

## ALPEGA GENERAL TERMS AND CONDITIONS FOR TMS SOLUTIONS AND SERVICES (NAFTA)

These terms and conditions apply to the use of the Transport Management System (TMS) solutions and services of Alpega. By using any portion of the Alpega TMS solutions and services, Customer confirms its agreement on these terms.

If you are accepting these terms and conditions on behalf of a company or any other (legal or natural) person, you represent and warrant that you have full authority to bind that company or person to these terms and conditions.

### 1. Definitions

1.1 The following expressions shall have the following meanings unless the context requires otherwise, and where the context so requires or admits, the singular shall include the plural and vice versa.

**"Affiliate"** means any company, corporation or other entity that directly or indirectly controls, or is controlled by, or is under common control with either ALPEGA or Customer. Control means to own or rule, directly or indirectly, more than 50% of voting shares

**"Agreement"** means the terms of any framework agreement or contract (the "Contract"), the Purchase Order, the STC, these GTC, the Documentation, any document incorporated expressly therein by reference and the ALPEGA Privacy Policy.

**"ALPEGA"** means an Affiliate of Alpega Holding S.à r.l., a Luxembourg company headquartered at 1 route d'Esch, L-1470 Luxembourg, Grand Duchy of Luxembourg, and registered with the Luxembourg Trade and Companies' Register under number B 213.747, as listed [here](#), which is the direct co-contracting party with Customer pursuant to the Agreement.

**"Changes"** means updates, new versions or options, extensions, enhancements, modifications to the Services/Software and/or to the look and feel of the ALPEGA websites, Customer Account, Customer Profile and/or User Accounts. Changes are governed by the Agreement.

**"Confidential Information"** means all information of any nature whatsoever, which is disclosed in whatever form by one party (or a Third Party acting on that party's behalf), regarding this party, its business and activities, which includes commercially or competitively sensitive, proprietary or private information, trade secrets and know-how (including information that is marked or designated as "Confidential", "Proprietary" or bearing a similar marking), and information related to current and future Services, to current and prospective customers and users of the Services, prices, technical, financial and marketing data of ALPEGA and any information related to ALPEGA customers and users, whether or not this information is marked as confidential, restricted or proprietary, but which could reasonably be expected to be of confidential nature. It includes the provisions of the Contract. Confidential Information shall not include information which (i) at the time of disclosure, was in the public domain, (ii) has been published or otherwise becomes part of the public domain through no fault of the receiving party, (iii) was lawfully known by the receiving party either before the disclosure or as obtained from a Third Party who had a lawful right to disclose such information, or (iv) was independently developed by the receiving party without any use or access to the Confidential Information.

**"Customer Account"** means the account of Customer set up by ALPEGA containing information and documents of (or concerning) Customer in relation to the subscribed Services.

**"Customer Change Request"** means a change to the Services as subscribed by Customer, which involves the Use of any additional functionality or the adjustment of an existing functionality (e.g. languages, interfaces or documentation).

**"Customer Profile"** means the set of information relating to Customer, which is generated by ALPEGA or provided by Customer and which is made available to ALPEGA, other ALPEGA customers and/or Third Parties via the Services or otherwise.

**"Customer"** means the (legal or natural) person subscribing to the Services.

**"Data Protection Legislation"** means the provisions of General Data Protection Regulation (EU) 2016/679 as

well as any national legislation and/or regulations implementing them, applicable to ALPEGA and/or Customer, as such legislation may be amended or replaced from time to time.

**"Documentation"** means the Service descriptions, user manuals, training materials, supporting materials, technical attachments and specifications, the technical system requirements and other information relating to the Services, whether distributed in print, electronic, or video format.

**"Force Majeure"** means any unusual and unforeseeable circumstances beyond the control of the Party invoking it, the consequences of which could not have been avoided even if all due care had been exercised, including malicious damage, labour trouble, pandemic, plant or technical shutdown or equipment and network failure.

**"General Terms and Conditions"** or "GTC" means these terms and conditions governing the provision and Use of the Services.

**"Intellectual Property Rights"** means (without limitation) patents of any type, design rights, utility models or other similar invention rights, copyrights and related rights, computer programs, databases, know-how, trade secrets, trademarks, trade names and services marks and any other intangible property right, whether registered or unregistered, including applications and registrations for any of the foregoing, in any country, arising under statutory or common law or by contract.

**"Key User Account"** means the User Account of any Key User enabling specific operations relating to standard User Accounts (including creation, modification of settings, deletion), and/or to Customer Account & Profile (including subscription to the Services, access and update).

**"Key User"** means a User, who is granted powers to operate via Key User Account.

**"License"** refers to the license described in clause 9.

**"Means of Access"** refers to the login, password and any other means of identification and/or Users access procedures, which are strictly personal to any User and enable access to the User Account or the Key User Account.

**"Notification", "Notify"** and all derivatives of such capitalised terms means, except where registered letter is required under the Agreement or by applicable law, any notice made by either Party in any kind of electronic or paper form to the other Party in accordance with these GTC.

**"Party"** means ALPEGA or Customer and **"Parties"** means both ALPEGA and Customer.

**"Price"** means the amount of money due for a Service as governed by the Agreement, excluding any Taxes and Costs.

**"Privacy Policy"** means ALPEGA' Policy available [here](#).

**"Purchase Order"** means the contract offer/proposal, or the order form, which is made available to Customer by ALPEGA online or offline and which is accepted, by any paper or electronic means (including click-to-accept process and email) by Customer for the Services to be purchased from, licensed or provided by ALPEGA, under the Agreement.

**"Required Material"** means virtual or physical devices, including software, desktop computer(s), laptop(s), tablet(s), mobile device(s), telecommunication device(s) and hardware product(s) capable of operating a wide variety of computer programs as well as internet connection(s) meeting the minimum requirements set forth in the Documentation/Agreement in order to Use the Services.

**"Services"** means the services supplied by ALPEGA to Customer, including in relation to the Use of the Software, as these may change from time to time, to which Customer has subscribed under the Agreement.

**"Software"** means the proprietary system software as developed, operated and commercialised by ALPEGA for the purpose of providing the Services, which is made available to Customer as per the Agreement. This includes programmes, functionalities, solutions, modules, routines, libraries, tools, texts, applications, communication protocols, data structures and formats, interfaces and compilers, user interface design, graphic designs and layouts, software architecture and components, pattern, know-how, methodologies, websites owned, licensed to and managed by ALPEGA, any error corrections, updates, upgrades, modifications and enhancements in relation to the Software, as

developed and operated by ALPEGA in relation to the Services.

**"Special Terms and Conditions"** or "STC" means the terms and conditions communicated separately to Customer, which are applicable to a specific Service and which supplement these GTC. The STC may be consulted at <https://www.alpegagroup.com/en/tc-shippers/>.

**"Taxes and Costs"** means any tax, fee, levy or duty as well as any cost or charge, pertaining to the Services, however designated, including value-added, sales or withholding taxes, freight, handling or insurance charges.

**"Territory"** means any country(ies) in which Customer has been granted Use by ALPEGA, or in the absence of any such granting, the country in which Customer's principal place of business is located and all member countries of the European Union.

**"Third Party Component"** means any computer program, product, service and/or content, including any complete or partial copies thereof, developed or provided by a Third Party and incorporated into the Services.

**"Third Party"** means any person that is not Customer, User or ALPEGA.

**"Use"** and **"Using"** means downloading, installing, accessing, executing, employing, operating or displaying information resulting from such capabilities, all or any portion of a Service or Software.

**"User Account"** means the non-transferable account dedicated to the User, linked to Customer Account, accessible by the Means of Access, and through which the Services ordered by Customer can be Used.

**"User"** means any natural person (including Customer's employees, consultants, contract employees, agents) and Key User, for which Customer requests the Use of one or more Services and which Uses the Services under the responsibility of Customer.

1.2 In the Agreement, any reference to "include" and "including" shall be deemed to be followed by the words "without limitation".

### 2. Scope

2.1 Access to and Use of the Services by Customer is governed by the Agreement. Unless otherwise specified in the Contract, Customer may access and Use the Services and the Software only in the Territory and solely for its own business purposes.

2.2 The Agreement shall apply, regardless of any additional or conflicting terms in other correspondence or documentation submitted by Customer to ALPEGA.

2.3 This Agreement will supersede any prior general (and special) terms and conditions and/or agreement entered into between ALPEGA and Customer, concerning the Services.

2.4 ALPEGA only contracts directly with Customer. If provided by the terms of the Agreement, ALPEGA will provide Services to Customer's Affiliates provided that Customer will procure that (i) these Affiliates will not make any claim or be a party to any action or lawsuit, directly or indirectly, against ALPEGA arising out of or in connection with the Agreement and (ii) these Affiliates will direct all communications regarding the Agreement through and to Customer and not through or to ALPEGA. Customer is fully responsible for the performance of its Affiliates' obligations under this Agreement and compliance by its Affiliates with the terms of the Agreement with respect to the Services provided to said Affiliates.

### 3. Subscription process

3.1 *Communication of required information and documents*

Subscription may be subject to the submission by Customer of information and documents requested by ALPEGA.

Customer warrants that all information and documents provided to ALPEGA as part of the Subscription process, and subsequently, is and will be current, true, accurate, supportable and complete. Customer accepts that ALPEGA bears no liability regarding the verification of the information and the documents as provided by Customer (or by any other customer).

3.2 *Approval - Services activation*

Access to, and Use of, the Services is subject to ALPEGA's prior approval. ALPEGA may refuse the

Purchase Order at its own discretion.

Upon Approval, ALPEGA shall create a Customer Account as well as the agreed number of Key User Accounts and provide Customer with the Means of Access related to such account(s). The Services will then be activated.

### 3.3 Customer Account

Customer, via the Key User Account(s), and ALPEGA, upon Customer request, may set up User Accounts for the Use of the Services, within the applicable limitations. Customer is liable for managing on a day-to-day-basis User Accounts (including the number thereof and the Services to which any User has access).

Customer must immediately deactivate a User Account when the concerned User is no longer entitled to Use the Services on behalf of Customer or, if Customer is not able to do so, contact ALPEGA immediately for that purpose.

### 3.4 Subscription to additional Services

In the course of the Agreement, Customer may in accordance with the Subscription process, subscribe to additional Services. Such Services will be governed by the Agreement (including any applicable Documentation and STC, where relevant).

## 4. Access to and Use of the Services

### 4.1 Required Material:

Customer is solely responsible and liable for the choice, purchase, installation, maintenance, servicing and operation of the Required Material, and for costs related thereto.

The Services that need to be installed on Customer's computer systems or Third Party Components whether or not embedded in the Services may be subject to separate and/or additional terms.

Customer is solely responsible and liable for installing and keeping up to date any security-related aspect of the Required Material (including patches, firewalls, virus, spyware, malware and other malicious codes scanners).

ALPEGA reserves the right to modify at any time the requirements with which the Customer's Required Material must comply. Except for adaptations to current standards of technologies available in the market, which Customer should adopt on its own initiative, Customer will be Notified of such modifications.

ALPEGA cannot be held liable for any insecurity or damages caused by the Required Material or any material used by Customer to Use the Services.

Customer confirms having received all necessary information in relation to the technical requirements for the Use of the Software and having verified and approved these.

### 4.2 Internet Connectivity

As the Services are made accessible through the internet, a secure internet and network environment is a prerequisite for using the Services. ALPEGA is not an operator of IP or telecommunications infrastructures and therefore shall not warrant or be liable for any unavailability of the Services resulting from a cause relating to the internet connectivity (e.g. failures, interruptions, omissions, latencies, faulty data transfers, or other disruptions or impairments).

Use of the Services may cause Customer's computer or devices to automatically, without notice, intermittently or on a regular basis, connect to the internet for purposes such as providing Customer with additional information, features, Changes, or functionality, and to check for Changes that are available for download to, and installation on, the computer or devices of Customer.

### 4.3 Means of access

Customer is responsible for the safeguarding, confidentiality, security and appropriate use of Means of Access by its Users and undertakes to take all steps to prevent any unauthorised Third Party from gaining knowledge and making use thereof. Customer shall indemnify and hold harmless ALPEGA against any and all claims or demands from Third Parties arising from the dissemination by Customer of (in)correct information about Customer and/or Users.

In the event of loss, theft, breach of confidentiality, or any risk of misuse of Means of Access, Customer

must immediately deactivate the concerned User Account, and if Customer is not able to do so, immediately Notify ALPEGA in writing. Customer is fully responsible for any unauthorised use of the Services, as well as for any detrimental consequences that may arise directly or indirectly therefrom.

ALPEGA reserves the right to refuse access to a User using Means of Access when a session is already open on another computer using the same Means of Access.

## 5. Services Acceptance

5.1 In case an acceptance of the Services is provided by the Agreement, the following acceptance test procedure shall apply:

ALPEGA shall initiate the acceptance process by written Notification sent to Customer following complete provision of the Services and shall allow Customer to test the Services. Immediately after the Service provision, Customer shall check whether the Services provided can be used productively for the transport management purposes contemplated. This means that the Services have no significant defects. Customer shall be required to accept the Services or Notify any existing defects within 10 business days as of the date of the handover. The acceptance shall be documented by ALPEGA and Customer in an acceptance report, which is to be signed by both Parties. If the written Notification (acceptance or refusal) is not made within 10 business days, the Services are deemed as accepted. If a written acceptance is refused due to significant defects communicated verbally, ALPEGA reserves the right (but shall not be obliged to) set an additional reasonable period to allow Customer for confirming said defects in a written Notification, after which the Services will be deemed to be error-free should Customer not have confirmed them in due time. The remaining non-significant defects are to be listed in a log.

5.2 Any defects discovered in the context of the verification of the Services are to be remedied by ALPEGA as soon as reasonably possible following the receipt of the Customer's Notification as referred to in clause 5.1. Customer may only reject the Services for material non-conformance with the agreed Services criteria and description. Defects which only impair the Services delivered marginally (insignificant defects as per clause 5.3), shall, regardless of ALPEGA's obligation to remedy the defect, not prevent acceptance. Once any significant defects notified have been remedied, the acceptance procedure as defined in clause 3.1 shall be reinitiated by Alpega.

5.3 A defect shall be deemed insignificant if no significant impairment of the functioning purpose is to be expected in regard to the Use of the Services. Insignificant defects may be remedied by ALPEGA within the scope of one of the next regular releases of the Software.

## 6. Changes to the Services

6.1 ALPEGA reserves the right at all times to provide Changes to the Services, to correct any errors and/or make Changes to the technical characteristics and specifications of the Services. However, ALPEGA is not obligated to Notify Customer of nor provide Customer with any such Changes. ALPEGA may perform from time to time online Changes without Customer's permission being required.

6.2 Customer shall not Use other version of the Services than the then current version as made available by ALPEGA.

6.3 Customer may request a Customer Change Request. ALPEGA shall decide on the Customer Change Request at its sole discretion. Following analysis of a Customer Change Request, ALPEGA shall inform Customer in writing about the feasibility of the change considered and if the Customer Change Request has been validated by ALPEGA, the conditions of its implementation (including date milestones, financial conditions, implementation modalities and parameters).

6.4 Should a not insignificant effort be required to examine the Customer Change Request, ALPEGA will invoice the expenditure for reviewing such Customer Change Request separately, as long as (i)

ALPEGA has informed Customer thereof in advance with the details on the level of effort involved and (ii) Customer, after receiving such information, confirms its wish to have said Customer Change Request analysed by ALPEGA. This provision shall likewise apply for a larger number of small Customer Change Requests resulting in not insignificant efforts being required.

## 7. Intellectual Property Rights

7.1 ALPEGA (or its licensors) holds at all times the Intellectual Property Rights associated with the Services, the Software and the Documentation and the Changes made thereof.

7.2 Customer shall not, in any case, challenge, directly or indirectly, in any way whatsoever, the Intellectual Property Rights held by ALPEGA used in connection with the Services, nor their validity or enforceability under the applicable laws, or take any action that may adversely affect or imperil in any way whatsoever the ALPEGA Intellectual Property rights. Customer shall not remove and / or delete any name, logo and/or other copyright notices from the Software.

7.3 Customer shall Notify ALPEGA immediately where it becomes aware of any unauthorized possession or Use of the Software and the Services and any associated Documentation by any Third Party.

7.4 Customer must take all necessary measures to protect and ensure that persons working under its authority protect ALPEGA's Intellectual Property Rights.

7.5 All documents of ALPEGA contain know-how, ideas and development endeavours of ALPEGA and/or its partners. No documentation and information may be processed, duplicated or made available to Third-Parties in any way, either in whole or in part, without ALPEGA's prior approval.

7.6 Except for more specific stipulations that may apply where appropriate, Customer grants to ALPEGA a non-exclusive license, for the term of the Agreement, to mention as a reference and to use and communicate the trade name and trademarks of Customer in relation to this Agreement solely for its own commercial communications, whether internal or external, including on its websites, press releases, presentations, brochures and assimilated media. Upon termination of the Agreement, ALPEGA shall cease the use and remove any mention of the trade name and trademarks of Customer from its commercial communications within a reasonable timeframe.

7.7 To the extent that Customer at any time provides ALPEGA with any feedback or suggestions regarding the Services, including potential improvements or changes thereto (collectively, "Feedback"), the Feedback shall not be considered Confidential Information of Customer, and ALPEGA may use, disclose and exploit the Feedback in any manner it chooses. All Feedback provided by Customer is provided "as is" and without warranty or representation of any kind.

## 8. Data

8.1 For the purpose of this clause, "data" shall mean a reinterpretable representation of information in a formalized manner suitable for communication, interpretation, or processing.

8.2 For the purpose of this clause, "processing" and all derivatives of such term shall mean any operation or set of operations which is performed on data or on sets of data such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination.

8.3 Customer grants to ALPEGA the right to process, or have it processed by a Third Party, any and all data provided by Customer and Users through the Use of the Software and the Services for the purposes of the Agreement and for purposes of performing big data analytics and/or generating industry-wide analyses, statistics and reports, to the extent such processing does not conflict with the normal exploitation of the data by Customer and do not unreasonably prejudice the legitimate interests of

Customer.

8.4 ALPEGA has the right to create and publish such analyses and reports based on the processing permitted under this clause 8, including for commercial gain, and Customer disclaims any right therein.

8.5 Customer will be solely responsible of the content of the data as processed via the Software (including its accuracy, quality and integrity).

8.6 ALPEGA reserves the right to monitor the content of any data provided via the Software and, at its sole discretion, to withhold, remove, and discard any data without notice in case of any non-compliance with the Agreement.

8.7 Either party shall establish and maintain reasonably appropriate standard safety and facility procedures in relation to the data of the other Party.

#### 9. License to Use

9.1 For the duration and under the conditions as fixed in the Agreement, to the extent it is so entitled and to the extent ALPEGA makes the Software, the Services and/or Documentation available in the context of the supply of the Services, ALPEGA grants to Customer a non-transferable, for the agreed term and non-exclusive License, to access and Use the Software, the Services and/or Documentation. Customer's right of Use includes the Use of Third-Party Components selected by ALPEGA and/or its partners for the relevant modules of the Services. If the providers of Third-Party Components are replaced in the context of a Change, the Customer's right of Use of the Third-Party Component provided by the previous provider shall end and Customer shall be granted with the right to use the replacement third-party component for the then subscribed Services. ALPEGA shall ensure that any change in relation to Third-Party Components shall not materially diminish the level of performance of the Third Party Components as involved in the Services.

9.2 The License is limited to the Territory.

9.3 The License is strictly granted for the sole purposes contemplated by the Agreement and for Customer's own business purposes.

9.4 Unless otherwise stated in writing, the License rights as acquired by virtue of the Agreement may not be sold, leased, assigned, sublicensed or otherwise transferred by Customer, in whole or in part, to any Third Party (including Affiliates), without the prior approval of ALPEGA.

9.5 In the event of the termination or suspension of the Services, the associated licenses are also automatically and immediately, terminated or suspended. Customer undertakes and ensures that in the event of the termination of the Agreement, it will immediately, as applicable, cease the Use of and/or return the Software, any associated program and Documentation, carriers data and all copies thereof to ALPEGA, and delete and/or destroy them, except these expressly allowed by ALPEGA as confirmed in writing. Customer shall confirm to ALPEGA in writing the completion of these actions and that no more copies exist.

#### 10. Non-disclosure

10.1 Either Party shall safeguard and hold as confidential all Confidential Information of the other Party.

10.2 Either Party shall use the Confidential Information solely for the purposes contemplated by the Agreement and shall not disclose such information to any person other than those Affiliates, employees, agents, partners, directors, co-contracting parties, suppliers, consultants, subcontractors and (potential) investors of such Party having a need to know the information in order to perform such Party's obligations under the Agreement and/or as long as they are themselves parties to a similar non-disclosure agreement, or as required by law. The Parties shall ensure the compliance of those Third Parties to whom Confidential Information is disclosed, with confidentiality obligations similar as those provided herein. The Parties shall also use their best endeavours to secure the Confidential Information against unauthorised access, use or disclosure, theft or loss.

10.3 As legal remedies may be insufficient as compensation for any breach of this clause 10, any party shall be entitled to obtain injunctive relief in relation to the breach or the threatened breach, in addition to any other legal or equitable remedies and without the necessity of proving actual damages.

10.4 Upon completion or termination of this Agreement, the Party receiving Confidential Information agrees that all Confidential Information received from the other Party, including all copies in any form, shall be, as appropriate, deleted or returned to the Party disclosing the Confidential Information, except if otherwise provided herein.

10.5 Each Party shall retain all rights, titles and interests to such Party's Confidential Information.

10.6 This clause shall survive the termination/expiry of the Agreement for a period of five (5) years except that with respect to any trade secrets, this clause shall continue for so long such information remains entitled to protection as a trade secret under applicable law.

#### 11. Privacy

11.1 For the purpose of this clause, "personal data", "processing", "data subject", "data controller", "data processor" and "supervisory authority" shall have the meanings set out in the applicable Data Protection Legislation.

11.2 The Parties will comply with the applicable Data Protection laws and regulations. Alpega shall process the personal data of Customer according to the ALPEGA Privacy Policy [here](#). Customer hereby acknowledges having verified and approved the content of the ALPEGA Privacy Policy.

11.3 It is inherent to the Services that Customer collects and processes personal data of Users and/or of Third Parties (including other customers) and it shall be qualified in this regard as a data controller. In this respect, Customer warrants that it complies and shall comply with Data Protection Legislation applicable to Customer in relation to all personal data processed by Customer and processed in the context of the Services and use of the Software, in respect of which it is a data controller and, if Customer processes personal data as a data processor, that Customer has complied with all instructions from the data controller of such personal data.

11.4 Customer warrants having fulfilled all necessary requirements to inform data subjects of the processing of their personal data, including but not limited to the public notification with the competent authority where required under applicable Data Protection Legislation.

11.5 Customer warrants having received all prior, individual and necessary approvals and authorizations from the Users to allow ALPEGA processing the personal data communicated in the course of the Use of the Software and Services as provided herein and in the Privacy Policy.

11.6 Customer will hold harmless and fully indemnify ALPEGA against any damages, loss, costs or expenses that may arise as a result of Customer's failure to comply with the its requirements under applicable Data Protection Legislation.

#### 12. Price

12.1 The Price due by Customer in consideration of the License and the provision of the Services are defined and payable pursuant to the Contract and/or the Purchase Order.

12.2 ALPEGA does not give credits or refunds for Prices already due or paid, except as specified elsewhere in the Agreement.

12.3 ALPEGA reserves the right to adjust and amend the Prices annually as follows:

- One-off fixed Prices due for professional services may be adjusted based on the HICP indexation rate applicable as at the date of invoicing by ALPEGA, if this rate has reached at least 1% above the rate as applicable at the time said Prices were agreed with Customer (Basis for calculation: HICP for the euro-zone; 2015 = 100);
- All other Prices [in particular and without limitation (i) non-transaction-based Prices (including base Prices, flat Prices and Prices due

for Customer Change Request) (ii) transaction-based Prices, (iii) Prices for professional service and (iv) lump sum Prices] may be increased by ALPEGA, during the term of the Agreement, up to 3% annually by providing Customer with advance notice (e-mail sufficient) not less than ninety (90) days prior to such change coming into effect; such change will however only come into effect as of January 1st of the year following the year during which the change was notified to Customer.

#### 13. Invoicing and Payment

13.1 Customer shall be invoiced pursuant to the modalities as set out in the Contract or the Purchase Order.

13.2 Prices may be invoiced monthly, quarterly or annually, as defined in the Contract or the Purchase Order. If not agreed otherwise, the Prices will be invoiced as follows:

- Prices due for professional services (including project management, implementation services, software engineering, consultancy or training) will be invoiced on a monthly basis. In case of a fixed one-off Price, this will be invoiced as per the following plan: (i) 40% upon approval of the Purchase Order by Customer, (ii) 30% at the end of conception (and before the system setup on the test system), (iii) 20% at the start of User Acceptance Test period and (iv) 10% at Go-Live of the project in the production system;
- Non-transaction-based Prices (including base Prices, flat Prices and Prices due for Customer Change Request analysis) will be invoiced yearly upfront;
- Transaction-based Prices will be invoiced to Customer monthly, at the beginning of the month following the end of the month of the Services' Use.

13.3 In the case a Customer Change Request results in a code change in the Software/Services, in addition to the agreed one-off Prices for the implementation of the Customer Change Request, annual maintenance fees amounting to 22% of the implementation Price shall apply.

13.4 In case any data provided by Customer and relevant to ALPEGA for pricing are incorrect or incomplete, or should the latter change substantially retrospectively, ALPEGA is entitled to make an appropriate Price adjustment.

13.5 One-off and lump sum Prices will be charged in advance.

13.6 The full invoiced amount is payable within 14 (fourteen) days as of the invoice date.

13.7 If any invoice has not been paid on the due date, late interests shall accrue on such due amount at a monthly rate of 1% from the due date until paid in full (without prejudice to ALPEGA's other rights and remedies).

13.8 Any complaint regarding an invoice must be lodged with the invoicing Affiliate of ALPEGA in writing by registered letter within 30 (thirty) days of the invoice being received. Once this period has expired, the dispute will be considered as inadmissible, and the invoice will be deemed to have been accepted irrevocably and in full by Customer.

13.9 All amounts and Prices as stated or referred to in the Agreement are exclusive Taxes and Costs, which shall be charged in accordance with the relevant regulations in force and must be paid by Customer.

13.10 Customer accepts that ALPEGA may issue invoices electronically. Customer is responsible for the appropriate storage of the electronic invoices and for the fulfilment of all other legal requirements with respect to receiving electronic invoices.

13.11 If any reference is required by Customer for processing the payment of the invoices issued by ALPEGA under the Agreement (including PO reference), Customer shall issue and communicate such reference within two weeks upon signing of the Agreement and/or within due time in the course thereof. In case the issuance of such reference is delayed by Customer for whatever reason, ALPEGA shall have the right, following a grace period of one week, to suspend the provision of any Services until the required reference has been received.

13.12 Customer expressly waives its right to set-off claims of whatever kind and nature they may have or retention rights and its right to invoke the exception of non-performance, against ALPEGA's claims for payment under the Agreement unless such counterclaims have been found to be valid by a court (in a final and non-appealable decision) or are uncontested or have been acknowledged in writing by ALPEGA.

#### 14. ALPEGA' responsibilities and warranties

14.1 ALPEGA warrants that:

- It has all the rights in relation to the Software to grant the License hereunder;
- all its obligations will be executed with reasonable care and skill based on industry-standards;
- the Services will be provided with care and diligence, in a professional and workmanlike manner;
- the Services will substantially conform to the specifications contained in the Agreement;
- the Software shall comply substantially in all material respects with the performance specifications and the functionalities as set forth in the Agreement, except in case of non-conformance to ALPEGA' instructions or in case of alteration of the Software by any person other than ALPEGA or any Third Party acting under its control;
- it will take the commercially reasonable measures to ensure the continuity of the Services and, if applicable, in line with the agreed SLA;
- in accordance with the agreed SLA, it shall remedy the defects notified to it by Customer. Defects are remedied by delivering a corrected version of the Software as per the terms of the SLA. ALPEGA may optionally provide a workaround that does not significantly restrict Customer in the Use of the concerned functionalities of the Services and, if necessary, finally eliminate the defect at the latest with the delivery of the next regular release of the Software. Insignificant defects (clause 3.3) may be remedied in any event by ALPEGA within the scope of one of the next regular Software releases.
- Unless otherwise agreed in the Agreement, it will take the commercially reasonable steps to ensure the maintenance of the Services and the Software. ALPEGA will be responsible for providing maintenance and support services with respect to the Services and the Software only, as required and to the extent provided under the Agreement and, as the case may be, as required under applicable law.
- It shall use commercially reasonable efforts to ensure that all Changes will not materially diminish the features and functionalities of the Services and the Software when used by Customer in accordance with the terms of the Agreement.
- Unless otherwise agreed between the parties, Alpega will deliver all working documents and deliverable in English. Alpega will not be held responsible for delays resulting from translation and language issues.

14.2 From time to time and in accordance with the agreed SLA, ALPEGA may suspend or disconnect access to the Services without notice or deny Customer access to the Services during any Changes, technical failure, modification or maintenance involved in the Services. To the extent possible, ALPEGA will endeavour to plan these suspensions outside business hours. These suspensions will not last for more than a reasonably necessary period and will be notified in a way that ALPEGA sees fit insofar as this is possible. Such suspension of Services cannot in any way incur ALPEGA's liability or lead to any entitlement to compensation. In such circumstances Customer remains liable for all charges due throughout the period of suspension.

14.3 Any warranty that may be granted by ALPEGA under the Agreement in relation to the correction of defects impacting the Services shall be exclusively limited to reproducible defects.

14.4 The warranties stated in the Agreement are the only warranties made by ALPEGA regarding the Software and the Services. Except as specifically set out in the Agreement and to the fullest extent permitted by the applicable law, ALPEGA excludes all implicit or express warranties, representations, terms or conditions of any kind in relation to the Software and the provision of the Services (including but not limited to any implied warranty and condition regarding merchantability, title, accuracy, integrity, performance, satisfactory quality, results, fitness for a particular purpose, non-infringement of Third Parties' rights, and their equivalents under the laws of any jurisdiction), whether imposed by statute, by operation of law or otherwise. Unless otherwise agreed and confirmed in writing, ALPEGA does not warrant in any case that a Service will meet Customer's or its Users' specific expectations, objectives or requirements or that, subject to the agreed SLA, the Services and the Software shall operate uninterrupted or error free and that all defaults, defects and errors in relation thereto shall be corrected. This clause shall apply to the maximum extent as permitted by applicable law.

14.5 ALPEGA makes no guarantee whatsoever in relation to the content of any data, file, document or any other information, as processed and transmitted through, uploaded to or downloaded from the Software by any user or licensee.

14.6 ALPEGA does not warrant that the Services are compatible with any software and/or interface Used by Customer, unless these have been approved by ALPEGA as confirmed in writing. The nature and scope of the compatibility is to be verified and approved in writing in each case by the Parties. ALPEGA excludes any kind of warranty and/or liability in relation to Third Party Components consisting of Open Source Software (OSS). The warranty shall lapse if any Changes are made to the Services (in particular to the Software and interfaces) by Customer or a Third Party without ALPEGA' consent.

14.7 ALPEGA does not provide any kind of warranty in relation to the availability of the Services in context of cyber-attacks or the prevention from loss of, alteration of, or improper access to, Customer Account data.

14.8 If Customer uses BOTs (*automated scripts that imitate user behaviour*), ALPEGA does not warrant that BOTs will continue to function after each release of a new version of the Software. ALPEGA reserves the right to block BOTs at any time.

14.9 ALPEGA reserves the right to monitor the Use of the Software and the Services and to withhold, remove, and discard any data and/or suspend, the Services without notice, in accordance with clause 19, in case of any non-compliance with or breach of the Agreement.

14.10 The warranty period for any claims on the part of Customer shall amount to six (6) months as from the day on which Service have been provided.

#### 15. Customer's undertakings and warranties

15.1 Customer undertakes to Use the Services only for the purposes and in the manner expressly permitted by the Agreement, for the sole purposes for which it was designed and in accordance with all applicable national and international legislations (including Data Protection Legislation and intellectual property rights regulations and competition law provision) and, in general, in a responsible manner.

15.2 Customer undertakes not to Use, and will procure that its Users do not Use the Services to:

- download, send, transmit, or disseminate data containing viruses, worms, spyware, Trojan horses, malware or any other similar malicious code or device which is specifically designed to permit unauthorized access, delete, disable, deactivate, interfere with or otherwise harm the Software;
- contravene any applicable laws;
- carry out any calculations, operations or transactions that may interrupt, destroy or restrict any functionality of or the operation of the Services or any program, computer or means

of telecommunications;

- store, distribute or transmit any material through the Software that is unlawful, harmful, offensive, political extremist, religious fanatical or pornographic, threatening, defamatory, objectionable, obscene, not in line with the free democratic basic order, harassing or racially or ethnically offensive in any way whatsoever; usurp the identity of another, notably by using the Means of Access of another User, registering in the name of a Third Party without the latter's consent, or making use of any other misleading or fraudulent method;
- resell or commercialise any data available through the Services and the Software; and
- spam the Services/Software.

15.3 Customer further undertakes that:

- It shall not disassemble, reproduce, translate, adapt, modify, decompile, reverse engineer, or reverse compile any part of the Services and the Software, except to make a back-up copy solely for recovery purposes and which shall be marked as back-up copy, or make any attempt to discover its source code, no rent, lease, sublicense, resell for profit, transfer, loan, distribute or modify the Services and the Software or any component thereof, unless expressly authorised by ALPEGA as confirmed in writing;
- It shall not attempt to obtain or assist others to obtain access to the Software other than as agreed in writing by ALPEGA.
- It shall report immediately security incidents in its sphere, which can have an impact on the Software and the Services.
- It shall compensate damages and expenses incurred by ALPEGA through BOTs used by Customer.
- if the Services are subject to any limitation in regards to volumes of data transfer and/or storage, it shall pay the corresponding excess costs, upon their being invoiced, in the event of the volume being exceeded.
- Where applicable, it shall not correct any defects identified on the Services and/or the Software on its own initiative and/or through the Use of services provided by third parties, without prior approval of ALPEGA as confirmed in writing.
- It shall carry out its responsibilities and tasks, and answer to ALPEGA's requests, in a timely and efficient manner; in the event of any delay in such performance or any non-compliance, ALPEGA may adjust any timetable as reasonably necessary and reserves the right to charge additional costs.
- it shall ensure that its Users are adequately experienced and informed for the purposes of the Agreement.
- In case of Use of the Services via an interface:
  - (i) It shall be responsible for the message transmission speed from its own systems to the Internet; Customer shall solve, at its own costs, any problem arising in relation to the speed and reliability of such transmission as soon as it becomes aware thereof;
  - (ii) it shall not modify any content or structure of the messages as sent to the Software via the interface, without prior written notice to and approval from ALPEGA;
  - (iii) it shall ensure any proxy server settings do not hide the pages from the ALPEGA relevant application pages, so as to let the pages always display the most recent data;
  - (iv) it shall have the responsibility of informing the selected carriers and other involved Third Parties about the project under the Agreement and shall provide its best effort to convince them by showing strong commitment thereto.

15.4 To the largest extent permitted under applicable law, Customer undertakes not to poach any employees, agents, directors or consultants of ALPEGA or its Affiliates for the entire duration of the Agreement and for a period of 12 months after termination of the Agreement. This clause shall not



apply in case of applications by an employee of ALPEGA in answer to general job postings of Customer that are not specifically directed to employees of ALPEGA.

15.5 Customer is solely responsible for the appropriate storage on its servers and devices of any electronic document (including invoices) pertaining to its business, and created, processed or stored via the Services, whether for the fulfilment of any applicable legal requirement or otherwise. To the fullest extent permitted by the applicable law, ALPEGA shall not be held liable for the storage of such electronic documents.

15.6 Customer agrees to be solely responsible for all costs, expenses, losses and liabilities incurred, and activities undertaken by Customer and Users in connection with the Services.

15.7 Neither Customer nor Users are permitted to make modifications to the Services.

## **16. Liabilities**

16.1 Under no circumstances, shall ALPEGA be liable to Customer, (including its Users), for any indirect, special, incidental, exemplary, enhanced, punitive or consequential damage of any kind, including any loss of profits, goodwill, business, contracts, revenues, interests, expenditures or anticipated savings or any other indirect, special, incidental, unforeseeable (as to the cause or the extent of the damage) and consequential damages or losses arising from claims of third parties whatsoever.

16.2 ALPEGA shall not be liable towards Customer for, without limitation:

- any loss or damage to Customer's records or data (including loss and damage caused by cyber-attacks) if the records and data of Customer have been restored from the back-ups processed by ALPEGA; the liability of ALPEGA shall be limited to ALPEGA's work necessary to restore the data from the latest available back-up performed;
- any loss or damage resulting from any kind of transaction, arrangement or agreement concluded with any Third Party through its use of the Software, and/or from any Third Party's conduct, statement, product or service and losses related to the field of physical logistics;
- any claim related to information, equipment, systems, elements, data, device or any material provided by or under the control of Customer or any Third Party (except those as provided by ALPEGA' Affiliates and sub-contractors for the purposes hereunder);
- any claim based upon any of the following circumstances: (i) any part of the Software has been Used in combination with any equipment, software, data or any material not approved by ALPEGA; (ii) the Software and the Services have been Used in a manner inconsistent with ALPEGA instructions and Documentation or in breach of the Agreement;
- any claim based on the content or any other aspect of any information, data or file transmitted via the Software/Services;
- loss or damage resulting from any misuse and/or unauthorized use of the Means of Access when the cause is attributable to Customer;
- loss or damage resulting from BOTs used by Customer and measures taken by ALPEGA due to these BOTs;
- subject to any applicable mandatory law, no liability can be assumed by ALPEGA in the field of physical logistics. Any matters concerning the physical logistics are to be directly negotiated, decided upon and invoiced between Customer (as consignor) and the freight forwarder in accordance with the provisions agreed between them.

16.3 ALPEGA shall under no circumstances be liable for shortcomings arising from the circumstances in clause 17 (Intellectual Property Rights) or for shortcomings of Third Parties (more specifically transport or delivery problems, hardware defects, connection or telecommunications problems, acts of an independent installer), except ALPEGA sub-

contractors.

16.4 Without prejudice to mandatory applicable law, ALPEGA shall only be liable for damages, under any legal theory (tort, contract or otherwise), if and to the extent that Customer can demonstrate that these result directly from the fault of ALPEGA.

16.5 In any event, ALPEGA's aggregate liability shall be limited to foreseeable and direct losses resulting directly from a breach of any material obligations under the Agreement and shall be limited, for any and all damages occurred in a calendar year to 50% (fifty percent) of the amounts due or paid by Customer during the twelve (12) months period preceding the cause of action.

16.6 Except for more specific stipulations that may apply where appropriate, any complaint regarding the Services must be made in writing and sent by registered letter within three months of the time Customer gained knowledge (or should reasonably have become aware) of the fact leading to the complaint. ALPEGA will be discharged of liability in the event of Notification received after such three months' period.

16.7 ALPEGA is not a party to and is not responsible for the content or validity of files, transactions, data and/or documents generated through the Use of the Services.

16.8 ALPEGA is not responsible for the hardware, computer programs, products, services or (the content of) websites of Third Parties. ALPEGA cannot be held liable for the failure of any infrastructure (computer programs and/or hardware) of Third Parties, except these acting under its control.

16.9 Nothing in this Agreement shall limit or exclude the liability of either Party for death or personal injury caused by its negligence, wilful misconduct, fraudulent misrepresentation or concealment or for any other liability which cannot be limited or excluded by applicable law.

16.10 The limitations of liability set forth in the Agreement shall only apply to the greatest extent permitted by the applicable laws.

16.11 Customer is responsible for the appropriate storage of any electronic documents as processed via the Software, for the fulfilment of any legal requirements into force with respect to the processed documents.

16.12 In case of breach of the Agreement, any claim based thereon must be made by the Party within 12 (twelve) months as from the date the alleged breach occurred however no later than 12 (twelve) months upon termination of the Agreement.

## **17. Indemnification**

17.1 Customer shall defend, indemnify and hold harmless ALPEGA, its officers, employees and agents, against and from all claims, demands, suits, actions, or proceedings, and shall reimburse ALPEGA for any and all damages, costs, penalties and expenses (including court costs and reasonable legal fees) payable to the party bringing such action to the extent that they are awarded in a final judgment or agreed to in settlement, as a result of (i) Users' and/or Customer's Use of the Software and the Services (including any Use in a manner that does not comply with this Agreement and/or applicable laws), (ii) modifications made to the Services that are not permitted by ALPEGA, or (iii) any mis-delivery, non-delivery, theft, conversion, misuse, fraud or inaccurate submission, receipt or distribution of any data transmitted through the Services/Software.

17.2 ALPEGA shall indemnify and hold Customer harmless from any Third Party's claim against it to the extent that it is based on an allegation that any part of the Services/Software licensed has infringed Intellectual Property Rights, and therefore pay those damages or costs related to the settlement of such claim or finally awarded against Customer, provided that Customer:

- promptly notifies ALPEGA of any matters relating to such claim of which it has knowledge;
- makes no admission as to liability or agreement to settlement or compromise without ALPEGA' prior written consent;
- cooperates with ALPEGA and provides all

reasonable necessary information and assistance; and

- gives ALPEGA full authority and sole control of the defence of and all negotiations in relation to such claim.

17.3 ALPEGA shall have no liability hereunder with respect to any infringement claim resulting from: (i) any combined Use of the Software with any Third Party services, data, material or software not approved by ALPEGA, (ii) in case of non-conformance to ALPEGA' instructions or in case of alteration of the Software by any person other than ALPEGA or any Third Party acting under its control use, (iii) Customer's software, systems, materials, equipment and data, (iv) Customer's continuing the allegedly infringing activity after being notified thereof or after being Notified of or provided with the modifications or replacements that would have avoided the alleged infringements and (v) Customer misconduct or negligence.

17.4 If ALPEGA determines that any part of the Software is or is likely to be the subject of an infringement claim, ALPEGA may, at its sole discretion:

- replace or modify this part to make it non-infringing while having substantially equivalent functionality; or
- procure, at no additional costs to Customer, the right to use the same; or
- if none of the foregoing alternatives are commercially feasible even after ALPEGA' best endeavours, withdraw the infringing element and, by giving written notice as much in advance as is reasonably possible, and refund to Customer any fees as paid in advance for the use of the same (pro-rata portion of the fees paid and allocable to the period after such termination).

17.5 The Parties hereby warrant that they have adequate insurance coverage to cover its obligations under this clause.

## **18. Term**

18.1 The Agreement is concluded for the term set forth in the Contract or the Purchase Order.

18.2 In the event that no term is stated, the subscription is for an initial period of one year starting from the activation of the initial subscribed Services. The term of any subscription will be tacitly extended for successive periods of one year, unless that Agreement has been terminated in accordance with the terms of clause 20 below.

18.3 Customer may subscribe to additional Services in the course of the Agreement. The Services will be subscribed for a period starting from the date of activation of the Service (in production) and continuing for the term of subscription of the Services as first initially subscribed by Customer, unless not agreed otherwise between the Parties.

## **19. Suspension**

19.1 ALPEGA reserves the right to suspend at its sole discretion, the provision and access to the Services and the Software, wholly or partially with immediate effect, without prior notice of default and without giving Customer any right to compensation, in the following events:

- ALPEGA has any reason to suspect that the confidentiality and/or security of the Means of Access has been breached or that the Services and/or Software are being misused;
- Customer and/or its Users provide incorrect information to ALPEGA;
- any breach by Customer and/or any of its Users of the terms of the Agreement, or in the event of complaints by Third Parties (including other ALPEGA customers) against Customer.

19.2 Customer will be Notified of such suspension and Customer is not released from its obligation to pay the Price during the suspension period.

19.3 ALPEGA reserves the right to charge Customer with a reconnection fee if the access to the Software must be restored for a reason for which Customer is responsible.

## **20. Termination**

20.1 Either Party may terminate the Agreement by Notifying by registered letter to the other Party that the term of the subscription to the Services will not be so extended, at least 6 months before the scheduled date of expiration of the initial or extended term. The date of the postmark is deemed to be applicable in respect to the adherence to this deadline

20.2 To the extent permitted under applicable law, either Party may, by Notifying in writing via registered letter, without prejudice to its right to full compensation, terminate the Agreement without additional notice of default, with immediate effect, without the prior intervention of a judge and without prejudice to its other rights and remedies, if:

- the defaulting Party commits a material breach of any of its obligations under the Agreement and, if the breach is capable of remedy, fails to cure such breach within 30 (thirty) days after receiving notice by written registered letter from the non-defaulting Party specifying the breach and requiring it to be remedied or, even if the breach is cured within the timeframe provided, the defaulting Party commits the same breach in a persistent manner;
- (for ALPEGA only) breach by Customer of its obligations as set out in clause 9;
- Customer becoming an Affiliate of or transferring, selling or otherwise disposing of all or any part of its assets to any company involved in any business competing directly or indirectly with ALPEGA;
- to the extent allowed by the applicable law, the Party is in a situation, or threatened situation, of cessation of business activities of any kind or is unable to pay its debts; or enters into or proposes to enter into any composition or arrangement with its creditors or any class of them (other than for solvent restructuring); or if any circumstances arise which entitle a competent court or a creditor to appoint a receiver or administrator. In any such events, all amounts paid by that Party shall be regarded as definitively acquired.

20.3 ALPEGA may terminate its obligations to provide any particular Service under the Agreement by giving written notice by electronic means or via the Customer Profile of the end of life of such Service to Customer at least six 6 months before the effective date of such termination.

20.4 Termination by Customer may never give rise to the reimbursement of monies already paid.

20.5 Upon termination of the Agreement for any reason, Customer shall discontinue all Use of the Software and the Services in accordance with clause 9.5. By the termination date, Customer shall have returned to ALPEGA any material provided with respect to the Software and the Services in the course of the Agreement (including but not limited to any copies, Confidential Information, associated programs and Documentation,) and delete any copy of the same held electronically. Customer shall confirm to ALPEGA in writing that the completion of these measures.

## **21. General**

### **21.1 Structure**

The Agreement governing the relationship between the Parties consists of (i) the terms of the "Contract", (ii) the Purchase Order, (iii) the STC (iv) these GTC, (v) the Documentation and (vii) the ALPEGA Privacy Policy. In case of any contradiction or inconsistency between these documents and unless otherwise stated in writing, the order as referred to above (i to vi) shall apply.

### **21.2 Modifications**

In view of the provision by ALPEGA of its Services and also given the further development of the Services, ALPEGA reserves the right to make changes from time to time to the terms of the Agreement.

Any modification to the terms of the Agreement shall be notified to Customer by ALPEGA via the Software, on its websites, via the Customer Profile and/or any other appropriate means.

### **21.3 Force Majeure**

Neither Customer nor ALPEGA shall be liable, except to pay the Prices and the Taxes and Costs due and

owing, for any delay or failure in performance due to Force Majeure, and shall not be responsible for any damage caused by the non-compliance or delay in compliance of obligations resulting from Force Majeure.

If either party is unable to perform its obligations hereunder due to Force Majeure, such obligations shall be suspended so long as those circumstances persist, provided prior prompt Notification of the delay and its causes.

### **21.4 Reference**

ALPEGA shall be entitled to include Customer's name in its "customers/references"-list. Customer explicitly consents thereto. Customer shall, following prior consultation with and request from ALPEGA, be available for reference calls, visits or any other kind of reference activities as agreed by the Parties from time to time.

### **21.5 Survival**

Provisions under the Agreement whose intention and scope are designed to remain in existence, shall survive the termination, expiry, fulfilment or cancellation of the Agreement.

### **21.6 Assignment**

None of the rights and obligations arising from the Agreement may be assigned by Customer to a Third Party, even in the event of a merger, split or partial contribution, without the prior written consent of ALPEGA. Any attempted unconsented assignment shall be void and of no effect. Notwithstanding any consented assignment by Customer, Customer shall remain liable for the payment of all amounts due under the Agreement.

ALPEGA reserves the right to assign any right or obligation under the Agreement to any Affiliate of ALPEGA or to any Third Party. Customer hereby gives its irrevocable consent hereto.

Customer shall not resell to, make available for use by, or otherwise transfer title to any Service to, any User or other Third Party, including any reseller, without prior written consent of ALPEGA.

### **21.7 Independence**

ALPEGA shall be an independent contractor as to Customer and shall have authority to control and direct the performance of the Software and all Services. Nothing in the Agreement shall be construed to make either ALPEGA or Customer a joint venture, principal, agent, partner or employee of the other.

### **21.8 Notification**

Unless otherwise stated herein or in the Agreement, any notice to be given under these GTC shall be made in writing and shall be deemed validly given if delivered personally, sent by courier or other express mail service, sent by registered or certified mail, postage prepaid, or return receipt requested.

Notification as provided by any SLA, which would form part of the Agreement, could be exchanged between the Parties under electronic form at the address referred to by the Parties for this purpose.

Any notification as referred to under the Agreement, any warning, order or any other communication in relation to the Agreement as sent under electronic form pursuant to the terms of the Agreement shall be accepted, in any legal proceedings related to this Agreement, with the same legal value as any other document as created and kept under paper form.

Notification by post is validly made to the address indicated in the in the Contract and/or the Purchase Order, until one of the Parties has notified the other of a change of address.

### **21.9 No waiver**

No waiver of any provision of the Agreement shall be valid unless mutually agreed in writing. Any waiver of a breach or observance of any provision hereof shall not operate or be construed as a waiver of any prior, concurrent or subsequent breach.

### **21.10 Severability**

If any clause herein, or any part thereof, conflicts with a statutory or regulatory stipulation for the protection of a particular category of persons, that clause must be deemed inapplicable to those persons.

If a provision of the Agreement is finally determined to be, or becomes, invalid, illegal or unenforceable, then such provision shall, if possible, and insofar as such clause is invalid, illegal or unenforceable, be

replaced by a valid, legal and enforceable clause reflecting as closely as possible the initial intentions of the Parties.

If the invalid, illegal or unenforceable provision cannot be validly replaced, then no effect shall be given to said clause and it shall be deemed not to be included in the Agreement, such without affecting or invalidating the remaining provisions of the Agreement.

### **21.11 Language**

The Agreement may be translated into one or more other languages but the version of this Agreement, which shall control the relationship between the Parties, shall be the English language version.

### **21.12 Disputes and applicable law**

The Parties will use their best endeavours to negotiate in good faith and settle any dispute that may arise out of or relate to the Agreement, or any breach thereof. For the validity, application, interpretation, performance and implementation of the Agreement, the laws of the State of Illinois shall apply exclusively, as if performed wholly within this state, notwithstanding any conflicts of law or other provision of the laws of Illinois or any other state that would otherwise result in the application of the laws of any other jurisdiction.

Subject to the right of ALPEGA to sue Customer before the competent court in Customer's jurisdiction, the courts of the State of Illinois and/or the United States District Court for the Northern District of Illinois will have exclusive jurisdiction for all disputes that may arise from the Agreement.

EACH PARTY HEREBY WAIVES ITS RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY DISPUTE OR LEGAL PROCEEDING ARISING OUT OF THIS AGREEMENT OR THE SUBJECT MATTER HEREOF.

Version of April 2021.