



## SaaS contract ODIGO

**Between the undersigned:**

- (1) **Odigo**, a *société par actions simplifiée* (simplified company limited by shares), having its registered office at 41, Rue Camille Desmoulins, 92130 Issy-les-Moulineaux (France), registered in the Nanterre Trade and Companies Register under number 529 038 978, represented by Mr Erwan Le Duff, in his capacity as Chairman, with full powers for the purposes hereof,

Hereinafter referred to as "**Odigo**" or the "**Service Provider**"

**And**

- (2) The company **[●]**, [legal form], having its registered office at [address], registered in [country] under company number **[●]**, represented by Ms/Mr, in the capacity of **[●]**, duly authorised for the purposes hereof,

Hereinafter referred to as the "**Customer**"



## GENERAL TERMS AND CONDITIONS

### 1. DEFINITIONS

- 1.1 The following terms and expressions shall have the following meanings:

**"Additional Services "** means technical and other consultancy services, training services and/or other services related to the Odigo Solution that the Supplier may provide to the Customer by way of a Purchase Order;

**"Commissioning of the Odigo Solution":** means the activation of the Odigo Solution configured after the completion of the Services under this Contract, enabling the Customer to access and use it;

**"Confidential Information"** means the terms and conditions of this Contract, as well as all information disclosed by one Party to another or otherwise received by another Party in the course of the negotiation, conclusion or performance of this Contract, which information is expressly marked as confidential or relating to the technology, know-how, delivery methodology, business, software and its performance, developments or finances of the said Party or its Subsidiaries, service providers or customers and including, but not limited to, any data relating to (i) the personal data of the Parties (ii) the functionality of the Odigo Solution, in particular its Documentation; (iii) Odigo's know-how; (iv) the overall structure of the Odigo Solution and its various Interfaces; (v) the Fees applied by Odigo; (vi) the Customer IPR; (vii) Odigo IPR; (viii) any other information that is considered or should be considered confidential by virtue of the nature of such information or the context in which it was communicated;

**"Configuration"** means the result of the configuration of the Odigo Solution excluding Developments carried out, where applicable, within the framework of the Implementation Agreement and/or by the Customer and/or any authorised third party;

**"Content"** means any information, data, databases, software, audio, video or visual objects (including any moving images), textual content and any other media read and/or uploaded to the Odigo Solution or made available or accessible by any other means via the Odigo Solution by the Customer, an End User or an End Customer, within the limits as set out in the Contract, in particular in the Documentation;

**"Contract"** means the contract between the Service Provider and the Customer consisting of: (i) the General Terms and Conditions and its appendices; (ii) the Special Terms and Conditions and its appendices; and (iii) the Purchase Order;

**"Customer Audio Files"** means the audio files created by the Service Provider on behalf of the Customer and uploaded to the Odigo Solution;

**"Customer Data"** means the data accessible on the Odigo Solution entered by and/or on behalf of the Customer in the course of using the Odigo Solution, in accordance with the Documentation and/or Legislation;

**"Customer IPR"** means all Intellectual Property Rights in the Customer Resources and any additions, adaptations, modifications, updates and/or improvements to the Customer Resources;

**"Customer Login"** means the login and password allocated to End Users or created by an End User to access the Odigo Solution, and/or the various Odigo tools used to provide the Services;

**"Customer Resources"** means the Information System, Customer Data, and Content ; any third-party resources integrated by the Customer as well as the configuration, where applicable, the Developments that the Customer makes accessible via the Odigo Solution and/or makes available to the Service Provider within the framework and under the conditions of this Agreement and/or uses in connection with the Odigo Solution;

**"Data Controller"** has the meaning given to "Controller" in the Data Protection Legislation;

**"Data Protection Legislation":** means: the legislation applicable to personal data law, in particular the French law no. 78-17 of 6 January 1978 relating to data processing, files and freedoms as amended (French Data Protection Act), the applicable regulations, in particular decrees, European standards and regulations, in particular the European Regulation 2016/679 of 27 April 2016 (GDPR), as well as the deliberations taken by the *Commission Nationale de l'Informatique et des Libertés* (CNIL - French Data Protection Authority);

**"Developments"** means specific developments to the standard version of the Odigo Solution (excluding the Odigo Solution) incorporated into the Odigo Solution, including by adaptation of the Interfaces, but excluding the Interfaces themselves;



**"Documentation"** means all technical documentation, procedures, instructions, programming and documentation standards, operating documentation, user documentation, user guides, relating to the Odigo Solution, in particular accessible at the following URL <https://odigohelpcenter.odigo.com> and each Update provided under this Contract;

**"Effective Date"** means the date of signature of this Contract on which the Contract takes effect;

**"End Customer(s)"** means any natural person or legal entity with whom the Customer interacts through the Customer's use of the Odigo Solution;

**"End User"** means any natural person or legal entity accessing the Odigo Solution directly or indirectly, including agents of the Customer or agents of third parties acting on behalf of the Customer, under the Customer's responsibility, and for whom the Customer ensures compliance with the provisions of the Contract;

**"Ethical Recommendations"** or **"ER"** means the detailed ethical recommendations of the AFMM in their current and updated version, available via the following URL <https://af2m.org/rd-sva/>;

**"EU GDPR"** means the General Data Protection Regulation ((EU) 2016/679), as it has effect in EU law;

**"Exonerating Event"** means any failure in whole or in part by the Customer to perform its obligations under this Contract, including with delay, or any other act or omission of the Customer (or End Users and/or any subcontractor, delegate and/or agent of the Customer) contributing thereto in whole or in part;

**"Fees"** means the fees due for the provision of the Odigo Solution Licence, for System Services and, where applicable, the Telecommunication Services and/or the Services as set out in the Special Terms and Conditions;

**"General Terms and Conditions"** or **"GTC"** means this document and its appendices;

**"Hotfix"** means versions of the Odigo Solution deployed for the purpose of correcting a critical problem and/or a high security risk and/or instability of the Odigo Solution, as appropriate;

**"Information System"** means the Customer's computer processing system and IT infrastructure, including any telecommunications networks, maintained by the Customer and/or a third party under the Customer's responsibility and which are necessary for the Customer's use of the Odigo Solution;

**"Implementation Agreement"** means the agreement formed by the GTC and the Special Implementation Conditions between the Customer and Odigo for the purpose of carrying out Configuration and, where applicable, Developments;

**"Initial Term"** means the initial term stipulated in the Special Terms and Conditions, commencing on the earlier of the date of Commissioning of the Odigo Solution and the date of first use of the Odigo Solution in a production environment;

**"Intellectual Property Rights"** means all patents, rights in inventions, copyrights and related rights, moral rights, trademarks, trade names and domain names, presentation rights, design and model rights, computer software rights, database rights and other intellectual property rights and related rights, know-how, trade secrets, personality rights, irrespective of whether they have been registered or not, as well as any applications (or rights to apply) for renewal or extension of the said rights, and any similar or equivalent rights or forms of protection that may subsist anywhere in the territories of operation covered by this Contract;

**"Interactive Voice Response"** or **"IVR"** means an automated telephone system that interacts with callers, collects information, and transfers calls to the appropriate recipient;

**"Interface"** or **"API"** means an IT solution that connects the Odigo Solution to one or more application programming interfaces ("**APIs**"), including Third-Party Software (e.g. chat bot), as listed in the Documentation, and allows them to communicate with each other and exchange services and/or data. The Interfaces, including any Update(s), are, where applicable, made available to the Customer via the Odigo Solution and under this Contract;

**"Law(s)"** or **"Legislation"** means any applicable: (i) law, regulation, binding regulation, order, or statutory instrument; (ii) binding court order, decree or ruling; (iii) code, policy or industry standard; (iv) rule, guideline or legislative or other instrument of a binding nature, in each case in force from time to time;

**"Major Release"** means a significant change, such as a new user interface, a restructuring of the Software and/or technical architecture, and/or a major new feature, or a complete redesign of all or part of the Odigo Solution;

**"Odigo IPR"** means all Intellectual Property Rights relating to the Odigo Solution, Interfaces, Services, System Services, Telecommunication Services, Documentation, as well as any additions,



adaptations, modifications, updates and/or enhancements to the aforementioned elements, in particular Updates;

**"Odigo Solution"** means the standard technical platform implemented by the Service Provider comprising all hardware, network and software components, shared equipment (including the data centre), connections with telecom operators, systems and, where applicable, Interfaces, as well as, where applicable, Updates provided under this Contract, subscribed to by the Customer and made available to it pursuant to this Contract, as more particularly described in the Documentation;

**"Odigo Solution Licence"** or **"Licence"** has the meaning ascribed to it in Sections 11.3 a) and 11.3.c);

**"Open-source software"** means software that meets one or more of the criteria of the Open Source Initiative definition of open source;

**"Patch(es)"** means fixes and/or new features and/or non-significant enhancements that are added to the most recent version of the Odigo Solution;

**"Purchase Order"** means the document entitled "Purchase Order" in a form, including in electronic format, and as agreed by the Parties;

**"Purpose"** means the use of the Odigo Solution for internal business purposes by the Customer (and where applicable its Subsidiaries) only and as appropriate the End Users, in accordance with the Contract.

**"Renewal Period"** has the meaning given to in clause 4;

**"Sandbox"** means the standard dedicated environment, offering a functional scope identical to production but without any specific configuration, allowing the Customer to access the next major release before going into production;

**"Services"** means Additional Services and/or implementation projects of the Odigo Solution that may be ordered by the Customer and carried out by the Service Provider under the Contract.

**"Service Levels"** means the commitments of the Service Provider in respect of the availability and performance of the Odigo Solution to be achieved in terms of service quality, as set out in the relevant Special Terms and Conditions;

**"Service Request"** means a request for assistance from the Customer regarding a change to the Odigo Solution and/or the Configuration within the terms and conditions of this Contract;

**"Software"** means the online software applications provided by the Service Provider as part of the Services;

**"Special Terms and Conditions"** or **"Special Conditions"** means the special terms and conditions relating to the Odigo Solution, and where applicable the special terms and conditions relating to the implementation project (or "Special Implementation Conditions");

**"Subscription Term"** means the Initial Term together with any subsequent Renewal Periods;

**"Subsidiary"** means any company, firm or other entity which Controls, is Controlled by or is under Common Control with a Party and, for this purpose, the terms **"Control"** and **"Controlled"** mean direct or indirect ownership or control of at least fifty percent (50%) of the: (i) voting rights or securities (representing a right to vote in the election of directors or the managing authority); or (ii) shares representing a right to make decisions for the company, firm or entity (as the case may be) in question in any partnership, joint venture or unincorporated association not possessing any shares or securities. Nevertheless, any such company, firm or entity shall be deemed to be a Subsidiary of a Party only for the duration of the ownership or Control in question;

**"System Services"** means the provision of access to the Odigo Solution, including hosting, support and maintenance services as described in the Special Conditions and (where applicable) Additional Services;

**"Telecommunication Services"** means the services provided by the Service Provider to the Customer in relation to allocation or hosting of a telephone number as designated in the Special Terms and Conditions;

**"Third-Party Software"** means any software owned by a third party to which the Customer subscribes from the Service Provider, including any open-source software, which allows the Customer to use the Third-Party Software with the Services provided by the Service Provider;

**"Update"** means a subsequent version of the Odigo Solution that modifies all or part of the previous version of the Odigo Solution and/or Documentation, as the case may be, made available to the Customer by the Service Provider. This includes any Major Release, Patch and Hotfix.

**"Working Day(s)"** means any day of the week excluding Saturdays, Sundays, and public holidays in France;



**"Working Hours"** means the hours between 9:00 and 18:00 on Working Days;

1.2 In this Contract:

- (a) the terms **"including"** and **"in particular"** are to be construed as indicative only and shall not limit the meaning of the terms they precede;
- (b) the clause headings are for guidance only and have no bearing on the interpretation of this Contract;
- (c) any obligation on a Party not to do or refrain from doing something includes an obligation not to permit or allow anyone to do the thing in question;
- (d) any reference to **"persons"** includes individuals, companies, partnerships, corporations, associations, organisations, bodies or foundations (whether or not they have a separate legal personality);
- (e) any reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established;
- (f) any reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement; and
- (g) any reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- (h)

## 2. CONTRACTUAL DOCUMENTS

2.1 The Contract consists of the following contractual documents:

- the Special Terms and Conditions
- the General Terms and Conditions and appendices; and
- the Purchase Order(s), if applicable.

2.2 In the event of any conflict between one or more provisions appearing in any of the above documents, the provision in the document of higher rank in the list in clause 2.1 shall prevail for the interpretation of the obligation in question.

## 3. PURPOSE

The purpose of this Contract is to define the conditions under which the Odigo Solution is made available to the Customer in accordance with the Special Terms and Conditions and, where applicable,

the term and conditions under which the Services are performed.

## 4. TERM

This Contract shall come into force on the Effective Date and shall run, unless terminated early in accordance with the terms hereof, for the Initial Term set out in the Special Terms and Conditions and, thereafter, this Contract shall be automatically renewed for successive annual periods (each a "Renewal Period"), unless one of the Parties notifies the other Party of termination in writing at least six (6) months before the end of the Initial Term or Renewal Period.

## 5. FEES, PAYMENT AND TAXES

5.1 The Customer shall pay the Fees to the Service Provider in consideration of the performance of the System Services and subsequently the Telecommunication Services and/or the Services in accordance with the terms of this Contract, and in particular the applicable Special Terms and Conditions.

5.2 Odigo's shall issue invoices at the end of each calendar month and payment shall be made by the Customer within thirty (30) days of the invoice being issued.

5.3 If the Service Provider has not received payment by the due date, the Service Provider may, without prejudice to any other rights and remedies it may have:

- (a) suspend access to the Odigo Solution as well as the provision of the System Services, telecommunication Services, and/or the Services and more generally its work, until the invoices are fully paid;

- (b) terminate the Contract as provided for in clause 16.1(a); and

- (c) claim from the Customer interest on the overdue sum from the due date until payment of the overdue sum, which shall accrue on a daily basis at three (3) times the legal interest rate from the day following the due date and the payment of a fixed legal fee for collection costs according to an amount set by decree and the payment of sum equal to the costs incurred by the Service provider in recovering the overdue sum from the Customer.

5.4 If the Customer receives an invoice which it reasonably believes includes a sum which is not valid and properly due:





- (a) the Customer shall notify the Service Provider in writing together with details of the reason it disputes the invoice within fifteen (15) Working Days, failing which the invoice will be deemed to have been accepted by the Customer;
  - (b) the Customer shall pay the balance of the invoice which is not in dispute by the due date for payment of the invoice; and
  - (c) to the extent that the Customer is obliged, following resolution of the dispute, to pay an amount, then the Service Provider may charge interest in accordance with clause 5.4(c) from the original due date until the date of payment; and
  - (d) once the dispute has been resolved, where either party is required to make a balancing payment, it shall do so within [NUMBER] days.
- 5.9 The Customer shall indemnify and hold harmless the Service Provider against all claims against the Service Provider and against any action for which the Service Provider may be held liable as a result of or in connection with any failure by the Customer to comply with its tax declaration or payment obligations.

## 6. PARTIES' OBLIGATIONS

### 6.1 Each of the Parties undertakes to:

- (a) provide to the other Party (or any person designated by it) promptly and in a timely manner, free of charge and in the required format, any information, certificate or other document reasonably required for the proper performance of the Contract;
- (b) to inform the other Party as soon as possible and in good time of any malfunction or difficulty of which it is aware and/or which it may encounter in the performance of the Contract, and to meet with the other Party in good time at the initiative of the Party to take the first action;
- (c) keep each other informed of any action they may take which, to their reasonable knowledge, may affect the Contract.
- (d) ensure that any required third party ensures that it signs and delivers all documents and takes all actions required to make this Contract fully effective as soon as possible;
- (e) perform its contractual obligations under the Law, in particular for the Customer, in relation to the use of the Odigo Solution.

## 7. ODIGO'S OBLIGATIONS

- 7.1 The Service Provider shall use reasonable endeavours to perform the System Services, the Telecommunication Services and, where applicable, the Services, with the necessary skills and care, in accordance with good practice in the field.
- 7.2 With regard to the System Services in particular, the Service Provider shall use its reasonable endeavours to perform them in accordance with the Service Levels defined in the Special Terms and Conditions.
- 7.3 The Service Provider shall provide the Customer with Updates to the Odigo Solution throughout the term of the Contract.
- 7.4 For Major Releases, the Service Provider will provide the Customer with a Sandbox giving it access to the functional upgrades of the Major Release until it is put into production. This Sandbox will be active during



Working Days and Working Hours one (1) month before the production roll-out. The provision of this environment shall allow the Customer to view the new features and to assess their impact and benefits. This environment has no SLA commitment and will be subject to a dedicated support process. The Customer agrees that the Sandbox will not be used for production purposes and that as such it remains solely responsible for its use and the quality and integrity of the data it incorporates therein.

7.5 In the event that new features are made available for a fee as part of the Odigo Solution upgrade, the Customer will have the option to subscribe to the new features by concluding a Purchase Order.

7.6 In the event that any features or Interfaces are decommissioned, the features or Interfaces concerned shall be supported by the Service Provider for a period of at least six (6) months from the date of notification to the Customer before being decommissioned.

7.7 The Service Provider hereby agrees that it shall:

- (a) define and implement commercially reasonable processes and means to ensure the provision of the System Services and Telecommunication Services and, where applicable, the Services, as well as more generally any provision of services for the Customer, as defined in this Contract; and
- (b) if necessary, assist the Customer in the context of Major Releases, in particular the provision of the Sandbox.

7.8 It should be noted that the Customer has the option to change the Configuration via the Interfaces and/or by Odigo by issuing a Service Request, in particular to ensure their compatibility with the Odigo Solution.

7.9 The Service Provider shall use its reasonable endeavours to ensure the upward compatibility of the Update version of the Odigo Solution with the previous version. Odigo shall use its reasonable endeavours to inform the Customer in advance of the implementation of the Update of any incompatibilities that Odigo can reasonably anticipate, as well as the consequences of such incompatibilities. In the event of incompatibility, the Customer undertakes in all cases to carry out and/or have carried out in good time the necessary adaptation(s) of all or part of the Customer Resources to ensure their compatibility with all or part of any Update.

## **8. CUSTOMER'S OBLIGATIONS**

8.1 The Customer shall use the System Services and the Telecommunication Services and, where applicable, the Services, as well as more generally any provision

of services in compliance with this Contract and to pay the Fees.

8.2 The Customer shall:

- (a) fulfil all its obligations under the Contract;
- (b) comply with its obligations as a Data Controller in accordance with Data Protection Legislation, as well as its obligations regarding the protection of personal data set out in this Contract;
- (c) obtain and maintain all permits, licences, agreements, endorsements and authorisations required to provide, make available and use the Customer Resources within the Odigo Solution under this Contract, as well as the Odigo Solution from time to time; and
- (d) except as otherwise provided in this Contract, assume full responsibility for the provision and maintenance of its network connections and telecommunications links between the Information System and the Odigo Solution and for any problems, delays, failures and other losses and damages related to or arising from the Customer's network connections or telecommunications links or caused by the Internet.

## **9. TERMS OF USE - CUSTOMER'S USER ACCOUNT**

The Customer hereby agrees that it shall:

- (a) prevent unauthorised use of and access to the Odigo Solution and Customer Logins, except as expressly authorised under this Contract. Records made by the Service Provider's server centre recording the use of Customer Logins when accessing the Odigo Solution constitute evidence of access to the Odigo Solution;
- (b) in accordance with clause 14.7, to take responsibility for: (i) converting its own data files (in particular Customer Data and/or Content) for use in the Odigo Solution; (ii) maintaining the confidentiality of the Customer Logins at all times; (iii) preventing any unauthorised use of and/or access to the Customer Logins; (iv) bearing any losses, costs, expenses and consequential damages arising from any unauthorised disclosure and/or use thereof and/or any breach of its confidentiality obligations in respect of such Customer Logins; (v) ensure that the number of Customer Logins matches the number of End Users; and (vi) supervise, manage and



- control the use (and the use made by End Users) of the Odigo Solution and Customer Resources and the acts and/or omissions of its Subsidiaries and End Users in the same manner as if they were its own acts and/or omissions;
- (c) comply with the terms of the user licences and/or any contractual documentation of third-party suppliers, in particular, where applicable, those communicated by the Service Provider;
  - (d) without limiting the foregoing, assume liability for the acts and omissions of any subcontractor, delegate, servant or agent of the Customer in connection with this Contract in the same manner as if they were its own acts and/or omissions;
  - (e) where applicable, provide the Service Provider with all necessary elements enabling the Service Provider to exchange with the supplier(s) used for the use of the Solution, in particular Third-Party Software, it being specified that the said suppliers remain under the Customer's responsibility and control in all cases;
  - (f) ensure that adequate material and human resources are allocated to the performance of the Contract and the use of the Odigo Solution; and
  - (g) ensure that End Users have the necessary training to enable them to use the Odigo Solution in accordance with the Contract.
- 9.2 The Customer remains solely responsible for the relationship with its End Customers, including the use of the Odigo Solution and/or System Services and/or Telecommunication Services.
- 9.3 The Customer also remains solely responsible for the use of the Odigo Solution and/or System Services and/or Telecommunication Services, including by End Users, for which the Customer is responsible. The Customer undertakes to ensure that all End Users comply with the same obligations applicable to the Customer under this Contract. The Parties acknowledge and agree that any resale by the Customer of the System Services and/or the Odigo Solution and/or the Telecommunication Services is prohibited.
- 9.4 The Customer has sole responsibility for the Customer Resources, and it is the Customer's responsibility to ensure that they are adequately secured, protected and backed up, and compatible with the Odigo Solution.
- 9.5 The Customer shall not (and shall ensure that End Users shall not) use the System Services and/or the Telecommunication Services to create, post and/or otherwise communicate Customer Resources contrary to the Law and/or which causes, even unintentionally, including by negligence, damage to the Service Provider and/or a third party.
- 9.6 The Customer warrants that the use of any Customer Resources used in connection with the use of the Odigo Solution, System Services and/or Telecommunication Services shall not infringe the rights of any third-party.
- The Customer remains solely responsible for any modification, which it makes or is by a third party on its behalf, to the configuration of the Odigo Solution elements and/or the Configuration as well as, where applicable, the Developments, and in particular their compatibility and/or compliance with the Documentation.
- 9.7 The Customer hereby indemnifies the Service Provider (and its Subsidiaries) against any and all liability, costs (including reasonable legal fees), losses and damages arising from or incurred in connection with any action brought by a third party as a result of any breach by the Customer of the provisions of this clause 9 and of its obligations under this Contract.
- ## 10. LIABILITY
- 10.1 Nothing in this Contract shall exclude or limit the Customer's obligation to pay the sums provided for in clause 5, nor the liability of the Parties in respect of: (i) any death or personal injury arising out of negligence; (ii) any fraud or fraudulent misrepresentation; (iii) under the provisions of clause **Erreur ! Source du renvoi introuvable.**; or (iv) any other liability which cannot be excluded or limited under the Legislation.
- 10.2 Each of the Parties shall use its best endeavours to mitigate any damage it may suffer as a result of this Contract.
- 10.3 Subject to clause 10.1, neither Party shall be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, increased overhead, loss of contracts, customers or anticipated savings, depletion of goodwill, loss or corruption of data or information, and consequential or incidental loss.
- 10.4 Subject to clause 10.1, it is expressly agreed between the Parties that they can only be held liable for a period of **one (1)** year from the knowledge of the damage.





- 10.5 The Service Provider shall exclusively perform the obligations described in clause 7.
- 10.6 The Service Provider shall not be liable in the event of:
- (a) use of the Odigo Solution and/or the System Services, Services, and/or Telecommunication Services contrary to this Contract and/or the Service Provider's instructions and/or the Documentation, as well as any modification and/or alteration of the Odigo Solution and/or the System Services, Services and/or Telecommunication Services and/or, if applicable, the Customer Resources by any person other than the Service Provider;
  - (b) any breach of its obligations under this Contract in the event of the occurrence of an Exonerating Event, preventing or delaying the performance of all or part of Odigo's obligations or otherwise contributing to the Service Provider's breach of its obligations under this Contract. In such circumstances, the Customer shall: (i) pay the Service Provider any reasonable costs incurred by the Service Provider as a result of the occurrence of the Exonerating Event in order to make good the Customer's deficiencies and, if the obligation in question includes a time limit for performance; (ii) suspend and postpone the Service Provider's correlative obligations accordingly;
  - (c) delays, failures or any other damage caused by (i) the transfer of data via communication networks and infrastructures, including the Internet, in particular from the Information System and (ii) the telecommunications equipment used by the Customer. In this respect, the Customer declares and acknowledges that the System Services and the Telecommunication Services may be subject to restrictions, delays or other difficulties inherent in the use of this type of communication system;
  - (d) obtaining or installing hardware or any other operating system or other information system components required to use the Odigo Solution and/or Telecommunication Services not provided for in the Contract and/or Additional Services;
  - (e) obsolescence or incompatibility of all or part of the Odigo Solution and/or System Services and/or Telecommunication Services resulting from changes initiated by the Customer, in particular Customer Resources; or
  - (f) suspension of all or part of the System Services and/or Telecommunication Services by Odigo in the event of the unlawful nature of all or part of the Customer Data, in accordance with the Law.
- 10.7 The Customer represents and warrants that the provision of the Odigo Solution, and/or the System Services, and/or the Telecommunication Services are provided to the Customer in accordance with the features set out in the Special Terms and Conditions and the substantial elements of the Documentation.
- 10.8 Except as expressly and specifically provided in this Contract: (i) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law, in respect of any matter, including merchantability, fitness for the Customer's purpose, fitness for a particular use, are to the fullest extent permitted by Law excluded from this Contract; and (ii) the Odigo Solution and/or the System Services and/or the Telecommunication Services are provided to the Customer on an "as is" basis.
- 10.9 The Service Provider does not warrant that the use of the Odigo Solution and/or the System Services and/or the Telecommunication Services will be uninterrupted or error free.
- 10.10 The Customer acknowledges and agrees that its decision and commitment to enter into this Contract has not been made in consideration of the availability of any future functionality or features, public communications or promotions from the Service Provider.
- 10.11 Subject to clause 10.1, clause 10.3, and clause 10.4, as an essential and determining condition without which the Service Provider would not have contracted, the Service Provider's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract is limited, in each year commencing on the Effective Date and each anniversary of the Effective Date, to the amount of the sums paid or payable by the Customer to the Service Provider under this Contract during the relevant year.
- 11. INTELLECTUAL PROPERTY**
- 11.1 Rights in pre-contract property
- (a) Each of the Parties or its licensors shall retain ownership of the Intellectual Property Rights



(Odigo IPR for the Service Provider and Customer IPR for the Customer) belonging to it prior to their use within the context of this Contract, as well as the improvements and additions it may make to them during the performance of the Contract ("Background IPR").

- (b) Each Party may therefore freely re-use all its Background IPR and undertakes to keep the Background IPR of the other Party confidential, in accordance with clause 14.

#### 11.2 Customer Resources

- (a) The Customer shall remain the owner and/or licensee of all Intellectual Property Rights relating to the Customer Resources and confirms that it has all the rights in relation to the Customer IPR attached to the Customer Resources that are necessary to grant the rights it purports to grant under, and in accordance with, the terms of the Contract.
- (b) The Customer grants the Service Provider, including its Subsidiaries, for the duration of this Contract and for the sole purpose of the performance of the Contract, the right to use, copy and modify the Customer Resources and any modification of the Customer Resources.

#### 11.3 Odigo Solution Licence

- (a) In consideration of the full payment of the Fee and for the strict purposes of the performance of the Contract, i.e. the use of the Odigo Solution in accordance with the Purpose, the Service Provider grants the Customer a personal, non-exclusive, non-assignable and non-transferable right to use the Odigo Solution as well as the Services as required, for the duration of the Contract and in the territory of France.
- (b) The Customer irrevocably acknowledges and agrees that the use of the Odigo Solution is solely online via one or more of the Customer's telecommunications networks and without the provision of hardware or direct and complete access to the Odigo Solution whether in compiled or source form.
- (c) This licence to use the Odigo Solution includes the right to reproduce and temporarily represent and access via one or more of the Customer's telecommunication networks, in SaaS mode, the Odigo Solution on the End Users' computer workstations for the Customer's use of the Odigo Solution, as well as the interconnection of all or part of the Customer's Resources, in accordance with the conditions and limits of this Contract, in

particular the Documentation, with a view to using the Solution.

- (d) Under the rights granted above, the Odigo Solution may only be used in accordance with its Purpose by End Users who have been previously trained in the use of the Odigo Solution by the Customer, in particular in the context of Additional Services.
- (e) Under the rights granted above, the API may only be used in accordance with its Purpose in order to modify the operating parameters of the Odigo Solution.
- (f) Under the rights granted above, the Sandbox may only be used in accordance with the Purpose exclusively to view new Major Releases and assess their impact and benefit, excluding any production launch of the Odigo Solution.
- (g) The Customer shall not make the Odigo Solution available to any third party, including any Subsidiaries, directly or indirectly in whole or in part by any means without the prior written consent of the Service Provider, and shall refrain from any other use than that granted by this Contract.

- (h) The Customer shall not, directly or indirectly, including by any third party, by any means (and shall not attempt to): (i) except as may be allowed by any Law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Contract, copy, reproduce, including to make a backup copy, modify, correct, adapt, translate, arrange, broadcast, create derivative works from, frame, mirror, republish, download, display, transmit or distribute all or any portion of the Odigo Solution and/or Documentation (as applicable) in any form or media; (ii) decompile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; (iii) grant a loan, licence, lease, sell, rent, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Odigo Solution and/or Documentation available to any third party except the End Users; or (iv) access all or any part of the Odigo Solution and Documentation in order to build a product or service which competes with the Odigo Solution and/or the Documentation.

#### 11.4. Open-Source Software and/or Third-Party Software

- (a) In the event that the Service Provider makes Open-Source Software and/or Third-Party Software available to the Customer in connection with the System Services and/or the Services, the



Customer's use of such Open-Source Software and/or Third-Party Software shall be subject to the applicable licence terms and conditions, which may be directly binding on the third-party licensor and the Customer.

- (b) In this respect, the Customer shall comply with the terms of the licence in question. The Customer is responsible for the accessibility and proper functioning of the Open-Source Software and/or Third-Party Software.
- (c) In the event of a malfunction in the System Services or in the provision of the Services resulting from the supplier of the Open-Source Software and/or Third-Party Software, the Customer shall take the necessary measures to enable the System Services and/or the provision of the Services to be restored as soon as possible and Odigo shall not be held responsible for the aforementioned malfunction.
- (d) Odigo shall not be liable for any damages caused by the Open-Source Software and/or Third-Party Software or arising from its/their use, interoperability and/or the exercise of any rights and/or obligations under the licence to the Open-Source Software and/or Third-Party Software.

#### 11.5. Business secrecy

- (a) Odigo has made significant financial, human and material expenditures to design, develop and enhance its expertise, including the Odigo Solution, such that it has significant commercial value.
- (b) In order to protect it, Odigo has taken technical, logical and organisational protection measures to ensure its confidentiality and non-disclosure so that it constitutes in whole or in part a business secret for Odigo.
- (c) For this reason, the Customer agrees not to attempt to discover the know-how, methods and mechanisms that enable the Odigo Solution to function, and acknowledges and agrees that, except for the Odigo Solution Licence, nothing in this Contract grants to the Customer any rights to, under or in, or the right to acquire, the Intellectual Property Rights in the Odigo Solution or the Documentation, and any know-how and/or business secrets resulting from the above-mentioned elements and/or from the execution of the Contract.
- (d) Notwithstanding anything to the contrary in this Contract, subject to any prior rights, Odigo reserves the right to acquire know-how and/or trade secrets arising from the performance of this Contract.

## 12. **INTELLECTUAL PROPERTY RIGHTS INDEMNITY**

- 12.1 Each of the Parties declares that it has all the Intellectual Property Rights necessary for the performance of this Contract, in particular with regard to the Odigo Solution and Customer Resources.
- 12.2 Accordingly, the Service Provider warrants that the Odigo Solution does not infringe or violate any Intellectual Property Rights of any third party.
- 12.3 Similarly, the Customer warrants that the Customer Resources it provides to Odigo for the provision of the System Services, including the use of any third-party resources that are accessible via the System Services and/or the Odigo Solution, do not infringe or violate any Intellectual Property Rights of any third party.
- 12.4 The Customer shall defend, indemnify and hold harmless the Service Provider against claims, actions, proceedings, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Service Provider's use of the Customer Resources.
- 12.5 Subject to clause 12.6, the Service Provider shall defend, indemnify and hold harmless the Customer against any claims, actions, proceedings, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Odigo Solution.
- 12.6 However, in no event shall the Service Provider be liable to compensate the Customer in any way if the claims made by third parties are caused by:
  - (a) a combination of all or part of the Odigo Solution with the Customer's elements, in particular Customer Resources;
  - (b) any Open-Source Software;
  - (c) any Third-Party Software;
  - (d) modification of all or part of the Odigo Solution, in particular the Configuration and/or Developments and/or any other resources and/or Intellectual Property Rights provided by the Service Provider to the extent that such modification has not been made by the Service Provider;
  - (e) compliance by the Service Provider with the Customer's instructions, orders and/or specifications (including any changes to the Odigo Solution resulting from compliance with such instructions, orders, or specifications); or
  - (f) any use of the Odigo Solution that does not comply with this Contract.



12.7 The above indemnities are subject to the following conditions:

- (a) the Party wishing to avail itself of the benefit of either of the indemnities at clause 12.4 or clause 12.5 has notified the other Party of the third party's action or claim as soon as possible;
- (b) the Party providing the indemnity at either clause 12.4 or clause 12.5 (as applicable) is given sole authority to defend or settle the claim under the indemnity and at its own expense, in particular as regards the choice of lawyers to represent it;
- (c) the Party wishing to avail itself of the benefit of either of the indemnities at clause 12.4 or clause 12.5 has not made any admission, or otherwise attempt to compromise or settle the claim and has cooperated faithfully in the said defence by providing, in good time, all the elements, information and assistance reasonably necessary to carry out such a defence,

12.8 In the defence or settlement of any claim under either of the indemnities at clause 12.4 and clause 12.5 and notwithstanding the right of the injured Party to claim compensation for its loss, in particular in the event of loss of use, the other Party shall endeavour, at its own choice and at its own expense:

- (a) firstly, to obtain the right for the injured Party to continue to exploit the rights granted in the context of the performance of the Contract;
- (b) failing that, to modify or replace the infringing elements in such a way as to avoid any risk of infringement while ensuring the same specifications in terms of functionality and performance for the injured Party.

The foregoing provisions set out the sole and exclusive rights and remedies available to the Parties and the indemnifying Party's entire obligations and liability in respect of infringement of the Intellectual Property Rights of third parties.

### 13. DATA RECOVERY

- 13.1 With the exception of Customer Data and Content, the Odigo Solution implemented hereunder is a proprietary solution and as such reversibility services are not available, which the Customer irrevocably acknowledges.
- 13.2 During the Subscription Term, the Customer may export Customer Data and Content entered into and/or stored in the Odigo Solution as part of the standard reporting data in XLS, CSV or TXT format.
- 13.3 Without prejudice to the foregoing, the Parties shall meet to define the elements that may be returned to the Customer at the end of the term of the Contract

for any reason whatsoever, as well as the financial conditions of this return.

- 13.4 The Service Provider may offer the Customer an optional assistance proposal which may include help in defining the technical and human environment requirements of the Customer or a third party designated by the Customer, necessary to carry out the resumption of operations. This advanced support service will be the subject of a commercial proposal and, if necessary, a reversibility plan defining the scope of the services and the timetable for their implementation and will be submitted to the Customer for approval.

### 14. CONFIDENTIALITY

14.1 Any Party receiving Confidential Information (the "Receiving Party") from the other Party (the "Disclosing Party") shall:

- (a) use the Disclosing Party's Confidential Information only in accordance with this Contract, and use all necessary means (including complying with the other terms of this clause 14) to prevent disclosure of such Confidential Information to third parties without the prior consent of the Disclosing Party.
- (b) take all necessary precautions to keep it confidential, as if it were its own information; and
- (c) ensure that its employees, agents, subcontractors and other representatives (and those of its Subsidiaries) comply with the confidentiality obligations set out in this Contract.

14.2 Subject to clause 14.1(b), the Receiving Party undertakes to ensure the physical, material and software security of the Confidential Information, by all appropriate means, including but not limited to keeping it in secure locations.

14.3 Subject to clause 14.5, the restrictions set out in articles 14.1 and 14.2 shall not apply to information which:

- (a) which was already in the public domain at the time of its transmission by the Disclosing Party or which would fall into the public domain through no fault of either Party;
- (b) whose disclosure is required by law, by a government agency (including a regulatory authority) or by a court of law, provided, in the latter case, that the disclosing Party notifies the other Party as soon as possible in writing of such request so that the other Party may freely object to the production or disclosure of the





requested information and provided that, in the event of production or disclosure of the information under legal compulsion, such production or disclosure is strictly limited as far as possible to the judicial request and such disclosure does not affect the confidential nature of the information concerned;

- (c) which the Receiving Party can prove was already in its possession at the time it was provided by the Disclosing Party;
- (d) that is independently developed by a Party and is not the subject of Confidential Information under this Contract; or
- (e) that was publicly known at the time of its disclosure or intended for the public.

14.4 Notwithstanding the above, Odigo may use some of the Confidential Information obtained in the course of the performance of the Contract for statistical purposes and to improve the services it provides.

14.5 Notwithstanding clause 14.3, the Parties agree that:

- (a) Odigo IPR is handled by the Service Provider in confidence and includes trade secrets and/or other Confidential Information of the Service Provider and/or its Subsidiaries, which the Service Provider has entrusted to the Customer for use in accordance with the express terms of this Contract. Such trade secrets and/or other Confidential Information include all algorithms, know-how, methods, techniques, designs, architectures, technologies and processes disclosed by the Odigo Solution and shall be deemed to be included in the term "Odigo IPR" for the purposes of this Contract;
- (b) the Customer shall not at any time disclose or distribute Odigo IPR to any person or entity who does not require access to it for the purpose of exercising the Customer's rights under this Contract; and
- (c) the Customer shall not disclose or distribute Odigo IPR to any third party without the express consent of the Service Provider.

14.6 The Customer shall ensure that its personnel (and any other persons or entities to whom the Customer grants access to Odigo IPR) protect Odigo IPR from misuse, dissemination or disclosure and comply with the Customer's obligations under this Contract, and the Customer shall bear any liability associated with any failure of such personnel or entities to comply with such obligations in the same manner as if the Customer had committed such failure.

14.7 Without prejudice to clause 14.3, the Parties agree that the Customer Logins constitute Confidential Information and, without limiting clauses 9(d) and 14.1, the Customer shall take all necessary steps to prevent any unauthorised use of or access to the Customer Logins and shall promptly change the Customer Logins if it becomes aware of or has reason to believe that there has been unauthorised use of or access to the Customer Logins.

## **15. PROTECTION OF PERSONAL DATA**

15.1 Unless otherwise stipulated in the Special Terms and Conditions, the Parties agree that the performance of the Contract entails the processing of personal data within the meaning of the Data Protection Legislation.

15.2 In this respect, the Parties undertake to process personal data in accordance with the Appendix "Protection of personal data".

## **16. TERMINATION**

16.1 Without affecting any other right or remedy available to it, either Party may terminate this Contract in whole or in part, in the event of:

- (a) material breach by the other Party of any term of this Contract, which (if such breach is remediable) has not been remedied within thirty (30) days after being notified in writing to remedy the breach in question; or
- (b) the other Party taking any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction.

16.2 As a result of the termination or expiry of this Contract, for whatever reason:

- (a) all licences granted under this Contract shall terminate immediately and the Customer shall cease all use of the Odigo Solution, System Services, Services, Telecommunication Services and any Odigo IPR;
- (b) each Party shall return and cease all use of all equipment, property and other items (including





copies) belonging to the other Party and supplied under this Contract; and

- (c) the Customer shall pay to the Service Provider, in each case until the date of termination or expiry of the Contract: (i) the full Fees; and (ii) 100% of the Service Provider's non-cancellable fees.

16.3 Upon the expiry or termination of this Contract for any reason, the remaining rights and obligations of each Party shall immediately terminate, but neither the termination nor the expiry hereof shall affect the rights and obligations acquired by the Parties up to the date of expiry or termination, nor the provisions of the following provisions:

- (a) 1 (Definitions);
- (b) 5 (Fees);
- (c) 15 (Protection of personal data);
- (d) 8.2(c), 9.4, 9.5 and 11.2(Customer Resources);
- (e) 12 **Erreur ! Source du renvoi introuvable.**(Intellectual Property Rights Indemnity);
- (f) 11(Intellectual property);
- (g) 14 (Confidentiality);
- (h) 10 (Liability);
- (i) 4 (Term); and
- (j) 24 (General provisions).

## 17. AUDIT

17.1 The Parties agree that the Customer may, after having notified the Service Provider in writing and with a minimum of ten (10) Working Days' notice, have an audit carried out at its own expense, no more than once (1) a year, to verify the Supplier's compliance with this Contract only in relation to:

- (a) security, in accordance with the provisions of the Data Protection Legislation and under the conditions set out in the "Protection of Personal Data" Appendix;
- (b) performance of the System Services, in accordance with the Service Levels;
- (c) compliance with the deadlines for the performance of the Services, in accordance with the deadlines indicated in the Appendices.

17.2 This audit may be carried out either by the Customer's internal audit department or by an independent firm appointed by the Customer, which may not be a competitor of Odigo. The duration of the audit should not exceed ten (10) Working Days.

17.3 The Customer acknowledges and agrees that the auditors will be required to give a formal undertaking

not to disclose the characteristics of Odigo's provision of services, such as Odigo IPR, in particular the Documentation and any copies of audit reports conducted by Odigo's subsequent sub-contractors, in accordance with the "Protection of Personal Data " Appendix.

17.4 Therefore, and in particular, the Customer shall procure that the said auditors undertake:

- (a) to respect the security rules described in Odigo's security guidelines, including the Security Action Plan attached as an appendix to these General Terms and Conditions;
- (b) to do nothing that could affect the effective performance of Odigo's Services;
- (c) to keep confidential all information about the data (technical infrastructure, processing, etc.) and the Odigo Solution that they become aware of during their work.

17.5 The Customer acknowledges and agrees that, to this end, at the start of their assignment, the Customer's auditors must have signed the confidentiality agreement and engagement letter that will be provided to them by Odigo.

17.6 The audit of the Odigo site will begin in accordance with the procedures and dates defined in an audit schedule agreed in advance between the auditor and the principle contact person at Odigo.

17.7 The Parties agree that the scope of the audit is strictly limited to the Customer's dedicated environment to the exclusion of the shared Odigo environment, and the Customer's performance of the intrusion tests.

17.8 The time spent by Odigo staff assisting the Customer's auditors will be invoiced at the pricing rates in force. In any event, the time spent by Odigo staff cannot exceed ten (10) man-days.

17.9 As part of these audits, Odigo undertakes to cooperate with the auditors and to provide them with all the reasonably necessary information insofar as this information does not concern confidential points of shared elements. In this way, it facilitates the auditors to any document, information, or other element useful to the smooth running of the audit mission and also accepts to answer any question and grant access to all tools and resources necessary for the procedure.

17.10 The Customer shall ensure that audit reports shall be sent at no additional cost to Odigo within the same timeframe as they are communicated to the



Customer and such reports shall be subject to further review at a meeting between the Parties.

- 17.11 In the event that an audit report reveals any breach of this Contract by Odigo following this in-depth review, Odigo expressly undertakes, at its own expense, to implement reasonable corrective measures within a deadline jointly agreed between the Parties.

## **18. INSURANCE**

Each of the Parties declares that it is insured with a solvent insurance company for all the consequences of acts for which it may be held liable by virtue of the performance of the Contract and, in the case of the Customer, more specifically in respect of the use of the Odigo Solution.

Each of the Parties undertakes to pay all premiums so that the other Party can assert its rights and provide each other with proof on request.

## **19. FORCE MAJEURE**

- 19.1 In this clause 19, "Force Majeure Event" means any events, circumstances or causes beyond a Party's reasonable control.
- 19.2 Neither Party shall be liable for, and shall not be entitled to any compensation for, any delays or adverse consequences to the performance of the System Services, the Services, the Telecommunication Services or the provision of the Odigo Solution to the extent that such delays or consequences are due to a Force Majeure Event.
- 19.3 The Party affected by a Force Majeure Event shall, without delay, notify the other Party in writing of the reasons for the delay or breach (and the potential duration of the delay) and also the fact that: (i) the performance of the affected Party's obligations shall be suspended for the duration of the Force Majeure Event; and (ii) the affected Party shall be granted an extension of time equal to the duration of the delay.
- 19.4 In the event that the Force Majeure Event continues for more than thirty (30) consecutive days, either Party may immediately and automatically terminate the Contract without compensation for either Party.

## **20. CONTINGENCY**

- 20.1 In the event of unforeseen events: (i) at the time of the conclusion of the Contract; or (ii) events which, although existing at the time of the conclusion of the Contract, result in unforeseen consequences and make performance excessively onerous for the

Service Provider, including in the event of a change in the Legislation, in particular the Legislation applied to communications, the Parties shall consult with each other within a maximum of sixty (60) days of the Service Provider notifying the Customer in writing of the occurrence of an unforeseen event with a view to making arrangements to limit the financial impact of the change in unforeseeable circumstances and to discuss the continuation of the Contract and any reasonable amendments to be made to it.

- 20.2 If the discussions are not concluded by conclusion of an amendment to this Contract within thirty (30) calendar days from the start of the discussions, each of the Parties shall have the option of terminating the Contract by giving [●] days' written notice to the other Party.

## **21. EXCEPTIONAL CIRCUMSTANCES**

- 21.1 At the date of signature of the Contract, a worldwide context relating to a pandemic is leading to exceptional measures being taken by the French Government and institutions which are imposed on the Service Provider in the performance of its obligations. These measures are subject to change depending on announcements and instructions from the French Government. The Service Provider reserves the right to refuse to travel to a site, city or country for legitimate reasons related to the protection and security or safety of its employees. The Customer may also be affected.
- 21.2 In view of the context and its direct and indirect consequences, the Parties mutually recognise that their obligations are subject to uncertainty. The Parties shall endeavour to keep each other informed as soon as possible, in particular of any impact on the performance of the System Services, the Services and/or the Telecommunication Services.
- 21.3 If necessary, depending on the measures imposed by the French Government, the Parties shall meet within the framework of the governance bodies provided for in the Contract, to discuss any impact or development in the performance of the Contract, and its consequences, particularly financial and contractual, and to jointly define the actions to be implemented, in good faith and in the interests of the Parties.

## **22. SUBCONTRACTING**

The Customer hereby authorises Odigo to subcontract all or part of the System Services and/or Services.



## 23. EXPORT CONTROL

23.1 Each Party warrants and undertakes, in connection with this Contract and its performance, to comply with all applicable laws, regulations, rules and requirements relating to trade sanctions, foreign trade controls, export and re-export controls, non-proliferation and anti-terrorism laws and other similar laws, including, as applicable, the laws of the European Union, France and the United Kingdom, as well as the United States Export Administration Regulations (EAR), the United States International Traffic in Arms Regulations (ITAR) and the regulations of the Office of Foreign Assets Control (OFAC) (collectively, the "**Export and Sanctions Laws**"). In particular, the Customer agrees that the System Services and the Odigo Solution may be subject to US export regulations ("**EAR**"), with which the Customer is required to comply when using the Services.

23.2 Without limiting the foregoing, the Customer represents and warrants that: (a) the Customer, its directors and End Users of its System Services (including the Odigo Solution) are not subject to any blocking or prohibition and are not on any US, EU, French or UK export ban or sanctions list; (b) the Customer is not located in a country that is subject to a US embargo (which is currently the case for Cuba, Iran, North Korea, Sudan, Syria and Crimea in Ukraine) and will not use or permit any of its End Users to use Odigo's services and technology from any of these countries; (c) the Customer will not use or permit any of its End Users to use the System Services and the Odigo Solution in a manner that is contrary to Export and Sanctions Laws, or for the purpose of designing, developing or producing nuclear, chemical or biological weapons, or rocket systems, space launch vehicles, sounding rockets or unmanned aerial systems

## 24. GENERAL PROVISIONS

### 24.1 Autonomy of provisions

Any provision of this Contract declared illegal, void or unenforceable by a competent authority or court shall be deemed to be severed from this Contract and the remaining provisions of this Contract shall remain in full force and effect.

### 24.2 Entire Agreement Clause

This Contract constitutes the entire agreement and understanding between the Parties with respect to its subject matter and supersedes any prior agreement or understanding (whether oral or written) with

respect to the subject matter hereof. Each of the Parties agrees that, in entering into this Contract, it has not relied on or been induced to enter into this Contract by any representation, warranty or interpretation of any person (whether a party to this Contract or not) not included in this Contract. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract. Nothing in this clause shall limit or exclude any liability for fraud.

### 24.3 Assignment

The Customer may not assign, transfer, sub-license, charge or otherwise deal with the Odigo Solution or any part of this Contract other than in accordance with the terms of this Contract without the prior written consent of the Service Provider. The Service Provider may assign all or part of this Contract to a Subsidiary or to a person acquiring all of its business or that part of its business to which this Contract relates upon written notice to the Customer.

### 24.4 Non-waiver

No failure or delay by a Party to invoke any right or remedy provided under the Contract or by law shall not in any way be interpreted as a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

### 24.5 Partial invalidity

24.5.1 If any provision or part-provision of the Contract, including its appendices, are held to be invalid or are declared as such in application of a law, a regulation or following a final decision of a competent court, it shall be deemed deleted but that shall not affect the validity and enforceability of the rest of the Contract.

24.5.2 In such a case, the Parties agree to consult each other and negotiate in good faith to agree to incorporate a new clause into the Contract which will restore the common will of the Parties as expressed in the initial clause, in compliance with the applicable legal and regulatory provisions.

### 24.6 Non poaching

(a) In order to protect the legitimate business interests of the Parties, each Party shall expressly refrain from directly or indirectly attempting to employ or engage or solicit or entice away, or employing or engaging or



soliciting or entice away, from the employment or service of the other Party the services of any employee of the other Party assigned to the performance of this Agreement, even if the initial approach is made by the employee.

- (b) This prohibition shall apply throughout the term of the Contract and for a period of one (1) year following its termination for any reason whatsoever.
- (c) In the event of a breach of this prohibition, the defaulting Party shall, on demand, pay to the other Party a sum equal to twelve (12) months of the last monthly gross salary of the person solicited or hired.

#### 24.7 Notices

- (a) Any notice required to be given under this Contract shall be in writing and shall be delivered by hand or sent by prepaid post at the priority rate (or by airmail for overseas countries) to the address of the Party concerned, for the attention of the Party concerned, with a copy to the following e-mail address:

For the Customer:

For the Service Provider:

- (b) Any change in contact details shall be notified to the other Party in accordance with this clause 24.7, but shall not take effect until five (5) Working Days after the notification of the change has been given.
- (c) Unless there is evidence of earlier delivery, any notice or other communication shall be deemed to have been given:
  - (i) if it is delivered by hand, when it is delivered to the address indicated in the clause 24.7(a); and
  - (ii) if sent by pre-paid first-class post, two (2) Working Days from the date of posting or, if sent by air, five (5) Working Days from the date of posting.

#### 24.8 Evidence

- (a) The Parties acknowledge and agree that exchanges via the Odigo Solution or by electronic mail constitute original documents between the Parties and shall be deemed to be evidence, unless written proof to the contrary is provided.

- (b) Elements such as the time of receipt or transmission, as well as the quality of the data received, shall have priority as shown on the Odigo Solution or as authenticated by the Service Provider's computerised procedures, unless the Customer provides written proof to the contrary. The scope of proof of information provided by the Odigo Solution is that given to an original in the sense of a written paper document, signed by hand.

#### 24.9 Variation

No variation of this Contract shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

#### 24.10 No partnership or agency

Nothing in this Contract is intended to or shall operate to create a partnership between the Parties, or authorise either Party to act as agent for the other, and neither Party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

#### 24.11 Applicable law and dispute resolution

- (a) If a dispute arises between the Parties, the Parties shall in the first instance endeavour to resolve it through negotiations between their respective managements. If such negotiations fail to resolve the dispute and if all Parties agree, the dispute may be referred to mediation. The Parties shall have a period of two (2) months following the receipt of a registered letter with acknowledgement of receipt notifying the other Party of the request to implement an amicable settlement of the dispute. Within this period, the Parties undertake not to bring the matter of this dispute before any court in parallel. This article 24.9(a) shall not prevent either Party from seeking summary judgement from the courts.

- (b) THIS CONTRACT IS GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH FRENCH LAW. THE FRENCH COURTS SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR OR DETERMINE ANY DISPUTE OR ACTION ARISING OUT OF OR RELATING TO THIS CONTRACT AND, TO THIS END, THE PARTIES IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF NANTERRE.



## **APPENDIX: PROTECTION OF PERSONAL DATA**





## **APPENDIX: SECURITY ASSURANCE PLAN**



## Special Conditions for SaaS – Odigo Multi-channel SOLUTION Contract

Odigo – [Customer]

Reference:

These Special Terms and Conditions supplement the General Terms and Conditions of the SaaS Contract that apply to the provision of the Odigo Solution.

### PREAMBLE

ODIGO, in its role as a multi-channel customer relations service provider, implements the functionalities that are required for customer relations management via its Odigo solution, routing incoming or outgoing contacts on various communication channels to the most appropriate resource.

The Customer is specialised in *[to be completed]*

The Customer would like to implement *[to be completed]*.

Odigo has responded to the Customer's statement of requirements by submitting a functional, technical and commercial proposal referenced "xxx" dated XX/XX/XXXX, proposing to the Customer the implementation of a multi-channel SaaS solution based on the Odigo Contact Centre Solution (the 'Proposal').

Under these conditions and on the basis of the Proposal, the Customer has retained the Odigo multi-channel solution proposed by Odigo. The functional characteristics of this solution meet the functional requirements requested by the Customer in terms of customer relations management, the routing of incoming or outgoing contacts on the different communication channels defined in the Contract.

The following has henceforth been agreed:

### CLAUSE 1 - DEFINITIONS

**'Data Center'** refers to the ODIGO Hosting center where the technical Hosting platforms for the Hosting and operation of the Odigo Solution are installed.

**'Hosting'** refers to the ODIGO service which provides the Customer with hardware, networks and software to ensure the hosting of the Odigo Solution.

**'Deliverable'** means a part of the Services which are delivered to the Customer under this Contract.

**'SaaS'** means the mode that allows the Customer to access and use, via the Internet, the applications which are operated and installed in Odigo's server centres and in particular the Odigo Solution.

**'Specifications'** refers to the document formalising the description of the Solution's general and functional characteristics. The 'Detailed Functional Specifications' are Deliverable Documents subject to acceptance, produced on the basis of the Odigo Proposal as referenced in the preamble. The Specifications thus validated by the Customer will form the contractual reference for the Customer's acceptance operations for the Solution.

Terms used in these Special Terms and Conditions which have not been defined in this Clause 1 shall have the meaning given to them in the General Terms and Conditions.

### CLAUSE 2 - PURPOSE OF THE CONTRACT

The purpose of these Special Terms and Conditions is to set the conditions under which ODIGO provides the Odigo Solution, Documentation, System Services, Telecommunications Services and/or the Services to the Customer.

### CLAUSE 3 – INITIAL TERM

The Initial Term for the purposes of clause 4 of the General Terms and Conditions shall be a period of [NUMBER] years commencing on the earlier of the date of commissioning of the Odigo Solution and the date of first use of the Odigo Solution in a production environment.

### CLAUSE 4 - CONTRACTUAL DOCUMENTS

These Special Terms and Conditions are comprised of the



following contractual documents listed in decreasing order of importance:

- This document ;
- The Documentation ;
- and the following appendices:
  - Appendix 1– Financial Conditions
  - Appendix 2 – Description of the Odigo Solution
  - Appendix 3 – Service Level Agreement (SLA)
  - Appendix 4 – Technical Prerequisites
  - Appendix 5– Conditions for Call Answering Service
  - Appendix 6 – The Odigo Solution Update Strategy
  - Appendix 7 – API Management
- as well as any future Detailed Functional Specifications as accepted by the Customer;
- The General Terms and Conditions of the SaaS Contract, and its appendices; and
- The Purchase Order(s), if applicable.

In the event of a conflict between one or more provisions appearing in any of the above documents, the provision in the higher ranking document will have precedence. In case of conflict between one or more equally-ranked appendices or between successive versions of the same contractual documents, the last-dated document will prevail.

## CLAUSE 5 - DESCRIPTION OF THE SERVICES

The System Services include the following recurring operational services.

- (i) Implementation of the collection and receipt, processing, qualification and distribution of Interactions as detailed in **Appendix 2** of this Contract. The Odigo Solution is provided to the Customer in SaaS mode;
- (ii) Provision, operation and maintenance of telecom accesses that input and output the Odigo Solution by dimensioning them to correctly process the System Services' volumes of interactions. The Customer shall inform Odigo of any operation that may temporarily cause a large influx of calls that exceeds the reception possibilities of the ODIGO Solution as dimensioned by ODIGO and based on the Customer's declared call volume;
- (iii) If necessary, connecting of calls to the Customer's call centres;
- (iv) Providing the Customer with secure access to interaction traffic statistics

### 5.1 Specific clauses for certain tools/Functionalities/Options

#### 5.1.1 Call supervision

The Customer shall comply with all Laws relating to listening to and/or recording telephone conversations in the workplace.

The Customer shall not listen to and/or permanently record employees' conversations unless this is permitted by Law.

The Customer shall, in the processing and collection of any personal data and in particular, the listening to and/or recording of telephone conversations of the callers and/or employees at their place of work, comply with the Data Protection Legislation.

The Customer shall indemnify, and keep indemnified and defend at its own expense the Service Provider against all claims, costs, damages or expenses incurred by the Service Provider or for which the Service provider may become liable due to any failure by the Customer to comply with its obligations under this clause 4.4.1, the Data Protection Legislation or Laws relating to listening to and/or recording telephone conversations in the workplace.

#### 5.1.2 Outbound calls

The Customer shall comply with all applicable Data Protection Legislation when making outgoing calls and sending messages to individuals

### 5.2 Use of communications for advertising or statistical purposes, or for the improvement of the service provided to the User

The Customer acknowledges and agrees that the use of communications for advertising or statistical purposes or for the improvement of the service provided to the End User is subject to the End User's express consent. This consent must be obtained annually by the Customer.

### 5.3 Public cloud

The Odigo Solution is hosted on servers controlled by Amazon Web Services Inc ('AWS').

### 5.4 Reporting and monitoring of Services

The Parties shall establish one or more committees, which shall be responsible for monitoring and coordinating the actions provided for in the Contract as well as any actions which will be jointly decided by the Parties.

The Parties will establish a governance committee, the organisation, periodicity, roles and members of which they will define.

Each committee's meeting will result in a written report drafted by the Service Provider and signed by both Parties.

Signing the report, when applicable, commits the Parties to performing the actions, but does not in any case have the effect of modifying the provisions of this Contract.



Any modifications to the Parties' commitments and obligations must be the subject of a written amendment signed by the Parties.

Within the framework of the monitoring bodies, ODIGO undertakes to provide a report which presents the Contract's performance monitoring, and in particular the potential delays and compliance with service quality criteria.

## **CLAUSE 6 - ACCEPTANCE**

Once the Odigo Solution has been accepted by the Customer and been implemented in accordance with the Special Terms and Conditions governing the implementation of the Odigo Solution ("Special Implementation Conditions"), the Deliverables (including interface developments, upgrades, etc.) shall be accepted by the Customer in accordance with the terms and conditions of the Special Implementation Conditions.

## **ARTICLE 7 - TERMS AND CONDITIONS FOR PERFORMING SERVICES**

### **7.1 Scheduled maintenance of servers and upgrades of the Odigo Solution**

#### 7.1.1 Scheduled maintenance of servers and/or the server centre

ODIGO undertakes to perform any intervention requiring an interruption of the System Services, or one that could result in an interruption, in accordance with a schedule, except on the occurrence of a Force Majeure Event.

ODIGO may interrupt the System Services for maintenance operations on servers and/or server centres, provided that it notifies the Customer of such maintenance at least one (1) month before the date of said interruption. The duration of interruptions must not exceed one (1) Working Hour per month. Their frequency must be less than or equal to four (4) times a month. In addition, and whenever possible, these interruptions must be implemented at the moment during the day when the effects on the Customer's traffic are the least detrimental, it being agreed that this must not have the effect of preventing ODIGO from performing the services or fulfilling its obligations.

#### 7.1.2 Changes in the means of Hosting the Odigo Solution

In the interests of constantly improving its services, ODIGO can implement modifications related to the Odigo Solution Hosting (technical Hosting platforms and Data centers) subject to the continued compliance with the level of service quality and provided that these modifications have no material negative consequences for the Customer from a technical, organizational and financial point of view. ODIGO will give

reasonable notice to the Customer of any eventual relocation of the Data Centers.

#### 7.1.3 Odigo Solution Major Releases, Patches and Hotfixes

Under the Contract, the Customer will automatically benefit from the latest Odigo Solution Major Releases, Patches and Hotfixes, which will be installed directly by the Service Provider, in accordance with the Odigo Solution update strategy described in Appendix 6.

The Parties acknowledge that the provision of certain new functionalities may have a financial impact. In this case, the Customer will be able to choose whether or not to use these new paid features.

In the context of Major Releases, the Service Provider will make available to the Customer a Sandbox, which provides access to the functional developments of the Major Release. This Sandbox will be active one (1) month prior to the production roll-out during Working Days and Working Hours.

The provision of this environment allows the Customer to view the new developments and assess their impacts and benefits. There is no SLA for this environment, which will be the subject of a dedicated support process. The Customer agrees that the Sandbox will not be used for production purposes and that, as such, it remains solely responsible for its use and for the quality and integrity of the data it includes in it.

Major Releases will be documented in release notes available on the <https://odigohelpcenter.odigo.com> portal two (2) months prior to availability of the Sandbox.

Where appropriate, the Service Provider may assist the Customer in the context of Major Releases. Such assistance shall be supplied as Additional Services subject to a purchase order.

Decommissioning of features:

In the event that features are decommissioned, the features concerned will be supported by the Service Provider for a period of at least six (6) months from the date of notification before being decommissioned.

The list of affected features is available on the <https://odigohelpcenter.odigo.com> portal and will be documented in the release notes.

#### 7.1.4 APIs

As part of its service, the Customer will benefit from APIs intended to allow it access to Odigo data in order to customise certain features by facilitating exchanges with third-party systems, it being understood that the Customer is prohibited from redeveloping a solution that is equivalent to that marketed by Odigo for its internal use or for marketing purposes based on these APIs.



These APIs are accessible from the <https://odigohelpcenter.odigo.com> portal.

The Service Provider shall use reasonable endeavours to ensure the upward compatibility of these APIs within the framework of its API management policy as defined in Appendix 7.

The Customer shall comply with the policy on the use of APIs, which is available at <https://odigohelpcenter.odigo.com> portal.

## **7.2 Volume**

The Contract is concluded between the Parties on the basis of the volumes specified in Appendix 2. However, the Customer undertakes to inform ODIGO when a significant variation in volumes is anticipated.

Odigo will then specify whether the initially-installed global solution may or may not accommodate the volume increases. In the event of a negative response, ODIGO will propose a solution to the Customer as rapidly as possible and deliver a commercial proposal. The solution proposed by Odigo will be implemented as soon as the Customer accepts the commercial proposal sent by Odigo.

## **7.4 Locations**

The Services will generally be provided at ODIGO's premises.

Some Services may be performed on the Customer's premises. In this case, the Customer undertakes to facilitate access to its premises for ODIGO staff interventions. The intervention will be performed within the related site on Working Days and during Working Hours. ODIGO staff who are required to work in the Customer's premises will comply with the provisions of the internal and security rules that the Customer has previously communicated or which are posted on its premises. However, all ODIGO personnel who are fully or partly assigned to perform the Services will remain under the hierarchical and disciplinary authority of ODIGO in all circumstances.

When applicable, the related items belonging to the Customer which have been agreed to in advance between the Parties and which are intended to connect with ODIGO equipment or to accommodate this equipment must be assembled by the Customer in good time, with assistance from ODIGO if necessary. As such, the Customer must comply with ODIGO recommendations and instructions concerning the Odigo Solution's environment (telecommunications and telephony architecture). Failing this, ODIGO cannot be held responsible for any malfunctions resulting from the Customer's non-compliance with ODIGO's recommendations.





Signed by [NAME  
OF DIRECTOR]  
for and on behalf  
of Odigo

.....

Director

Signed by [NAME  
OF DIRECTOR]  
for and on behalf  
of [NAME OF  
CUSTOMER]

.....

Director

*Drawn up in two original copies,*

*In Issy les Moulineaux, date: .....*



## **APPENDIX 1: FINANCIAL CONDITIONS**



## **APPENDIX 2: DESCRIPTION OF THE ODIGO SOLUTION**



### **APPENDIX 3: SERVICE LEVEL AGREEMENT (SLA)**



#### **APPENDIX 4: TECHNICAL PRE-REQUISITES**





## **APPENDIX 5: SPECIFIC CONDITIONS FOR CALL ANSWERING SERVICE**

### **Preamble:**

Where specified in the list of conditions that ODIGO is required to provide Telecommunications Services, this Appendix shall apply.

This Appendix consists of this document and the 'Ethical Recommendations'. It is specified that this document may be changed without being the subject of an amendment to the Contract, as updates to the Ethical Recommendations are available and can be consulted on the AF2M website (<https://af2m.org>).

### **CLAUSE 1. DEFINITIONS**

- *CLI: Calling Line Identification (caller ID)*

*Number:* refers to either a VRS Number or an Inter-Personal Number as defined below for access to the service:

- *VRS (Voice Reception Service) Number:* Short or long number assigned by ARCEP to ODIGO and made available to the Customer by ODIGO. Depending on the price tier, the VRS Number will be a 'free', 'special rate' or 'premium rate' number.
- *Ported Number:* A telephone number originally assigned to another operator that has been moved to the ODIGO operator.
- *Geographical Number:* A number in the national telephone numbering plan with a structure containing a geographical indication used to route calls to network endpoint. the corresponding
- *Multi-use Number:* A number in the national, regionally differentiated telephone numbering plan beginning with 09.

*Local Loop Operator:* refers to an operator that deploys telecommunications infrastructures allowing a subscriber to physically connect to switched telecommunications networks. The Local Loop Operator charges its subscribers for calls made to the Numbers assigned to ODIGO or ported to ODIGO and made available to ODIGO'S CUSTOMER.

*Donor/Recipient Operator:* refers to any actor involved in the portability of the Customer's Number: the Donor Operator being the operator from which the Number is ported and the Recipient Operator being the operator to which the Number is ported.

*Value-added Service:* refers to any service that is accessible through a special or short number and consists of the delivery of a service by telephone, by a natural or legal person, for one of its current or future customers, against remuneration or the expectation of remuneration.

### **CLAUSE 2. SPECIFICITIES RELATED TO TYPES OF NUMBERS**

#### **2.1 Specificities related to types of numbers**

##### **2.1.1 Number**

Where ODIGO assigns to the Customer one or more Number(s), this/these Number(s) may be modified for reasons outside ODIGO's control. ODIGO shall inform the Customer as soon as possible after receiving official notification from the competent authority. The Customer is informed that ARCEP decisions are binding and ODIGO cannot oppose them.

In order to protect users from the use of caller IDs or abusive messages, VRS Numbers and Non-geographical Numbers are assigned by ODIGO to the Customer for its own use and therefore the Customer is not permitted to assign those Numbers to a third party.

If the Customer uses a CLI other than a Number assigned by ODIGO, the Customer must be able to justify to ODIGO upon request that the use of the Number was previously authorised by the Number's assigner. Thus, ODIGO may at any time require that the Customer provides the authorisation received from the Number's assigner.

For outgoing calls, the CLI presented to the called party must allow the called party to contact the Customer again.

,ODIGO reserves the right to interrupt routing, and calls or messages received via an incoming international interconnection.

Each special or short premium rate VRS Number may only be assigned exclusively and in a way that is stable over time to a single natural or legal person and for a single service.

##### **2.1.2 Ported Number (incoming portability)**

ODIGO undertakes to perform, in accordance with the related laws and regulations in force, the portability of the Service access Number(s) at the request of the Customer. The Customer acknowledges and agrees that portability can only be effective if the Donor/Recipient Operator also implements the technical requirements for such portability. ODIGO shall not be liable in case of delay or difficulty in the implementation of portability caused by said Donor/Recipient Operator. Moreover, the accessibility of the Ported Numbers will depend on the accessibility granted by the Donor/Recipient Operator, as ODIGO cannot technically grant more access than the above-mentioned operator concerned.

#### **2.2. Accessibility**



The VRS Number(s) is/are accessible from the entire national territory including the following overseas territories: Guadeloupe, St Martin, St Barthélemy, French Guiana, Martinique, Reunion, Mayotte and St Pierre and Miquelon.

If the Customer wishes its Voice Reception Service to be specifically accessible from abroad (i.e. from foreign countries), it will specifically mention this to ODIGO and the financial conditions associated with this accessibility will be agreed between the Parties in the Contract or later by way of an amendment.

Please note that short Numbers are not accessible from abroad.

Furthermore, the Customer is informed that when the access Numbers for the Voice Reception Service are accessible from abroad, no repayments will be made by ODIGO for these calls, regardless of the type of Number. In addition, for these calls, ODIGO may charge the Customer a specific collection fee as will be specified in the Contract.

It is the Customer's responsibility to communicate the accessibility of its Voice Reception Service to callers in the course of the pricing information brought to their attention in the Voice Reception Service.

### **2.3. Conditions relating to a refusal to open a Voice Reception Service**

ODIGO may refuse to open a Voice Reception Service:

- If the Customer has already been the subject of a Voice Service Contract terminated by court decision within the last six months or in the event of a recurrence within the last two years;
- If, on the date of its request, the Customer has, within the last three years, had a Voice Service Contract terminated or suspended by decision of a competent authority or on the basis of a court decision and is again the subject of judicial proceedings for termination, and this stands until the court's final decision is served.

### **2.4. Outbound Portability of the Number**

When the Customer is the Number holder, it may ask ODIGO to port the Number to another operator. ODIGO shall perform this outbound portability under the same conditions as those set out for inbound portability in paragraph 2.1.2 above. The Customer acknowledges and agrees that Odigo makes the same reservations mentioned in paragraph 2.1.2 concerning the fact that the efficiency and effective implementation of the portability partly depend on the Donor/Recipient Operator.

With regard to Short Numbers, which can only be assigned by ARCEP to operators, it is specified that a Short Number cannot be the subject of portability within the meaning provided for in the relevant laws and regulations in force. In the event that the Customer, when changing operator, would like to keep the Short Number attributed to it by Odigo and made available to the Customer for its Voice Reception Service requirements, ODIGO shall carry out the administrative formalities incumbent upon it in order to allow the assigned Short Number to be transferred to the new operator designated by the Customer. The Customer acknowledges and agrees that the provision of the Number constitutes only part of the Voice Reception Service provided by ODIGO under this Contract.

## **CLAUSE 3. RIGHTS AND OBLIGATIONS OF THE CUSTOMER**

3.1 The Customer is responsible for the supply and correct operation of the telecommunications equipment located on its site, which is neither provided nor made available to it by ODIGO and over which it has or its subcontractors have technical mastery, including over its sizing in view of the volume of calls it expects to receive on its services.

The Customer shall notify ODIGO of any operation that may temporarily cause a significant influx of calls exceeding the reception possibilities of its facilities or its personnel.

3.2 In order to combat ping calls, the Customer is prohibited from using premium rate special numbers in 089B form as the caller ID for outgoing calls made from its voice service.

The Customer acknowledges and agrees that, to combat this practice, the operators (local loop operators, transit operators and collection operators) will set up filtering (blocking or concealing) mechanisms for when these calls pass through their network to protect their own customers who receive such calls. In the event of failure by the Customer to comply with this regulation, ODIGO will implement all necessary measures in order to intervene rapidly to bring them to an end.

3.3 The Customer warrants that it is aware of the operating conditions of the networks and undertakes to comply with the relevant telecommunications laws and rules in force from time to time.

3.4 The Customer shall be responsible for the content and nature of the information given out in the Voice Reception Service and shall, as such, take any appropriate measures to ensure effective monitoring of the information so that the Voice Reception Service does not contravene any applicable legislative, regulatory or ethical provisions, or public order and accepted standards of behaviour, or the rights of third parties. In this regard, the Customer shall follow the current or future published Ethical Recommendations applicable to voice



services. On the date of signing of this Contract, the Ethical Recommendations are set out in the appendix to these General Terms and Conditions. Updates are available on the website of the AF2M or of any entity that might replace it.

ODIGO reserves the right to cut off any access to the Voice Reception Service in the event that ODIGO or a Donor/Recipient Operator finds a breach of the above-mentioned Ethical Recommendations, without the Customer being able to challenge this decision. In this case, the latter shall not be entitled to any compensation for the harm suffered by the closure of any access to the Voice Reception Service. In any event, should the liability of ODIGO be sought due to the Customer's failure to fulfil its obligations with regard to the content of the Voice Reception Service, the latter undertakes to indemnify ODIGO for any damages resulting therefrom.

3.5 Any remuneration due in respect of reproduction rights and in respect of the communication to the public of works or extracts of works used in connection with the Services provided in the Voice Reception Service (rights due to SACEM or to other copyright societies), which form the subject matter of this Contract, is not included in the financial conditions for the Voice Reception Service.

The Customer undertakes to seek the necessary authorisations for the reproduction and dissemination of such works or extracts of works from the collecting societies concerned and to settle the payments arising from them. The Customer shall indemnify ODIGO against any action, complaint, claim, or opposition from any person invoking an intellectual property right or an act of unfair competition or free riding in relation to the works or extracts of works concerned.

In the event that ODIGO agrees to directly conclude a contract with the author and composer of the music used on the Voice Reception Service, no Intellectual Property Rights relating to such music shall be transferred to the Customer.

3.6 In the hypothetical cases referred to in the clauses above, the Customer shall bear all financial consequences and any convictions and/or damages that may be imposed on ODIGO by a court decision.

### 3.7 FREE PRICING INFORMATION MESSAGE (FPIM)

The Customer acknowledges and agrees that a free information message on the total price that may be charged to the consumer must be put in place. These provisions apply to all Premium rate numbers as mentioned in the Ethical Recommendations available on the AF2M website. Consequently, the service should be preceded by a free message of at least 10 seconds, punctuated by a beep in order to inform the consumer about the price of the call. A beep indicates the end of this information and the implementation of the announced price conditions.

The Customer undertakes to comply with all the provisions of the above-mentioned decree.

If the Customer would like ODIGO to customise this pricing information announcement, apart from the above recommendations and in compliance with the decree, it will have to make a request to ODIGO, which will propose a quotation for the implementation of that service. The pricing information announcement will then only be implemented after acceptance of that quotation by the Customer.

### 3.8 Customer directory database (not required)

The CUSTOMER is informed that ODIGO establishes a database (lists of subscribers) including the directory data of customers to whom it has assigned Numbers or whose numbers have been reported to ODIGO. The purpose of the processing is to establish a database of directory data in order to communicate that data to any universal directory publisher and universal information service provider that requests it from ODIGO. The data likely to be collected and processed by ODIGO in this context may constitute personal data. Consequently, for the processing of such data, ODIGO complies with the legal and regulatory provisions known as the French 'Data Protection act' as defined in the amended law No. 78-17 of 6 January 1978. The Customer has the right to access, correct, update and erase its data in accordance with Articles 39 and 40 of Law No 78-17. The Customer must complete a form, a template of which will be provided to it by ODIGO, if it wishes to have its data included in the telephone directories or information services.

ODIGO does not control the veracity of the data transmitted by its customers and cannot therefore be held responsible in the event of an error or omission relating to the Customer in the published data.

Furthermore, ODIGO cannot be held liable for any changes to the transmitted data where such change is made by the publishers of universal directories and the universal information service providers without ODIGO having requested such a change. Similarly, publishers of universal directories and universal information service providers may be required to modify the data to comply with their own editorial charter and ODIGO shall not be held liable for any non-conformity of publication due to modifications made by universal directory publishers and universal information service providers, the Customer expressly acknowledges this.

If the Customer does not correctly complete the form, it cannot claim against ODIGO for any absence or error in the publication of its data in directories and information services.

The Customer is informed that it may request ODIGO not to include it on the lists of subscribers transmitted to directory publishers and information service providers. In this case, the Customer undertakes, at the signing of this Contract, to inform ODIGO of its desire not to appear on the lists of subscribers by filling out the form and mentioning its refusal of publication so that ODIGO can take into account said refusal and withdraw or not include the Customer's data in the lists addressed to directory publishers and information service providers.

The Customer may also inform ODIGO at the time of signing of the Contract or at any time thereafter of any publishing objections and restrictions it wishes to have applied, namely:



- that the list communicated by ODIGO to directory publishers and information service providers should not include the full domicile address except when the business activity mentioned consists in providing goods or services to consumers;
- for natural persons, that the list communicated by ODIGO to directory publishers and information service providers should not contain a reference to their gender, on condition that names are not duplicated in the same list;
- that the personal data relating to it from the lists of subscribers or users should not be used in direct prospecting operations either by post or by electronic communications;
- that its data should not be mentioned on lists of subscribers or users that allow a reverse search for the identity of a subscriber or user by telephone number.

The Customer is informed that it may withdraw, at any time and free of charge (except for the costs related to the transmission of its intention), its consent to the publication of its data in telephone directories and information services. The Customer may also modify or supplement its data or its publication choices at any time during the execution of the Contract, by returning a new completed form to ODIGO.

3.9 The Customer, which has directly concluded a contract with a software publisher for the maintenance of software that may be integrated into the voice application hosted by ODIGO, expressly authorises or delegates to ODIGO the right to contact said software publisher. The Customer undertakes to agree to the publisher granting sufficient rights to allow ODIGO to use that software in the performance of the Services, which are the subject of this Contract.

3.10 The Customer agrees, for the period of the Contract, that all traffic related to the Service, which is the subject of this Contract, will be collected and processed by ODIGO's technical infrastructure.

3.11 All tools made available to the Customer in SaaS mode by ODIGO remain the property of ODIGO. These tools made available to the Customer are regularly modified based on the monitoring plan carried out by ODIGO. Upgrades and especially standard updates of said tools are included in the cost of the recurring services. This allows the Customer to benefit from standard updates of said tools at no additional cost.

Depending on the tool made available to the Customer in SaaS mode, ODIGO will (i) upgrade the versions on the date of its choice for any tool that corresponds to a service shared by all Odigo customers or (ii) offer the Customer three dates for a multi-batch deployment for tools that do not correspond to a service shared by all Odigo customers.

If the Customer declines the dates offered by ODIGO and prefers a specific deployment, the cost of the specific deployment will be charged to the Customer.

The date requested by the Customer must fall within the version deployment period.

The Customer is also reminded that if it declines an initial version upgrade of the tool concerned, the following version upgrade will be imposed on it.

In addition, in the event that the Customer's project requires specific integrations with third-party solutions other than those under ODIGO's responsibility, any costs associated with updating these integration specificities with third-party solutions will be borne by the Customer.

### 3.12 VRS REVERSE DIRECTORY (Regulatory requirement)

Article L 224-43, paragraph 1 of the Consumer Code requires VRS Operators and service publishers to put a tool in place ('VRS reverse directory') to identify, from the call number or text message, the name of the product or service accessible from this value-added Call Number (premium rate).

This VRS reverse directory allows the consumer, for any VRS Number, to know the price, the name of the publisher and the main features of the publisher's service.

This reverse directory is available at: [http:// www.infosva.org/](http://www.infosva.org/)

In this context, the Customer undertakes to communicate to ODIGO the data defined in Article L 224-43 of the Consumer Code. Failure to do so will result in the suspension of access to the VRS numbers concerned, which may be followed by the termination by ODIGO of the Contract due to a breach by the Customer in case of recurrence.

The obligations and measures implemented in the context of the reverse directory are specified in the Ethical Recommendations set out in the Appendix to this document.

It is restated that:

- The Customer undertakes to keep ODIGO informed without delay of any modification of the above information throughout the duration of the Contract.
- In the event of inaccuracy of the information transmitted by the Customer, ODIGO may proceed with the suspension of access to the VRS Number and, if necessary, the termination of the Contract. In addition, ODIGO may terminate the Contract as of right in the event of absence of notification by the Customer of any modification of the above-mentioned information transmitted by the Customer to ODIGO.

### 3.13 THE VRS SIGNAGE CHARTER



The Customer undertakes to comply with the signage charter for the graphic display of VRS numbers. As such, the Customer acknowledges that it is responsible for applying this charter and complying with its content in all its communications and commercial notices to consumers (in particular on all advertising media including packaging).

The objective of this signage charter is to ensure price transparency for consumers. The details of the signage are described in the 'Signage of VRS numbers' document. This common signage is available on the AF2M website.

3.14 ODIGO recommends that the CUSTOMER should make a backup or copy of any items it delivers to ODIGO, including items not included in backup procedures for which ODIGO is not responsible in the event of loss or destruction and does not guarantee the retention of a copy in the event of loss for any reason whatsoever.

### **3.15 Specific obligation of the Customer when the latter is a publisher of telephone information services**

If the Customer is a publisher of telephone information services, it undertakes to comply with the regulations relating to the telephone information services it provides and takes responsibility regarding price transparency for callers with regard to its telephone information service in accordance with the applicable law on the subject. ODIGO shall not be held liable for Customer's failure to fulfil its obligations.

In addition, it is restated that the Customer undertakes to respect and comply with the Ethical Recommendations and the Customer undertakes to comply with the following provisions, in particular:

- Under clause 2 'Limitation of uses' and more specifically clause 2.1 'Duration of Services' of the Ethical Recommendations, the amount charged to the caller may not exceed EUR 24 including tax per call. Consequently, in view of this obligation, ODIGO will automatically end the communication as soon as this amount is reached.
- Finally, the Customer undertakes not to use special premium rate voice numbers starting with 089, 3BPQ special or premium rate short numbers (excluding 30PQ and 31PQ) and 118 XYZ short telephone information service numbers, in the context of telephone marketing to contact a consumer.

## **CLAUSE 4. RIGHTS AND OBLIGATIONS OF ODIGO**

4.1 ODIGO undertakes to comply with all laws and regulations applicable to it in respect of its activity or likely to have an impact on the provision of the Services.

4.2 In the event of the Customer's failure to comply with the Ethical Recommendations or the provisions of this Contract relating to the content of the Service, ODIGO may, after notice sent to the Customer by registered letter with acknowledgement of receipt remains without effect for a maximum period of five (5) days, immediately suspend the Voice Reception Service.

Furthermore, ODIGO may, in all cases, refer the matter to a judge in chambers in order to obtain a decision on immediate suspension. In this case, the formal notice procedure does not apply.

The suspension of the Contract by ODIGO, under these conditions, shall, as a matter of right, lead to the suspension of the associated repayments, if any repayments are included in the Contract. Blocked funds shall not generate interest.

In the event of a criminal prosecution at the initiative of the public prosecutor against the Customer or its representative, in particular concerning the content of the voice service, ODIGO may suspend the performance of this Contract with no right to compensation for the Customer until the date of the final legal decision to intervene, when such suspension is made at the request of the judicial authority.

In the event of conviction of the Customer or its representative due to the voice reception service offered or the publicity for the voice reception service, ODIGO may terminate this Contract without notice and with no right to compensation.

In the event of repeated breaches or a serious breach of the Ethical Recommendations, ODIGO may terminate the Contract as of right.

In addition, Odigo reserves the right to pass on to the Customer any penalties that the operators might apply to it in the event of the Customer's failure to comply with the Ethical Recommendations.

Similarly, if the entity responsible for the application of ethical rules requires the VRS operators to include a lump sum penalty into contracts concluded with their customers in addition to the termination of the Contract for breach of the Ethical Recommendations, ODIGO shall be entitled to claim the latter from the Customer following advice from the competent authority.

4.3 In the case of features requiring passage through the Internet network, in no case can ODIGO be held responsible for access speeds from other websites or for external slowdowns. ODIGO's responsibility stops at the egress of the IP (Internet Protocol) routers installed on its premises.

4.4 It is restated that, in accordance with the legislation in force, ODIGO undertakes to keep all connection data for a minimum period of one year from the date of recording, for the purposes of searching, finding and prosecuting criminal offences, in accordance with the provisions of the Post and Electronic Communications Code.





## **APPENDIX 6: ODIGO SOLUTION UPDATE STRATEGY**

In accordance with the Odigo Solution life cycle, the Service Provider will make the following updates:

<b>Type</b>	<b>Framework</b>	<b>Regularity</b>	<b>Prior notification</b>	<b>Intervention time</b>	<b>Service interruption</b>
Hotfix	Instability, high security risk, blocking incident	If necessary	N/A	As soon as the hotfix is available	If impact on service, 2 hours maximum
Patch	Patches and/or developments without any functional impact	Weekly if necessary	7 days	If impact on service, between 10 pm and 5 am Customer's local time If there is no impact on service, at any time night and day	If impact on service, 2 hours maximum
Major Release	Functional developments	Twice yearly	4 months	If impact on service, between 10 pm and 5 am Customer's local time If there is no impact on service, at any time night and day	If impact on service, 4 hours maximum

The Service Provider reserves the right to modify the Regularity of the updates.



## **APPENDIX 7: API MANAGEMENT**

APIs made available to the Customer by the Service Provider will follow the life cycle described below:

- **Active:** This is the current version of the API. It is available and documented on the <https://odigohelpcenter.odigo.com> portal.
- **Deprecated:** API version that is no longer recommended for use and for which a new active version has been published. Deprecated APIs will be supported by the Service Provider for at least (1) year from the date of notification of the deprecation before being decommissioned. The deprecation of an API will be announced with a notice period of not less than six (6) months.
- **Decommissioned:** the API is no longer available in production. There is no support and no documentation. The decommissioning of a deprecated API will be announced with a notice period of not less than six (6) months.

### **Management of API Updates:**

Active APIs will be updated in accordance with the Odigo Solution life cycle, as defined in Appendix 6.

Deprecated APIs will only benefit from Hotfixes as defined in Appendix 6.

All developments will be documented in the API documentation available on the <https://odigohelpcenter.odigo.com> portal.