

GEM S.A
End User Software Agreement

IMPORTANT: READ THIS DOCUMENT CAREFULLY

THE TERMS AND CONDITIONS OF THE END USER SOFTWARE SUBSCRIPTION AGREEMENT (THE "EUSA") CONSTITUTE A LEGAL AGREEMENT BETWEEN THE ENTITY EXECUTING AN ORDER PRESENTED BY GEM S.A ("CUSTOMER") AND GEM S.A WITH RESPECT TO USE OF THE PROPRIETARY ABREEZ SOFTWARE (THE "SOFTWARE"). BY (1) EXECUTING A GEM S.A ORDER, (2) INSTALLING, COPYING, DOWNLOADING OR OTHERWISE ACCESSING THE SOFTWARE, (3) CLICKING TO ACCEPT, OR (4) EXECUTING THIS EUSA, CUSTOMER COMPLETELY AND UNEQUIVOCALLY AGREES TO BE BOUND BY THE TERMS OF THIS EUSA, CUSTOMER MAY NOT ACCESS OR OTHERWISE USE THE SOFTWARE AND MUST PROMPTLY RETURN ALL COPIES OF THE SOFTWARE AND DOCUMENTATION IN THE MANNER PROVIDED HEREIN.

This EUSA was last updated on Aug 30, 2017. It is effective between Customer and GEM S.A as of the date of Customer accepting this EUSA.

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RECITALS

WHEREAS, GEM S.A owns or otherwise has the exclusive right to use, sell, sublicense the use of, and grant rights of access to and use of the Product (as defined below); and

WHEREAS, Customer desires to receive from GEM S.A the right to access and use the Software (as defined below), and engage GEM S.A to provide Customer with certain services associated therewith, all pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises, terms and conditions set forth below, and of other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged the Parties hereby agree as follows:

1. DEFINITIONS

Definitions. The following capitalized terms shall have the meanings and applications set forth below:

“**Affiliate**” of a Party means an entity which, directly or indirectly, owns or is owned by or is under common ownership with an entity, where ownership means at least 50% of the voting power or securities interest in such entity and it includes its holding company, any of its subsidiaries and any subsidiary of its holding company.

“**Business Day**” means any day other than Saturdays, Sundays and U.S.A public holidays.

“**Business Hour**” means the hours between 9:00 AM to 5:00 PM on any Business Day.

“**Order**” means subscription order, and/or any other form or writing that is physically or electronically by both Customer and GEM S.A pursuant to which Customer seeks to purchase the offerings subject to this EUSA. This EUSA is incorporated by reference into any Order without modification.

“**Delivery Date**” means the date of first access to the Software.

“**Effective Date**” means the date on which Customer accepts or is deemed to accept this EUSA as provided herein.

“**Guests**” means Customer’s customers, visitors and patrons.

“**Hardware**” means Customer’s mobile device(s), including but not limited to mobile phone(s), smartphone(s), tablet computer and computing device(s), which may be monitored and managed by the Software, whether owned by the Customer or by Customer’s Users, all as reflected on the Order.

“**Hosted Services**” mean the service provided to host, on GEM S.A servers on Customer’s behalf, the necessary Software to allow communication and control functions with Hardware via internet-based consoles.

“**Initial Term**” means the minimum period of twelve (12) months period of Services which Customer must subscribe to unless it is for a longer period stated in a SOW or Order.

“**GEM S.A**” means GEM S.A Inc. and its affiliates.

“**Modification**” means all customization modifications or enhancements, bug fixes, error, corrections, updates, new features, new functionalities, upgrades or new versions of any Software, whatever its form or format.

“**Product**” means software, software related services, technical and customer services supplied and provided by GEM S.A.

“**Resell EUSA**” means an EUSA entered into between GEM S.A and its reseller or distributor.

“**Set up Fee**” means the costs and expenses associated with configuration Customer’s account, access right.

“**Service Renewal Term**” means the period after which the Initial Term for which Services is renewed by Customer specified in an Order.

“**Service Term**” means the total term which Customer subscribes for, including Initial Term and/or where the context so permits shall include the Service Renewal and/or additional Services subscribes by Customer from time to time.

“**Site**” means Customer address in which Services are carried out or to be carried out and more particularly specified in a SOW.

“**SLA**” means Service Level Agreement.

“**Software**” means the object code versions of computer programs and sufficient associated documentation, training materials and configuration to use and modify such programs supplied and provided by GEM S.A to Customer.

Software Related Services means Software-related services performed by GEM S.A as reflected in a SOW or in an Order pursuant to an SOW or an Order such as installation, activation, training, Software configuration, hosting environment configuration, integration, reconfiguration assessment, optimization, or other Software-related services and excluded professional services for the development of custom Software.

“**SOW**” means a statement of work executed by the parties, specifying the terms and conditions, deliverables, and compensation for delivery of Software Related Services or other items.

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“**Source Code**” means any program instruction as an ASCII text file which requires translation by a compiler or interpreter or assembler into the object code for a particular computer before execution.

“**Software Updates**” means new Software programme that increments the version number of a single Software product release.

“**Subscription Fees**” means any monthly, quarterly or yearly fees which Customer must pay for the subscription of any Services subscribed by Customer from GEM S.A.

“**Technical and Customer Support Services**” means, for customers who are current on maintenance fees, maintenance and support services performed in accordance with GEM S.A SLA.

“**Third Party Hardware**” means any physical part of a computer, related devices such as components and peripherals, and mobile devices supplied by GEM S.A.

In consideration of the mutual covenants herein expressed, and other true and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follow:

2. END-USER AGREEMENT WITH GEM S.A

- 2.1 GEM S.A develops and is the owner of certain GEM S.A Softwares (“**ABreez Software**”) and provides certain services to Customer (“**Software Related Services**”).
- 2.2 Upon request, GEM S.A may supply Third Party Hardware.
- 2.3 To the extent that this EUSA relates to the provision of Services only and not to GEM S.A Product, the terms relating to supply of GEM S.A Product shall be disregarded, and to the extent this EUSA relates to the provision of GEM S.A Product only and not to Services the provision relating to Services shall be disregarded.
- 2.4 This EUSA set forth the terms and conditions for Customer’s purchase a subscription of GEM S.A Product solely for the use at the Site and solely for (a) Customer’s internal business use, or (b) resale only if and where Customer has been granted appropriate distribution rights by GEM S.A for the specific GEM S.A Product to be resold/distributed under separate EUSA (for the purposes of this EUSA, it will be called “**Resell EUSA**”). Customer shall not resell to, or make available for use by, or otherwise transfer title to any GEM S.A Product to, any end user or other third party, including any reseller, without such distribution rights. If there is any contradiction or inconsistency between the terms and conditions in the Resell EUSA and the terms and conditions of this EUSA, the terms and conditions of this EUSA shall prevail.
- 2.5 This EUSA will be effective from the date on which customer accepts or is deemed to accept this EUSA as provided herein. This EUSA shall govern the relationship of the Parties for any and all GEM S.A Product supplied and provided to Customer hereunder in a SOW or in an Order.
- 2.6 Any term or condition of Customer’s communication or other documentation supplied by Customer which is different from, in addition to, or inconsistent with any term or condition specified herein is hereby objected to and rejected, and unless hereafter specifically accepted in writing by a duly authorized GEM S.A’ representative with power to bind GEM S.A, such term or condition will not be binding on or effective against GEM S.A. In the event a separate EUSA covering terms and conditions of subscription has been negotiated and agreed upon in a signed written EUSA between GEM S.A and Customer and specifically sets forth that it takes precedence over this EUSA, the said EUSA is applicable and shall take precedence, to the extent of conflicts, and this EUSA shall be supplemental to the terms of such EUSA. This EUSA embodies the entire EUSA of the Parties in relation to its subject matter and supersedes all prior understandings, communications and representations between the Parties, whether oral or written.
 - (a) Overseas deliveries may be subjected to import duties and taxes, which may be levied once Third Party Hardware reaches the destination. Customer shall be responsible for custom clearance and to deliver Third Party Hardware to the Site. Any additional charges for custom clearance must be borne by Customer. GEM S.A has no control over these charges and cannot predict what they may be. Customs policies vary widely from country to country, so Customer shall contact its local customs office for further information.
 - (b) Where GEM S.A personnel is required to enter a foreign country, Customer must ensure that application, clearance and approval is obtained from the immigration department or any regulatory body including but not limited to visa, permits, licence and any other travel documents required to enter the country is obtained. All expenses shall be borne by Customer.

3. SOFTWARE TRIAL

To the extend reflected in an Order, a Software Trial for evaluation purposes (“**Trial**”) shall be used solely for the purposes of testing and evaluating the Software shall be hereinafter referred as “Software Trial”. The Software trial shall be for a period of thirty (30) days from the Delivery Date or for such other period reflected on the Order (the “Software Period”). ANY DATA THE CUSTOMER ENTERS INTO THE SERVICES, AND ANY CUSTOMIZATIONS MADE TO THE SERVICES BY OR FOR THE CUSTOMER, DURING THE TRIAL WILL BE PERMANENTLY LOST UNLESS THE CUSTOMER PURCHASES A SUBSCRIPTION TO THE SAME SERVICES AS THOSE COVERED BY THE TRIAL BEFORE THE END OF THE TRIAL PERIOD.

4. INTERPRETATIONS

In this EUSA unless there is something in the subject or context inconsistent with such construction or unless it is otherwise expressly provided:-

- (a) Words denoting the masculine gender shall include the feminine and neuter gender and vice versa;
- (b) Words denoting singular number shall include the plural number and vice versa;
- (c) Reference to any statute, rule, regulation, order, directive shall be construed as reference to such statute, rule, regulation, order, directive as respectively amended or re-enacted or as their operation is modified by any other statute, rule, regulation, order or directive;
- (d) Any reference to a ‘day’, ‘week’, ‘month’, or ‘year’ is to that day, week, month or year in accordance with the Gregorian calendar;
- (e) If any period of time is specified from a given day, or the day of a given act or event, it is to be calculated exclusive of that day and if any period of time falls on a day which is not a Business Day, then that period is to be deemed to only expire on the next Business Day;

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- (f) The heading of this EUSA are inserted for convenience only and are to be ignored in construing the provisions of this EUSA; and
- (g) No rule of construction or interpretation of contracts shall apply to the disadvantage of a party for the reason that the party was responsible for the preparation of this EUSA or any part of it.

5. TERMS AND CONDITIONS AND ACCESS OF USE

- 5.1 Customer hereby acknowledges and understands it is not purchasing the Software or any license thereto. The Software is being provided to Customer as a service pursuant to the terms and conditions set forth herein. The Software will reside on servers owned or controlled by GEM S.A. Customer's rights to access and use the Software will be subject to its acceptance of, and compliance with, the terms and conditions of this EUSA and its timely payment of the Subscription Fees. Where Customer refuses, fails and/or neglects to comply with any of the requirements or to sign any documents required by GEM S.A, GEM S.A shall not be liable for any fault which occurs on GEM S.A Product.
- 5.2 Other costs and expenses. Where travelling is required for any work or to carry out any work requested by Customer which is not covered by a SLA for a period necessary for GEM S.A personnel to carry out such installation and any work:- (a) where the Site is completed and ready for occupation by its guests, Customer shall provide GEM S.A personnel one of its hotel room and meals at a standard reasonably acceptable to GEM S.A, laundry and internet; or (b) If Customer's Site is not completed or ready for occupation by its guests, Customer shall provide accommodation and meals at a standard reasonably acceptable to GEM S.A, laundry and internet; and (c) in addition to the above either (a) or (b), Customer agrees to be responsible to bear and/or indemnify GEM S.A all costs, expenses and charges incidental to such installation or any work carried out by GEM S.A such as (but not limited to) travelling expenses. These cost and expenses includes items like per diem including the date of travel till the date of arrival of GEM S.A personnel at the next designated site.

6 TECHNICAL AND CUSTOMER SUPPORT AND TRAINING

Technical and Customer Support shall be provided in accordance with GEM S.A SLA. Technical and Customer Support is offered for only the Software. GEM S.A will exercise commercially reasonable efforts to ensure the Software functions in accordance with the SLA attached hereto an incorporated herein by reference as Exhibit A (the "SLA"). Technical and customer support services for the Product shall be available pursuant to the terms and conditions set forth in the SLA. Only Customer's representatives designated by Customer in writing to GEM S.A may contact GEM S.A with technical and customer support inquiries. Such individuals must have undergone training with respect to the Product.

Subject to GEM S.A's availability and unless as otherwise agreed by GEM S.A, GEM S.A may train those certain individuals designated by Customer in writing to GEM S.A on the proper use, display, promotion and operation of the Product. All training will be provided remotely and solely shall consist of sales promotional materials, technical manuals or demos, sales aides and other training in a web-based, multi-media format. All costs, fees and expenses associated therewith shall be set forth in the Order.

7 PROFESSIONAL SERVICES

In addition to the Product, Customer may purchase certain professional services (the "Professional Services"), which may be customized pursuant to a mutually agreed upon and executed written statement of work provided to Customer upon its request (each, a "SOW"). The Professional Services are provided by GEM S.A separate and distinct from the Product and are not required for Customer's use or enjoyment of the Product. In the event of any conflict between any term or condition set forth in this EUSA and in a Statement of Work, the terms and conditions of this EUSA shall govern, unless the Parties expressly agree otherwise in such Statement of Work. Any Statement of Work may be modified or amended only with the written consent of each of GEM S.A and Customer.

8 INTELLECTUAL PROPERTY RIGHTS

Customer hereby acknowledges and understands it is not purchasing the Software or any license thereto. The Software is being provided to Customer as a service pursuant to the terms and conditions set forth herein. Title to and ownership of the Software and all GEM S.A copyrights, name, trademark, trade names, service mark or any other identifying characteristics are proprietary intellectual property of significant value and goodwill to GEM S.A and all associated intellectual property rights relating thereto (the "GEM S.A IP") are retained by GEM S.A. This EUSA only grants Customer the limited right to use the GEM S.A IP under the terms and restrictions specified in the EUSA. Customer does not, and will not, acquire any other right, title or interest in any GEM S.A IP, which will at all times remain the exclusive property of GEM S.A. Customer will not remove, suppress, or modify in any way any proprietary marking which is on or in the GEM S.A IP, or which is on any media supplied with the GEM S.A IP, except where expressly allowed. Customer acknowledges and agrees that GEM S.A shall be the sole owner of any enhancements, updates, upgrades, new version, new releases, or derivatives of the Software which are developed by GEM S.A during and after the term of this EUSA. Without limiting the foregoing, Customer expressly acknowledges and agrees that GEM S.A shall be the sole owner of any newly-developed intellectual property including but not limited to (a) newly-developed, revised, or modified source code and (b) inventions where such are related in any way to the Software or GEM S.A general business, regardless of whether such are developed, revised, or modified in response to Customers' requests, suggestions, or ideas even if performed as Software Related Services paid by Customer. During the term of the EUSA and thereafter, Customer shall not assert the invalidity of the GEM S.A IP, or contest GEM S.A right, title, or interest therein or thereto, and Customer shall not cause, influence or assist in any manner whatsoever, any other party to make any such assertions or contest.

9 PROVISION OF SERVICES

- 9.1 Upon subscription by Customer, GEM S.A will provide Services specified in a SOW or in an Order to Customer.
- (a) After the Initial Term, Services will be automatically renewed or extended for a successive term of twelve (12) months each ("Service Renewal Term") unless terminated in accordance with the provision of this EUSA. If renewal is not automatic, Services may be renewed at the prevailing charges and rates to be imposed by GEM S.A, by executing an Order.

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(b) After the expiration of the Initial Term, the Services can be renewed at the prevailing charges and rates based on the following criteria (a) Parties shall review the technical and customer support services annually and to increase the technical and customer support services Fee to a rate acceptable by both Parties or (b) GEM S.A may also increase the technical and customer support services Fee based on the Consumer Price Index ("CPI").

9.2 Third Party Hardware. Customer acknowledges and agrees that GEM S.A shall not be responsible to provide technical and customer support services to Customer towards Third Party Hardware.

10 SUSPENSION OF SERVICES

10.1 GEM S.A shall be entitled at its absolute discretion to immediately suspend Services, without liability at any time, without notice if Customer breaches any of the terms and conditions of this EUSA including non-payment by Customer.

10.2 Customer shall remain liable to pay GEM S.A Fees during the period of suspension unless this EUSA is terminated in accordance with the provision of this EUSA.

11 PAYMENTS AND PAYMENT TERMS

11.1 The Subscription Fees shall be due and payable pursuant to the payment terms and conditions set forth in this EUSA.

11.2 Customer shall examine all entries specified in the invoice and give GEM S.A a notice in writing of any of the entries which it disputes within Fifteen (15) days therefrom. Customer hereby irrevocably agrees that in the event Customer shall fail to give GEM S.A any notice in writing disputing any of the entries specified in the invoice within fifteen (15) days from the date of receipt thereof, such invoice shall be deemed correct, binding and conclusive evidence against Customer of the correctness and accuracy of the entries specified therein and the amount due and owing by Customer to GEM S.A in a court of law, save for any manifest error.

11.3 All Fees are exclusive of any taxes, however designated, levied or based. All such taxes shall be paid by Customer, excluding only taxes based on GEM S.A's net income. Applicable taxes shall be billed as a separate item on the invoice where possible.

12 DISPUTE ON INVOICE

12.1 If Customer dispute an invoice issued by GEM S.A, Customer shall give a notice, within fifteen (15) days from the date of invoice, specifying the amount in dispute, the reason why such amount is disputed and written records or documentary evidence supporting Customer's dispute.

12.2 Upon receipt the parties shall use their best efforts to amicably resolve the matter within fifteen (15) days. In the event that the parties fail to resolve the matter within fifteen (15) days or such other period as the parties may mutually agree, either party may serve upon the other a written notice that negotiations have reached an impasse and the dispute may be resolved in accordance with the provision of this EUSA.

12.3 Notwithstanding that Customer is not required to pay the amount in dispute pending resolution of dispute; Customer shall still be liable to pay to GEM S.A such portion of the invoice that is not in dispute in accordance with the provision of Clause 11.

13 LATE PAYMENT CHARGES

GEM S.A shall be entitled to charge and Customer shall be liable to pay GEM S.A late payment charges on all overdue charges at the rate of 1.5% per month (or 18% per annum) calculated on a daily basis from the day following the due date thereof to the date of actual payment thereof.

14 CUSTOMER'S WARRANTIES COVENANTS AND UNDERTAKING

14.1 Customer covenants, represent and warrants that:-

(a) Power and Authority. This EUSA constitutes valid and legally binding obligations of Customer and Customer has the full power and authority to execute this EUSA and has taken all requisite approvals in connection with the execution and performance under this EUSA.

(b) Accuracy of Information. All information required by and furnished by Customer to GEM S.A in connection with or for the purposes of any of the Services provided hereunder are correct and accurate in every material aspects and are not false, misleading, deceptive, defamatory and/or unlawful and nothing herein shall imply any obligation on the part of GEM S.A to verify the accuracy and authenticity of such information.

(c) Compliance with Law. It shall comply with all laws and regulation of the country (including those required by foreign or international laws) in which GEM S.A Products are received.

(d) Authorised Personnel. Customer warrants that the personnel signing physically or accepting electronically this EUSA has the authority to execute this EUSA.

14.2 Customer hereby covenants and undertakes with GEM S.A as follows:-

(a) Modification. Shall not modify or adjust Software or merge the Software with those of third party product, device or Software not supplied by GEM S.A without prior written consent of GEM S.A.

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(b) Source Code. It shall have no right, interest and/or lay any claims against GEM S.A Source Code in any circumstances whatsoever unless GEM S.A business ceases to carry on its business globally.

(c) Insurance. To insure and keep insured Customer's equipment against all risks (including without limitation, fire, flood, and other peril) up to the replacement value thereof as well as to cover any consequential loss of profits as may be deemed necessary by Customer and to ensure that all such insurance policies shall include a waiver by the insurer of its rights of subrogation against GEM S.A.

(d) Compliance. Customer shall comply strictly to the usage of Software and in accordance with the terms and conditions of this EUSA.

(e) Safety of GEM S.A personnel at Site. Customer shall provide a safe, secured, healthy, security, good working condition and similar matters for GEM S.A personnel whether such personnel is GEM S.A officer, employee, agent, representative or subcontractor when carrying out Services at the Site. Customer is required to provide all safety equipment, permits, outfits and any miscellaneous items to GEM S.A personnel to ensure that they can perform their work at Site in a safe, secured, healthy, good working condition at no cost to GEM S.A. If GEM S.A is required to purchase any of these items to ensure its personnel is in a safe, secured, healthy condition as required by law to work in that Site, Customer shall reimburse GEM S.A in full provided that such expenses incurred is reasonable and supporting documents and receipts are provided to Customer.

15 GEM S.A OBLIGATIONS

GEM S.A covenants with Customer that GEM S.A:-

(a) Professional Skill and Expertise. Possess the requisite professional skill and technical expertise to perform its obligations hereunder and in accordance with the highest industry standards and practices.

(b) Standard of Service. Shall provide Customer with technical and customer support and GEM S.A shall repair any interruption the GEM S.A Product within the repair time allowed as specified in the SOW and SLA provided it is not due to Customer's fault, its equipment, and/or third parties not appointed by GEM S.A.

16 DISCLAIMER OF WARRANTY

EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, THE PRODUCT AND THE PROFESSIONAL SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, GEM S.A AND ITS AFFILIATES, PARENTS, SUBSIDIARIES AND AGENTS (COLLECTIVELY, THE "REPRESENTATIVES") DISCLAIM ANY AND ALL REPRESENTATIONS AND WARRANTIES, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, OR STATUTORY, INCLUDING (WITHOUT LIMITATION) ANY WARRANTY AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, TITLE, OR NON-INFRINGEMENT. THE REPRESENTATIVES DO NOT WARRANT THAT THE PRODUCT WILL MEET CUSTOMER'S REQUIREMENTS NOR DO THEY GIVE ANY WARRANTY ABOUT THE RESULTS THAT MAY BE OBTAINED BY USING THE PRODUCT. CUSTOMER ACKNOWLEDGES THAT GEM S.A DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. GEM S.A IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

17 LIMITATION OF LIABILITIES

In no event will GEM S.A be liable to Customer for any direct, indirect, incidental, consequential, punitive, special or exemplary damages arising from this EUSA, including, but not limited to, loss of revenue or anticipated profits or lost business, loss of data or loss of use. IN NO EVENT SHALL GEM S.A'S TOTAL CUMULATIVE LIABILITY FOR CLAIMS OF ANY KIND, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, INDEMNITY OR OTHERWISE, FOR ANY LOSS OR DAMAGE ARISING OUT OF OR RELATED TO THIS EUSA OR THE PRODUCT EXCEED THE FEES ACTUALLY PAID BY CUSTOMER HEREUNDER DURING THE TWELVE (12)-MONTH PERIOD ENDING ON THE DATE OF THE CAUSE OF ACTION UNDERLYING SUCH CLAIMS. No claim may be asserted by Customer against the Company more than twelve (12) months after the date of the cause of action underlying such claim. NOTHING SET FORTH IN THIS EUSA SHALL EXCLUDE OR LIMIT LIABILITY TO A GREATER EXTENT THAN IS PERMITTED BY APPLICABLE LAW OR SHALL EXCLUDE OR LIMIT LIABILITY FOR FRAUD, FRAUDULENT MISREPRESENTATION OR FOR DEATH OR PERSONAL INJURY CAUSED BY NEGLIGENCE.

18 CONFIDENTIAL INFORMATION

During the Term and for a period of three (3) years thereafter, each of GEM S.A and Customer (in such capacity, the "Receiving Party") will hold confidential, not use except as otherwise authorized herein, and protect from disclosure to unauthorized third parties the Confidential Information (as defined below) of the other party (in such capacity, the "Disclosing Party"). Each Party acknowledges that it will have access to certain confidential information and materials of the other Party concerning the other party's business, pricing, subject matter, plans, customers, technology, Software (including source code, object code, binary, or machine code, in any language or format, and in any medium), products including the terms and conditions of this EUSA ("Confidential Information"). Each Party agrees that it shall not use in any way, for its own account or the account of third party, except as expressly permitted by this EUSA, nor disclose to any third party (except as required by law or that party's solicitors, accountant and other advisors as reasonably necessary), any of the other party's confidential information and will take reasonable precautions to protect and safeguard the confidentiality of such information from disclosure to others, using the same degree of care used to protect its own Confidential Information.

19 EXCEPTION

Information will not be deemed Confidential Information hereunder if such information:-

(a) is known to the receiving party prior to receipt from the disclosing party directly or indirectly from a source other than having an obligation of confidentiality to the disclosing party;

(b) becomes known (independently of disclosure by the disclosing party) to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party;

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- (c) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this EUSA by the receiving party; or
- (d) is independently developed by the receiving party.

20 REMEDIES

Notwithstanding anything to the contrary in this EUSA, in the event any intentional breach of this Clause, the non-breaching party will be entitled to any remedies available at law and/or in equity.

21 CUSTOMER DATA

In connection with Customer's access to and use of the Product, GEM S.A may collect, consolidate and analyse personal information and data about Customer, Guests and other third parties that interact electronically or otherwise with Customer or the Product (collectively, the "Customer Data"). GEM S.A will not own any Customer Data; provided, however, that Customer hereby grants to GEM S.A: (a) a non-exclusive, fully-paid up, Worldwide license to use the Customer Data in connection with GEM S.A's performance of its obligations under this EUSA and provision of the Product; and (b) a non-exclusive, perpetual, fully-paid up, Worldwide license to use non-personally identifiable Customer Data in aggregate and blinded formats that do not identify, reference or imply an association with Customer or the Guests, for the purposes of creating benchmarking, statistical, research and marketing analyses, surveys, reports and studies. Customer agrees that GEM S.A has sole discretion with respect to the collection and retention of Customer Data and has no obligation to Customer to retain the Customer Data. GEM S.A may delete and destroy Customer Data at any time without providing Customer with notice of such deletion. GEM S.A will not be responsible or liable for any deletion, correction, destruction, damage, loss or failure to store any Customer Data.

22 INSPECTIONS AND ACCESS

During the Term and the eight (8)-month period immediately thereafter, GEM S.A shall have the right to visit and inspect the Site(s) solely for the purposes of observing Customer's use of the Product and verifying Customer's compliance with the terms and conditions set forth in this EUSA and in the Customer Software Use EUSA. Such inspections shall be conducted

during Customer's standard business hours without unreasonable disruption to Customer's business. Customer shall keep and maintain proper records and books of account relating to its use of the Product. During such inspections, GEM S.A shall have full access to the entire Site(s), which shall include opportunities to speak with Customer's employees or non-employee personnel and to make and retain copies of documents and other materials in paper, electronic or other form.

23 TERMINATION

23.1 Subject to the termination provisions set forth herein, the initial term of this EUSA will commence on the effective date set forth in an Order, will continue for such period of time as is set forth in an Order (the "Initial Term"), and will renew automatically for consecutive twelve (12)-month terms, unless it is terminated earlier by a Party pursuant to this Section 8 (each such renewal term, a "Renewal Term," together with the Initial Term, the "Term").

23.2 In the event Customer shall unilaterally terminate this EUSA prior to delivery or installation of GEM S.A Products, any and all payments made by Customer to GEM S.A as deposit shall not be refundable.

23.3 In the event that Customer shall unilaterally terminate this EUSA during but prior to the expiry of the Initial Term, Customer agrees that it shall be liable to pay GEM S.A the Fee for the remainder of the Initial Term as agreed liquidated damages within thirty (30) days from the date of Customer's notice to terminate provided always that such termination by Customer shall not be due to the material breach of GEM S.A.

23.4 Either Party may terminate this EUSA at any time after the Initial Term by giving the other party sixty (60) days' notice in writing.

Either Party will have the right to terminate this EUSA if:-

- (a) the other Party shall breach any material term or condition of this EUSA and shall fail to rectify and remedy such breach within thirty (30) days [for non-payment seven (7) days] from the date of receipt of a written notice requiring it to do so; or
- (b) the other Party shall commit an act of bankruptcy or suffer the presentation of a petition for liquidation or winding-up as the case may be; or
- (c) have a decree entered against the other Party by a court of competent jurisdiction appointing a receiver, liquidator, trustee or assignee in bankruptcy or in insolvency covering all or substantially all of such party's property providing for the liquidation of such party's property or business affairs; or
- (d) the other Party shall make an arrangement for the benefit of or enter into any arrangement or composition arrangement with its creditors; other Party shall permit or suffer any execution proceedings levied on any of its properties, premises, goods, fixtures, fittings, equipment, chattels and effects.

24 EFFECT OF TERMINATION

The expiration or termination of this EUSA for any reason shall not release either Party from any liability which, at the time thereof, has already accrued to such Party, or which is attributable to a period prior to such expiration or termination; nor shall it preclude any party from pursuing all rights and remedies it may have hereunder or at law or in equity with respect to any breach of this EUSA.

Upon any termination or expiration of this EUSA, as the case may be, all rights of access and use and Software granted hereunder shall terminate and Customer immediately will discontinue all use of the Product or return to GEM S.A the Hardware, as instructed by GEM S.A.

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25 ALTERNATIVE DISPUTE RESOLUTION

In the event of any dispute between the Parties hereto arising from or relating to this EUSA then, upon written request by either Party, each of the Party will appoint a designated representative to endeavour to resolve such dispute. The designated representative shall be executives with sufficient authority to engage in good faith and capable of binding the Party he represents. If the designated representatives are unable to resolve the dispute within thirty (30) days from the date the notice was given, then the dispute will be escalated to representatives of each Party at least one (1) level higher in their respective organisation than those previously involved wherein both Parties must try to resolve the dispute within thirty (30) days from the last negotiation. Except if a court determines injunctive relief is warranted upon application by one of the Party, either Party will try not to commence any legal proceedings relating to such dispute until and unless the escalated representatives conclude in good faith that amicable resolution through continued negotiation of the dispute is not likely to happen.

26 GENERAL PROVISIONS

26.1 **Notices.** Notices or other communications hereunder shall be in writing, and shall be deemed effectively given: upon personal delivery; upon confirmed delivery by facsimile or electronic mail without notice of transmittal failure; on the third (3rd) day following delivery to a nationally-recognized overnight courier; or on the seventh (7th) day following mailing by registered or certified mail, postage prepaid. Notices of EUSA termination must be sent by registered or certified mail or by overnight courier; facsimile or electronic mail notices of termination will not be effective.

26.2 **Acceptance of an Additional Order.** Customer's acceptance of an additional Order and reaffirmation of its agreement to the Terms and Conditions of this EUSA and the original Order shall be indicated by Customer (a) executing and returning to GEM S.A a new Order.

26.3 **No partnership.** Each of GEM S.A and Customer hereby acknowledges and agrees that the relationship between the Parties hereunder shall be that of an independent contractor and that nothing contained herein shall be construed or interpreted as creating any other relationship between the Parties including, but not limited to, employer/employee, principal/agent, partnership, or joint venture.

26.4 **Force Majeure.** Neither Party shall be liable for any failure or delay in performance to the extent caused by causes beyond its reasonable control and without negligence of such party, including without limitation, failure of transport infrastructure, government act, labour disputes, fires, other casualties, weather or natural disaster, or damage. If delay in

performance or non-performance continues for more than one (1) month from such event then either party will have the right to terminate this EUSA with immediate effect and neither party shall have any claims against the other in respect of such termination save for antecedent breaches.

26.5 **Publicity.** GEM S.A may use the name and/or logo of Customer in a list of customers used in marketing materials until requested to cease this use by Customer. Within forty-five (45) days of signing this EUSA GEM S.A may publish a press release announcing the acquisition of Customer as a customer, provided Customer has an opportunity to review and approve the press release.

26.6 **Waiver.** No failure or neglect of either Party in any instance to exercise its right, power, privilege hereunder or under law shall constitute a waiver of any right arising from, pursuant or under this EUSA. All waivers by either party must be in writing signed by the authorised person, in the case of GEM S.A, by the officer with highest authority in the organisation.

26.7 **Independent Contractor.** GEM S.A shall at all times be considered an independent contractor under this EUSA. Nothing contained herein will be construed to create the relationship between the parties of principal and agent, employer and employee, partners or joint venturers.

26.8 **No Third Party Beneficiaries.** This EUSA is for the benefit of the Customer and GEM S.A and does not provide any third party the right to enforce it or to bring an action for any remedy, claim, liability, reimbursement or cause of action or any other right or privilege.

26.9 **Assignment.** GEM S.A may assign its rights and obligations under this EUSA at any time. Customer may not assign its rights and obligations under this EUSA without the prior written consent of GEM S.A. Subject to the foregoing, this EUSA shall be binding upon and shall inure to the benefit of the Parties' successors and assigns.

26.10 **Amendments.** Any modification or amendment of any provision of this EUSA must be made in writing and signed by an authorized representative of each Party.

26.11 **Language.** In the event that GEM S.A or another party provided Customer with a translation of this EUSA from the English language to another language, Customer agrees that such translation is provided for convenience only; that the American English language version of this EUSA governs the relationship between GEM S.A and Customer; and, if there is any conflict between the American English language version of this EUSA and such translation, the American English language version shall take precedence. All disputes arising under this EUSA shall be resolved in the American English language.

26.12 **Governing Law.** This EUSA is made under and shall be governed by and construed in accordance with the laws of Brussels, Belgium without regard to principles of conflicts of law, and the Parties hereby irrevocably agree to submit to the non-exclusive jurisdiction of Brussels, Belgium Courts and waive any objections on the ground of venue or forum or non-convenience or any similar grounds.

26.13 **Entire Agreement.** This EUSA constitutes the entire agreement between the parties with respect to the subject matter hereof. This EUSA and any related Order supersede and replace all prior understandings, negotiations, commitments, representations, and agreements of the parties relating to the Software and the subject matter hereof. GEM S.A's agreement to provide the Software to Customer is expressly conditioned upon the unequivocal application of all terms and conditions included in this EUSA to such transaction and any additional or different terms or conditions proposed by Customer (whether by purchase order, counter-offer, acknowledgement, electronic data interchange, or otherwise) are hereby expressly objected to and will not be in way binding upon GEM S.A. Although any related Order or SOW is incorporated by reference herein, it is the express agreement of the parties that the terms of this EUSA shall supersede any conflicting terms in any related Order or SOW, unless the conflicting terms in such related Order or SOW clearly express an intent to supersede this EUSA by directly and specifically referring to the section or sections of this EUSA to be superseded and such Order or SOW is executed by an officer of each party. If any term of this EUSA is found to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with a term consistent with the purpose and intent of this EUSA. This EUSA may only be amended or modified in writing and any modification or amendment to this EUSA will be effective only upon execution by an officer of each party.

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26.14 Transmission of Original Signatures and Executing Multiple Counterparts. Original signatures transmitted and received via facsimile or other electronic transmission of a scanned document, (e.g., pdf or similar format) are true and valid signatures for all purposes hereunder and shall bind the Parties to the same extent as that of an original signature. This EUSA may be executed in multiple counterparts, each of which shall be deemed to constitute an original but all of which together shall constitute only one document.

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EXHIBIT A

END USER SOFTWARE SUBSCRIPTION AGREEMENT (the “EUSSA”)
SERVICE LEVEL AND SUPPORT ADDENDUM

1. CAPITALIZED TERMS

All capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the EUSA.

2. PROVISION OF SUPPORT SERVICES

During the Term, GEM S.A will use commercially reasonable efforts to provide Customer with the levels of support for the Software and the Hardware set forth in this Service Level and Support Addendum (the “Addendum”), provided all applicable Fees are paid in a timely manner. The terms of this Addendum will apply only to elements directly under GEM S.A’s control which are related to the Software and only if the problem is reproducible in GEM S.A’s environment. If GEM S.A’s review of an issue indicates that, in GEM S.A’s reasonable opinion, the cause of a reported problem does not meet any of the foregoing criteria, then GEM S.A shall have no obligation to resolve such problem and Customer shall reimburse GEM S.A for: (i) any related travel expenses related to on-site support and repairs; and/or (ii) the on-site support or repair fee based on GEM S.A’s then current rates.

3. SOFTWARE SUPPORT LEVELS

The Standard Support Plan will be provided to Customer’s Users at no additional charge for all GEM S.A Softwares. Support is available on weekdays, excluding holidays, during local business hours.

Level 1 Support. For purposes hereof, “**Level 1 Support**” means support for basic problems related to Customer’s usage of the Software such as inquiry regarding a routine technical issue; information requested on application capabilities, navigation, installation or configuration; bug affecting a small number of users. Reasonable workaround available. Resolution required as soon as reasonably practicable.

Level 2 Support. For purposes hereof, “**Level 2 Support**” shall mean support for advanced problems related to system performance issue or bug affecting some but not all users. Short-term workaround is available, but not scalable.

Level 3 Support. For purposes hereof, “**Level 3 Support**” means support for all defects and errors relating to the Software source code, programming of the Software, or any other error or defect that is inherent to the Software. Major functionality is impacted or significant performance degradation is experienced. Issue is persistent and affects many users and/or major functionality. No reasonable workaround available. Also includes time-sensitive requests such as requests for feature activation or a data export.

In connection with any Level 3 Support requested by Customer, GEM S.A shall provide Customer with one of the following solutions, as determined by GEM S.A in its sole discretion: (i) a patch for the affected Software; or (ii) a new version of the affected Software (collectively, the “**Level 3 Solutions**”). GEM S.A shall bear the costs of providing Customer with the Level 3 Solutions; provided, however, if GEM S.A, in its sole discretion, determines that an on-site technician is required to provide a Level 3 Solution, then Customer hereby agrees to reimburse GEM S.A for all travel expenses related to such on-site support; provided that Customer pre-approves in writing such expenses. For purposes hereof, “Level 3 Support” means support for all defects and errors relating to the Software source code, programming or routines of the Software, or any other error or defect that is inherent to the Software.

3.1 Standard Support Plan:

Level 1, Level 2 and Level 3 Support. Level 1, Level 2 and Level 3 Support (as defined herein) are available by email only; unless otherwise mutually agreed in writing by Customer and GEM S.A. All issues and errors relating to **Level 1, Level 2 and Level 3 Support** shall be emailed to support@mobile-simple.com. Such emails must include the following information: (i) Customer’s billing information, including company name, billing address, billing contact and billing contact phone number (the “**Customer Billing Information**”); (ii) the dates and time period that the errors or defect in the Software occurred; and (iii) any other relevant information related to the Level Support requested by Customer. A GEM S.A Support Representative will use commercially reasonable efforts to call or e-mail the User within two (2) business days excluding USA holidays and will use commercially reasonable efforts to promptly resolve each case. Actual resolution time will depend on the nature of the case and the resolution. A resolution may consist of a fix, workaround or other solution in SFDC’s reasonable determination.

4. SOFTWARE AVAILABILITY

- a. GEM S.A shall use commercially reasonable efforts to ensure that the core components of the Software will be available generally 98% of the time, subject to Scheduled Maintenance and Emergency Maintenance (each as defined below). General availability will be calculated per calendar quarter, as follows:

$$\left[\left(\frac{\text{total} - \text{nonexcluded} - \text{excluded}}{\text{total} - \text{excluded}} \right) * 100 \right] \geq 98\%$$

where: (i) “total” means the total number of minutes for the quarter; (ii) “nonexcluded” means downtime that is not “excluded”; and (iii) “excluded” means the following: (A) any Scheduled Maintenance or Emergency Maintenance; (B) any Excluded Claims (as defined below); and (C) any unavailability caused by circumstances beyond GEM S.A’s reasonable control.

For any partial calendar quarter during which Customer subscribes to use the Software, general availability will be calculated based on the entire calendar quarter, not just the portion for which Customer subscribed. Unavailability of some specific features or functions within the Software, while others remain available, will not constitute unavailability of the Software, so long as the unavailable features or functions are not, in the aggregate, material to the performance of the Services as a whole.

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- b. If Customer believes GEM S.A failed to meet the [98%] threshold for general availability of the Software for a calendar quarter, Customer must file and report a claim pursuant Section 5(c) below. Subject to the terms and conditions set forth in Section 5(c) below, if GEM S.A concludes general availability fell below [98%], Customer shall be entitled to receive a credit as follows:

General Availability %:	Credit %:
> 97.5% but < 98.0%	1.5% of Monthly Fees
> 96.0% but < 97.5%	3% of Monthly Fees
> 94.0% but < 96.0%	6% of Monthly Fees
> 90.0% but < 94.0%	10% of Monthly Fees
< 90.0%	25% of Monthly Fees

Any such credit shall be applied to Customer's next invoice (or refunded if there are no forthcoming invoices). The penalty specified in this Section 5(b) shall be the sole remedy available to Customer for GEM S.A's breach of this Addendum.

c. To file a claim under this Section 5, Customer must email support@mobile-simple.com with the following details: (i) Customer Billing Information; (ii) downtime information with dates and time periods for each instance of downtime during the relevant period; and (iii) any other relevant information related to the claim, including any relevant calculations. Claims may be made only on a calendar quarter basis and must be submitted within ten (10) business days after the end of the relevant calendar quarter, except for periods at the end of the EUSA that do not coincide with a calendar quarter end, in which case Customer must provide GEM S.A with notice of such claim within ten (10) business days after the expiration or termination of the EUSA (the "Notification Requirement"). Failure to comply with the Notification Requirement will result in Customer's forfeiture of its right to receive a credit or refund, as applicable. All claims will be verified in good faith against GEM S.A's internal records. If any periods of downtime submitted by Customer are disputed, GEM S.A will provide to Customer a statement regarding the availability of the Software during the quarter or period in question, as applicable. GEM S.A will provide a statement of availability only in response to a good faith Customer dispute.

d. No credit or refund, as applicable, will be issued for outages that are caused by (each, an "Excluded Claim"): (i) Customer's equipment, Software, facility, databases, or operator error; (ii) an interruption in Customer's connection to the Internet; (iii) an interruption in Customer's computer or mobile devices; (iv) maintenance and modification of the Software, of which Customer is provided advance notice pursuant to the EUSA or Section 6 below; and (v) any circumstances or acts beyond GEM S.A's reasonable control, including, without limitation, all circumstances and events set forth in the last sentence of Section 24 of the EUSA.

5. MAINTENANCE

Software updates, enhancements or repairs will be performed during GEM S.A's standard scheduled maintenance, which typically be done outside of business hours (the "Scheduled Maintenance"). Notification of any expected Scheduled Maintenance disruption will be provided in writing to Customer at least forty-eight (48) hours in advance of such disruption. GEM S.A will exercise commercially reasonable efforts to perform unscheduled maintenance for critical updates. GEM S.A will make reasonable efforts to provide Customer with advance notice of the application of critical updates or enhancements (the "Emergency Maintenance"). Urgent updates and/or enhancements may be deployed outside of the published maintenance window if deemed necessary. Under certain circumstances, Software updates or patch downloads will be required by Customer.