

# General Terms & Conditions - CMNTY Corporation (CMNTY)

Last modified: March 20, 2018

## 1. DEFINITIONS

**“Account”** means an Account that is created when an individual, company, or other entity, or any representative of such, signs up with a username and password.

**“Account Owner”** or **“Platform Owner”** means the person company, corporation, organization, or other entity who pays for the Services.

**“Add-ons”** means users, members, domains, and other features CMNTY may develop in the future that CLIENT has the option of adding to their Account based on Subscription level, and usually for an additional fee.

**“Additional Terms of Use”** or **“Additional Terms”** refers to additional terms of use enshrined in agreements between CMNTY and its clients to deliver specific services offered by CMNTY, e.g. Services related to provision of CMNTY Cloud.

**“Additional Work”** refers to all additional services delivered during the term of this Agreement which are in excess of the scope of Services initially agreed upon by CMNTY and the CLIENT.

**“Agreement”** refers to the relationship between CMNTY and CLIENT formed by conclusion of an Order between CMNTY and CLIENT, a Subscription to the Services and/or any other agreement concluded between CMNTY and CLIENT. The Agreement shall be governed by these General Terms and Conditions, Order Confirmation document and any other documents stemming from a specific Order concluded with the CLIENT.

**“API Rate Limit”** means the maximum allowed API requests per hour.

**“Beta Test”** means, but is not limited to, alterations to the Services, modifications to how the Services are offered or provided, and changes to the software; usually designed to test for bugs, usability issues, or to evaluate user experience.

**“Cancellation/Downgrade”** means removing subscription fees and paid features from an Account.

**“Concurrent Users”** or **“Concurrent Requests”** means how many web requests (HTTP or HTTPS) the service can serve "at once" at any given moment.

**“CLIENT”** means a natural or legal entity, or an authorized signatory thereof, with whom this Agreement to provide Services from CMNTY is concluded.

**“Claims”** means an assertion of entitlement to monetary, proprietary, or other judicially-enforceable redress.

**“CMNTY Cloud”** is a bundle of CMNTY Platforms (see “Software”), licensed to clients of CMNTY upon a separate Order. Orders for CMNTY Cloud Services are issued separately and subject to these Terms as well as Additional Terms; all platforms in CMNTY Cloud are subject to these Terms.

**“Content”** includes but is not limited to text, images, logos, documents, HTML, Javascript, CSS, and other codes and intellectual property that are either open-source or owned by or licensed to CLIENT, and that CLIENT has added to their Account.

**“Delivery”** refers to the making available of CMNTY Services to the CLIENT and is to be understood separately from provision of Services in the duration of the agreed License term.

**“Design Service Package”** or **“Design Services”** refer to design services delivered by CMNTY to the CLIENT in relation to a specific package ordered. All design service packages hold the scope of service provided as defined on [www.CMNTY.com](http://www.CMNTY.com).

**“General Terms and Conditions”** or **“Terms”** refers to these General Terms and Conditions in their entirety, including any Additional Terms that may govern execution of a specific Order.

**“Inactive User”** means a CMNTY Account owner, who has not logged in for 90 days or longer.

**“License”** means the right of CLIENT to make use of the Software and Services offered by CMNTY for an agreed period of time in exchange for an agreed monthly fee determined by CMNTY.

**“Materials”** means anything provided by or through CMNTY, its affiliates, subsidiaries, employees, agents, licensors, or other commercial partners including, but not limited to, software, informational text, documentation, design of and “look and feel,” layout, photographs, graphics, audio, video, messages, interactive and instant messaging, design and functions, files, documents, images, or other materials, whether publicly posted or privately transmitted as well as all derivative works thereof.

**“Order Confirmation”** or **“Order”** refers to a specific Order concluded between CMNTY and the CLIENT, including but not limited to orders placed via [www.CMNTY.com](http://www.CMNTY.com), online plan activations, CMNTY Platform orders, CMNTY Cloud orders, Additional Orders and any other orders issued for or made available to use by CLIENT. As such, the act of Order Confirmation or conclusion of an Order shall be taken to mean both an online submission of an order via [www.CMNTY.com](http://www.CMNTY.com), signing an order offered by CMNTY to CLIENT, or any other custom written agreement concluded between and signed by both parties. Scope of the Order and specific details thereof are laid out in the Order Confirmation document.

**“Plan”** means a Subscription plan.

**“Profile/Profile Information”** means all information in the “Profile” section of the Services, including, but not limited to, full name, email address, password, profile picture, newsletter features, and subscription level.

**“Services”** refer to all services, including Software as a service, access and hosting, support, consulting, development, design, and other services to be delivered to CLIENT by CMNTY from the setup of and throughout the project, as laid out in a particular Order Confirmation.

**“Sensitive Information”** means credit or debit card numbers; personal financial information; Social Security/Social Insurance Numbers; passport numbers; driver’s license numbers or similar identifiers; racial or ethnic origin; religious affiliation; physical or mental health condition or information; or other employment, financial or health information, including any information subject to regulations, laws or industry standards designed to protect data privacy and security.

**“Site”** means the CMNTY website ([www.CMNTY.com](http://www.CMNTY.com)) and its subdomains not associated with a CLIENT.

**“Software”** means proprietary online Software of CMNTY to be made available to the CLIENT as an inherent part of provision of Services and term of this Agreement. In the light of this Agreement, Software shall mean CMNTY Platform which may include but shall not be limited to modules, widgets and/or additional features; CMNTY Cloud; administrator interfaces thereof, and any other products CMNTY shall make available for CLIENT’s Order.

**“Standard Business Hours”** means the time window between 8:30 AM and 5:00 PM CENTRAL EUROPEAN TIME and 8:30 AM to 5:00 PM EASTERN TIME, Monday through Friday, excluding statutory holidays of the country of the local office.

**“Subscription”** means an online subscription to CMNTY’s Services. It encompasses access to paid features, and usually begins with a free trial.

**“Subscription Period”** means period between billings.

**“Support”** means assistance in use of the Services, revision and response to CLIENT’s Support requests, answering of questions and other services of information provision to the CLIENT regarding the use of Services. Support may be divided in “Regular Support” that covers normal use of the Services and “Incident Support” that covers support for when Services are not working as can be naturally expected.

**“Technical Contacts”** means any and all individuals appointed and specified by the CLIENT as the main contact person with regards to the use of the Services. Technical Contacts hold administrator rights, use the Services on behalf of the CLIENT and act as a liaison between CMNTY and CLIENT’s Users.

**“Third Party”** means any organization or person, other than CLIENT or CMNTY. This includes, but is not limited to: CRM/CMS systems, email marketing software, billing and shopping cart/check-out platforms, PPC conversion tracking codes, analytics and other tracking software, non-CMNTY forms, file hosting/sharing platforms, and any organization or person with which CLIENT or CMNTY conducts business or integrates.

**“Trial Period”** means first fourteen days of a new paid Subscription are the Trial Period. One Trial Period is allowed per email address.

**“Trial Program”** A temporary, free release of a new feature that may later be added to a Subscription for an additional fee.

**“User”** means any and all named or specified (by password or other user identification) individuals authorized by CLIENT in the Agreement to use the Services, regardless of whether the individual is actively using the Software at any given time. CLIENT and any employees thereof are considered to be Users under this Agreement.

**“Upgrading” or “Activating”** means CLIENT’s Subscription to a paid or higher plan.

## **2. APPLICABILITY**

1. These Terms govern the relationship between CMNTY and the CLIENT and shall therefore form, together with the Order Confirmation document, an Agreement. By concluding an Order, CLIENT acknowledges that these Terms and the information incorporated in these Terms, together with the relevant Order Confirmation document, are the complete Agreement for the Services ordered by CLIENT, and that this complete Agreement supersedes all prior or contemporaneous agreements, any prior or contemporaneous terms of purchase or other ordering document not issued by CMNTY. Any of CLIENT's general terms and conditions and/or general purchase conditions are hereby explicitly rejected, unless expressly otherwise agreed in writing prior to Order Confirmation.
2. This Agreement shall not be modified, altered or waived by CLIENT unless otherwise explicitly agreed by both parties in writing.
3. If any of these Terms is found to be invalid, null or unenforceable, the remaining provisions shall remain effective. Parties shall then in mutual consultation be obliged to replace the invalid, nullified or unenforceable stipulation in writing.
4. CMNTY reserves the right to alter or change these General Terms and Conditions at any time, and the changed General Terms and Conditions shall have immediate effect on this Agreement. CLIENT hereby obliges, upon said notification, to get acquainted with the updated Terms in a timely manner. Should the CLIENT disagree with any or all of the revised General Terms and Conditions, CLIENT shall have the right, within said period of 10 business days, to submit an objection upon which both parties shall negotiate adjustments to Agreement. In case no objection is submitted within this period, CMNTY shall conclude that the CLIENT has been sufficiently informed and the updated version of these General Terms and Conditions will become valid.

## **3. ADDITIONAL TERMS OF USE**

1. Any Additional Terms used by CMNTY to govern provision of specific Services, including but not limited to those related to CMNTY Cloud, shall be laid out in specific agreements between CMNTY and CLIENT. Specific stipulations of such agreements may vary depending on details of particular Orders.
2. Any Additional Terms provided by CMNTY are inseparable from and must be interpreted in light of these General Terms and Conditions. In case of conflict between specific provisions of these Terms and any Additional Terms, the latter shall supersede the former.

## **4. CONCLUSION OF AGREEMENT**

1. All Orders concluded between CMNTY and CLIENT are deemed to be binding agreements and are subject to these General Terms and Conditions. All such Orders shall be subject to a Service Level Agreement (SLA).
2. CMNTY shall provide an opportunity to the CLIENT to test the Services upon request before Order Confirmation. Orders cannot be cancelled and shall thus be treated as termination of Agreement, as laid out in these Terms.

## **5. SUSPENSION AND TERMINATION OF AGREEMENT**

1. This Agreement shall be automatically terminated by accomplishment of the term initially agreed upon, unless the parties explicitly agree otherwise or an express Order for extension of the Agreement in writing has been presented by CLIENT. Upon accomplishment of term initially agreed upon by parties, any exemptions, exceptions, discounts, price reductions and any other special conditions agreed upon by the parties shall expire, and regular costs, fees and prices shall apply, unless otherwise agreed by parties thereafter.
2. If the CLIENT fails to meet any obligations, either arising from this Agreement or resting with the CLIENT by virtue of this Agreement, CMNTY shall, without prejudice to any other rights it may have in respect hereof, be entitled to suspend its obligations until the CLIENT has cured the breach. CMNTY shall inform the CLIENT of any such breach with a warning. CLIENT shall be given a period of grace of 5 business days to cure the breach.

3. CMNTY reserves the right to terminate this Agreement with the CLIENT with an immediate effect by registered letter, without notice of default or judicial intervention, if the CLIENT is in default with payment or timely payment, or fails to observe or does not strictly observe any other obligation arising from the Agreement. CLIENT shall be given a period of grace of 5 business days from the date of receipt to fulfill its obligations.
4. Regardless of the stipulations provided elsewhere in this Agreement, either of the parties shall be entitled to terminate the Agreement in writing with an immediate effect, without notice of default or judicial intervention, in cases such as the following:
  - 4.1. if and as soon as the other party is granted a moratorium or provisional moratorium on payments and this moratorium or provisional moratorium on payments has lasted longer than six consecutive months;
  - 4.2. if and as soon as the other party is declared to be in state of involuntary liquidation;
  - 4.3. if and as soon as the company of the other party is wound up, has ceased or a substantial part thereof is sold;
  - 4.4. if and as soon as a pre-judgment attachment or execution is levied on a considerable part of the assets of the other party and this attachment prevents a proper performance of the Agreement;
  - 4.5. if and as soon as the other party must be deemed not or no longer to be able to fulfill its obligations arising from the Agreement.
5. In case an Agreement has been executed for an indefinite period of time and thus is not terminated by accomplishment, either of the parties can terminate the Agreement by notice of termination in writing, provided that decision and reasons to terminate the Agreement has been properly communicated by either of the parties to one another. If no express notice period has been agreed between parties, a notice period of maximum 2 calendrical months shall be observed in the event of termination.
6. Termination of this Agreement, with respect to any or both Parties, shall be without prejudice to any obligations which are expressly stated to continue after or not to be affected by such termination.
7. In case an Agreement is terminated by CLIENT before any setup or design work has been completed, the agreed fees associated with this work need to be paid by CLIENT in full. In case these fees have already been paid then no refund is possible.

## **6. ADDITIONAL WORK**

1. Additional work shall be taken to mean all that is delivered during the term of the Agreement concluded with a CLIENT which is in excess of what has initially been agreed on.
2. An additional Order pertaining to additional work shall be executed upon request of the CLIENT. CMNTY shall only be bound after it has confirmed the instruction received from the CLIENT in writing.
3. Any and all expenses arising from execution of additional work by CMNTY due to loss of data, incorrectness of settings, and/or non-compliance with this Agreement arising from actions of the CLIENT, shall be borne by the CLIENT. In such event, CMNTY shall inform the CLIENT in advance of execution of Additional Work, and the parties will execute a corresponding amendment to this agreement to agree upon the relevant increase.

## **7. PRICES AND INVOICING**

1. Unless otherwise expressly announced in writing, all prices quoted in Orders concluded between CMNTY and CLIENT shall be based on the rates indicated at the moment of Delivery, and exclusive of VAT, sales tax and any other taxes, charges and levies, shipping, insurance, transport and/or operating system costs, installation, cable-wiring and non-durable goods, database and other software licenses necessary for the use of Services.
2. If, in fulfilling this Agreement, CMNTY must, for the purpose of best performance of this Agreement, use other products and/or Materials instead of the products and/or Materials agreed on, any and all additional costs shall be communicated to and thereafter borne by the CLIENT.
3. CMNTY holds explicit right to:
  - 3.1. modify or change prices for Software and Services offered by CMNTY without notice. Such changes shall not affect any pre-existing Agreements between CMNTY and its clients and shall only be applicable to automatic or non-automatic extensions of said Agreements and/or new Agreements to be concluded by the parties;
  - 3.2. increase the prices quoted in the Agreement if the costs incurred by CMNTY rise as a result of circumstances beyond its control, including but not limited to an increase in labour costs, a change in exchange rates, a rise in energy prices or an increase in the cost of Materials. Should such be the case, the increased prices shall apply to this Agreement from the 1st of January of the next calendrical year.
4. Reasonable travel and/or accommodation costs arising from execution of this Agreement are not included and shall be borne by the CLIENT.
5. CMNTY may offer discounts on specific Orders, in the event of which CMNTY shall communicate such discounts in writing, either in this Agreement, or on [www.CMNTY.com](http://www.CMNTY.com) or any other method of communication chosen by CMNTY. Discounts shall apply to the costs, fees or prices initially agreed upon in this Agreement, for the term initially agreed upon for this Agreement.

## **8. PAYMENT**

1. Unless otherwise explicitly agreed by CLIENT and CMNTY in advance, CLIENT obliges, upon submitting or signing an Order, to conform with CMNTY's terms of payment as follows.
2. CMNTY shall only accept wire transfer payments or credit card payments, unless otherwise specifically agreed between parties. By selecting for the credit card payment method, CLIENT hereby authorizes CMNTY to initiate monthly credit card debit entries for payment if the project period spans a timeframe longer than 1 month. CMNTY shall assume no responsibility or liability if credit card payment by CLIENT fails, is rejected, disputed, or cannot be processed or accepted by the financial institution in charge. Should either be the case, CMNTY shall be entitled to reject CLIENT's application to receive Services and/or may suspend the receipt of Services, including without limitation to the Software until valid payment in full is received.
3. Unless otherwise explicitly agreed by CMNTY and the CLIENT, the CLIENT shall pay CMNTY a one-time fee of accumulated Delivery costs, and a monthly fee for the Services, including but not limited to License costs, Additional Work expenses and any other costs to be borne by the CLIENT as laid out in this Agreement, calculated according to the rates applied by CMNTY.
4. All invoices shall be sent to be paid by CLIENT in advance, with the exception of invoices regarding Additional Work as defined in Article 6 of these Terms. All payments of invoices shall be made within 15 days of the date of invoice, without extension or set-off, unless otherwise stated in contract or Order confirmation. In the event of failure to pay, the CLIENT shall be in default by operation of law and therefore, an interest at rate of 0.75% per month shall be payable by CLIENT to CMNTY without further notice of such default. Should such be the case, a part of a month shall be calculated as a month.
5. Any judicial and/or extrajudicial costs incurred in the collection of payments due to CMNTY shall be borne by the CLIENT.
6. Payments shall first be set off against the aforementioned costs and interest and shall subsequently be set off against the invoice which is overdue for the longest period of time.

7. The amounts due and payable to CMNTY shall be immediately claimable by operation of law as soon as any of the following occurs:
  - 7.1.CLIENT is declared to be in a state of involuntary liquidation;
  - 7.2.CLIENT applies for a moratorium of payments;
  - 7.3.a petition for a guardianship order has been filed;
  - 7.4.an attachment has been levied on CLIENT's goods or part thereof;
  - 7.5.CLIENT's assets or part thereof are put under administration;
  - 7.6.CLIENT loses, wholly or partially, disposition over their assets;
  - 7.7.CLIENT is in the process of being wound up or is dissolved, whether in general partnership or as a private limited company.
8. If before or during the execution of the Agreement CMNTY has good reasons to believe that the CLIENT will not or not timely be able to fulfill its payment obligations, CMNTY shall be entitled, after a warning and a period of grace of 5 business days, to suspend the performance of its obligations until the CLIENT has on request furnished sufficient security therefor. If the CLIENT fails to furnish such security, CMNTY shall be entitled to terminate the Agreement. The CLIENT shall compensate CMNTY for all the loss or damage sustained by CMNTY, arising from this suspension or dissolution.
9. Each setoff invocation by the CLIENT shall be excluded, unless the setoff invocation refers to a claim against CMNTY which CMNTY has unconditionally recognized.

## **9. EXECUTION OF THE ORDER**

1. CMNTY shall execute the Order in accordance with specifications laid down in the Order Confirmation document.
2. All Services to be delivered by CMNTY shall also depend on the data, Materials and documents provided by the CLIENT, which shall be assumed to be correct and complete. CMNTY is not liable to pay any damages and costs ensued as a consequence of incorrectness and/or incompleteness of the data provided.
3. CMNTY is entitled to assign the execution, wholly or in part, to third parties if and in so far as such is deemed necessary, useful or required for proper execution of this Agreement. CMNTY remains fully responsible for the performance and execution of this Agreement by these third parties.
4. CMNTY shall only have an obligation to perform to the best of its ability and no obligation to guarantee a certain result, unless otherwise explicitly agreed in writing. CMNTY never guarantees suitability of its Services for a specific purpose, unless otherwise explicitly agreed in writing.

## **10. RESERVATIONS TO EXECUTION OF THE AGREEMENT**

Modifications to Software, Content creation and other sorts of Services which are not explicitly listed on [www.CMNTY.com](http://www.CMNTY.com) nor offered to CLIENT in writing by CMNTY nor otherwise made available to CLIENT are not included by standard, unless otherwise explicitly agreed in writing.

## **11. DELIVERY**

1. CMNTY shall deliver the Services provided for by this Agreement to the CLIENT after the payment, or sufficient proof thereof, is received, unless otherwise explicitly agreed between CMNTY and CLIENT in writing.
2. Delivery dates, in any way mentioned by CMNTY, shall be deemed to be estimates. CLIENT hereby acknowledges that no damages shall be claimed from CMNTY if Delivery dates are exceeded, unless mandatory statutory provisions prescribe otherwise.
3. CMNTY shall be entitled to deliver an Order wholly or successively in parts. In the latter case, partial Delivery will be communicated to CLIENT and invoiced separately before the partial Delivery takes place.
4. Should the CLIENT fail to pay for (partial) Delivery, or to provide sufficient proof of payment thereof, CMNTY shall be entitled, in so far as CMNTY has not yet concluded the Agreement, to terminate the Agreement without judicial intervention and without giving any notice of default to the CLIENT, without prejudice to its right to claim damages and without prejudice to its right to claim compliance instead of dissolution.

5. CMNTY reserves the right to charge repeated Delivery costs, as described in the paragraph 3 of Article 8 of these Terms, in case the CLIENT requests the provision of Services to be continued after a suspension caused by conditions laid out in paragraph 8 of Article 8 of these Terms.

## **12. CLAIMS**

1. No action, regardless of form, arising from this Agreement may be brought by either party more than one year after the cause of action has accrued, with an exception of actions regarding non-payment, breach of CMNTY's proprietary rights in the Software and Services, and any or all of the cases defined as follows:
  - 1.1. Claims by the CLIENT regarding defects in the Services delivered by CMNTY shall be invoked by registered letter within a period of 5 business days of the date that the CLIENT has discovered or could reasonably have discovered the defect, in the absence of which the rights of the CLIENT shall lapse in respect thereof, provided that the CLIENT has not attempted to correct the alleged defect or trusted the correction with a Third Party without written consent of CMNTY;
  - 1.2. Claims with respect to invoices shall be submitted to CMNTY within 10 business days of the invoice date, in the absence of which the rights of the CLIENT shall lapse in this respect.
2. No Claim as referred to under paragraphs 1 and 2 of this Article 12 shall suspend the CLIENT's payment obligations.

## **13. INTELLECTUAL PROPERTY RIGHTS OF CMNTY**

1. CLIENT acknowledges that title in and rights to the Software and custom Design Services provided wholly by CMNTY to the CLIENT, remain exclusively with CMNTY, or a Third Party which has granted CMNTY the right to use and sublicense part of the Software. No stipulations arising from this Agreement shall be deemed to constitute a transfer of title. CLIENT shall only be granted a License or right to use or apply the Software and/or custom Design Services for the purposes agreed upon together with this Agreement.
2. In the event that CMNTY incorporates any new features or functionalities upon request of the CLIENT into the Software, such new features and/or functionalities shall be the sole and exclusive property of CMNTY, unless explicitly agreed otherwise in writing.
3. CLIENT retains the copyright to any and all custom design data, files and graphic logos provided by the CLIENT, and grants CMNTY the rights to publish and use such Material. CLIENT must obtain permission and rights to use any information and/or files copyrighted by a Third Party, and is further responsible for granting CMNTY permission and rights to use said information and/or files. CLIENT hereby agrees to indemnify and hold harmless CMNTY from any and all Claims, proceedings, penalties, payment of damages, liabilities, losses and other expenses resulting from CLIENT's negligence or inability to obtain proper copyright permissions for data, files and graphic logos used in the custom design. Order conclusion and, subsequently, installation of custom design, created or otherwise arranged by CMNTY, in Software of CMNTY shall be regarded as guarantee by CLIENT to CMNTY that such permissions have been fully obtained, with sufficient evidence of such acquisition. CMNTY reserves the right to deny service upon failure to provide such evidence.
4. CMNTY has taken sufficient (legal) measures to ensure that the use of the Software by CLIENT is ascertained in the event of any discontinuity of or in relation to CMNTY. CMNTY shall, upon request of CLIENT, provide insight in the measures taken by CMNTY.
5. CMNTY may allow re-use of, at a price rate set by CMNTY, custom design delivered wholly by CMNTY to the CLIENT, upon conclusion of new Order by the same CLIENT, when the previous license to use said design has expired upon termination of a former agreement between CMNTY and the CLIENT. CMNTY reserves the right to revoke such service.
6. CMNTY grants the CLIENT a non-exclusive license to use CMNTY's trade name, service marks, logo, domain name and other brand features, solely in connection with use of the Services and in accordance with this Agreement. CMNTY may revoke this license to use these trade and service marks at any time.

## **14. INTELLECTUAL PROPERTY RIGHTS OF CLIENT**

1. CMNTY acknowledges that title in and rights to custom design created wholly or partially by CLIENT for the front-end of Software, or a Third Party employed by the CLIENT, remain exclusively with CLIENT, or the Third Party which has granted CLIENT the right to use the custom design. This paragraph 1 of Article 14 shall not be deemed to apply for any design templates made available to the CLIENT by CMNTY before the installation of custom design created or otherwise arranged by CLIENT.
2. For the convenience of and upon request by CLIENT, CMNTY may store the custom design, created or otherwise arranged wholly or partially by the CLIENT, for a default period of 12 months, unless requested otherwise by CLIENT. Due to nature of data back-ups performed in favor of the CLIENT during the term of this Agreement, all design data, including any necessary documentation, files and graphic logos, cannot be completely destroyed earlier than 30 calendrical days of the date of termination of Agreement.
3. CLIENT hereby acknowledges that CMNTY shall assume no responsibility for the maintenance, adaptability and/or suitability of, or any changes in, the design in the execution of Article 19 of these Terms or general Services development of any other kind.
4. CMNTY may include, upon permission, CLIENT's name and brand features in presentations, marketing materials, customer lists and financial reports.

## **15. CONFIDENTIALITY**

1. Each party may have access to information that is confidential to the other party.
2. CMNTY's confidential information shall include, but not be limited to, the Services, documentation, formulas, methods, know how, processes, designs, new products, developmental work, marketing requirements, marketing plans, CLIENT names, prospective CLIENT names, the terms and pricing under this Agreement, provided that it is clearly identified in writing at the time of disclosure as confidential and all information which CLIENT ought reasonably to regard as confidential.
3. Confidential information of any or both of the parties shall not include information that:
  - 3.1.is or becomes a part of the public domain through no act or omission of the other party;
  - 3.2.was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party;
  - 3.3.is lawfully disclosed to the other party by a Third Party without restriction on disclosure; or
  - 3.4.is independently developed by the other party without use of or reference to the other party's confidential information.
4. This Article 15 will not be construed to prohibit disclosure of confidential information to the extent that such disclosure is required by law or valid order of a court or other governmental authority; provided, however, that the responding party shall first have given notice to the other party and shall have made a reasonable effort to obtain a protective order requiring that the confidential information so disclosed be used only for the purposes for which the order was issued.
5. The parties agree, unless required by law, not to make each other's confidential information available in any form to any Third Party (except third parties who are Users as defined hereunder) or to use each other's confidential information for any purpose other than in the performance of an Agreement. Each party agrees to take all reasonable steps to ensure that confidential information is not disclosed or distributed by its employees or agents in breach of the Agreement.
6. The parties agree to hold each other's confidential information in confidence during the term of the Agreement and for a period of 2 years thereafter. Each party acknowledges and agrees that, due to the unique nature of confidential information, there can be no adequate remedy at law for breach of this Article 15 and that such breach would cause irreparable harm to the non-breaching party. Therefore, the non-breaching party shall be entitled to seek immediate injunctive relief, in addition to whatever remedies it might have at law or under an Agreement.
7. CMNTY hereby ensures that the obligations of confidentiality, as laid down down in this Article, shall be agreed upon by any and all third parties to be involved in performance of this Agreement. CMNTY shall, upon request by the CLIENT, provide a list of any such third parties upon entering into this Agreement with the CLIENT.

## **16. LIMITATION OF LIABILITY**

1. CLIENT shall indemnify and hold harmless CMNTY against any and all liability to third parties relating to use of the Software and/or the Services.
2. CMNTY's liability arising from this Agreement or the termination of this Agreement shall be strictly limited to the total aggregate amount paid to CMNTY by the CLIENT pursuant to the agreement during a period of 12 calendrical months preceding the event causing liability. This limitation of liability is cumulative and not per incident.
3. CMNTY shall not be liable for any indirect, incidental, special or consequential damages, however caused and on any theory of liability, arising out of the Agreement, including but not limited to loss of anticipated profits, even if CMNTY has been advised of the possibility of such damages. This paragraph 3 of Article 16 does not limit liability for bodily injury inflicted on a private individual.
4. If a Claim is raised by a Third Party against CMNTY for any loss or damage for which the CLIENT is liable under this Agreement, the CLIENT shall fully indemnify CMNTY in this respect.
5. The liability of CMNTY for any shortcoming under the Agreement only arises if the CLIENT puts CMNTY into default without delay and by written notice, specifying therein a reasonable period for curing the identified shortcoming, and CMNTY keeps on failing imputably in the fulfilling of its obligations also after this period. The notice of default shall contain a most detailed description of the shortcoming, so that CMNTY will be able to respond adequately.
6. Any right to compensation only arises under the condition that the CLIENT informs CMNTY of the loss or damage immediately after the loss or damage has been sustained.
7. CLIENT shall be aware that Software and Services, bound by these Terms, may contain measurement, algorithmic or visualization errors, and shall not hold CMNTY responsible for said errors nor for misinterpretation of the (visualized) data by the CLIENT.

## **17. FORCE MAJEURE**

1. If during the term of the Agreement circumstances arise or become known of which CMNTY was not aware, nor ought to be aware of, as a result of which CMNTY is unable to (timely) fulfill its obligations with respect to the CLIENT, CMNTY shall not be in default and shall be entitled to suspend its obligations.
2. If CMNTY remains unable to comply with the performance as a result of the aforementioned circumstances, it shall be entitled to request that this Agreement is changed in such a way that the performance thereof remains possible, unless such a change cannot reasonably be required from the CLIENT in the given circumstances and dissolution is justified. In the latter case this Agreement shall be dissolved upon 10 business days after first request, without the CLIENT being able to assert any right to compensation.
3. The aforementioned circumstances include any and all circumstances beyond the control of CMNTY preventing the fulfillment of the Agreement either permanently or temporarily, as well as the following circumstances in so far as these are not yet included therein: war and threat of war, riots, industrial actions, disasters and natural disasters, incidents, government measures, delayed supply or non-supply of sub-contractors of CMNTY, including fuel, power and water, transport problems, fire and breakdowns affecting the company of CMNTY.

## **18. LICENSE**

1. With the Agreement CMNTY shall grant the CLIENT the License to use the Software made available to the CLIENT, including additions and new versions as defined by CMNTY, with due observance of the stipulations of these Terms.
2. CLIENT acknowledges that any and all Licenses are for use of CLIENT only and are not transferable to or usable by partners, colleague offices, clients or any other parties unless CMNTY has given its express permission. Any office that accrues data collected by the Software and/or uses the Services of CMNTY is hereby obliged to acquire its own License.
3. Clients are not entitled to issue any sub-licenses for use of the Software by partners, colleague offices, clients or any other parties, whether paid or unpaid.
4. For this License, CLIENT shall pay CMNTY a periodic License fee as referred to in the Agreement in its entirety.

## 19. NEW RELEASES

1. For the purpose of Software maintenance, examples of which shall include Software fixes, error elimination and continuous development, CMNTY shall, upon the release of new versions of the Software, make these releases available to the CLIENT. CMNTY reserves the right to determine and/or modify the frequency, timing, extent and scope of such new releases.
2. In a particular case of CMNTY Cloud services, CMNTY shall provide the CLIENT with access to the control panel that enables one to perform these updates, in which case CLIENT is responsible to (timely) update execution. CLIENT hereby acknowledges that (timely) update execution is crucial for proper maintenance of Software and shall not claim any damages arising for any errors, malfunctioning or decrease in functionality or performance stemming from failure to carry out said updates in a timely manner. Software version older than 3 months are not support.
3. CMNTY reserves the right, at all times, to perform updates without notice, when CMNTY considers this necessary.

## 20. DISK SPACE

1. The amount of disk space to be covered by the License shall depend on a particular Order concluded between CMNTY and CLIENT. A default amount of disk space as specified of CMNTY's pricing page shall be provided unless otherwise explicitly agreed between CMNTY and the CLIENT prior to Order Confirmation.
2. Additional disk space may be purchased at any time. If at any time, CLIENT's used disk space exceed the set limits, upon CMNTY's written notice to CLIENT (email permitted), CLIENT shall have ten (10) business days to reduce or offset such excess, either by purchasing additional disk space or by purchasing a higher plan at the applicable pricing set forth herein, or by deleting Content. For the avoidance of doubt, CMNTY may require CLIENT to execute additional documentation (e.g. Order Forms) to effectuate such additional purchases, and in the event CLIENT's remain in excess of the associated limits after ten (10) business days and CLIENT has not yet executed and returned such documentation, CMNTY reserves the right to process a prospective Add-on or Upgrade Order Form for the additional Limits or new Plan at the then current list price via CMNTY's billing system, with no signature required; provided, that CLIENT's execution of this Order Form shall be deemed acceptance of such Add-on Order Form, which will be non-cancelable until the Contract End Date listed therewith.
3. CLIENT shall not be entitled to transfer disk space to any partners, colleague offices, clients or any other parties, whether paid or unpaid.
4. CMNTY shall take sufficient measures, including but not limited to email notifications, to educate and inform CLIENT about the state of disk space in use, disk space still available and management thereof.
5. Should the CLIENT exceed the limit of disk space provided, CMNTY shall be entitled to add additional disk space on behalf or at expense of the CLIENT, without notice. In addition to that, CLIENT hereby acknowledges that exceeding the disk space may result in and or all of the following implications:
  - 5.1. Stability and reachability of the Software may be in jeopardy and possibly at risk of causing a server crash. CLIENT shall take full responsibility for such consequences and bear any and all costs necessary for the recovery of Services, including any and all damages caused to CMNTY;
  - 5.2. CMNTY may temporarily disable functionality of the Services to limit the non-essential growth to an extent that allows for enough disk space to be made available again. Examples of such include but are not limited to suspending Software updates, platform activation, platform creation, and possible other functionalities.

## **21. BANDWIDTH**

1. The member limit, Concurrent Users limit (CCU) and API rate limit (ARL) covered by the License shall depend on a particular Order concluded between CMNTY and CLIENT. Unless stated otherwise, a default of 100 members, 100 CCUs and an ARL of 200 shall be provided.
2. If at any time, CLIENT's bandwidth exceeds the set limits, upon CMNTY's written notice to CLIENT (email permitted), CLIENT shall have ten (10) business days to reduce or offset such excess, either by purchasing additional bandwidth or by purchasing a higher plan at the applicable pricing set forth herein, or by removing members, web traffic or API calls. For the avoidance of doubt, CMNTY may require CLIENT to execute additional documentation (e.g. Order Forms) to effectuate such additional purchases, and in the event CLIENT's remain in excess of the associated limits after ten (10) business days and CLIENT has not yet executed and returned such documentation, CMNTY reserves the right to process a prospective Add-on or Upgrade Order Form for the additional Limits or new Plan at the then current list price via CMNTY's billing system, with no signature required; provided, that CLIENT's execution of this Order Form shall be deemed acceptance of such Add-on Order Form, which will be non-cancelable until the Contract End Date listed therewith.

## **22. SOFTWARE AS A SERVICE (SAAS) AND HOSTING**

CMNTY shall provide to the CLIENT, upon entering into this Agreement concluded between CMNTY and CLIENT, for the term of the Agreement, a non-exclusive and non-transferrable right of access to the Services for the User's use. This shall also included a non-exclusive, non-transferrable right to use any new releases, upgrades, modifications and/or changes of the functionality of the Software which are governed by this Agreement.

## **23. UPGRADING AND DOWNGRADING**

1. CLIENT shall be entitled to upgrade the combination of Services ordered from CMNTY at any moment in the execution of the Agreement. Service upgrades shall be processed by CMNTY as soon as it is possible with respect to specific Services requested. CLIENT shall be aware of the additional costs and/or change in regular costs caused by such upgrade.
2. CLIENT shall only be entitled to downgrade the combination of Services after the initial term of Agreement has ended.

## **24. SERVICE LEVEL AGREEMENT**

1. Availability, accessibility and quality of the Software and Services shall be governed by a Service Level Agreement (SLA) made available to the CLIENT. This SLA shall apply to all Software and Services ordered by the CLIENT.
2. Unless otherwise expressly stated in a relevant SLA, CMNTY reserves its obligation under Article 18 of these Terms and shall not be held liable by the CLIENT for any of the following:
  - 2.1.unrestricted, undisturbed and uninterrupted access to and use respectively of the Software and Services;
  - 2.2.correct and undamaged data transmission;
  - 2.3.full reliability against hacking of the Software and Services.

## **25. ACCESS AND IDENTIFICATION CODES**

1. CMNTY shall assign access and/or identification codes to the CLIENT only. The access and identification codes are strictly personal and are only to be used by the User(s), whether assigned by CLIENT or the CLIENT itself.
2. CLIENT shall treat the access and identification codes confidentially and with utmost care.
3. CMNTY shall never be liable for damage or expenses resulting from misuse of access and identification codes.

4. CMNTY has the right to temporarily deny CLIENT access to the Software at the moment:
  - 4.1. CMNTY has detected or reasonably expects that unauthorized third parties are using or are able to use the access or identification codes that grant access to the Software; or
  - 4.2. CLIENT has informed CMNTY by any means of the (possible) unauthorized use of the Software.
5. CMNTY shall inform CLIENT as soon as possible of the (possible) unauthorized use of the Software and the temporarily denying of access to the Software. CMNTY shall provide CLIENT with substitute access and/or identification codes as soon as possible after denying the access to the Software.
6. If the unauthorized use of the Software is attributable to the CLIENT, CLIENT shall duly reimburse CMNTY of:
  - 6.1. all technical and administrative costs CMNTY has made;
  - 6.2. all costs for the unauthorized use of the Software that will be calculated according to number of (extra) datasets that have been processed.

## **26. OWNERSHIP OF DATA**

CMNTY acknowledges that CLIENT retains ownership of all data to be processed and hosted as a result of the provision of Services. Both parties shall acknowledge their rights and obligations under stipulations regarding confidentiality and intellectual property laid out in these Terms. Upon completion or termination of the contract CLIENT can download data.

## **27. QUALITY OF DATA**

CMNTY shall not be held responsible for, and hereby declares that it can only do its utmost best to ensure, the reliability, accuracy, unambiguity and/or completeness of data collected by means of using the Software and Services provided by CMNTY.

## **28. OBLIGATIONS OF CLIENT AND USER**

1. The CLIENT shall be responsible at all times for each single episode of use, including unauthorized use, made in its name of the Software and Services, and the rights of use and access rights granted to CLIENT. CLIENT shall hereby adopt the attitude of and shall behave as may be expected from a reasonable and careful User of software and online applications.
2. CLIENT shall hereby be responsible to properly instruct and advise all Users about reasonable and careful use of the Services, including but not limited to password strength and appropriateness of Content.
3. CLIENT shall hereby be responsible, on own behalf and on behalf of all Users, for the following:
  - 3.1. Users shall inform CLIENT as soon as possible in writing of any changes in relevant data concerning themselves;
  - 3.2. Users shall comply with instructions, guidelines and requirements of technical or other nature provided by or in the name of CMNTY regarding acceptable use of Software and Services;
  - 3.3. Users shall refrain from hindering and causing damage to the proprietary Software of CMNTY. Users shall be prohibited from initiating any processes, programs, applications or other means, through the Software or otherwise, which may, knowingly to or by reasonable expectation of the User, hinder or cause damage to Software, Services, CMNTY in its entirety or clients of CMNTY;
  - 3.4. Users shall be prohibited from use of Software and Services for acts, actions or purposes in conflict with applicable statutory provisions, self-regulation or this Agreement, including these Terms;
  - 3.5. Users shall be prohibited from transferring or making available their user name and password and/or other rights arising from this Agreement to any third parties, unless explicitly permitted by CMNTY in writing. Users shall remain responsible at all times for acceptable use of and any damages arising from transfer of their user names and passwords;

- 3.6. Users shall arrange any hardware, software, terminal equipment and/or connections necessary for proper use of the Services in so far as CMNTY does not provide such facilities.
4. CMNTY hereby strictly prohibits usage of demo products for purposes other than promotion, sales or project setup, and/or removal, adjustment or deletion of indicatory demo banners from demo products, should any such product be delivered to CLIENT upon execution of this or any additional Agreement. Upon failure by the CLIENT to conform with this prohibition, CMNTY shall hold the right to terminate this Agreement and/or to suspend the Services.
  5. CLIENT shall inform CMNTY of any extensive, in terms of data and/or Users, use of the Software and Services. Extensive use shall include, inter alia, chat sessions, marketing campaigns and bulk emails. CMNTY reserves the right to amend the Agreement in the event of excessive use. Upon failure by the CLIENT to inform CMNTY of the extensive use, CMNTY shall hold the right to terminate this Agreement and/or to suspend the Services. CLIENT shall be obliged to cover any damages arising from said failure to inform CMNTY.
  6. If CLIENT is using CMNTY Cloud they shall be responsible for keeping all Cloud platforms up to date with the latest Software version made available by CMNTY in the control panel of CMNTY Cloud. Platforms running on a version that is 2 or more versions older than the current available Software version, are not covered by CMNTY's SLA.
  7. If CLIENT is using the custom design feature (CSS) in a platform they shall be responsible for keeping the CSS-code, imagery, fonts, and everything related to design up to date with any breaking design changes that are part of Software updates. CMNTY shall not be held responsible for CSS-based design that breaks as part of Software updates except when CMNTY authored the complete custom CSS code and no changes have been made to that code by CLIENT.

## **29. COLLECTION, PROCESSING AND STORAGE OF PERSONAL DATA**

1. The processing of personal data by CMNTY as a result of the performance of the Agreement, an Order and provision of the Services, shall take place on the basis of a data processor agreement.

## **30. SECURITY**

1. CMNTY shall ensure adequate security of Software and Services as defined in the SLA, however without releasing the CLIENT from their being responsible for the adequate security of their systems, data and other information.
2. CMNTY shall not be liable for any loss or damage caused by suspension, termination and/or restriction of the Services or the use thereof, access or the rights of use as referred to in these Terms.
3. The CLIENT shall be responsible and possibly liable for any and all use of the Services and other services and/or goods delivered or provided by CMNTY utilized by the User.
4. CLIENT is not allowed to conduct system penetration tests, or any other type of test, or ask a 3rd party to perform these tests without the written permission of CMNTY.

## **31. ACCEPTABLE USE POLICY**

1. No Illegal, Harmful, or Offensive Use or Content: CLIENT may not use, or encourage, promote, facilitate or instruct others to use, the Services for any illegal, harmful or offensive use, or to transmit, store, display, distribute or otherwise make available Content that is illegal, harmful, or offensive. Prohibited activities or Content include:
  - 1.1. Illegal Activities. Any illegal activities, including advertising, transmitting, or otherwise making available gambling sites or services or disseminating, promoting or facilitating child pornography.
  - 1.2. Harmful or Fraudulent Activities. Activities that may be harmful to others, CMNTY's operations or reputation, including offering or disseminating fraudulent goods, services, schemes, or promotions (e.g., make-money-fast schemes, ponzi and pyramid schemes, phishing, or pharming), or engaging in other deceptive practices.
  - 1.3. Infringing Content. Content that infringes or misappropriates the intellectual property or proprietary rights of others.

- 1.4. Offensive Content. Content that is defamatory, obscene, abusive, invasive of privacy, or otherwise objectionable, including Content that constitutes child pornography, relates to bestiality, or depicts non-consensual sex acts.
- 1.5. Harmful Content. Content or other computer technology that may damage, interfere with, surreptitiously intercept, or expropriate any system, program, or data, including viruses, Trojan horses, worms, time bombs, or cancelbots.
2. No Security Violations. CLIENT may not use the Services to violate the security or integrity of any network, computer or communications system, software application, or network or computing device (each, a "System"). Prohibited activities include:
  - 2.1. Unauthorized Access. Accessing or using any System without permission, including attempting to probe, scan, or test the vulnerability of a System or to breach any security or authentication measures used by a System.
  - 2.2. Interception. Monitoring of data or traffic on a System without permission.
  - 2.3. Falsification of Origin. Forging TCP-IP packet headers, e-mail headers, or any part of a message describing its origin or route. This prohibition does not include the use of aliases or anonymous remailers.
3. No Network Abuse. CLIENT may not make network connections to any users, hosts, or networks unless CLIENT has permission to communicate with them. Prohibited activities include:
  - 3.1. Monitoring or Crawling. Monitoring or crawling of a System that impairs or disrupts the System being monitored or crawled.
  - 3.2. Denial of Service (DoS). Inundating a target with communications requests so the target either cannot respond to legitimate traffic or responds so slowly that it becomes ineffective.
  - 3.3. Intentional Interference. Interfering with the proper functioning of any System, including any deliberate attempt to overload a system by mail bombing, news bombing, broadcast attacks, or flooding techniques.
  - 3.4. Operation of Certain Network Services. Operating network services like open proxies, open mail relays, or open recursive domain name servers.
  - 3.5. Avoiding System Restrictions. Using manual or electronic means to avoid any use limitations placed on a System, such as access and storage restrictions.
4. No E-Mail or Other Message Abuse. CLIENT will not distribute, publish, send, or facilitate the sending of unsolicited mass e-mail or other messages, promotions, advertising, or solicitations (like "spam"), including commercial advertising and informational announcements. CLIENT will not alter or obscure mail headers or assume a sender's identity without the sender's explicit permission. CLIENT will not collect replies to messages sent from another internet service provider if those messages violate this Policy or the acceptable use policy of that provider.
5. Monitoring and Enforcement. CMNTY reserves the right, but do not assume the obligation, to investigate any violation of this Policy or misuse of the Services. CMNTY may:
  - 5.1. investigate violations of this Policy or misuse of the Services; or
  - 5.2. remove, disable access to, or modify any Content or resource that violates this Policy or any other agreement CMNTY has with CLIENT for use of the Services.
  - 5.3. CMNTY may report any activity that CMNTY suspects violates any law or regulation to appropriate law enforcement officials, regulators, or other appropriate third parties. CMNTY's reporting may include disclosing appropriate customer information. CMNTY also may cooperate with appropriate law enforcement agencies, regulators, or other appropriate third parties to help with the investigation and prosecution of illegal conduct by providing network and systems information related to alleged violations of this Policy.
6. CLIENT is obliged to have a terms & conditions document in place that end-users of the Service have to accept before they are allowed to use the Services. This terms & conditions document should respect CMNTY's general terms and privacy policy at all times.

## **32. SUBSCRIPTION ACCOUNT INFORMATION**

1. For as long as CLIENT remains the Account Owner and is in compliance with the Agreement, CLIENT has the right to access and use the Services. This right is non-transferable, and CLIENT agrees not to disclose their Account information to any Third Party. CLIENT is solely responsible for all activities that occur within their Account. If CLIENT becomes aware of any unauthorized use of the Account or Profile Information, CLIENT is responsible for notifying CMNTY immediately. It is CLIENT's responsibility to update or change any Account or Profile Information, as needed or desired.

2. For online Subscriptions, billing information can be updated from within CLIENT's Account, and may only be changed by the Account Owner. CMNTY disclaims all liability where Account ownership is disputed, and will not participate or play any role in such disputes. CMNTY will automatically charge the credit card on file; should the billing information be changed, the new credit card will be charged. If an updated credit card is under a different name, the owner of the updated card becomes the Account Owner. CMNTY will not change CLIENT' billing information for CLIENT, under any circumstances, and will not be held responsible if an unauthorized party accesses CLIENT's Account or changes their billing details.

### **33. SUBSCRIPTIONS FEES & RENEWAL**

1. CLIENT agrees to pay all Subscription fees. Unless otherwise specified in a Subscription, such fees will be billed in advance for each month and are non-refundable. CLIENT agrees that they may not be refunded or credited for partial months of service, or for periods in which CLIENT Account remains open but CLIENT does not use the Services. If CLIENT exceeds any usage or fee thresholds set forth in CLIENT's Subscription, CMNTY may charge CLIENT for such overages on their next invoice.
2. CMNTY reserves the right to modify billing rates at any time upon thirty (30) days written notice by posting these fee changes to the Site or by notifying CLIENT via email. Should CLIENT continue to use the Services after these changes go into effect, CLIENT will be responsible for paying the new Subscription/billing rate.
3. By entering a credit card number, CLIENT agree that CMNTY, and Third Party service providers, may store CLIENT's payment card information. After CLIENT one (1), 14-day free trial expires, CLIENT expressly authorize CMNTY to charge them, where applicable: (i) Subscription Fees, to be billed during a Subscription Period (ii) other fees for Services purchased, including, but not limited to, Add-Ons (iii) charges for use of the Services in excess of limitations, and (iv) taxes connected with CLIENT's use of the Services.
4. CLIENT agrees to reimburse CMNTY, where applicable, for all collection costs and interest for any overdue amounts. If the payment card CLIENT provides expires and CLIENT does not update their payment card information or cancel their Subscription, CLIENT authorizes CMNTY to suspend their Account until the billing details have been updated. After an Account suspension, CLIENT agrees that CMNTY may re-attempt payment processing upon receiving updated billing details.

### **34. SUBSCRIPTIONS TERM & RENEWAL**

1. CLIENT's paid Subscription is valid for either a monthly or an annual Subscription Period. CLIENT's Trial Account is valid until such time as the trial expires, CLIENT activates their Plan or requests Account deletion (by contacting support@CMNTY.com from the email address on file and requesting deletion).
2. If CLIENT upgrades to a higher-level Subscription during the Subscription Period, CLIENT will have immediate access to those higher level features. CLIENT agrees to pay CMNTY the difference between CLIENT's original Subscription fee and the cost of the upgrade.
3. If CLIENT downgrades to a lower-level Subscription during the Subscription Period, CLIENT's Plan will be downgraded at the end of the current Subscription period. Until that time CLIENT can keep using the features associated with the current plan.
4. Changes to Subscriptions will be reflected in CLIENT's next invoice. No credits or refunds will be issued for downgrading.
5. CLIENT's Subscription will automatically renew for an additional Subscription Period unless CLIENT cancels (see "Cancellation and Termination" below).

### **35. SUBSCRIPTIONS CANCELLATION & TERMINATION**

1. CLIENT may cancel their Monthly Subscription at any time, either from within their Account or by sending an email to support@CMNTY.com, from the email address affiliated with the Account. CLIENT should contact Support to request assistance with Subscription Cancellation or account deletion, CMNTY reserves the right to verify CLIENT's identity by asking for the last four (4) digits of the credit card on file, the type of card, and the billing address.
2. To cancel over the phone, CLIENT must verify the last four (4) digits of the credit card on file, the type of card, and the billing address.

3. Changes to Annual Subscriptions, including Cancellations, go into effect at the end of the Annual Subscription Period. No refunds or credits shall be issued for Annual Subscription Cancellations or downgrades, or from switching from an Annual to a Monthly Subscription before the end of the Annual Subscription Period.
4. Cancellations must be completed at least one (1) day prior to the end of CLIENT's then-current Subscription Period, whether Monthly or Annual; otherwise, billing for the next month or year will be processed automatically. Cancellations performed after billing are not entitled to refunds, in whole or in part.
5. CLIENT is responsible for all charges accrued on their Account up to the time of Cancellation, including all fees within the Subscription Period in which CLIENT cancels. Upon Subscription Cancellation CMNTY may delete that CLIENT's Account from CMNTY systems, either at CLIENT's request or if CLIENT is an Inactive User. Account deletion permanently removes all Content, as well as CLIENT's email address and other Personal or Sensitive Information. CMNTY is not responsible for any Content lost as a result of Account deletion. 90 days after Account deletion, all Account Information, including but not limited to lead data, landing pages, Personal Information, billing details, and all Content, is permanently removed from CMNTY backup databases. CMNTY reserves the right to change data storage and processing capabilities and procedures at any time, without notice or liability.
6. CMNTY reserves the right to terminate this Agreement at any time, for any reason, and at CMNTY's sole discretion, without liability. A reason for such termination may be, but is not limited to, failure to comply with these Terms. CMNTY reserves the right to modify, suspend, or discontinue the Site and/or Services, or any portion thereof, at any time and for any reason, with or without notice.
7. The sections "GOVERNING LAW AND REMEDIES", "LIMITATION OF LIABILITY", "CONFIDENTIALITY", "INTELLECTUAL PROPERTY RIGHTS OF CMNTY", "INTELLECTUAL PROPERTY RIGHTS OF CLIENT" will survive any actual or purported termination or expiry of this Agreement and continue in full force and effect.

### **36. GOVERNING LAW AND REMEDIES**

1. For US-based clients: These General Terms and Conditions, and this Agreement in its entirety, shall be construed, interpreted and governed by the national laws of The United States and by the state laws of New York exclusively. For clients based in the European Union (EU) and the rest of the world: These General Terms and Conditions, and this Agreement in its entirety, shall be construed, interpreted and governed by the national laws of The Netherlands exclusively.
2. The applicability of the rules of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.
3. In any dispute arising out of or related to the Site, the Services, a subscription and/or this agreement, CLIENT hereby expressly give up: (I) their right to trial by jury; and (II) their right to participate as a member of a class of claimants, in any lawsuit including, without limitation, class action lawsuits.
4. CLIENT agrees that they will not bring a Claim under or relating to this Agreement more than twelve (12) months from when their Claim first arose.
5. Parties hereby agree to seek remedies to all disputes arising from this Agreement, or further contracts resulting therefrom, through international arbitration.

### **37. BETA TEST**

1. From time to time and at CMNTY's sole discretion, CMNTY may initiate Beta Tests. CMNTY may implement, run, suspend, or terminate a Beta Test at any time without notice or liability, and does not guarantee that a tested product, service, modification, upgrade, or other adjustment to the Site, Services, or means of providing the Services, will become part of the Services. CMNTY may deliver (and subsequently cease delivering) a Beta Test to all or any subset of CMNTY Account holders at CMNTY's discretion without prior permission at any time. If CMNTY decides to incorporate a tested product or service into the Services, CMNTY may adjust prices accordingly. CMNTY accepts no liability for any consequences resulting from, or related to, CLIENT's participation in a Beta Test.

### **38. TRIAL PROGRAM**

1. From time to time and at CMNTY's sole discretion, CMNTY may offer CLIENT the opportunity to try a new product or service for free for a limited time. Before the end of the Trial Program, CLIENT must decide whether they would like to continue using the new feature. If CLIENT purchases the trialed product or service, it will be added to their monthly invoice and billed automatically until they choose to remove the Add-On or cancel their Subscription. If CLIENT does not purchase the product or service by the end of the Trial Program, they will not be billed for it (normal Subscription rates will apply), and that feature will no longer be available to them.
2. CLIENT agrees to comply with any additional terms, restrictions, or limitations connected to any Trial Program. CLIENT may not sign up for multiple Accounts in order to receive additional Trial Program benefits. CMNTY may terminate or suspend a Trial Program at any time without notice or liability, and in CMNTY's sole discretion, and CMNTY reserves the right to adjust pricing relative to any service or product offered through a Trial Program. CMNTY is not responsible or liable for any adverse impact caused by or connected with a Trial Program.

### **39. CONTACTING CMNTY**

1. CMNTY may be contacted by email at [support@CMNTY.com](mailto:support@CMNTY.com), by telephone at +31 40 340 0440 or +1 646-876-9914, or by mail at CMNTY Corporation B.V., Kastanjelaan 400 , 5616 LZ, Eindhoven, The Netherlands or CMNTY Corporation, 110 Wall St. New York, NY 10007, United States of America.