

TERMS AND CONDITIONS

NOVEMBER FIVE

November Five BV, a private limited liability company, having its registered office at 2000 Antwerp (Belgium), Scheldestraat 11 and registered with the Crossroads Bank of Enterprises under company number 0820.822.413 (hereinafter referred to as "NOVEMBER FIVE") is a software firm specialized in the design, development, operation, maintenance and/or hosting of software and the thereto related (strategy) services.

The client may be any natural person or legal entity which enters into a contractual relationship of whichever nature with NOVEMBER FIVE in connection with his or its trading, business, artisanal or professional activity (hereinafter referred to as the "Client").

1. Application

1. The conclusion of an agreement with NOVEMBER FIVE shall entail the full and unconditional acceptance of these Terms and Conditions.
2. The application of the Terms and Conditions of NOVEMBER FIVE shall exclude the application of any other (general or particular) terms and conditions of the Client.

2. Agreement and scope of the Services

1. The offers of NOVEMBER FIVE shall be without obligation and shall not bind NOVEMBER FIVE as such. Offers shall be valid for a period as indicated in the Statement of Work ("SOW") or, in the absence thereof, for a period of 30 (thirty) days following the date on which the yhe SOW was sent to the Client. Orders from a Client not confirmed in writing by NOVEMBER FIVE shall not be binding for NOVEMBER FIVE.
2. An agreement shall be concluded by and between NOVEMBER FIVE and the Client only by signing of a SOW, incorporating these Terms and Conditions.
3. All SOW's of NOVEMBER FIVE shall be drawn up on the basis of the information provided by the Client. Any change in the fore mentioned information may lead to a revision of the price and signing of a new SOW.
4. In the event of a conflict or a conflict of interpretation between these Terms and Conditions and an SOW, the terms and conditions of the latter will apply.

3. Term

1. These Terms and Conditions shall come into force upon the Effective Date and will remain in force and effect for a duration as indicated in the relevant SOW.
2. The parties intend that each SOW should be fulfilled for the full period contemplated by that SOW, even if these Terms and Conditions expire or are otherwise terminated, unless these Terms and Conditions and/or the SOW are terminated by NOVEMBER FIVE following material breach of these Terms and Conditions by the Client or following an insolvency related event of the Client as indicated below.

4. Services

1. NOVEMBER FIVE shall carry out Services as agreed upon in the relevant SOW.
2. NOVEMBER FIVE shall use reasonable endeavours to ensure that the Services are provided in accordance with the timetable set out in the SOW, and that a copy of the Software, the

Deliverable(s) and Documentation is delivered to the Client by means of a secure online file sharing system.

3. The Client acknowledges that a delay in the Client performing its obligations under these Terms and Conditions may result in (i) a delay in the performance of the Services and (ii) an increase in costs/Fees that will be charged in their entirety to the Client.
4. NOVEMBER FIVE shall ensure that the source code comprised in the Software is written to a professional standard, conforms with any coding standards document agreed between the parties, and incorporates sufficient commentary to enable a competent third party developer to understand, adapt, maintain and update the code.
5. NOVEMBER FIVE shall keep the Client reasonably informed of the progress of the Services (during sprints at regular intervals) and, in particular, shall inform the Client of any substantial obstacles or likely delays in the performance of the Services.
6. NOVEMBER FIVE shall during the course of the Services at the request of the Client make accessible to the Client a current development version of the Software for the purposes of enabling the Client to assess the progress of the Services and provide feedback to NOVEMBER FIVE regarding the Software.

5. Acceptance procedure for Software

1. If so desired and agreed upon by the parties in the relevant SOW, the Client shall carry out Acceptance Tests for Software during the Acceptance Period.
2. NOVEMBER FIVE hereby grants to the Client a non-exclusive, non-transferable, non-sublicensable right to use the Software during each Acceptance Period solely for the purpose of conducting the Acceptance Tests.
3. NOVEMBER FIVE shall provide to the Client at the Client's cost and expense all such assistance and co-operation in relation to the carrying out of the Acceptance Tests as agreed upon in the relevant SOW.
4. Before the end of the Acceptance Period, the Client shall give to NOVEMBER FIVE a written notice specifying whether the Acceptance Tests have been passed or failed.
5. If the Client fails to provide NOVEMBER FIVE written notice in accordance with Clause 5.4 or uses the Software for any purpose other than the conduct of the Acceptance Tests, the Software shall be deemed to have passed the Acceptance Tests.
6. If the Client notifies NOVEMBER FIVE that the Acceptance Tests have been failed, then the Client must provide to NOVEMBER FIVE, at the same time as the giving of the notice, written details of the results of the Acceptance Tests including full details of the identified failure.
7. In case the Client notifies NOVEMBER FIVE that the Software has failed the Acceptance Tests:
 - (a) if NOVEMBER FIVE agrees with the Client that the Software does not comply with the Acceptance Criteria, then NOVEMBER FIVE must correct the issue and re-supply the Software to the Client before the end of the Remedy Period for additional Acceptance Tests; or
 - (b) otherwise, then the parties must meet as soon as practicable and in any case before the expiry of the Remedy Period and use their best endeavours to agree whether the Software does or does not comply with the Acceptance Criteria, and if appropriate conceive a plan of action reasonably satisfactory to both parties.

8. Notwithstanding the other provisions of this Clause 5, but subject to any written agreement of the parties to the contrary, the maximum number of rounds of Acceptance Tests under this Clause 5 shall be 3, and if the final round of Acceptance Tests is failed due to NOVEMBER FIVE, the latter shall be deemed to be in material breach of the relevant SOW.
9. If the Client notifies NOVEMBER FIVE that the Software has passed the Acceptance Tests or the Software is deemed to have passed the Acceptance Tests under this Clause 5, then subject to Clause 15, the Client will have no right to make any claim under or otherwise rely upon any warranty given by NOVEMBER FIVE to the Client in these Terms and Conditions in relation to the conformance of the Software to the Specification or the absence of Software Defects from the Software, unless the Client could not reasonably be expected to have identified the breach of that warranty during the testing process.

6. Time and material / resource reservation / fixed scope – fixed fee

1. If so agreed upon in the SOW, NOVEMBER FIVE will provide Services calculated on a "time and materials basis", subject to the current rates NOVEMBER FIVE.
2. Should the parties agree that NOVEMBER FIVE is to be paid for the provision of certain Services on a "time and materials" basis, the Fees shall be computed on the basis of:
 - the number and profile of NOVEMBER FIVE personnel who provide the Services;
 - the rate card for such NOVEMBER FIVE personnel; and
 - the time that such NOVEMBER FIVE personnel spends in providing the Services.
3. NOVEMBER FIVE shall prepare invoices each month in respect of the time spent in that month by each member of the NOVEMBER FIVE personnel that has been engaged in providing the Services.
4. Upon written request of the Client, NOVEMBER FIVE will provide the underlying timesheets for the relating invoice.
5. If so agreed upon in the SOW, NOVEMBER FIVE will provide Services on a "resource reservation" basis. The parties explicitly agree that any SOW for Services on a "resource reservation" basis requires NOVEMBER FIVE to allocate certain NOVEMBER FIVE personnel and resources to the Client, the latter not being granted the right to terminate the SOW without the explicit approval of NOVEMBER FIVE or require less Services from NOVEMBER FIVE than agreed upon in said SOW.
6. If so agreed upon in the SOW, NOVEMBER FIVE will provide Services on a "fixed scope-fixed fee" basis. The parties explicitly agree that for any SOW for Services on a "fixed scope-fixed fee" basis, the Client will not be granted the right to terminate the SOW without the explicit approval of NOVEMBER FIVE. Any additional Services, out of scope, will be charged in accordance with the then current rates of NOVEMBER FIVE.

7. Intellectual Property Rights

1. The Client expressly acknowledges that:
 - i. **General ideas, tools and libraries.** NOVEMBER FIVE shall be free to use any general ideas, concepts, methodologies, processes, tools, libraries and know-how developed or created by NOVEMBER FIVE in the course of executing the Services.
 - ii. **Design Deliverables.** Subject to the timely payment of the Fees, the final design deliverables (the "**Design Deliverables**") and any and all Intellectual Property Rights or other industrial or similar rights pertaining thereto, whether registered or

unregistered and throughout the world, shall automatically, irrevocably, unconditionally, exclusively and without limitations whatsoever be transferred to the Client immediately upon their creation. For the avoidance of doubt, it is specified that such Design Deliverables shall not include the designs that were not selected by the Client during the provision of the Design Deliverables by NOVEMBER FIVE.

- iii. **Specific Developments.** Subject to the timely payment of the Fees, NOVEMBER FIVE transfers all Intellectual Property Rights on or to the Specific Developments, in full ownership and irrevocably to the Client, and this immediately and unconditionally from such time as these Specific Developments are developed. The Specific Developments are elements in the Software that have been specifically ordered by the Client and that are developed by NOVEMBER FIVE for the Client, as defined in an SOW as Specific Developments. NOVEMBER FIVE shall conclude the agreements required for the transfer of the Specific Developments (the "**Transfer**") with its personnel. The Fees paid by the Client, amongst others, are intended as remuneration for NOVEMBER FIVE for this Transfer. NOVEMBER FIVE undertakes, when the Client requests this, to sign each document or to satisfy each formality, which may be reasonably required in order to perform the aforesaid Transfer. The Client grants NOVEMBER FIVE a non-exclusive, non-transferrable, worldwide, irrevocable and royalty-free license to use such Specific Developments.
 - iv. In the provision of the Services, NOVEMBER FIVE may create and/or improve materials that are generic, reusable or are useful for the development of the general roadmap of one or more other products, tasks and projects of NOVEMBER FIVE. Such materials provided to the Client under the SOW are defined as generic developments (the "**Generic Developments**"). The Customer agrees that all Generic Developments and all Intellectual Property Rights pertaining thereto will be the exclusive property of and will belong to NOVEMBER FIVE. Upon full payment of the Fees, NOVEMBER FIVE will be deemed to grant to the Client a non-exclusive, worldwide, perpetual, irrevocable and fully paid up license to use, modify, adapt, sublicense and otherwise exploit the Generic Developments solely for use with the Software and/or the Deliverables and further exploitation of the Specific Developments.
2. All rights in and to the Software, Deliverables and Services not expressly granted to the Client in the SOW are reserved by NOVEMBER FIVE and its licensors.

8. Third Party Materials

1. Subject to any express written agreement between the parties, NOVEMBER FIVE shall ensure that the Third Party Materials, as defined in an SOW, are:
 - (a) licensed to the Client in accordance with the relevant licensor's standard licensing terms (which the Client acknowledges may be open source licensing terms); or
 - (b) sub-licensed by NOVEMBER FIVE to the Client on reasonable terms notified in writing by NOVEMBER FIVE to the Client.

9. Client obligations

1. Save to the extent that the parties have agreed otherwise in writing, the Client must provide to NOVEMBER FIVE, or procure for NOVEMBER FIVE, such:
 - (a) timely co-operation, support, feedback and advice;
 - (b) attendance during meetings;
 - (c) intermediate scope approvals, if so required; and
 - (d) information and documentation,

as are reasonably necessary to enable NOVEMBER FIVE to perform its obligations under these Terms and Conditions.

2. The Client must provide to NOVEMBER FIVE, or procure for NOVEMBER FIVE, such access to the Client's computer hardware, software, networks and systems as may be reasonably required by NOVEMBER FIVE to enable NOVEMBER FIVE to perform its obligations under these Terms and Conditions.

10. Fees

1. The Client shall pay the Fees to NOVEMBER FIVE in accordance with these Terms and Conditions and/or the relevant SOW.
2. All amounts stated in or in relation to an SOW are exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Client to NOVEMBER FIVE.

11. Payment terms

1. NOVEMBER FIVE shall issue invoices for the Fees to the Client on or after the payment milestones set out in an SOW. Services provided on a time and materials basis are invoiced monthly.
2. The Client must pay the Fees to NOVEMBER FIVE within the period of 30 (thirty) days following the receipt of an invoice issued in accordance with this Clause 11.
3. The Client must pay the Fees by using such payment details as are mentioned on the related invoice.
4. In case the invoice is not paid entirely or partially on expiry date, all other invoices (irrespective their expiry date) will be immediately and automatically due. In such case, interest will be automatically due (without prior written notice) at a rate of 1% per month as from the invoice date. Any started month will count as a complete month. Moreover, the Client will have to pay automatically and without prior notification and without further formality a lump sum of 10% of the invoice price, VAT excluded, with a minimum of 250 EUR, without prejudice to the right of NOVEMBER FIVE to claim an indemnity equal to its actual losses. Furthermore, NOVEMBER FIVE shall be entitled to suspend the execution of Services under these Terms and Conditions until receipt of all due amounts.
5. The recurring Fees shall automatically, on each anniversary date of the entry into force of an SOW, be proportionally adjusted on the basis of the following formula:

$$\text{adjusted Fee} = \text{basic Fee} \times \left\{ \frac{(0.2+0.8) \text{ current index}}{\text{basic index}} \right\}$$

whereby the index is the AGORIA index and the elements of this formula are defined as follows:

- Basic Fee: the Fee as set out in the relevant SOW;
- Current index: the index of the month preceding the adjustment of compensation;
- Basic index: the index of the month preceding the signing of the SOW.

12. Confidentiality obligations

1. The parties acknowledge that they may become privy to Confidential Information which is disclosed by the other party.

2. The receiving party will keep all Confidential Information confidential. The receiving party will not disclose Confidential Information to any other person, and will not use Confidential Information for any purposes other than for the purposes of the relevant SOW. The receiving party will safeguard the Confidential Information to the same extent that it safeguards its own confidential and proprietary information and in any event with not less than a reasonable degree of protection.
3. The receiving party agrees to disclose Confidential Information only on a "need-to-know" basis to employees and independent contractors.
4. The receiving party agrees that before any of its subcontractors and/or agents may be given access to Confidential Information, each such subcontractor and/or agent will agree to be bound by a confidentiality undertaking comparable to the terms of these Terms and Conditions. Notwithstanding the return of any Confidential Information, the receiving party and its subcontractors and/or agents will continue to hold in confidence all Confidential Information for a period of 2 years from the date of receipt of the Confidential Information, which obligation will survive any termination of these Terms and Conditions.
5. In the event the receiving party is requested or required to disclose, by court order or regulatory decision, any of the other party's Confidential Information, the receiving party will provide the other party with prompt written notice so that the disclosing party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of these Terms and Conditions. The receiving party will furnish only that portion of the Confidential Information which is legally required.
6. Within 10 (ten) Business Days upon (i) the termination of an SOW and upon explicit request or (ii) the disclosing party's reasonable earlier request at any time, the receiving party will destroy or return to the disclosing party (at its option) any and all of disclosing party's Confidential Information, and will remove all copies from any storage location and/or media.
7. Confidential Information will not include any information that the receiving party can establish:
 - prior to receipt from the disclosing party, was in the possession of or rightfully known by the receiving party without an obligation to maintain its confidentiality;
 - at the time of use or disclosure by the disclosing party was generally known to the public without violation of these Terms and Conditions and not as a result of any action or inaction of the receiving party;
 - is disclosed to the receiving party by a third party not in violation of any obligation of confidentiality; or
 - is independently developed by the receiving party without the participation of employees or other individuals who have had access to Confidential Information of the disclosing party.
8. Any infringement by the receiving Party of its confidentiality obligations will entitle the disclosing Party to claim payment of a EUR 25,000.00 (Twenty Five Thousand Euros) lump sum, without prejudice to the disclosing party's right to claim higher damages if the disclosing party can prove the existence of such higher damages.

13. Data protection

1. Each party shall, at all times, comply with its respective obligations under the General Data Protection Regulation 2016/679, as amended, and any further implementation or replacement of that law ("Data Protection Legislation"). The word "Process" and the expression "Personal Data", when used in this clause shall have the meaning assigned thereto in the Data Protection Legislation.

2. NOVEMBER FIVE shall Process Personal Data provided to it pursuant to an SOW in accordance with the Data Protection Legislation and, if so required, a Data Processing Addendum.

14. Warranties

1. NOVEMBER FIVE warrants to the Client that:
 - (a) NOVEMBER FIVE has the legal right and authority to enter into the SOW and to perform its obligations under these Terms and Conditions;
 - (b) NOVEMBER FIVE will comply with all applicable legal and regulatory requirements applying to the exercise of NOVEMBER FIVE's rights and the fulfilment of NOVEMBER FIVE's obligations under these Terms and Conditions; and
 - (c) NOVEMBER FIVE has or has access to all necessary know-how, expertise and experience to perform its obligations under these Terms and Conditions.
2. NOVEMBER FIVE warrants to the Client that:
 - (a) the Software and/or the Deliverable(s) as provided will conform in all material respects with the Specification;
 - (b) the Software will be supplied free from Software Defects and will remain free from Software Defects for a period of at least 3 months following the supply of the Software;
 - (c) the Deliverables will be supplied free from defects. The Client expressly agrees to provide NOVEMBER FIVE any complaints in respect of the Deliverables within a period of 10 Business Days after delivery, after which the Deliverables will be deemed to be accepted "as is" by the Client.
3. NOVEMBER FIVE warrants to the Client that the Software and/or the Deliverable(s), when used by the Client in accordance with these Terms and Conditions, will not infringe the Intellectual Property Rights of any person.
4. If NOVEMBER FIVE reasonably determines, or any third party alleges, that the use of the Software and/or the Deliverable(s) by the Client in accordance with these Terms and Conditions infringes any third party's Intellectual Property Rights, NOVEMBER FIVE may at its own cost and expense:
 - (a) modify the Software and/or the Deliverable(s) in such a way that they no longer infringe the relevant Intellectual Property Rights; or
 - (b) procure for the Client the right to use the Software and/or the Deliverable(s) in accordance with these Terms and Conditions.
5. Except as expressly provided in these Terms and Conditions, NOVEMBER FIVE provides no other warranty. In particular, NOVEMBER FIVE provides no warranties of any kind in relation to the merchantability and/or fitness of the Software and/or the Deliverable(s) for a particular purpose.
6. The Client warrants to NOVEMBER FIVE that it has the legal right and authority to enter into an SOW and to perform its obligations under these Terms and Conditions.

15. Acknowledgements and warranty limitations

1. The Client acknowledges that the Software is never wholly free from defects, errors and bugs and subject to the other provisions of these Terms and Conditions, NOVEMBER FIVE gives no warranty or representation that the Software and/or the Deliverable(s) will be wholly free from defects, errors and bugs.
2. The Client acknowledges that the Software is never entirely free from security vulnerabilities and subject to the other provisions of these Terms and Conditions, NOVEMBER FIVE gives no warranty or representation that the Software will be entirely secure.
3. Unless agreed otherwise in the relevant SOW, the Software shall not be subject to security or performance tests. If so desired, NOVEMBER FIVE will engage a third party service provider in this respect at Client's expense.
4. The Client acknowledges that the Software is only designed to be compatible with that software specified as compatible in the Specification and NOVEMBER FIVE does not warrant or represent that the Software will be compatible with any other software.
5. The Client acknowledges that NOVEMBER FIVE will not provide any legal, financial, accountancy or taxation advice under these Terms and Conditions or in relation to the Software and/or the Deliverable(s) and, except to the extent expressly provided otherwise in these Terms and Conditions, NOVEMBER FIVE does not warrant or represent that the Software and/or the Deliverable(s) or the use of the Software and/or the Deliverable(s) by the Client will not give rise to any legal liability on the part of the Client or any other person.

16. Limitations and exclusions of liability

1. Nothing in these Terms and Conditions will:
 - (a) limit or exclude any liability for death or personal injury resulting from negligence;
 - (b) limit or exclude any liability for fraud;
 - (c) exclude any liabilities that may not be excluded under applicable law.
2. Neither party shall be liable to the other party in respect of any losses arising out of a force majeure event.
3. Except for any liability under Clause 16.1, neither Party shall be liable to the other party in respect of any loss of revenue or income, loss of use or production, loss of business, contracts or opportunities, loss or corruption of any data, database, special, indirect or consequential loss or damage.
4. Except for any liability under Clause 16.1, the aggregate liability of either party to the other party under these Terms and Conditions in respect of direct damages shall not exceed the total amount of 25.000 EUR.

17. Force majeure

1. Neither party shall be in breach of these Terms and Conditions nor be liable for delay in performing, or failure to perform, any of its obligations under these Terms and Conditions if such delay or failure results from events, circumstances or causes beyond its reasonable control, including but not limited to, failures of the internet or any public telecommunications network, epidemic, hacker attacks, virus or other malicious software attacks or infections, power failures, changes to law, disasters, explosions, fires, floods, riots, terrorist attacks and wars.

2. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for 10 weeks, the party not affected may terminate the SOW by giving 14 days' written notice to the other party.

18. Termination

1. NOVEMBER FIVE and the Client may not terminate an SOW.
2. Either party may terminate any ongoing SOW immediately by giving written notice of termination to the other party if:
 - (a) the other party commits a material breach of these Terms and Conditions, and the breach is not remediable;
 - (b) the other party commits a material breach of these Terms and Conditions, and the breach is remediable but the other party fails to remedy the breach within the period of 30 (thirty) days following the giving of a written notice to the other party requiring the breach to be remedied.
3. Either party may terminate any ongoing SOW immediately by giving written notice of termination to the other party if:
 - (a) the other party:
 - (i) is dissolved;
 - (ii) ceases to conduct its business;
 - (iii) is or becomes unable to pay its debts; or
 - (iv) is or becomes insolvent or is declared insolvent;
 - (b) an administrator, administrative receiver, liquidator is appointed over any of the assets of the other party;
 - (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganization where the resulting entity will assume all the obligations of the other party under these Terms and Conditions).

19. Miscellaneous

1. Compliance with laws and regulations

Both parties will, for their own accounts, comply with the laws and regulations of the public authorities relating to these Terms and Conditions and pay all Fees or other expenses in this respect.

2. Waiver

The failure of either party at any time to insist upon strict performance of any of the provisions under these Terms and Conditions will not be deemed a waiver or limitation of its right at any time thereafter to insist upon strict performance.

3. Notices

All notices, demands or consents required or permitted under these Terms and Conditions will be in writing. Notice will be sent to the parties by registered mail at the addresses set forth on the SOW, or at such other address as will be given by either party to the other in writing.

4. Severability

If any provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision will be severed and the remainder of the provisions of these Terms and Conditions will continue in full force and effect as if these Terms and Conditions has been executed with the invalid, illegal or unenforceable provision eliminated. The parties will immediately commence negotiations in good faith to remedy this invalidity.

5. Applicable law and jurisdiction

These Terms and Conditions will be governed by and construed under the laws of Belgium. Each party submits to the exclusive jurisdiction of the competent courts of Antwerp, division Antwerp for the purposes of any dispute arising hereunder.

20. **Definitions**

For the purpose of these Terms and Conditions, the following terms will have the meanings specified or referred to in this clause:

"Acceptance Criteria" means:

- (a) the Software conforming in all material respects with the Specification; and
- (b) the Software being free from Software Defects;

"Acceptance Period" means a period of 10 Business Days following the supply of the Software to the Client in accordance with Clause 5, or such other period as the parties may agree in writing;

"Acceptance Tests" means a set of tests designed to establish whether the Software meets the Acceptance Criteria, providing that the exact form of the tests shall be determined and documented by NOVEMBER FIVE acting reasonably, and communicated to the Client in advance of the commencement of the Acceptance Period;

"Business Day" means any weekday other than a bank or public holiday in Belgium;

"Business Hours" means the hours of 9am to 5pm on a Business Day;

"Confidential Information" means any and all information that is disclosed (orally, in writing, by electronic delivery, or otherwise) by one party ("disclosing party") to the other party ("receiving party") prior to or during the term of the SOW (or to which the receiving party otherwise gains access as a result of the SOW) relating to the business of the disclosing party, including without limitation business plans and models, financial information, market research, client and supplier information, proprietary software and methods, and information concerning proprietary inventions and technologies;

"Deliverables" means all works, products, proofs of concepts, minimum viable products ("MVP"), business cases, improvements, adaptations, inventions and innovations which result from the Services carried out by NOVEMBER FIVE in execution of its agreement with the Client, excluding Software deliverables (see below);

"Documentation" means the documentation for the Software and/or the Deliverable(s) produced by NOVEMBER FIVE and delivered or made available to the Client by NOVEMBER FIVE, subject to its discretion;

"Effective Date" means the date of execution of the SOW;

"Fees" means the amounts due to NOVEMBER FIVE for the delivery of Services under these Terms and Conditions as stipulated in the relevant SOW;

"Intellectual Property Rights" means all patent rights, trademarks, designs and models, copyrights, rights in databases, proprietary rights in know-how, including trade secrets and other confidential information, and any other form of legally protectable intellectual or industrial property rights under any jurisdiction whatsoever;

"Remedy Period" means a period of 20 Business Days following the Client giving to NOVEMBER FIVE a notice that the Software has failed the Acceptance Tests, or such other period as the parties may agree in writing;

"Services" means any services that NOVEMBER FIVE provides to the Client, or has an obligation to provide to the Client, under these Terms and Conditions and the subsequent SOW's under these Terms and Conditions. This might include, without being limited to: development, design, strategy, hosting, maintenance, support and extra services;

"Software" means the software identified in the relevant SOW, including the source code of that software created by or on behalf of NOVEMBER FIVE in the course of the provision of the Development Services;

"Software Defect" means a defect, error or bug in the Software having a material adverse effect on the operation, functionality or performance of the Software, but excluding any defect, error or bug caused by or arising as a result of:

- (a) any act or omission of the Client or any person authorized by the Client to use the Software;
- (b) any use of the Software contrary to the Documentation by the Client or any person authorized by the Client to use the Software;
- (c) a failure of the Client to perform or observe any of its obligations in these Terms and Conditions; and/or
- (d) an incompatibility between the Software and any other system, network, application, program, hardware or software not specified as compatible in the Specification;

"Specification" means the specification for the Software and/or the Deliverables as set out in the relevant SOW and in the Documentation, as it may be varied by the written agreement of the parties in the then current product documentation and collaboration software application applied by NOVEMBER FIVE;

"SOW" means a Statement of Work that may be signed between NOVEMBER FIVE and the Client, all offers of NOVEMBER FIVE holding the specifications of the Software and/or the Deliverables and Services to be delivered, incorporating these Terms and Conditions;

"Terms and Conditions" means these Terms and Conditions as set out herein that apply to all SOW's of NOVEMBER FIVE;

"Third Party Materials" means the works and/or materials comprised in the Software and/or the Deliverables, the Intellectual Property Rights which are owned by a third party, and which are specified in (i) an SOW, or (ii) which the parties agree upon in the course of the provision of Services and add in the then current product documentation and collaboration software application applied by NOVEMBER FIVE.