6 **“Privacy Policy”** means incadea’s Privacy Policy which can be found www.incadea.com
- 1.7 **“Services”** means the services set forth in Appendix B.
- 1.8 **“Subscription Term”** shall be the period of time designated in Appendix B during which Customer shall have access to the incadea Software. Each Subscription Term shall commence on the applicable Activation Date.
- 1.9 **“Super-Users”** means [a User who has full operational rights to the incadea Software].
- 1.10 **“Territory”** shall mean the territory set forth in Appendix B.

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- 1.11 **“User”** means an employee or contractor of Customer that is authorized by Customer to access the incadea Software.
- 1.12 **“Third Party Software”** means any software, including, but not limited to, Microsoft Dynamics NAV, Open Source Code, etc., that may be required for the operation and use of the incadea Software and that (i) is manufactured by a party other than incadea and (ii) which may or may not have been incorporated into the incadea Software by incadea.

2. Access, Use and Named Users

- 2.1 Subject to this Agreement, including the restrictions set forth in Section 3, incadea grants to Customer a non-exclusive, non-transferable, revocable right and license during the Subscription Term and in the Territory to permit access to and use of the Services for the Named Users.
- 2.2 Customer acknowledges that these this Appendix A2 does not apply to the licensing of Third-Party Software, in particular, but not limited to, Microsoft Dynamics NAV. Customer agrees that the rights and licenses with respect to Third Party Software and Third Party Services shall be under terms set forth in the pertinent purchase, license or services terms and conditions of the vendors of such Third Party Software or Third Party Services. Customer shall comply with appropriate purchase, license, or services agreements with respect to any Third Party Software or Third Party Services. Any amounts payable to third party vendors or service providers under such agreements are the sole responsibility of Customer and shall be paid directly by Customer to such third party vendors or service providers. Customer shall indemnify, defend and hold harmless incadea, its directors, officers, employees, affiliates and agents (the “Indemnified Party”) from any and all claims, damages, liabilities, costs and expenses, including actual, out-of-pocket reasonable attorneys’ fees and expenses, relating to any damage suffered by an Indemnified Party caused by Customer’s non-compliance with appropriate purchase, license, or services agreements with respect to any Third Party Software or Third Party Services. Reference to the relevant 3rd party T&Cs can be made available on request.
- 2.3 incadea shall provide to Customer the necessary passwords, security protocols, policies, network links or connections (“Access Protocols”) to allow Customer and its Named Users to access the Services.
- 2.4 Customer will permit only Super-Users and Named Users to access the Services through the Access Protocols and Customer will be responsible for any such use of the Services using Customer’s Access Protocols.
- 2.5 Customer shall notify incadea as soon as practicable of any unauthorized use of any Access Protocols, password or account or any other known or suspected breach of security.

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- 2.6 Customer bears responsibility for all acts and omissions of its Super-Users and represents and warrants that incadea may rely on the instructions and authorizations of such Super-Users in connection with the Services.
- 2.7 Customer shall be also responsible for all acts and omissions of Named Users, and any act or omission by such Named Users which, if undertaken by Customer, would constitute a breach of this Agreement, shall be deemed a breach of this Agreement by Customer.

3. Restrictions and Responsibilities

The rights granted in Section 2 are explicitly conditioned on Customer's adherence to the following restrictions and compliance with its responsibilities as set forth herein.

- 3.1 Customer must comply with all restrictions set forth in these this Appendix A2, the Privacy Policy, and any and all other applicable incadea guidelines as published from time to time in all uses of the incadea Software and the Services.
- 3.2 If incadea, in its sole discretion, has a reason to assume that Customer has violated or attempted to violate any term, condition or the spirit of these this Appendix A2, the license afforded Customer pursuant to these this Appendix A2 may be temporarily or permanently revoked, with or without notice to Customer.
- 3.3 Customer is not permitted to use the incadea Software in any manner that does or could potentially undermine the security of the Services or any data or information stored or transmitted using the Services.
- 3.4 Customer will not conceal, remove or alter any proprietary notice or legend regarding incadea's proprietary rights in the Services.
- 3.5 Customer shall not, and shall not attempt to: (a) interfere with, modify or disable any features, functionality or security controls of the Services, (b) defeat, avoid, bypass, remove, deactivate or otherwise circumvent any protection mechanisms for the Services, or (c) reverse engineer, decompile, disassemble or derive source code, underlying ideas, algorithms, structure or organizational form from the Services.

4. Passwords; Security

- 4.1 incadea will either issue to Customer or Customer will create and issue to each User, an identity and associated password for access to and use of the incadea Software. Customer and its Users are responsible for maintaining the confidentiality of all Identities and/or passwords and for ensuring that each Identity and/or password is used only by the User to which it was issued. Customer will restrict its Users from sharing passwords. Customer agrees to use commercially reasonable efforts to notify incadea of any unauthorized use of Customer's account, any Identity and/or password, or any other breach of security known to Customer, affecting access and use of the incadea Software.

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- 4.2 incadea will deploy reasonable security precautions commensurate with reasonable industry standards intended to protect against unauthorized access to any Customer Data stored on the incadea Software. incadea shall implement such security measures to secure the incadea Software, including, but without limitation, firewalls and, if applicable, encryption of all personally identifiable data, and shall take all other commercially reasonably necessary measures to prevent unauthorized access, use, reproduction or disclosure of all data (including Customer Data). In addition, incadea shall maintain back-up procedures and facilities covering equipment, operating systems, telecommunications services which will facilitate continued operation of the incadea Software, including without limitation daily updated back-up copies of all current content and data on the incadea Software.
- 4.3 Neither Customer nor any User may circumvent or otherwise interfere with any user authentication or security of the incadea Software. Customer shall notify incadea of any breach, or attempted breach, of security known to Customer, affecting the incadea Software.
- 4.4 Customer acknowledges that, notwithstanding the security precautions deployed by incadea, the use of, or connection to, the Internet provides the opportunity for unauthorized third parties to circumvent such precautions and illegally gain access to the incadea Software and Customer Data. Subject to incadea performing its security obligations in Section 4.2 herein, incadea cannot and does not guarantee the privacy, security, integrity or authenticity of any information transmitted over or stored in any system connected to or accessible via the Internet or otherwise or that any such security precautions will be adequate or sufficient.

5. Customer Obligations

- 5.1 Customer is responsible for (i) obtaining, deploying and maintaining all computer hardware, software and communications equipment needed to access and use the incadea Software as set forth in Appendix B, (ii) contracting with third parties that provide services related to Customer being able to access and use the incadea Software (e.g., ISP, telecommunications, etc.) as set forth in Appendix B, and (iii) paying all third-party fees and access charges incurred while accessing and using the incadea Software as specifically set forth and itemized in Appendix B.
- 5.2 incadea will not be required to supply any hardware, software or equipment to Customer by reason of any agreement based on these this Appendix A2.
- 5.3 Each Party represents and warrants, during the term of the Agreement, that it is in compliance with and will comply with all applicable laws, rules, governmental regulations and orders, including without limitation privacy and data protection laws and governmental regulations in any applicable jurisdiction in its performance of its obligations under the Agreement.
- 5.4 Customer acknowledges and agrees (i) that Customer is responsible for selecting appropriate remediation for, and resolving, any issues found on Customer's network, hardware, software, or third party services relied on by Customer to access and use the incadea Software

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(collectively, “**Customer Items**”); and (ii) that incadea is not liable for, or responsible to, remediate any issues found regarding Customer Items or Customer Data, except to the extent caused by incadea’s negligent acts or omissions. Customer agrees: (a) to abide by all applicable local, state, and national laws and regulations applicable to Customer’s use of the incadea Software; (b) not to send or store Customer Data to or on the incadea Software which, to the best of its knowledge, violates the rights of any individual or entity established in any jurisdiction, including any intellectual property rights; (c) to use commercially reasonable measures not to upload in any way any information or content that contain viruses, worms, Trojan Horses, corrupted files, or any other similar software or programs, harmful code or data that may damage the operation of the incadea Software or another’s computer or mobile device; (d) not to use the incadea Software for illegal or fraudulent purposes; (e) not to intentionally interfere or disrupt networks connected to the incadea Software; (f) not, to the best of its knowledge, distribute, promote or transmit through the incadea Software any unlawful, harmful, defamatory, obscene, pornographic or otherwise objectionable material of any kind or nature; (g) not, to the best of its knowledge, transmit or post any material that encourages conduct that could constitute a criminal offense or give rise to civil liability; (h) not to intentionally interfere with another customer’s use and enjoyment of the incadea Software; (i) not to intentionally use the incadea Software in any manner that impairs the incadea Software, including without limitation the servers and networks on which the incadea Software are provided; (j) not to run Maillist, Listserv, any form of auto-responder or “spam” on the Services, or any processes that run or are activated while Customer is not logged into the incadea Software, or that otherwise intentionally interfere with the proper working of the incadea Software (including by placing an unreasonable load on the incadea Software infrastructure); and (k) not to launch any program that “crawls,” “scrapes,” or “spiders” any page, data, or portion of or relating to the incadea Software (through use of manual or automated means). Customer acknowledges and agrees that incadea neither endorses the contents of any Customer Messaging or Customer Data, nor assumes any responsibility for any offensive material contained therein, any infringement of third party intellectual property rights arising therefrom or any crime facilitated thereby. incadea may remove any content posted or stored using the incadea Software or transmitted through the incadea Software that violates this Section 5.4, with or without notice to Customer.

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6. Custom Development and Enhancement Requests

- 6.1 This Agreement does not include any programming services for custom development or modifications. Such work, if negotiated and agreed to between incadea and Customer, shall be the subject of a separate agreement for development services between the Parties. Customer acknowledges that incadea is not a contract development organization, but rather incadea makes a single general release of the incadea Software available within specified industries. As such, Customer further acknowledges that the incadea Software are a major and valuable asset of incadea's business and, as such, incadea shall have complete control of the design and development of the incadea Software, including with respect to any enhancements and modifications. Therefore, incadea has the right, and sole discretion, to reject any request for enhancement or modification to the incadea Software by Customer.

7. Professional Services

- 7.1 incadea will provide Customer with the professional services, if any, set forth in Appendix B (“**Professional Services**”). Such Professional Services shall be scheduled as mutually agreed upon subject to incadea's availability following receipt by incadea of the signed Agreement and any related deposit. Should Customer require rescheduling of confirmed Professional Service dates, incadea will make commercially reasonable efforts to accommodate Customer's request and provide Customer with the next available dates based on incadea's then-current availability. Customer shall be responsible for paying for any Professional Services that have been scheduled and confirmed between Customer and incadea if canceled or rescheduled by Customer less than thirty (30) days prior to the commencement of such Professional Services, unless (and only to the extent that) incadea is able to reschedule the resource with another customer using commercially reasonable efforts.

8. Fees

- 8.1 Customer agrees to pay the fees and charges mutually agreed upon by the Parties and set forth in Appendix B (collectively, “**Fees**”).
- 8.2 All Fees are due in accordance with the payment schedule set forth in Appendix B.
- 8.3 All Fees are quoted and payable in the currency set forth in Appendix B.

9. Ownership

- 9.1 As between incadea and Customer, all right, title and interest in the incadea Software and all modifications and enhancements thereof by incadea, including all copyright rights, patent rights, trademark rights, and other intellectual property rights in each of the foregoing, belong to and are retained solely by incadea or incadea's licensors and providers, as applicable.

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9.2 Except for the express licenses granted in Section 2.1 (License Grant), there are no other licenses granted to Customer, neither express nor implied.

9.3 All rights in the incadea Software not granted in these this Appendix A2 are reserved by incadea.

10. Support

10.1 incadea will provide to Customer online support services for the incadea Software set forth in Appendix B (“Support”).

10.2 No other support services will be provided unless specifically provided for in Appendix B.

10.3 These this Appendix A2 does not entitle Customer to any support for the incadea Software and/or the Services, unless Customer makes separate arrangements with incadea for such support.

11. Warranties/Warranty Disclaimer

Customer acknowledges that incadea does not warrant that the Services will be uninterrupted, timely, secure, error-free or free from viruses or other malicious software, and no information or advice obtained by Customer from incadea or through the service shall create any warranty not expressly stated in these this Appendix A2.

12. Term and Termination

12.1 The Services shall commence as from the Activation Date and shall continue for the Subscription Term, unless terminated by either Party in accordance with the GTC and these this Appendix A2.

12.2 Unless set forth otherwise in Appendix B, the initial Subscription Term shall be 36 months.

12.3 Unless set forth otherwise in Appendix B, the Subscription Term shall be extended for periods of 12 months each, unless terminated by either Party in accordance with the GTC and these this Appendix A2.

13. Disclaimers

To the maximum extent permitted by applicable law, nothing in this Agreement shall grant any direct warranty by Microsoft to the Customer.

13.1 To the maximum extent permitted by applicable law, the liability of Microsoft for any damages, whether direct, indirect, incidental or consequential, as a result of the use or the installation of the Software is excluded.

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- 13.2 This Agreement does not grant any rights to copy, modify, or distribute the Microsoft software source code. These rights may be available directly from Microsoft under a separate agreement.
- 13.3 (iv) The Microsoft software may not be (i) used to develop and/or (ii) offered in conjunction with new applications, databases or tables other than those contained in the Software.
- 13.4 In case the Software is provided in a subscription model and/or hosted environment, the following terms shall apply:

Customer expressly acknowledges the following:

- 13.4.1 The subscription duration is for a limited term. Upon expiration or termination of the subscription, Customer will no longer have the right to use the Software, and if Customer has an on premise subscription license then Customer will remove the copies of the Software received under the subscription. Customer's use of the Software after expiration or termination of the subscription is a violation of international copyright laws and the End User Agreement.
- 13.4.2 Incadea may terminate Customer's subscription. Microsoft will not be liable in any manner whatsoever to Customer arising out of incadea terminating Customer's subscription. Microsoft reserves the right to terminate a subscription, at any time in response to an intellectual property infringement claim against Microsoft according to a court or other governmental order

Exhibit 1: Description of Personal Data Processing

This Exhibit includes certain details of the Processing of the Personal Data as required by Article 28(3) GDPR.

1. Subject matter and duration of the Processing of the Personal Data

The subject matter and duration of the Processing of the Personal Data are set out in the Appendix B, and Appendix C and Appendix D and this Exhibit.

2. The nature and purpose of the Processing of the Personal Data

Incadea is engaged to provide the Services to Customer relating to the provision of a dealer management system for the automotive sector. The scope of the Services are set out in the Appendix B, and Appendix C and Appendix D, and the Customer Personal Data will be Processed by Incadea to deliver those Services and to comply with the terms of the Appendix B, and Appendix C and Appendix D and this Exhibit.

3. The types of the Personal Data to be Processed

Names; contact details; user ID / log-in details; vehicle registration number; service history; purchase history; invoicing details; any other categories of personal data which Customer chooses to enter onto a dealer management system in relation to an end Customer.

4. The categories of Data Subject to whom the Personal Data relates;

End Customers of Customer's automotive products or services;

Customer's employees and staff

5. The obligations and rights of Customer

The obligations and rights of Customer are set out in the Agreement and this Exhibit.

Exhibit 2: Relevant Microsoft Terms

Customer hereby confirms the following terms which are mandatory for the licensing of the incadea solution.

Microsoft is a Third Party beneficiary of this agreement with the right to:

1. Enforce certain clauses of this agreement
2. Verify Customer compliance with this agreement
3. Contact Customer directly

By concluding this Agreement Customer grants authorization to incadea to share information with Microsoft that is:

1. necessary for incadea to collaborate with Microsoft,
2. to enable Microsoft to provide services and communication to Customer directly and
3. to verify Customer compliance with the Microsoft SLT

Microsoft license information for licenses under active maintenance can be accessed via: <https://mbs.microsoft.com/customersource>.