

# VANTIVA

## TERMS AND CONDITIONS OF SALE

### 1. Definitions.

(a) **“Buyer”** means the entity identified on Buyer’s purchase order, or, if different, on Seller’s quotation, Order Acknowledgment or statement of work.

(b) **“End User”** means a person who is a subscriber or customer of Buyer which uses the Product for their individual use.

(c) **“Seller”** means the entity identified on Seller’s quotation, Order Acknowledgment or statement of work.

(d) **“Hardware”** means equipment designed and manufactured by or on behalf of Seller, or any third-party manufacturer’s equipment offered for sale by Seller to Buyer.

(e) **“Open Source Software”** means any software that: (i) contains or is derived in any manner (in whole or in part) from software that is distributed under license terms where any party can be a licensee without notice to the licensor with a right to modify, including without limitation distribution models similar to the GNU’s General Public License (GPL) or Lesser/Library GPL (LGPL); the Artistic License (e.g., PERL); the Massachusetts Institute of Technology (MIT) Public License; the Mozilla Public License; the Netscape Public License; the Sun Community Source License (SCSL); the Sun Industry Source License (SISL); and/or the Apache Software license; or (ii) software that is licensed pursuant to any of the following terms (a) any requirement for licensee to distribute source code, including without limitation derivatives or modifications thereof, to non-licensor third parties, (b) any requirement for any patent non-assert or patent license be conferred by Seller to non-licensor third parties, or (c) any requirement to provide licensor attribution(s) to non-licensor third parties.

(f) **“Order Acknowledgment”** means a document or email furnished by Seller acknowledging the receipt of Buyer’s purchase order and Seller’s agreement to supply the Products and/or Services stated therein under the terms and conditions stated herein.

(g) **“Product”** means (i) any product designed or manufactured by or on behalf of Seller, or (ii) any third-party manufacturer’s product offered for sale by Seller and includes any combination of Hardware and Software.

(h) **“Services”** means site engineering, system integration, product installation, implementation, training, maintenance and technical support services for Products or other professional services provided by Seller to Buyer. Services exclude managed services and hosted cloud services provided by Seller. Appendix B, attached hereto, sets forth additional terms and conditions specific to Services. For the avoidance of any doubt, the price of Products does not cover any Services.

(i) **“Software”** means Seller-licensed software, either embedded or standalone, including any updates, enhancements, modifications and bug fixes provided thereto, in object code form only (unless otherwise specified), and any full or partial copies thereof. Software does not include software created or owned by third parties.

(j) **“Third Party Component or Software Provider”** means the conditional access provider and/ or middleware provider and/or any other supplier of Software or supplier of components requested by Buyer to be incorporated in the Product.

2. **Terms; Seller’s Acceptance.** Unless Seller expressly agrees otherwise in writing, these Terms and Conditions will govern all purchase orders, quotations and statements of work. Seller specifically rejects, and Buyer disclaims, all pre-printed provisions in Buyer’s purchase order and any other Buyer forms or documents, including any terms and conditions on Buyer’s internet site. Seller’s failure to object to any term or condition in any communication from Buyer will not be construed as agreement to such term or condition, nor will it be deemed a waiver of these Terms and Conditions. Seller reserves the right, in its sole discretion, not to accept any purchase order, including any purchase order issued in connection with a quotation provided by Seller. Seller’s acceptance to supply Products and/or Services, as identified in Buyer’s purchase order, shall be in writing, as evidenced by the issuance of an Order Acknowledgment. In the event the Buyer and Seller have executed a definitive contract relating to the Products and/or Services purchased (a “Definitive Contract”), then the terms and conditions set forth in such Definitive Contract shall supersede any conflicting terms and conditions set forth herein for as long as such Definitive Contract is in effect and not terminated or expired.

3. **Entire Agreement; Amendments.** These Terms and Conditions, including any applicable Appendices, and Seller’s quotation, Order Acknowledgment and/or statement of work, (a) constitute the entire agreement of the parties covering the Products and/or Services provided by Seller to Buyer, and (b) supersede all other written or oral agreements between the parties, except in the event of a Definitive Contract executed by the parties. Seller and Buyer may modify these Terms and Conditions, or the associated quotation, Order Acknowledgment and/or statement of work, only by an express written agreement signed by both parties. Appendix A contains specific additional terms applicable

to the sale of set-top boxes with MediaKind Software or Google Android Software. Appendix B contains specific additional terms applicable to the sale of Services. Appendix C lists the governing laws for these Terms and Conditions, including jurisdiction by Seller entities. Appendix D contains all other specific terms applicable to the sale of Products and/or Services in the countries identified therein.

4. **Commercial Contract.** The procurement rules and regulations of any local, state, federal or other government or governmental authority will not apply to any sales of Products and/or Services by Seller to Buyer.

5. **Quotations and Prices.** Except as otherwise specifically provided in Seller’s quotation, Order Acknowledgment or statement of work, the prices of Products and/or Services will be Seller’s list prices in effect at the time of Seller’s quotation or Seller’s Order Acknowledgment or the effective date of statement of work and are not subject to trade or other discounts. Except as otherwise stated in writing by Seller, a quotation or proposal is valid for a period of sixty (60) days from date of issue; however, prices set forth in a quotation or a proposal are subject to increases due to market conditions. Seller may correct errors or omissions in published or quoted prices or change its published list prices at any time without notice. Unless stated otherwise in Seller’s quotation or Order Acknowledgment or statement of work, prices do not include any costs related to insurance, special packaging or insulation, source inspection, testing, service calls or service work performed by Seller, all of which must be paid by Buyer. Notwithstanding the foregoing, prices in Seller’s quotations, Order Acknowledgments and/or invoices may be subject to a price increase and/or surcharge.

6. **Taxes.** Seller is responsible for all corporate taxes measured by net income resulting from performance under these Terms and Conditions (“Seller Taxes”). Buyer is responsible for all taxes, duties, tariffs, assessments, levies (including but not limited to copyright levies), fees, or other charges of any nature (including, but not limited to, consumption, gross receipts, import, property, sales, stamp, turnover, use, privilege, excise or value-added taxes, and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto, imposed by any governmental authority on Buyer or Seller) in relation to these Terms and Conditions or purchase order other than Seller Taxes (“Buyer Taxes”). Prices do not include the amount of any Buyer Taxes. If Buyer deducts or withholds Buyer Taxes, Buyer will pay additional amounts so that Seller receives the full price without reduction for Buyer Taxes. Buyer will provide to Seller, within one month of payment, official receipts from the applicable governmental authority for deducted or withheld taxes. Seller and Buyer hereby agree to cooperate and use commercially reasonable efforts to obtain any available Tax exemption or other Tax incentive or benefit available to either Seller or Buyer, including, without limitation, by timely providing valid tax exemption certificates or other necessary documentation to the other party.

7. **Terms of Payment.** Unless otherwise agreed by Seller in writing, all payments shall be in U.S. Dollars and due within thirty (30) days of the date of the invoice. Seller shall invoice Buyer on or about shipment of the Products and/or performance of Services, as applicable. Buyer will pay interest on any past due invoices at a rate of 1.5% per month on the unpaid balance, or, if lower, the maximum rate permitted under applicable law. Buyer will pay all costs, including reasonable attorneys’ fees, court costs and collection agency fees that Seller incurs in the enforcement of these Terms and Conditions against Buyer. If in Seller’s judgment, Buyer’s financial condition or payment history does not justify the payment terms set forth above or continuation of the existing payment terms, Seller may: (i) require full or partial payment of Buyer’s account; (ii) require payment in advance of shipment and/or performance; (iii) change Buyer’s credit terms; or (iv) any combination of the above. Buyer acknowledges that Seller retains a security interest in all Products, and all proceeds and products thereof, until Buyer renders payment in full, and Buyer hereby authorizes Seller to file any documents necessary to perfect Seller’s security interest.

8. **Shipping.** Seller will pack, package and crate Products in accordance with its standard commercial practices. Seller may make partial shipments and submit invoices for such partial shipments in accordance with the payment terms set forth in Section 7 above. Seller may ship overages or underages of weight, length, size and/or quantity in accordance with Seller’s standard practices.

9. **Title; Risk of Loss.** Title to the Hardware and the risk of loss or damage to the Products will pass to Buyer when delivery of the Products is made in accordance with Section 10.

10. **Delivery.** Unless stated otherwise in Seller’s quotation or Order Acknowledgment, all Products will be delivered EXW Seller’s warehouse (Incoterms 2020). Seller does not and will not guarantee any shipping or delivery date, and no person is authorized to commit to a delivery date except in writing signed by an authorized officer of Seller. Seller may estimate shipping or delivery dates to the best of Seller’s knowledge based on information provided by Buyer and conditions existing at the time of the estimate. Seller will make commercially

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reasonable efforts to ship the Products by the estimated shipping date, but will not be liable for any damages, loss or expense (direct, incidental, indirect, economic, consequential or otherwise) arising from a delay in shipment.

11. **Force Majeure.** Seller will not be held liable for any failure or delay in the performance of its obligations under these Terms and Conditions if such failure or delay results from causes beyond its control, including, but not limited to, labor disputes, civil commotion, explosion, war, fires, floods, inclement weather, governmental regulations or controls, order of any government or government agency, casualty, government authority, strikes, riots, terrorism, insurrection, embargo, actions, statute, ordinance, regulation, shortage of labor, material, fuel, supplies or transportation, pandemics, epidemics, local disease outbreaks, public health emergencies, communicable diseases, quarantines, acts of Governments (e.g., tariffs), industry level supply shock, or acts of God, in addition to any other events or circumstances not within the reasonable control of Seller, whether similar or dissimilar to any of the foregoing, in which event Seller will be excused from its obligations for the period of the delay and for a reasonable time thereafter. Seller will use reasonable efforts to notify the Buyer of the occurrence of such an event within a reasonable period of time of its occurrence. If Seller is partially excused from performance either by any of the conditions listed above or by the provisions of any applicable laws or regulations, Seller will not be required to make any allocation of production, shipments or deliveries, notwithstanding any applicable laws or regulations that may provide otherwise. Additionally, Seller will use reasonable efforts to limit the impact of the event of force majeure on its performance hereunder.

12. **Acceptance of Products and Services.** The Products and Services provided by Seller are deemed accepted by Buyer upon delivery of Products in accordance with Section 10 and performance of Services, respectively.

13. **Warranties.** Seller warrants the Products and Services to Buyer in accordance with the terms, conditions and limitations of Seller's Limited Warranty for such Products and Services as in effect as of the date of shipment or completion of work, respectively. Seller's Limited Warranty for the Products and Services is located on Seller's website at: <https://www.vantiva.com/hn-product-warranty/> and is incorporated by reference into these Terms and Conditions. No person is authorized to give any additional warranties on Seller's behalf or to assume for Seller any other liability, except in writing signed by an authorized officer of Seller. In the event of a conflict between this Section 13 and the Seller's Limited Warranty, this Section 13 shall prevail.

14. **Seller Liability for Third Party.** Seller will not be liable for any failure or delay to perform caused by a third party or its services, components or software, including, without limitation, failure by Third Party Components or Software Providers or defects in their respective services, components or software.

15. **Indemnity.** Buyer will indemnify Seller for any resulting liability, (A) if the Buyer is in breach of any term herein, (B) to the extent that any claim arises from or is caused by designs or specifications provided by Buyer, any modifications to any Product made by anyone other than Seller, the combination of any Product with any hardware, software or other components, use of a version of a Software or a Product other than the current version, if the current version would be non-infringing, the use of any Product for purposes not contemplated by the parties at the time of sale as indicated by contemporary product documentation, or an action of Buyer initiating a claim against a third party; or (C) except as agreed by the Parties in writing, for any claims resulting from, caused by or related to (i) royalties payable, other than a reasonable royalty based upon revenue derived by Seller from Buyer from sales or license of the infringing Products or associated Software; (ii) royalties payable, or intellectual property claims related to compliance with the Moving Picture Experts Group's ("MPEG") MPEG-2 specification of Generic Coding of Moving Pictures and Associated Audio: Video (ISO/IEC 13818-2) and the Transport Stream defined in the MPEG-2 Systems specification (ISO/IEC 13818-1) ("MPEG-2 Standards"), the MPEG-4 Visual and MPEG-4 Systems standards defined in ISO/IEC 14496-2 and ISO/IEC 14496-1, respectively, and the AVC/H.264 Standard, defined in ISO/IEC IS 14496-10; the MPEG HEVC standard (defined in ISO/IEC 23008-2 MPEG-H Part 2 and ITU-T H.265); or VP8 or VP9 by Google, Inc.; (iii) royalties payable, or intellectual property claims related to compliance with or implementation of standards issued by public or private standards bodies (including ITU, IEEE, ANSI, ISO/IEC, WiFi and Cable Labs standards), as well as third party private standards such as 5C Digital Transmission Content Protection, DVB and Dolby Digital Audio; (iv) infringement by any third party software; and, (v) infringement arising from any user interface (including but not limited to KreaTVGo and/or KreaTVUI, Rovi guides (including but not limited to Rovi i-Guide, Passport Guide, and DTA guides)) or PVR functionality included and/or made available in the Products, which is manufactured and/or supplied by a third party, or any claim from TiVo thereon.

In no event shall Seller be liable to Buyer or any third party and Buyer will

indemnify Seller for any resulting liability caused by, relating to or arising from (A) Buyer's intentional misconduct, (B) programming services offered by Buyer or Buyer's programmers using or accessed by the Products and/or Software, including any assertion that any such programming services involve tortious conduct or the infringement of any third-party rights; (C) any disputes between Buyer and any of its program distributors or other distributors or affiliates; and (D) any disputes or claims involving the subscriber's use of the Product for the services of Buyer, including, but not limited to, a subscriber altering or modifying media, data or programming content, a subscriber streaming, transmitting, downloading, storing, viewing or playing media, data or programming content to/on the Product or other devices which may be located within or outside subscriber's premises. This paragraph of this Section 15 shall survive termination or expiration of these Terms and Conditions.

16. **Property Furnished by Buyer.** If Buyer furnishes any components, tools, dies, jigs or other property, equipment, material, or facilities to Seller in connection with its performance under these Terms and Conditions, Buyer shall bear all risk of loss or damage with respect to such property, equipment, material, or facilities and shall indemnify and hold Seller harmless from and against all loss, cost, expense or liability arising in connection with its use of any such property, equipment, material, or facilities. Seller shall not be responsible for any delay in performance or nonperformance hereunder or the failure of any Product to conform to applicable specifications resulting, in whole or in part, from Seller's use of property, equipment, material, or facilities furnished by Buyer.

17. **Software License.** Unless specified in a Definitive Contract, provided that the Buyer has paid all applicable fees to Seller, Seller hereby grants to Buyer a limited, nonexclusive, nontransferable, non-sublicensable license (except for use by End User) to use and distribute the Software, solely with and as embedded or installed on the Hardware (if applicable and sold in conjunction with the Software), for its intended purposes, which purposes preclude Buyer's provision of any product or service to a third party that would alleviate any third party from the obligation or need to obtain a separate license to the Software. Except as otherwise expressly set forth herein, use of the Software is limited to the internal business operations of Buyer and its End Users. Buyer is responsible for its agent's, contractor's, and End User's use of the Software and their compliance with these Terms and Conditions. The Software is licensed and not sold, either separately or with the Hardware. Except as expressly set forth herein, no other licenses or rights are granted, and all rights, title to and ownership of all applicable intellectual property rights in the Software, including but not limited to patents, copyrights and trade secrets remain with Seller and its licensors (including Third Party Component or Software Provider). Buyer shall not attempt to acquire any other rights or attempt to assign or transfer any intellectual property rights in the Software in contravention of Seller's or its licensor's rights. Seller's rights extend to any accompanying printed materials and online or electronic documentation of the Hardware and/or Software, and any authorized copies of the above materials. Seller has no obligation to provide any updates or upgrades to the Software under these Terms and Conditions.

Unless otherwise agreed to in writing, Buyer shall not copy, modify, lend, share, lease, rent, assign, sub-license, provide service bureau, time-sharing, hosting, outsourcing or subscriptions services, create derivative works, reverse engineer, decompile, disassemble or in any manner attempt to derive the source code from the Software (including but not limited to review of data structures or similar materials produced by Software), or distribute or transfer the Software or any copies thereof, in whole or in part, or make the Software available in any manner to any third party for use in the third party's business operations. Buyer is entitled to make a single copy of the Software solely for backup or archival purposes and all title, trademark, copyright, restricted rights or any other proprietary notices shall be reproduced in such copy. The publication or disclosure of any results of benchmark tests run on the Software is prohibited. Buyer shall not remove, obscure or alter any markings or notice of copyright, patent, trade secret, trademark or other proprietary right or disclaimer appearing in or on any Software or accompanying materials.

If an update of the Software on the Product is managed by the Buyer and/or a Third-Party Component or Software Provider, the Buyer will maintain accurate records concerning any Software updates to the Product. Upon request from the Seller, the Buyer shall provide reasonable information regarding such updates, which the Seller may share with licensing partners (e.g., Dolby). Such information shall include, but not limited to: (i) the Product version(s) subject to the update; (ii) the version of Seller product Software and licensing partner software/technology included in the deployed Product software update; (iii) all product models and the quantity of products to which the Product software update was deployed; and (iv) the method of delivery of the Product software update (e.g., via Buyer infrastructure, via Third-Party Component and Software Provider middleware infrastructure, etc.). The Buyer shall also collaborate with the Third-

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Party Component and Software Provider and the Seller as necessary to enable the Seller to confirm the version of licensing partner implementation in the updated Software.

IF THE PRODUCT IMPLEMENTS ANY STANDARD TECHNOLOGY IDENTIFIED IN THE AGREED SPECIFICATION, THE PRODUCT IS LICENSED UNDER THE APPLICABLE PATENT PORTFOLIO LICENSE FOR THE PERSONAL AND NON-COMMERCIAL USE OF A CONSUMER TO (i) ENCODE VIDEO IN COMPLIANCE WITH SUCH APPLICABLE STANDARD AND/OR (ii) DECODE VIDEO THAT WAS ENCODED BY A CONSUMER ENGAGED IN A PERSONAL AND NON-COMMERCIAL ACTIVITY AND/OR WAS OBTAINED FROM A VIDEO PROVIDER LICENSED TO PROVIDE VIDEO UNDER SUCH STANDARDS. NO LICENSE IS GRANTED OR SHALL BE IMPLIED FOR ANY OTHER USE. ADDITIONAL INFORMATION MAY BE OBTAINED UPON REQUEST.

Buyer usage royalties, and any other royalties not explicitly agreed to by the parties, are not included in the quoted price of the Product and are the responsibility of Buyer. The Product price as agreed between the parties do not include all licensee fees or royalties due to third party intellectual property, such as, but not limited to, newly established standards or licensing programs, even if conforming to the specifications.

Buyer will not subject Seller's proprietary Software or proprietary derivative works in whole or in part to any of the terms of an Excluded License. "Excluded License" means any license that requires (as a condition of use, modification and/or distribution of software) such software or other software combined and/or distributed with such software be (a) disclosed or distributed in source code form; (b) licensed for the purpose of making derivative works; or (c) redistributable at no charge. Loadable Kernel Modules are subject to the GPL, as derivatives of the Linux Kernel, and are considered licensed under an Excluded License.

Under certain circumstances, Seller will advise that Buyer needs to obtain a license for other third-party software ("Third-party Software") for use in conjunction with the Software. Buyer agrees that the terms and conditions agreed to between Buyer and such Third-party Software vendor, including but not limited to warranties, indemnification and support, shall be solely between Buyer and the Third-party Software vendor, and Seller shall not have any responsibility or liability for such Third-party Software or related royalties or fees arising from Buyer's use of the same.

Seller Products may contain Open Source Software. If Open Source Software is used, upon written request from Buyer, Seller will make available the appropriate Open Source Software as per the applicable Open Source Software license terms. To the extent any license to any Open Source Software requires Seller to provide Buyer the rights to copy, modify, distribute or otherwise use any Open Source Software that are inconsistent with the limited rights granted to Buyer under these Terms and Conditions, then such rights in the applicable Open Source Software license shall take precedence over the rights and restrictions granted under these Terms and Conditions, but solely with respect to such Open Source Software. Buyer acknowledges that unless otherwise required by the applicable Open Source Software license, the use of Open Source Software is subject to the applicable license terms for that Open Source Software component and such license is solely between Buyer and the applicable licensor of the Open Source Software. Buyer shall fully comply with the terms of all applicable Open Source Software licenses, if any. Buyer shall not use any Open Source Software in such a way that would cause the non-Open Source Software portions of the Software to be subject to an Excluded License or any Open Source Software licensing terms and obligations. Buyer acknowledges that the Software includes unpublished software, trade secret and confidential or proprietary information of Seller or its licensors, and any unauthorized disclosure or use thereof may cause irreparable injury to Seller for which damages might be an inadequate remedy, and Seller shall be entitled to seek equitable relief, including injunction, in the event of such breach.

Buyer agrees to inform Seller promptly if it becomes aware of any breach of the Software license and Buyer agrees to enforce the terms of these Terms and Conditions against its customers and, if Seller requires Buyer to do so, to protect its interest, at Seller's request, Buyer shall assign to Seller or its designee the right to enforce these Terms and Conditions. The licenses granted in this Section 17 shall terminate automatically upon Buyer's or End User's breach of any of the terms set forth herein. Upon termination of the Software license resulting from any breach of these Terms and Conditions, Buyer shall discontinue use and destroy or return to Seller all copies of the Software and related documentation and provide Seller written declaration of compliance.

18. **Limitations on Liability. THE WARRANTIES IN SECTION 13 ARE EXCLUSIVE AND ARE MADE ONLY TO BUYER. SELLER MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS AND EXCLUDES ANY REPRESENTATION OR WARRANTY OF**

**MERCHANTABILITY, SATISFACTORY QUALITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE AND ANY REPRESENTATION OR WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE. SELLER'S TOTAL LIABILITY FOR ANY CLAIM OR DAMAGE ARISING OUT OF AND/OR IN CONNECTION WITH THESE TERMS AND CONDITIONS OR THE MANUFACTURE, SALE, DELIVERY OR USE OF THE PRODUCTS OR SERVICES WILL BE LIMITED TO PROVEN DIRECT DAMAGES, NOT TO EXCEED THE TOTAL AMOUNTS PAID BY BUYER TO SELLER PURSUANT TO THESE TERMS AND CONDITIONS IN THE TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE FIRST EVENT (OR SERIES OF EVENTS) GIVING RISE TO LIABILITY. IN NO EVENT WILL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY CLAIM FOR LOSS OF ACTUAL OR ANTICIPATED DATA, USE, REVENUES OR PROFITS. The Products are not specifically designed, tested, manufactured or intended for operation or use in any inherently dangerous, life endangering or life support applications where any failure of the Products could lead to death, personal injury or significant physical or environmental damage (High Risk Activities). If Buyer uses the Products in High Risk Activities, including but not limited to nuclear facilities or the flight, navigation or communication of aircraft, Buyer agrees that neither Seller nor its third party licensors are liable in whole or in part, for any claims or damages arising from such use, and that Buyer shall indemnify and hold Seller and its third party licensors harmless from any and all claims for loss, cost, damage, expense or liability arising out of or in connection with any use of the Products in High Risk Activities. The limitations on liability in these Terms and Conditions, including warranty limitations, shall apply regardless of the form of action, whether in contract, tort, strict liability or otherwise, and whether damages were foreseeable. The limitations of liability in this Section 18 shall survive failure of any exclusive remedies provided in these Terms and Conditions or in Seller's Limited Warranty. Nothing in these Terms and Conditions shall, however, operate to limit or exclude any liability for (a) death and/or personal injury resulting from the negligence of Seller and its employees; (b) fraud or fraudulent misrepresentation; or (iii) any liability which cannot be excluded or limited by mandatory law.**

19. **Remedies for Events of Default.** If Buyer (a) fails to pay any amount due within 30 days of the due date, (b) files a petition in bankruptcy or seeks relief under any bankruptcy, reorganization, insolvency, dissolution, liquidation or similar law of any jurisdiction, or (c) becomes unable to pay or suspends payment of its debts as they become due, or if a court issues an order appointing a receiver, custodian or administrator over all or part of Buyer's assets, Seller may terminate any outstanding purchase order. In addition, without waiving any other available remedies, Seller may: (v) declare immediately due and payable all sums due and to become due under any outstanding purchase order; (w) stop manufacture of any Products for Buyer; (x) stop all shipments in progress and future shipments; (y) stop performance of all Services; and (z) repossess any Products in which Seller has a security or ownership interest.

20. **Waiver of Subrogation.** Each party waives (for itself and its insurance carrier) all its rights of subrogation against the other party and the other party's employees, agents, suppliers and subcontractors to recover damages and losses to the extent such damages or losses are covered by insurance; provided that this provision will have no effect to the extent that it invalidates or otherwise limits the insurance coverage of a party.

21. **Specifications, Tooling and Product Discontinuance.** Seller may change its Product specifications and manufacturing practices at any time without notice to Buyer; provided that such changes do not materially impair the performance of the Products. Seller may also discontinue any Products and/or Services at Seller's sole discretion. Seller will exclusively own all materials and information provided by Seller to Buyer, including, without limitation, specifications, drawings, engineering data and technical designs, and all tools required for production, or engineering advances developed by Seller, or on behalf of Seller, as a result of producing items in a purchase order.

22. **All Sales Final.** Unless otherwise expressly agreed in writing by Seller, all sales are final. No returns will be accepted by Seller without a written authorization to return materials signed by Seller.

23. **Changes; Cancellation. PURCHASE ORDERS ACCEPTED BY SELLER ARE NON-CANCELLABLE AND UNCHANGEABLE BY BUYER. ONCE ACCEPTED BY SELLER, PURCHASE ORDERS REPRESENT A BINDING COMMITMENT TO PAY FOR THE ORDERED PRODUCTS. ACCEPTED PURCHASE ORDERS CANNOT BE UNILATERALLY CANCELLED OR CHANGED BY BUYER,**

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**INCLUDING, WITHOUT LIMITATION, CHANGES RELATED TO QUANTITY AND/OR DELIVERY DATES. IN THE EVENT BUYER ATTEMPTS TO CHANGE OR CANCEL AN ACCEPTED PURCHASE ORDER OR REFUSE ACCEPTANCE OF CONFORMING PRODUCTS OR SERVICES, BUYER WILL REMAIN LIABLE FOR THE TOTAL PRICE OF THE ACCEPTED PURCHASE ORDER.**

24. **No License.** Neither these Terms and Conditions nor the purchase of any Products or Services hereunder shall be construed to confer upon Buyer or its customers any license under any patent or other proprietary rights of Seller, except the right to use such Products or Services for the purposes for which they are sold. Buyer does not acquire any right, title or interest in any tooling, set-up, fitting-up, drawings, design information, or invention or other intellectual property resulting therefrom, which remain the sole property of Seller or its licensors as the case may be (including Third Party Component or Software Provider).

25. **Compliance with Laws; Anti-Corruption and Economic Sanction Regulation.** Buyer will comply with all applicable laws affecting the purchase and use of the Products and/or Services, including, without limitation, any applicable export laws. Buyer will maintain all required licenses, permits and registrations with governmental authorities and agencies, commercial registries, chambers of commerce or other offices. Buyer will dispose of Products in an environmentally responsible manner in accordance with all applicable local laws and regulations.

Each party represents and warrants that it complies with all applicable commercial and public anti-bribery laws, including the U.S. Foreign Corrupt Practices Act of 1977, the UK Bribery Act of 2010, and the French SAPIN II Act of 2016 (collectively "Anti-bribery Laws"), which prohibit offers or payment, or acceptance of anything of value, either directly or indirectly to anyone, including government officials, with corrupt intent to obtain or keep business or to secure any other improper commercial advantage. For the purposes of this clause, "Government officials" include any government employee; candidate for public office; and employee of government-owned or government-controlled companies, public international organizations, and political parties. Furthermore, Seller and Buyer represent and warrant it will respectively not make any facilitation payments, which are payments to induce officials to perform routine functions they are otherwise obligated to perform.

Each party represents and warrants it complies with applicable export control and trade sanction regulations, including those of the United States, United Kingdom, European Union, and its member states, such as the Republic of France (collectively referred to as "Trade Sanctions"). Seller and Buyer acknowledge that the counterparty is subject to Trade Sanctions regulations and represents, warrants and covenants that it will take no action or omit to take any action that would cause the counterparty, directly or indirectly, to violate Trade Sanctions.

25(a). **Data Protection.** To the extent that Seller is deemed to be processing Personal Data at Buyer's direction, Seller will implement appropriate technical and organizational measures to protect Personal Data processed by Seller on behalf of Buyer in connection with these Terms and Conditions in accordance with all applicable data protection laws and any other laws, regulations, or regulatory guidance. "Personal Data" means information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household, or which is so classified under an applicable data privacy law. To the extent Buyer provides Personal Data to Seller for any purpose, Buyer represents and warrants that it has taken all steps legally required under applicable data protection, privacy or related laws, including but not limited to providing notice and/or obtaining individual consent, where legally required, in order to disclose, transfer or otherwise provide such Personal Data to Seller. Upon request, Buyer will furnish to Seller a certificate of compliance regarding the foregoing undertakings. When and as reasonably required by Seller from time to time, Buyer shall execute supplemental data privacy, data protection, and/or data security terms with Seller, as required in Seller's sole reasonable judgment, for compliance with applicable data protection laws.

26. **Buyer's Representations.** Buyer represents and warrants that (i) the Products and/or Services purchased hereunder will not be used, directly or indirectly, to further the illegal theft of services or any other unauthorized receipt, interception, publication, distribution of, or interference with any privately owned transmission of information and (ii) except as otherwise agreed to by the parties under a separate written agreement, Buyer will not act as a reseller of any Products and/or Services provided hereunder.

27. **Set-off.** Buyer may not set-off any amount owing from Seller to Buyer against any amount payable by Buyer to Seller, whether or not related to the same purchase order.

28. **Software Usage Audit.** Seller shall have the right, upon reasonable notice, to audit the Buyer's usage of the Software to ensure compliance with

applicable terms and conditions. Audits will not occur more frequently than once per quarter. Buyer shall provide reasonable assistance and access to information in the course of such audit and shall permit Seller to report the audit results to any applicable third-party licensor. If any audit reveals any underreported, unpaid or unauthorized use of the Software, then Buyer shall promptly pay to Seller the then current fee representing the underreported, unpaid or unauthorized use of the Software, and Buyer will be responsible for the costs and expenses of the inspection and audit if such inspection and audit reveals that the then current fee representing the underreported, unpaid or unauthorized use of the Software is equal to or greater than 5% of the amounts actually paid by Buyer for such Software.

29. **Confidential Information.** Buyer will not disclose any confidential or proprietary information of Seller, including, without limitation, any information regarding pricing of the Products or Services or the other terms and conditions of sale of the Products or Services to Buyer, nor shall Buyer use any such confidential or proprietary information other than in the course of performing its obligations hereunder. Seller retains ownership of all of its confidential and proprietary information and all documentation containing such information. Upon request of Seller, Buyer shall immediately return any such confidential or proprietary information provided, including all copies made by Buyer. In addition, Buyer will not use any of Seller's trademarks, service marks or trade names without the express written consent of Seller.

30. **Media.** Notwithstanding any other provision, neither party may issue any announcement, press release or otherwise make any public statement regarding the existence or terms and conditions of these Terms and Conditions, nor use the other party's name in any advertising or promotional materials or publication or public statement of any kind, without such other party's prior written consent, which will not be unreasonably withheld. Upon request of either party, the other party will cooperate in good faith to develop all public announcement materials as to the timing and contents of any such press release, public announcement, or communication.

31. **No Partnership or Joint Venture.** The parties agree that nothing in these Terms and Conditions will create any agency, employment, partnership, joint venture or fiduciary relationship between Buyer and Seller.

32. **Assignment.** These Terms and Conditions are binding upon, and inure to the benefit of Buyer, Seller and their permitted successors and assigns. Buyer may not assign all or any portion of its rights or obligations hereunder, by operation of law or otherwise, without the prior written consent of Seller. Any attempted assignment without such consent shall be void. Seller may assign, delegate, novate or subcontract any of its rights or obligations, in whole or in part, without Buyer's consent.

33. **Waiver.** Seller's waiver of any breach of any provision contained in these Terms and Conditions will not waive any other breach by Buyer. Seller's delay or failure to enforce its rights under these Terms and Conditions shall not be deemed a waiver of such rights.

34. **Governing Law.** These Terms and Conditions and all matters arising from or related to them, shall be governed by and construed in accordance with the laws of the jurisdictions for the Seller entities set forth in Appendix C, attached hereto, without regard to any choice of law rules or principles. All proceedings relating to or arising out of these Terms and Conditions are subject to the exclusive jurisdiction and venue according to Appendix C. Buyer expressly consents to the personal jurisdiction and venue of the state and federal courts specified in Appendix C and waives any objection to the exercise of personal jurisdiction by these courts. The United Nations Convention on Contracts for the International Sale of Goods will not apply. All shipping and delivery terms specified herein will have the definitions set forth in the Incoterms 2020 published by the International Chamber of Commerce.

35. **Notices.** All notices provided hereunder shall be in writing, sent by express, registered or certified mail, return receipt requested, courier service or personal delivery, or electronic mail, and shall be effective upon receipt or refusal. Notices to Buyer shall be sent to the address listed in the purchase order or other documentation to Seller. Notices to Seller shall be sent to:

Vantiva  
ATTN: Legal Department  
4855 Peachtree Industrial Blvd, Suite 200  
Norcross, Georgia 30092

with a copy to: legal-notices@vantiva.com

36. **Severability.** If any provision of these Terms and Conditions is held to be invalid, illegal, or unenforceable, such provision shall be enforced to the maximum extent permissible so as to effect the intent of the parties, and remainder of these Terms and Conditions shall continue in full force and effect.

37. **Signature.** Neither Buyer nor Seller are required to sign these Terms and Conditions.

## VANTIVA

### TERMS AND CONDITIONS OF SALE

38. **Limitation of Actions – US Buyers Only.** BUYER HEREBY CONSENTS THAT ALL SERVICE OF PROCESS BE MADE BY REGISTERED OR CERTIFIED MAIL DIRECTED TO IT AT ITS ADDRESS SET FORTH ON THE PURCHASE ORDER, QUOTATION, ORDER ACKNOWLEDGMENT OR STATEMENT OF WORK. NOTHING IN THESE TERMS AND CONDITIONS AFFECT THE RIGHT OF SELLER TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING ANY ACTION OR PROCEEDING AGAINST BUYER IN THE COURTS OF ANY OTHER JURISDICTION THAT HAS JURISDICTION OVER BUYER. TO THE EXTENT PERMITTED BY LAW, BUYER WAIVES TRIAL BY JURY AND WAIVES ANY OBJECTION THAT IT MAY HAVE BASED ON LACK OF JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS TO THE CONDUCT OF ANY PROCEEDING ARISING OUT OF OR IN CONNECTION WITH THESE TERMS AND CONDITIONS.

## Appendix A

### Provisions Specific to MediaKind Software and Android Software

**1. Provisions Relating to MediaKind Software.** The provisions set forth in this Section 1 of Appendix A are applicable only to Seller's Set-top Box Products ("STBs") that include MediaKind Software.

(a) **Definitions.** "MediaKind Software" means Mediaram Client and related supporting software (including, but not limited to operating system, conditional access, and drivers) created or owned by Microsoft, Ericsson or MediaKind or each of its affiliates and any related future software. MediaKind Software is not considered Software under these Terms and Conditions.

(b) **Certificate Revocation.** Buyer acknowledges that MediaKind may revoke the MediaKind IPTV CA Certificate and the associated signed Seller CA Certificate. Further, Seller shall, upon MediaKind's request, revoke a Device Certificate: (a) upon MediaKind's or Seller's reasonable knowledge or suspicion of a compromise of the "Private Key" (as defined herein) or a private key associated with such Certificate; or (b) if MediaKind or Seller determines that the Device Certificate was not properly used. Private Key means the private key generated by Seller that is cryptographically related to the public key contained in an OEM CA Certificate and used to sign device certificates. Seller shall have no liability of any kind associated with the expiration or revocation of MediaKind or Seller CA Certificate as set forth herein.

(c) **Supplemental Code.** Buyer acknowledges and agrees that MediaKind may periodically provide required or optional Supplemental Code, as defined herein, to the STBs (including bug fixes, patches and other updates), which Seller shall (if required) or may (if optional) incorporate into the STBs. Supplemental Code is defined as additional or replacement code of any portion of the MediaKind Software as MediaKind may provide from time to time. Any additional license rights or limitations related to the Supplemental Code provided to Buyer by Seller will be described in a letter from Seller to Buyer accompanying the Supplemental Code. In the event that Buyer receives Supplemental Code from MediaKind without express approval from Seller, Seller shall have no liability or obligations for additional license rights, fees or obligations incurred by the Supplemental Code.

The following shall apply to Supplemental Code: (i) The Supplemental Code letter or documentation accompanying the Supplemental Code may have additional or different terms and conditions than under these Terms and Conditions; (ii) If Buyer does not use the Supplemental Code, these additional or different terms and conditions shall not apply to it; and, (iii) If Buyer uses the Supplemental Code, then Buyer shall comply with the additional or different terms and conditions as set forth in the Supplemental Code letter.

(d) **Notices; Injunctions.** Buyer agrees that Seller may provide Buyer with forty-five (45) days prior written notice of MediaKind's recommendation that Buyer should cease use, sale, offer for sale, importation or other disposition or promotion of one or more STBs or trademark(s) due to a claim with respect to the MediaKind Software. Buyer agrees that Buyer shall reimburse Seller for any and all damages, costs, and expenses (including reasonable attorneys' fees) incurred resulting from Buyer conducting any activities contrary to such recommendation after the effective date of such notice.

Without limiting the foregoing, if in connection with a MediaKind Software claim a court enjoins Buyer or Seller from distributing STBs in its inventory and (i) such injunction is not lifted within sixty (60) days; (ii) MediaKind has not procured a license that enables Buyer or Seller to distribute the enjoined MediaKind Software; or (iii) MediaKind has otherwise not modified MediaKind Software to make it non-infringing within such sixty (60) day time period, then such MediaKind Software will no longer be available for incorporation into the STBs under these Terms and Conditions. Seller shall have no liability to Buyer or any third party and shall not be in breach of these Terms and Conditions if it declines to make further shipments of STBs due to an injunction regarding the MediaKind Software. In the event of STB supply discontinuance under this Section 1(d), Buyer shall be responsible for payment for all STBs and accessories previously ordered or forecasted for delivery for the 120 day period following the effective date of such notice.

**2. Provisions Relating to Android Software.** The provisions set forth in this Section 2 of Appendix A are applicable only to Seller's STBs that include Google's Android Software ("Android STB"). All capitalized terms used in this Section 2 of Appendix A but not otherwise defined in these Terms and Conditions shall have the meanings assigned to them in the Google Android Terms available on Seller's website at: <https://www.vantiva.com/hn-google-android-terms/>. Google's Android Software is not considered Software under these Terms and Conditions.

(a) Seller has obtained from Google a license for the Google Applications and hereby grants to Buyer a sub-license of the same as set forth in the Google Android Terms. Buyer's license and use of the Android (which is open source software) shall be subject to Buyer accepting the terms of the Google Android Terms and Android license available at <https://source.android.com/>. The Android STBs are supplied pre-loaded with Android required to run the Google Application.

(b) For any third party application software (e.g., TiVo, Netflix) that Buyer requests and which Seller agrees to load on any Android STB ("Third Party Application Software"), Buyer represents that it has all the rights necessary to grant Supplier the rights to access and load all Third Party Application Software on the Android STB ("Third Party Application Software Rights"). Buyer hereby grants to Supplier, solely for and to the extent necessary for the performance of Supplier's obligations hereunder, all Third Party Application Software Rights, including without limitation the license under Buyer's and its licensors' intellectual property rights to use, make, have made, reproduce import or distribute to Buyer the Third Party Application Software which it has requested Supplier to load and that which Supplier has agreed to load on the Android STB.

(c) Seller will provide mandatory (i.e., made mandatory by Google) updates and upgrades from Google if/when available (unless stated by Google that update/upgrade is not applicable to the specific reference design or product or software) for a period of three (3) years, starting from first certification of the applicable Seller's Android STB by Google. Except as set forth in this Section 2(c) and Google Android Terms, support and maintenance of Android Software or any third party products or software, including any Third Party Application Software is not covered by Seller and outside the scope of these Terms and Conditions.

(d) Solely to the extent licensing terms are altered by Google, Seller may provide further and/or updated licensing terms relating to Android Software, and such terms shall apply upon notification to Buyer. Seller shall have no liability to Buyer or any third party and shall not be in breach of these Terms and Conditions if it declines to make further shipments of Android STBs to the extent due to an injunction regarding the Android Software or Third Party Application Software. In the event of Android STB supply discontinuance under this Section 2(d), Buyer shall be responsible for payment for all Android STBs and accessories previously ordered or forecasted for delivery for the 120 day period following the effective date of such notice.

NOTWITHSTANDING ANY PROVISION IN THESE TERMS AND CONDITIONS OR THIS APPENDIX A TO THE CONTRARY, SELLER MAKES NO WARRANTY REGARDING ANDROID SOFTWARE OR ANY THIRD PARTY SOFTWARE ON THE ANDROID STB AND SHALL HAVE NO LIABILITY WHATSOEVER, INCLUDING ANY INFRINGEMENT CLAIMS, TO THE EXTENT DUE TO THE ANDROID SOFTWARE OR ANY SUCH THIRD PARTY SOFTWARE ON THE ANDROID STB.



Appendix B

Terms Specific to Services

1. Price Adjustments. The price of Services may be adjusted to reasonably reflect the adverse cost impact to Seller of: (i) Buyer changes or delays that are outside of the scope of Services; (ii) legal/regulatory changes that occur after the issuance of a quotation and/or statement of work for the particular Services in question; or (iii) the failure of Buyer to perform its obligations under Sections 2, 3 and 4 of this Appendix B. Seller will provide a written notice and reason for an adjustment to the price within a reasonable period of time after Seller becomes aware of an event under which Seller intends to request an adjustment. The parties will then determine, in a commercially reasonable manner, the price adjustment that is appropriate. Pending such agreement, Seller will continue to perform the Services specified in the purchase order for ten (10) business days or such other greater time that may be agreed to in writing by Seller, unless Buyer fails to pay amounts due to Seller when due, an event specifically identified in the quotation and/or statement of work permitting suspension or termination of the Services occurs, or Buyer is otherwise in breach. In the event an adjustment to the price has not been made within the aforementioned ten (10) business days, Seller shall have the right to terminate the applicable purchase order, in whole or in part and in addition to any other remedy available to Seller, Buyer shall make immediate payment to Seller on account of all Products delivered and/or Services rendered.

2. Schedule for Performance of Services. Seller will perform the Services in accordance with the schedule stated in a quotation and/or statement of work. Seller shall select the method of performance of the Services, including without limitation the right, in its sole discretion, to use agents or subcontractors to perform the Services to be rendered. Both parties agree to adhere to the schedule; however, each party will give due consideration to any reasonable proposal by the other party regarding changes in the schedule which, if agreed upon, will be recorded in a written modification to the applicable purchase order or statement of work. Dates for performance of Services are estimated by Seller in good faith but not guaranteed by Seller. Except as otherwise set forth in a quotation and/or statement of work, Seller will have unrestricted access to Buyer's site and any other locations at which Services are to be performed at all times (including overtime hours, Saturdays, Sundays and holidays) for the purpose of performing the Services.

3. Site Preparation and Condition for Services. Buyer will be responsible for preparation of the site at which Seller will perform the Services, to the specifications and in accordance with the time schedule stated in a quotation and/or statement of work. Buyer warrants to Seller that each such site is in compliance with all applicable health and safety regulations and is free from all friable asbestos and hazardous contamination or pollutants, as further provided in Section 4 below.

4. Hazardous Materials. Prior to the date specified in a quotation and/or statement of work for the performance of Service, Buyer will take any and all steps needed to assure that each site is free from all friable asbestos and hazardous contamination or pollutants. If contamination is found to be present at a site, Seller will have no further obligations under any quotation and/or statement of work (other than with respect to any software licenses or confidentiality obligations), until such contamination is removed.

5. Prior to the date specified in a quotation and/or statement of work for the performance of Service, Buyer will (i) obtain and pay for all governmental or third party consents, permits, approvals, licenses and public and private easements necessary for Supplier's unrestricted access to any site or location needed for performance of the Services; and (ii) will notify Seller in advance of any requirements including all local laws, regulations, ordinances and the like to which Seller is or will be required to comply in the rendering of Services hereunder.

Appendix C

Governing Law, Jurisdiction and Venue

<b>SELLER ENTITY</b>	<b>GOVERNING LAW</b>	<b>JURISDICTION AND VENUE</b>
Seller Entities in the Americas, except Mexico and Brazil	Georgia (U.S.)	Federal and State courts in Atlanta, Fulton County, Georgia (U.S.)
Seller Entities in Brazil.	Brazil	Federal and State courts in São Paulo, Brazil
Seller Entities in Mexico	Mexico	Mexico City, Mexico
Seller Entities in Europe	France	Commercial Courts of Paris, France
Seller Entities in India	Tamil Nadu (India)	Courts located in Chennai, Tamil Nadu (India)
Seller Entities in East Asia	Singapore	Courts located in Singapore
Seller Entities in Australia	New South Wales	Courts located in Sydney



Country Specific Terms

**The Terms and Conditions of Sale apply to all regions or countries, except that the following terms shall replace, supplement or modify Terms and Conditions of Sales where a Buyer makes purchase and takes delivery wholly within the identified country or location below. All Terms and Conditions of Sale that are not modified by these country unique terms shall remain in effect.**

**AUSTRALIA**

**1. Implied Warranties**

To the extent permitted by law and except as otherwise expressly set out in these Standard Terms and Conditions:

- a. any warranty that would otherwise be implied in connection with these Standard Terms and Condition is excluded; and
- b. Buyer acknowledges that, to the extent permitted by law, Seller excludes implied conditions and warranties and limits liability to the Buyer and end user in accordance with the terms of the Standard Terms and Conditions of Sale (to the extent permitted by law) to replacement, repair or re-supply of the Products or Services (or payment of the cost of the same).

2. **GST.** All prices are exclusive of GST. If a party makes a taxable supply in connection with these Terms and Conditions for a consideration which represents value then the party liable to pay for the taxable supply must also pay, at the same time and in the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply. A party's right to payment under this clause is subject to a tax invoice being delivered to the party liable to pay for the taxable supply. Expressions used in this Section have the same meaning as those expressions defined in the *A New Tax System (Goods and Services Tax) Act 1999* (as amended)

**COUNTRIES IN EUROPE, THE MIDDLE EAST AND AFRICA**

1. **Section 17 Software License** the following supplementary terms apply:

If Buyer believes that it has a right to exercise any rights under Article 6.1 (b) of the EC Directive on the Legal Protection of Software (Directive 19/250), or any successor or similar law, Buyer shall give reasonable notice to Seller before attempting to exercise any such right

2. **Section 25(a) Data Protection** shall be deleted in its entirety and unless otherwise agreed in writing, replaced as follows:

**25(a). Data Protection**

**25(a)(i).** To the extent that Seller is deemed to be processing Personal Data at Buyer's direction, Seller will implement appropriate technical and organizational measures to protect Personal Data processed by Seller on behalf of Buyer in connection with these Terms and Conditions in accordance with all applicable data protection laws including Regulation (EU) 2016/679 and any other laws, regulations, or regulatory guidance (as amended and/or replaced from time to time), ("**Data Protection Laws**"). "**Personal Data**" means information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household, or which is so classified under an applicable Data Protection Laws. The details of the Personal Data and its processing are set out in the Data Privacy Schedule attached hereto. The parties may update the Data Privacy Schedule or add new schedules from time to time by agreement in writing. Seller will not process Personal Data except as necessary for the purposes of these Terms and Conditions and only in accordance with Buyer's written instructions. Seller shall immediately notify the Buyer if, in Seller's opinion, any instruction or direction from the Buyer infringes Data Protection Laws. Following this notification, Seller shall continue processing according to such direction or instruction except to the extent the Buyer withdraws or amends such direction or instruction. In the absence of such a written withdrawal or amendment of the direction or instruction, Buyer agrees to indemnify Seller on demand against all losses that Seller may suffer as a consequence of continuing such processing, including without limitation losses arising from regulatory action or from claims made by data subjects. At Buyer's request, Seller will provide support requested by the Buyer in fulfilling its obligations subject to reimbursement of reasonable costs incurred.

**25(a)(ii).** Buyer hereby provides a general authorization for Seller to subcontract the processing of any Personal Data. Seller shall notify Buyer of any intended changes concerning the addition or replacement of sub-processors as soon as possible and where practicable in advance of the change taking place. Buyer may object to the intended change within thirty (30) days of the notification from Seller, and where it does so object, the specific impacted services shall be terminable for convenience in accordance with these Terms and Conditions. For the avoidance of doubt, if Seller engages a sub-processor, Seller remains liable to the Buyer for the performance of the sub-processor's obligations under Data Protection Laws or any acts or omissions of the sub-processor. Buyer consents to the sub-processors and processing specified in the Data Privacy Schedule attached hereto.

**25(a)(iii).** Seller shall promptly notify Buyer of any actual or suspected breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data. Seller shall provide reasonable co-operation with any investigation regarding the breach and take all necessary measures to limit further unauthorized disclosure of or unauthorized processing of Personal Data subject to reimbursement of reasonable costs incurred.

**25(a)(iv).** Upon request, on a confidential basis, and no more than one (1) time in any twelve (12) month period (or more frequently if required with regard to a regulatory audit or investigation), Seller will make information available to Buyer to demonstrate its compliance with this Section and shall permit and assist with audits, including on-site inspections of Seller's business premises or processing facilities, conducted by Buyer or a third party to assess Seller's compliance with this Section. Except as provided otherwise by law, upon termination of these Terms and Conditions, Seller will, at Buyer's option, immediately delete or return all Personal Data.

**25(a)(v).** Personal Data shall only be transferred outside the European Economic Area where Seller puts in place appropriate safeguards for the protection of the Personal Data, or where permitted by Data Protection Laws. Buyer hereby approves the use of the standard contractual clauses set forth in the EU Commission Decision EU Commission Decision 2021/914 of 4 June 2021 on Standard Contractual Clauses (SCC) for the transfer of Personal Data to processors established in third countries under Regulation (EU) 2016/679 or the then-current standard contractual clauses ("**Model Contract Clauses**") as a legally enforceable mechanism for transfers of Personal Data and hereby appoints Seller as its agent for the sole purpose of Seller entering into any such Model Contract Clauses with a relevant data importer in the name and on behalf of Buyer as the relevant data exporter, provided that Seller shall not modify, vary, supplement or disapply any of the Model Contract Clauses without Buyer's prior written approval. Notwithstanding the foregoing, the Buyer agrees that Seller is authorized to enter into Model Contract Clauses on Buyer's behalf which include indemnification provisions equivalent to those set out in Section 25(a)(vi) below. Notwithstanding any other provision of these Terms and Conditions or the Model Contract Clauses, Buyer undertakes not to make a claim against any signatory of the Model Contract Clauses for any liability, fines, damage or loss which would not be recoverable from Seller under these Terms and Conditions.

**25(a)(vi).** Seller shall indemnify, defend and hold Buyer harmless from any fines imposed on Buyer by a data protection regulator and damages finally awarded against Buyer by a court of competent jurisdiction (together "**Data Protection Losses**"), in both cases solely to the extent such Data Protection Losses arise from or are connected with Seller's breach of the Data Protection Laws in connection with the processing of Personal Data under these Terms and Conditions. Indemnification is contingent on: (i) Buyer promptly notifying Seller of the claim, regulatory investigation or enquiry which may result or has resulted in the Personal Data Protection Losses ("**Proceedings**"); (ii) Seller having sole control of the defense and settlement of any such Proceedings; (iii) Buyer not making any admission of liability in respect of such Proceedings, or settling such Proceedings without the prior written approval of Seller; and (iv) Buyer providing reasonable co-operation and assistance to Seller in defense of such Proceedings. Seller's

## Appendix D

liability under this indemnity shall be limited to the price actually received or receivable by Seller for the services provided by Seller which the Proceedings determine caused the Data Protection Losses minus, for the avoidance of doubt, any damages or losses that Seller or any member of the Seller group has paid to the Buyer in respect of all liability, fines, damage or loss suffered by the Buyer arising from or in connection with this Section 25(a). Buyer acknowledges that the indemnity provided pursuant to this Section 25(a)(vi) represents its sole and exclusive remedy in relation to liability, fines, damage or loss arising from or connected with this Section 25(a) or any breach of Data Protection Laws by Seller.

**25(a)(vii).** Buyer acknowledges that Seller is not responsible for the design or functionality of third party software or firmware, the output or results of such software or firmware, or for conducting any processing of personal data using such software or firmware, unless expressly agreed otherwise in writing by Seller.

### **DATA PRIVACY SCHEDULE**

#### **Subject-Matter of the Processing**

Service(s) procured by Buyer from Seller pursuant to these Terms and Conditions, which could include support services, maintenance services, professional services, and other services requested by Buyer. Processing could involve some/all of the following:

Collection, transfer, storage, analysis, reporting, data provisioning services, application / equipment / network configuration services, technical support, engineering troubleshooting activities, application / equipment / network maintenance and management, processing in accordance with Buyer's instructions, deletion, incidental access to data, search, display in user interface functionality.

#### **Duration of the Processing**

The term of the relevant service(s) as specified in these Terms and Conditions or Purchase Orders placed hereunder.

#### **Nature and Purpose of the Processing**

As further described in these Terms and Conditions, Purchase Orders placed hereunder and/or the relevant service description.

#### **Type of Data**

Various categories of personal data within and in relation to Buyer's equipment and services to which access is provided for the purpose of delivering the relevant service(s) procured from Seller. This could include but is not limited to some/all of the following (to the extent that they are considered to be personal data under applicable Data Protection Laws):

- Equipment MAC addresses, IP addresses
- Names, addresses, postal codes, country, phone numbers, latitude and longitude of location of subscriber equipment, service (location) identification references, subscriber/customer identification references, equipment serial number, service priority details.

#### **Special Categories of Data (if relevant)**

The processing of special categories of data is not anticipated.

#### **Categories of Data Subjects**

Subscribers to / customers of / users of services and products supplied by Buyer and/or Seller.

#### **Sub-Processors (including Country of Processing)**

Information about sub-processors, including their functions and locations, is available upon request at [privacy@vantiva.com](mailto:privacy@vantiva.com).