



**General Terms and Conditions for the KLAXOON Service R2020-1**  
**In force as of September 30<sup>th</sup> 2020**

**Article 1. Subject**

1.1. These general terms and conditions for the KLAXOON service (hereinafter the "**GTCS**") define how the KLAXOON service (hereinafter the "**Service**") can be accessed and used by its clients (hereinafter the "**Client**") for their own use without requiring prior written express authorisation, clearance or certification from KLAXOON. KLAXOON and the Client are hereinafter referred to as the "**Parties**".

1.2. The Service allows data (hereinafter the "**Data**") to be stored and exchanged during interactive training sessions and/or seminars.

The Service can be accessed either in "Software as a Service" mode via the Internet (hereinafter "**Access in SaaS mode**"), or using equipment provided by KLAXOON (hereinafter the "**Equipment**"), depending on which option is selected by the Client in the Order Form (the definition of which is given below).

1.3. The options to which the Client subscribes are mentioned in the Order Form. It is hereby stated that the number of participants (hereinafter the "**Participants**") at a given meeting and the number of sessions per year is limited to the values specified in the Order Form. The Participants' use of the Service is regulated by KLAXOON's general terms and conditions of use (hereinafter the "**GTCU**") and is subject to the prior acceptance of the GTCU by the Participants. In the event of any discrepancy(ies) and/or contradiction(s) between the provisions stated in the GTCU and those in these GTCS, then the provisions in the latter shall prevail over those in the GTCU. These GTCU are accessible at the following address: <https://klaxoon.com/static/eula.pdf>.

1.4. By placing an order with KLAXOON for the use of its Service, the Client accepts the GTCS, the Order Form (as defined below) and expressly renounces to its own general terms and conditions of purchase or any other pre-existing document or communication relating to the Order which is not formalised by a written amendment signed by the two Parties.

**Article 2. Orders**

2.1. To place an order, the Client must duly complete in writing and address a form to KLAXOON, issued by KLAXOON, expressing the Client's commitment which the Client must date and sign or agree upon specific conditions of services with KLAXOON, (hereinafter the "**Order Form**"). Such Order Form shall be accompanied by (i) payment of the agreed amount and (ii) the current GTCS (hereinafter the "**Order**").

2.2. An Order Form is considered to be valid and accepted by KLAXOON once KLAXOON has cashed the payment of the amount indicated in the Order Form.

2.3. KLAXOON reserves the right to improve the Service and/or the Equipment at any time and without informing the Client in advance. Service enhancements are deployed in accordance with Article 9.9.

2.4. The version of the Service used the Client is the latest version in production at KLAXOON. The Client can consult the version number via Access in SaaS mode and on the Service's interface. The Rental and/or Purchase (as defined in Articles 6.1 and 6.2) of the Equipment relates to the version of the Equipment available at the date of the Order.

**Article 3. Price**

3.1. The prices are indicated in the Order Form in dollars, exclusive of any external fees or charges of any kind.

The prices mentioned in **Article 3.1** are likely to include specific developments and/or additional services (*i.e.*: *Client training and coaching sessions, consulting services, partner program certifications, etc.*) agreed between Parties (hereinafter the "**Additional Services**"). The specific terms and conditions for the Additional Services, if any, shall be specified in the Order Form.

3.2. KLAXOON reserves the right to modify its prices at any time. Price changes are applicable immediately to any new Order. For Services in use, in the event of a price increase, the Client shall be informed by email thirty (30) calendar days before the effective date of the new prices. As a result, the Client will have, from this notification, a period of thirty (30) calendar days to terminate without penalty the Subscription and/or the Rental, by registered letter with request for acknowledgment of receipt. Otherwise, the Client will be deemed to have accepted the new prices applicable to the Service.

**Article 4. Payment terms**

4.1. Invoices are sent to the Client by any possible means (electronic or postal) and must be paid not later than thirty (30) days after the invoice date unless otherwise stated in the Order Form. KLAXOON may require the payment of an instalment or of the full price of the Service in order to validate the Order. With regard to Subscriptions and/or Rental, and/or Purchase (definitions of which are given below), KLAXOON may require payment in advance of all or part of the amounts which must be paid by the Client to cover the duration of the Client's commitment. No discount is awarded for early payment.

4.2. Any invoices not paid when they reach their due date shall accrue interest based on a rate equal to the greater of 1.5% or the maximum rate permitted by law, starting from the date when the invoice becomes due and without notification.

4.3. Any late payment shall require, as of right, the payment by the Client of a fixed fee to cover the costs of recovering the debt of \$300. Notwithstanding the above, the value of this fee shall be increased up to the value of the actual cost of recovery, subject to justification, if these costs exceed \$300.

4.4. Moreover, if the Client fails to settle by the due date an invoice sent to the Client, KLAXOON reserves the right to suspend the Client's access to the Service, to cancel the Subscription or Rental, to solicit the resolution of the Purchase (under the terms stated in 15 below), to demand the return of Equipment, to keep by way of initial compensation the sums already received under the terms of the Order concerned, and without prejudice to any other compensation and any other means of recovery. The suspension of the access to the Service will occur within thirty (30) days after sending a formal notice to the Client remaining ineffective and indicating the intention to enforce this Article. This suspension shall not be considered as unavailable time of the Service in the context of the implementation of the Service commitments provided for in Article 9.8 of the GTCS.

## **Article 5. Access in SaaS mode**

5.1. The Client may subscribe to Access in SaaS mode for an initial period of time specified in the Order Form (hereinafter the "**Subscription**"). Unless otherwise agreed in the Order Form, the Subscription shall automatically renew for successive periods of the same duration, unless the Client notifies KLAXOON by registered letter with acknowledgement of receipt at least thirty (30) days prior to the end of the current term.

5.2. The Service can be accessed via a website (hereinafter the "**Website**") and requires the use of personal login IDs provided by KLAXOON. The login credentials provided as part of the Service in SaaS mode are strictly personal, individual, confidential and non-transferable.

5.3. The Client agrees to make available, at its own expense, high-speed Internet access (not included in the Subscription).

5.4. KLAXOON hereby reminds the Client that the Internet network used to access the Service in SaaS mode is an open and informal network, formed by the global interconnection of IT networks using the TCP/IP internet protocol suite. The Internet is not managed by any central entity, since each portion of this network belongs to an independent public or private organisation. Its operation is based on cooperation between the operators of the various networks, and there is no obligation incumbent upon the various operators to supply a service or to deliver a specified quality of service. The networks may have unequal transmission capacities and their own policies regulating their use. KLAXOON cannot provide a guarantee that the Internet overall shall function correctly and nor, for this reason, can it provide a guarantee against any partial or total inability to access the Service in SaaS mode.

## **Article 6. Use of the Equipment**

### **6.1. Rental of the Equipment**

Depending on the option subscribed to in the Order Form, the Client may rent Equipment for an initial period of time specified in the Order Form (hereinafter the "**Rental**"). Unless otherwise agreed in the Order Form, the Rental shall automatically renew for successive periods of the same duration, unless the Client notifies KLAXOON by registered letter with acknowledgement of receipt at least thirty (30) days prior to the end of the current term.

For the entire duration of the Rental, the Client is the custodian of the Equipment. It shall contract for insurance cover to all possible damage to the Equipment. The Client agrees to provide written evidence of this cover when first requested by KLAXOON. As a custodian, the Client is and remains liable for all damage suffered by the Equipment. The Client is liable in the event of theft, loss or deterioration of the Equipment.

The Client agrees that, within a period of not more than thirty (30) days starting from the end of the Rental, and irrespective of the reason, it will return the Equipment in good working condition to KLAXOON at its own expense, and in packaging appropriate for the conditions of transport; the Client shall bear the risks for degradation and loss of the Equipment.

If the return of the Equipment is delayed by the Client, and after a formal notice addressed by registered letter with request for acknowledgment of receipt remaining ineffective for a period of seven (7) days from its first presentation, KLAXOON reserves the right to apply a fixed compensation equal to 1% of the total amount invoiced on the Equipment not returned per day of delay, without prejudice to any legal proceedings which KLAXOON may initiate against the Client.

The provision of the Equipment under the terms of a Rental may be conditional on the payment of a security deposit by cheque, payment card or in cash, as detailed in the Order Form. This security deposit, whose value shall be set by KLAXOON based on the retail price of the Equipment, shall not generate any financial benefit.

If the Client's actions result in the loss or theft of the Equipment, KLAXOON shall invoice the Client for the payment of a lump sum equal to the rental fees for such Equipment during an eighteen (18)-month Rental period. Where the breakdown or defectiveness of the Equipment is attributable to the Client, KLAXOON shall invoice the Client for the full cost of the repair, exchange or replacement with equivalent Equipment, and including the shipping and transfer costs incurred. If no security deposit is paid, the corresponding invoice is payable on reception. If a security deposit is paid, KLAXOON may set off the value of the invoiced amounts against this deposit, without performing any prior formality with the Client, and shall then return the balance to the Client. If these invoiced amounts exceed the value of the security deposit, the Client shall have to pay the balance on reception of the invoice.

If the integrity of the Equipment is complete and it is found to conform fully when returned at the end of the Rental, irrespective of the cause, KLAXOON undertakes to return the security deposit promptly and in its entirety to the Client.

After receiving the Equipment from the Client, KLAXOON shall delete all the Data stored in the Equipment in accordance with the provisions stated in **Article 14.6** herein.

## 6.2. Purchase of the Equipment

Depending on the option selected in the Order Form, the Client may purchase the Equipment (hereinafter the "**Purchase**") under the conditions described in these GTCS and in the Order Form.

## 6.3. Transfer of risks and delivery

Klaxoon shall bear the risk of transport (loss and damage) and the Client shall bear the costs of such transport as indicated in the Order Form.

The parties agree the Equipment is deemed delivered by KLAXOON when delivered to the person and at the address specified in the Order Form (the "**Reception**").

The risks associated with the loss and deterioration of the Equipment are transferred to the Client at the Reception. The Client shall have the right to make any claims necessary against the carrier. As of this date, the Client shall be solely responsible for any damage that the Equipment may suffer or cause.

If the Client disputes the conformity of the delivery to the Order it shall send its claim to KLAXOON within five (5) days of the date on which it is actually received by the Client. After this period, the Client is presumed to have irrevocably and unreservedly accepted the delivery.

## 6.4. Ownership of the Equipment

### 6.4.1. Rental of the Equipment

During the term of the Rental, the Client

- shall not take any action which affects or which might affect KLAXOON's exercise of its rights of ownership of the Equipment;
- undertakes, for the entire duration of the Rental, to oppose third-party infringement of KLAXOON's right of ownership of the Equipment in all circumstances, and notably in cases of claims, seizure, and/or court-ordered insolvency procedures.

### 6.4.2. Purchase of the Equipment

As part of the Equipment Purchase, KLAXOON retains ownership of the Equipment until full payment of the Purchase price by the Client.

The Client undertakes, until full payment of the price, not to transform, incorporate, resell and/or pledge the Equipment. Otherwise, Klaxoon may immediately claim the return of this Equipment.

## 6.5. Warranty on the Equipment

The Equipment cannot be used for any purpose other than delivering the Service.

KLAXOON grants the Client with a limited warranty on the Equipment in accordance with the provisions listed hereinafter.

This warranty covers every conformity fault or hidden defect to the Equipment, excluding any other express or implied warranty. KLAXOON undertakes to fulfil the obligations incumbent upon it by applying a level of care consistent with the standards performed in the industry and in compliance with good current professional working practices.

The warranty covers the Equipment:

- for the Rental, the entire duration of the Rental;
- for the Purchase, one (1) year following the Reception. KLAXOON may also decide to offer to the Client purchasing of a service contract for a three (3) years additional period of warranty. This extension of warranty shall be mentioned in the Order Form.

The Equipment is delivered "*as is*". This warranty does not cover wear parts (such as electric cables and power supplies, carrying case, etc.).

In accordance with the applicable regulation, the warranty cannot be enforced if the Client fails to make its payments for the Equipment.

If the Client wishes to invoke the warranty it shall notify KLAXOON of its intention, and the latter shall provide the Client with details of the procedure to follow and provide a reference number.

In this situation, the Client shall return the Equipment to KLAXOON at the Client's expense and with the Client retaining liability.

KLAXOON undertakes to repair or replace, at its sole discretion, the Equipment covered by the warranty and considered to be defective by KLAXOON in a prompt manner. Under these circumstances only, the Equipment shall be returned to the Client at KLAXOON's expense.

If Equipment returned under the terms of the warranty is ultimately found to be in good working order or to have been damaged as a result of incorrect use, then KLAXOON shall send a quote for the cost of the work to the Client before carrying out the work on the Equipment which shall be invoiced to the Client.

Should the Client request KLAXOON to work on Equipment excluded from or not covered by the warranty, then KLAXOON shall provide details about the procedure to follow and shall send a quote to the Client.

All warranties are excluded in the following cases: (i) the Equipment is used in a manner which does not comply with its intended use or with the Documentation, notably if the Equipment has been opened, (ii) the Equipment is combined with another product which results or not in an infringement of the rights of a third party, (iii) a third party not authorised by KLAXOON carries out repair work, (iv) negligence or incorrect servicing or maintenance, (v) the failure by the Client to install the Updates (a definition of which is given below) provided by KLAXOON or (vi) force majeure provided under section 13.1.

TO THE EXTENT PERMITTED BY LAW, THE EXPRESS LIMITY WARRANTIES, CONDITIONS AND REMEDIES SET OUT IN THIS CONTRACT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, CONDITIONS, TERMS, UNDERTAKINGS, OBLIGATIONS AND REPRESENTATIONS, WHETHER ORAL OR WRITTEN, STATUTORY, EXPRESS OR IMPLIED. TO THE EXTENT PERMITTED BY LAW, KLAXOON SPECIFICALLY DISCLAIMS AND EXCLUDES ANY AND ALL STATUTORY AND IMPLIED WARRANTIES, CONDITIONS, TERMS, UNDERTAKINGS, OBLIGATIONS AND REPRESENTATIONS RELATED TO OR ARISING IN ANY WAY OUT OF THIS ORDER, INCLUDING ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, SATISFACTORY QUALITY, CARE, SKILL OR FITNESS FOR A PARTICULAR PURPOSE.

## **Article 7. Conditions of use of the Service**

7.1. KLAXOON provides information for the Client about the Service and how it is used (hereinafter the "**Documentation**"). This Documentation is accessible online.

7.2. The Client undertakes to read carefully the Documentation and any updates to it and to use the Service in accordance with the provisions stated in this Documentation.

7.3. The Client acts as an independent entity and consequently assumes all the risks associated with its business activities.

7.4. The Client is solely responsible for selecting the services to which it subscribes, for the content of the information and of the files sent, circulated or collected, for their use and update in the context of the use of the Service.

7.5. The Client undertakes to comply with all the legal and regulatory requirements in force, and particularly those relating to data processing, personal data, data protection and civil liberties, and notably to declare, where necessary, all processing of data to any competent office and also undertakes to provide the Participants with information about how KLAXOON handles the personal data used in the context of the Service and to pass on to them the information provided in **Article 14**.

7.6. The Client acknowledges that use of the Service is subject to acceptance of KLAXOON's General Terms of Use by the users of the Service and the Participants more generally.

7.7. The Service is considered to be made available to the Client "as is" without being the subject of specific adaptation measures. It is therefore the Client's responsibility to check that the Service is adequate for its requirements and to take all the necessary precautions.

7.8. All warranties are excluded in the following cases: (i) the Service is used in a manner which does not comply with its intended use (ii) the version of the Service used is not the one defined in these GTCS, (iii) the Service has been combined with another product which results or not in an infringement of the rights of a third party, (iv) a third party not authorised by KLAXOON has performed repair or corrective work.

7.9. The Client acknowledges that it is solely responsible for the data which it creates, modifies or deletes.

## **Article 8. Intellectual property**

8.1. KLAXOON holds or is vested with all the intellectual property rights pertaining to the Service (the service, any Additional Services, the Website and the Equipment) and grants to the Client, which accepts it, and for its own use, a personal, non-assignable and non-transferable licence to use its rights relating to the Service, to the exclusion of any other use, worldwide, and subject to the full payment of the relevant amounts due.

8.2. This licence to use is granted for the entire duration of the Service.

8.3. The Service may incorporate third-party technologies belonging to other developers. The rights to use these technologies are conditional on respecting various rights and obligations attached to these technologies and provided to the Client in the Documentation.

8.4. The Client undertakes to respect KLAXOON's rights and cannot, under any circumstances, when not using the Service in accordance with the GTCS, for its own use, make, have made, sell, offer for sale, import, export, supply, lease, distribute, perform, provide, reproduce, represent, modify, transmit, publish, adapt in any medium whatsoever, using any means whatsoever, or exploit in any way whatsoever, the Service without receiving prior written authorization from KLAXOON.

8.5. The Client undertakes to:

- Login to the Service in SaaS mode using only the personal and confidential code allocated to him/her (hereinafter the "**Code**");
- Keep his/her Code confidential and notify KLAXOON without delay of any theft or loss of his/her Code by sending an email to the following address:  
[help@klaxoon.com](mailto:help@klaxoon.com)
- Use the Service for its professional needs (internal organization, customer relationship and for any event carried out on its behalf).  
The Client prohibits itself to resale (i) the Service; (ii) products or services based on the Service or incorporating all or part of the latter (with the exception of services provided by KLAXOON Partner Clients duly certified or authorized for this purpose by KLAXOON);
- Not to infringe the copyright and/or to harm the image and/or to the reputation of KLAXOON;
- Not to recreate or to attempt to recreate, based on the information provided on the Website, a website and/or software whose purpose is to offer third parties, directly or indirectly, free of charge or subject to payment, the same service or a comparable service, and/or to circulate or sell, in any way whatsoever, information with the intention of assisting a third party to recreate, entirely or in part, a website of this kind or an equivalent website, software of this kind or equivalent software.

8.6. If a claim is submitted to the Client regarding the infringement by the Service and/or Website of an intellectual property right, the Client undertakes to pass on directly to KLAXOON the details regarding all such claims.

8.7. The Client is expressly informed and accepts that KLAXOON may, at its discretion and expense, either replace or modify all or a part of the Service and/or Website and/or the Equipment, or obtain for the Client a right to use on the condition that the Client has respected the following conditions:

- that the Client has accepted and fulfilled all its obligations under the terms of the GTCS;
- that an infringement action has been filed in a court of competent jurisdiction;
- that KLAXOON is able to defend its own interests and those of the Client, and in order to do so, that the Client collaborates loyally with KLAXOON by supplying all the elements, information and assistance necessary to bring such a defence to a satisfactory conclusion.

8.8. Should none of these measures be reasonably conceivable, KLAXOON may unilaterally decide to terminate the right to use granted for the Service and/or Website and/or Equipment and shall:

- reimburse the Client for the payments made for the last twelve (12) months of use during the Rental and/or the Subscription;
- reimburse the Purchase price of the Equipment to the Client.

8.9. The provisions of this article define all KLAXOON's obligations with regard to the infringement of patents and/or copyright resulting from the use of the Service.

8.10. The Parties expressly agrees that KLAXOON may use the Client's company name, trade name and logo as commercial references (or clients list) on KLAXOON's websites and commercial documentation for the duration of the Subscription and/or Rental and 2 years thereafter.

## **Article 9. Maintenance**

9.1. For the entire duration of the Subscription and/or Rental, and/or Purchase, KLAXOON shall provide the Client with technical assistance with a view to addressing problems in accessing the Website or in using the Service in accordance with articles 6 and 9.5.

9.2. This service is accessible via various channels (phone, mail and webchat) depending on the option subscribed in the Order Form, and in any case, by email at [help@klaxoon.com](mailto:help@klaxoon.com) and webchat accessible directly via the Service.

9.3. Requests from Clients will be answered as promptly as possible from Monday to Friday (except on US bank holidays) from 9 am to 6 pm (New-York Time).

9.4. KLAXOON shall make every effort to deal with the Client's request.

9.5. KLAXOON undertakes to provide corrective maintenance for the Service free of charge:

- for the duration of the Subscription and/or Rental;
- for the duration of the Purchase Equipment warranty as described under article 6.5.

9.6. As part of the provision of corrective maintenance, KLAXOON shall provide the Client with every update of the version of the Service which was deployed to the Client (hereinafter an "**Update**"), by offering for download and installation in the Equipment an update file in accordance with the procedures indicated in the Documentation or communicated to the Client by KLAXOON by any other means. The Client undertakes to implement the measures necessary to ensure that it only uses the latest Update delivered by KLAXOON.

9.7. The corrective maintenance services apply to the last available version of the Service.

9.8. KLAXOON must satisfy a "best endeavours" obligation with regard to providing access to the Service in SaaS mode, and undertakes, in this regard, to make every effort to deliver the following level of service to the Client:

- 24/7 availability (98% of the time);
- KLAXOON's integrated video-conferencing Service availability up to 100 hours per month and per Subscription;
- Response time after receiving an email sent to [help@klaxoon.com](mailto:help@klaxoon.com) reporting a problem with the Website or with the use of the Service: 24 hours maximum during working hours (Monday to Friday, except on US bank holidays, from 9 am to 6 pm, New York Time);
- Time to restore the Service following a total loss of Service reported by email to [help@klaxoon.com](mailto:help@klaxoon.com): 24 hours maximum during working hours (Monday to Friday, except on US bank holidays, from 9 am to 6 pm, New York Time);

9.9. KLAXOON will make available to the Client any evolution of the Service implementing new major functionality(s) (hereinafter an "**Upgrade**") during the duration of the Subscription and/or the Rental, and/or the Purchase, as indicated in the Documentation or communicated by KLAXOON to the Client by any other means. The Client undertakes to use only the latest Upgrade. If the Upgrade implementation cannot be implemented on the Equipment nor no Upgrade is available for the version of the Client Equipment, a change of Equipment would be necessary to access to the Services and would be made according to the terms and conditions communicated by KLAXOON to the Client. The present clause is subject to the terms of the Purchase warranty period described in Article 6.5.

## **Article 10. Confidentiality**

10.1. The Parties undertake to preserve the confidentiality of the confidential information of all kinds exchanged, collected or generated during the Subscription and/or Rental and for the entire duration of the Subscription and/or Rental and for a period of five (5) years starting from the end of the Subscription and/or Rental, for any reason whatsoever. To this end,

the Parties shall refrain from communicating any of this information on any grounds whatsoever, in any form whatsoever and for any purpose whatsoever and shall undertake to ensure that this obligation is respected by all its directors, employees and subcontractors if applicable.

10.2. The obligations on the Parties under the terms of this article do not apply to confidential information with regard to which the receiving Party can prove:

- that it has disclosed this information after first obtaining written authorisation from the other Party or that the disclosure was made by the said other Party;
- that this information was in the public domain when it was passed on by the other Party, or that it entered the public domain after being communicated without this receiving Party committing any fault;
- that this information was received lawfully from a third party not subject to any confidentiality obligation;
- that on the date on which this information was communicated by the other Party, it already possessed this information;
- that the disclosure of this information was ordered pursuant to an imperative legal or regulatory provision, or to a definitive legal decision rendered by a court of competent jurisdiction. The Party which is subject to a disclosure obligation of this kind must, as soon as possible, notify the other Party in advance of any disclosure in order to allow the other Party to take any protective measures against any disclosure, and, where applicable, request the implementation of all the measures or procedures necessary to protect the confidentiality applicable in this instance.

10.3. The aforementioned exceptions are not cumulative.

## **Article 11. Liability**

11.1. KLAXOON undertakes to repair any direct prejudices which the Client may suffer in the event of the non-fulfilment or incorrect fulfilment of the Order due to its actions or to those of one of its employees (not including delivery).

11.2. KLAXOON shall not be held liable for indirect and intangible damages (such as loss of business, loss of clientele, loss of opportunity, etc.), which is expressly accepted by the Client.

11.3. The Client is solely and fully liable for the use of the Equipment and of the Service.

11.4. IN ALL CIRCUMSTANCES, IT IS EXPRESSLY AGREED BY THE PARTIES THAT THE TOTAL, FOR ALL CAUSES COMBINED, OF THE COMPENSATION, DAMAGES AND COSTS OF ALL KINDS WHICH MAY BE ASSUMED OR PAID BY KLAXOON FOR THE BENEFIT OF THE CLIENT, SUBSEQUENT TO A DEFINITIVE DECISION RENDERED BY A COURT OF COMPETENT JURISDICTION, CANNOT EXCEED AN OVERALL MAXIMUM AMOUNT FOR ALL DISPUTES COMBINED WHOSE VALUE IS EQUAL TO THE AMOUNTS PAID BY THE CLIENT TO KLAXOON UNDER THE TERMS OF THE DISPUTED ORDER OVER THE COURSE OF THE TWELVE (12) MONTHS PRIOR TO THE OCCURRENCE OF THE EVENT GIVING RISE TO THE LIABILITY.

11.5. The provisions herein establish an allocation of the risks between the Parties. The price reflects this allocation, and the liability limitation described.

## **Article 12. Insurance**

12.1. KLAXOON declares that it holds professional civil liability insurance in the context of its business activities in relation to the GTCS with a company known to be solvent.

12.2. KLAXOON undertakes to maintain this insurance cover for the entire duration of the Rental and/or Subscription.

12.3. As a custodian of the Equipment, the Client undertakes to maintain an insurance policy covering the risks associated with the use of the Equipment.

## **Article 13. Force majeure**

13.1. The failure of a Party hereunder to perform any obligations, due to governmental action, law or regulation, or due to events, such as war, act of public enemy, strikes or other labor disputes, fire, flood, acts of God, or any similar cause beyond the reasonable control of such Party, is excused for as long as said cause continues to exist. The Party prevented from performing shall promptly notify the other Parties of such non-performance and its expected duration, and shall use all reasonable efforts to overcome the cause thereof as soon as practicable.

13.2. No recourse is possible for the non-fulfilment of Orders attributable to a case of force majeure. If such an event occurs which prevents KLAXOON from respecting its commitments, KLAXOON undertakes to inform the Client promptly of the occurrence of the event.

13.3. KLAXOON and/or the Client may freely cancel all or part of the Order, Subscription or Rental should the case of force majeure persist for more than sixty (60) days starting from the first occurrence of the case of force majeure, with neither Party able to make any claim for damages.

## **Article 14. Data Processing**

### 14.1. Personal data

The Client is informed that personal data and other personally identifiable information relating to the Client and used in the context of the Service, as well as personal data and personally identifiable information relating to the Participants ("**Personal Data**"), shall be subject to automated processing by KLAXOON in order to ensure that the Client and the other Participants can access the Service and the Website.

The Client is also informed that this Personal Data may be submitted for statistical analyses performed by KLAXOON and/or by companies controlled by the latter, by companies which control it or under joint control (the "**Affiliates**") and the Client shall also be informed of any reuse of this Personal Data in the context of prospecting for new business. Accordingly, the Participants must

accept the GTCU unreservedly in order to be able to use the Service.

As a part of the performance of the Order, each party undertakes to comply with the applicable data protection law including but not limited the General Data Protection Regulation "GDPR" ("**Applicable Laws**").

KLAXOON undertakes to:

- implement its technical and organizational measures to ensure the ongoing confidentiality and integrity of Personal Data and to implement any appropriate safeguards;
- store Personal Data for a limited period of time proportional to the purposes of the relevant processing activities;
- inform the Client without undue delay in case of potential Personal Data breach detected by KLAXOON; and
- implement all its necessary corrective measure to resolve such breach;

The Client and each Participant has the right to access and amend the Personal Data relating to him/her, and may object to the processing on legitimate grounds. In order to exercise these rights, the Client may amend its Personal Data on the Website, or alternatively may send an email to KLAXOON at [help@klaxoon.com](mailto:help@klaxoon.com). The Participants, who shall be informed by the Client of the provisions of this article, may exercise their rights by emailing KLAXOON at [help@klaxoon.com](mailto:help@klaxoon.com).

In all circumstances, the Client undertakes to carry out all the formalities relating to the transfer of Personal Data to France required by any imperative legal or regulatory provision.

#### 14.2. Cookies

A cookie is a text file which is installed on an Internet user's computer when s/he browses a website.

With regard to Access in SaaS mode, cookies are used by KLAXOON to store and re-read temporary information such as a user ID, and to improve the Service.

The use of these cookies is a prerequisite to using the Service via Access in SaaS mode, which the Client accepts. Information about cookies will appear when the Client and/or a Participant logs into the Website for the first time.

#### 14.3. Security of user IDs

The user IDs provided in the context of the Service in SaaS mode are strictly personal, individual, confidential and non-transferable.

The Client undertakes to keep its user IDs secret and not to disclose them in any form whatsoever. The Client is fully liable for their transmission to third parties.

The Client is fully liable for all use of the user IDs.

In the event of the loss or theft of one of its user IDs, the Client may ask, on the page of the website used to access the Service, for the user ID to be reset, with the

procedure subsequently involving email exchanges. If the user ID is stolen, the Client must notify KLAXOON without delay and via any suitable means so that KLAXOON and the Client can work together to determine the appropriate measures to take.

#### 14.4. Data Security

The server/Website is authenticated by a certificate validated by a trusted third party.

KLAXOON applies its technical infrastructure, hardware and monitoring software such that it can reasonably safeguard the security and integrity of the Client's Data under conditions which comply with good professional working practices and, since this data is Personal Data, in accordance with the provisions of Data protection Applicable law, in order to prevent (i) destruction, alteration, modification or loss of Personal Data, (ii) unauthorised disclosure of, or access to Personal Data, (iii) any kind or purposes of unlawful Personal Data processing activities not specified in the Contract.

#### 14.5. Storage of Data

KLAXOON undertakes to take reasonable precaution to ensure the physical protection of the Data stored and/or exchanged in the context of the Service in SaaS mode, in accordance with the good professional working practices applicable to the Service and with applicable laws.

#### 14.6. Backing-up and reversibility

The Client is responsible for regularly backing-up its Data, at its own expense and using its own equipment. However, at the Client's request, KLAXOON may back-up the Data and deliver it to the Client, subject to the prior acceptance of KLAXOON's quote.

Subject to applicable law, in circumstances in which KLAXOON replaces faulty Equipment under warranty and/or when the Equipment is definitively returned by the Client and/or at the end of the Rental, irrespective of the cause, KLAXOON shall delete all the Data saved on the Equipment as soon as the Equipment is received by KLAXOON.

Subject to Applicable Laws, at the end of the Subscription period and irrespective of the cause, KLAXOON, undertakes to carry out the anonymisation and/or deletion of the Client's Personal Data saved on the Website depending on the nature of the Data at stake and the involved technical complexity.

### **Article 15. Termination for Cause**

15.1. Without prejudice to the other provisions provided for in the GTCs, every Subscription and/or Rental may be terminated by either Party in the event of the breach by the other Party of any one of its material obligations hereunder.

15.2. The termination shall automatically take effect if the defaulting Party fails to remedy its breach within thirty (30) days after formal notice by registered letter with request for an acknowledgement of receipt sent by the other Party indicating its intention to apply this Article,

and without prejudice to any damages which the non-breaching Party may claim as of right.

15.3. In the event of termination, the Equipment shall be returned in accordance with the provisions of **Article 6.2** of the GTCS and KLAXOON shall delete the Data pursuant to the provisions stated in **Article 14.6**.

### **Article 16. Subcontracting**

16.1. KLAXOON may, if necessary, subcontract all or some of the delivery of the Service to a third party.

16.2. Where processing is to be carried out on behalf of KLAXOON, the latter shall use only processors providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that processing will meet the requirements of the Data protection Applicable Laws. If a processor fails to comply with its obligations regarding Personal Data protection, KLAXOON shall be held liable in respect of that processing.

### **Article 17. Amendments to the GTCS**

KLAXOON reserves the right to amend, at any time, the GTCS which shall then apply to every new Order.

### **Article 18. Renunciation**

KLAXOON's decision not to invoke at any given time any one of the clauses herein cannot be considered as renunciation or waiving of its subsequent right to invoke the same clauses.

### **Article 19. Severance**

If any provisions of the GTCS and/or of the Order Form are or should become invalid, unenforceable or illegal with regard to applicable law or any final decision from a court of competent jurisdiction, such provisions shall be held to be ineffective. All other terms hereof and/or the Order Form shall remain in full force and effect unless such provision is deemed to be a key provision for a Party at the execution date of the Contract. In such event, the Parties shall discuss in good faith and fair dealing in order to replace such provision by a provision that is valid and enforceable and that comes closest to expressing the initial intention of the Parties.

### **Article 20. Election of domicile - Applicable law and competent jurisdiction**

20.1. The domicile elected by the Parties shall be their head office.

20.2. Notwithstanding any applicable statutory limitations, every claim carried out, dispute raised or demand made of any kind by the Client with regard to KLAXOON relating to the fulfilment of the Order shall be initiated no later than one (1) year after the occurrence of the event giving rise to such claim, dispute or demand.

20.3. The Order, Subscription, Rental, GTCS and the use of the Service are exclusively governed by the laws of the State of New York without regard to conflict-of-laws

principles. All provisions stated in the Vienna Convention on the international sale of goods are excluded. Any dispute and/or demand relating to a dispute which is not resolved amicably shall be decided by a court of competent jurisdiction in the State of New York.