NxtPort – General Terms and Conditions for the ECLIC Community

1 Applicability

1.1 Description

These general terms and conditions (the "***General Terms and Conditions***") describe the terms and conditions pursuant to which a ***Subscriber*** can make use of the *Platform* and/or procure other services from NxtPort. The use of the Platform, the *NxtPort* and/or ECLIC *API's* by such Subscriber and other services rendered by NxtPort shall be governed by the (i) Subscription Order Form, (ii) the General Terms and Conditions (and its Annexes), (iii) the API Terms and Conditions, *i.e.* the terms and conditions applicable to that specific *NxtPort and/or ECLIC API's* as made available through the Platform and (iv) the Data Sharing Rules which are attached as annex to the API Terms and Conditions. These documents (as well as any documents referenced therein) shall hereinafter be referred to as the "***Terms and Conditions***" or "**Agreement**".

In the event of a conflict between the various contractual documents the following order of precedence shall apply, unless expressly provided otherwise: (i) the Data Sharing Rules, (ii) API Terms aan Conditions, (iii) the Annexes to the General Terms and Conditions, (iv) the Subscription Order Form and (v) General Terms and Conditions.

1.2 Entity Qualification

For the avoidance of doubt, each Subscriber may, at the same time qualify as *Data Provider*, *Data User* and/or *ISSV*. In such case, all relevant provisions will apply.

1.3 Operations

The *Platform* is operated and managed by **NxtPort CVBA**, registered with the Crossroads Bank of Enterprises under company and VAT number BE 0429.672.881 and having its registered office at Brouwersvliet 33, Box 8, 2000 Antwerp (Belgium) ("***NxtPort***").

1.4 Subscribers

By accepting these Terms and Conditions, the Parties accept that the general terms and conditions of the *Subscriber*s or other terms of NxtPort (*e.g.* invoice terms) are not applicable and are therefore explicitly excluded, even if such general terms and conditions and/or invoice terms would contain a similar clause.

Prior to registration via the Subscription Order Form or login in to the Platform, the *Subscriber*s have been informed of the *Terms and Conditions* and have accepted all provisions thereof. By accessing the Platform, the Subscribers accept the Terms and Conditions. *NxtPort* reserves the right to modify the *Terms and Conditions* at any time. Such changes will only occur after agreement between ECLIC and NxtPort via the governance model set out in the Partner Agreement made and entered into between NxtPort and ECLIC. Any such amendments or changes will, unless otherwise agreed, be effective immediately upon *NxtPort* making such changes available on the *Platform*. If any changes are made to the *Terms and Conditions*, such changes will (a) only be applied prospectively and (b) not be specifically directed against a specific *Subscriber* but will apply to all similarly situated *Subscriber*s using the *Platform*. Each *Subscriber* may terminate the *Terms and Conditions* upon written notice to *NxtPort* if any change to the *Terms and Conditions* is unacceptable to such *Party*, within a period of one (1) month following the notice of the amendment.

2 Definitions

The following definitions shall apply to the *Terms and Conditions*, unless the context necessarily requires otherwise:

*"**Account**"* means the personal *Account* of the *Authorized User* which enables access to and use of the *Platform*;

"**Affiliates**" means any entity controlling or controlled by or under common control with a Party, where "control" is defined as the ownership of more than 50% of the equity or other voting interests of such entity or the power to direct or cause the direction of the management or policies of such entity, whether through ownership, voting securities, contract or otherwise.

"**API"** means an application programming interface, a set of clearly defined methods of communication, to interact with the Platform and to provide, obtain or process Data;

*"**Application"*** means a software application developed by NxtPort, an ISSV or Subscriber, using one or more APIs interacting with the Platform;

"**Article**" means an *Article* of these *Terms and Conditions*;

"**Authorized User**" means the *user* who has the right to see a specific set of *Data* available on the *Platform* pursuant to the applicable *Data Sharing Rules linked to a specific Subscriber*;

"**Data**" means any content uploaded and shared on the Platform, regardless of the method of upload or sharing, or whether the Data was the result of an upload, the combination with other Data or enrichment of the Data by NxtPort, the Subscriber or an Authorized User;

*"**Data Controller"*** or *"**controller"*** means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by European Union or Member State law, the *controller* or the specific criteria for its nomination may be provided for by European Union or Member State law;

*"**Data Processor"*** or *"**processor"*** means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the *controller*;

"**Data Provider**" means the entity which shall provide *Data* directly or through an ISSV and/or other intermediaries to be made available on or processed through the *Platform*;

*"**Data Sharing Rules**"* means the unambiguous and clear sharing rules applicable to the *Data* as described in *Article 4.1* and which will be (i) attached as an Annex to the relevant API Terms and Conditions or (ii) defined by ECLIC or the Data Provider, through the Platform

"**Data User**" means the entity which shall be able to make use of specified *Data* directly or through an ISSV and/or other intermediaries;

"**Data Vault**" means a Subcriber specific Data set, owned by the Subscriber (or its licensors) that might contain Subcriber specific Data including histrorical transactional records, of which the use is traceable through the Platform;

"**ECLIC**" means ECLIC vzw, with registered seat at Boulevard Auguste Reyers 80, 1030 Brussels, Belgium;

"*Fees*" shall mean the amounts payable, if any, by the Subscribers, consisting of a subscription fee, a data fee and/or a transactional fee, in accordance with the Terms and Conditions and as further detailed in the Order Subscription Form, eECD API Terms and Conditions and/or the Platform;

"**Force Majeure Event"** means any event beyond the reasonable control of either Party preventing it from performing any of its obligations under this Agreement caused by flood, earthquake, storm, lightning, war or terrorist attack, provided that: (a) no Force Majeure Event shall be considered to occur if it arises as a result of the affected Party's failure to take reasonable care, (b) neither lack of funds, nor a default or misconduct by any Subcontractor shall be a cause beyond reasonable control of the Supplier unless caused by events or circumstances which are themselves a Force Majeure Event; (c) mere shortage of labour, materials, equipment or supplies shall not constitute a cause beyond reasonable control of a Party, unless caused by events or circumstances which are themselves a Force Majeure Event; and (d) strikes, lock-outs or other industrial disputes involving the work force of the Party so prevented or of any Subcontractors or suppliers shall not constitute a Force Majeure Event

"Good Industry Practices" means the a reasonable degree of skill, care, prudence, efficiency, foresight and timeliness which would be expected from a suitably skilled, trained and experienced person providing similar services to the Services to a customer similar to the Subscriber.

"*Intellectual Property Rights*" or "*IPR*" means any and all now known or hereafter existing
- (i) rights associated with works of authorship, including but not limited to copyrights, copyrightable works (and moral rights;
- (ii) trademarks, trade dress, trade names, or corporate names;
- (iii) trade secret rights;
- (iv) patents, patent disclosures, and inventions (whether patentable or not) know-how and industrial property rights;
- (v) logos, layout design rights, design rights and other proprietary rights of every kind and nature other than trademarks, service marks, trade dress, and similar rights; whether registered or not;
- (vi) database rights; and
- (vii) all registrations, applications, renewals, extensions, or reissues of the foregoing, in each case in any jurisdiction throughout the world;

"*Independant Software and/or Service Vendor*" or "*ISSV*" means a Subscriber, who develops one or more Applications on the Platform and/or who uses and/or provides certain Data on behalf of a Data User and/or Data Provider;

"*Party*" and "*Parties*" means *NxtPort* and/or one or all of the *Subscriber*s, as applicable;

"**Personal Data**" means any information relating to an identified or identifiable natural person; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as (but not limited to) a name, an identification number, location *Data*, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;

"**Platform**"means *NxtPort's Data* Sharing *Platform* which will collect, store, pool and exchange *Data* from a multitude of sources and various stages in the supply chain targeting the ports and logistics sector as described in Article 3;

"**Platform Services**" means the provision of the Platform in accordance with the provisions of this Agreement, the related software-as-a-services relating to specific NxtPort and ECLIC APIs, and the related Support Services in accordance with the SLA;

"**Professional Services**" means any professional services provided by NxtPort (or its subcontractors) pursuant to this Agreement in accordance with art. 6.2;

"*Services*" means the provision of the Platform in accordance with the provisions of this Agreement, the related software-as-a-services relating to specific NxtPort and ECLIC APIs, and the related Support Services in accordance with the SLA, and any additional professional services, as applicable;

"*Service Level Agreement*" *or* "*SLA*" means the service level agreement as agreed to, from time to time, between ECLIC and NxtPort and applicable to the Platform Services;

"**Subscriber**" means the *Data Provider*, *Data User* and *ISSV* who shall make use of the *Services* and to which the *Terms and Conditions* shall be applicable;

"**Subscription Order Form**" means the ordering document which is subject to these General Terms and Conditions and, as the case may be, Specific API Terms and Conditions which are necessary to get access to the Platform and/or specific API and which sets out the Platform Services which will be provided to the Subscriber and/or Authorized User(s).

"**Support Services**" means any error corrections, updates and upgrades or other maintenance services that NxtPort may provide or perform with respect to the Platform and Application, as well as any other support or training services provided to the Subscriber under these Terms and Conditions, all as described in the SLA;

"**Technical Partner**" means any technology provider or service provider engaged by *NxtPort* for the further development or support of the *Platform*;

3 Description of the *Platform*

NxtPort has developed the Platform on which *NxtPort* and *Data Provider*s may make certain *Data* available. Within the limits of this Agreement, *Data User*s and *ISSVs* shall have access to such *Data* through the *Platform*, the APIs and the Services.

It is agreed that, unless and until a Data Provider has accepted a specific set of API Specific Terms and applicable Data Sharing Rules, no Data of the Subscriber will be shared with any Authorised User.

The purpose of the *Platform* is to share the *Data* with other *Subscribers* who may themselves store such *Data* beyond *NxtPort*'s control. Such *Subscribers* will be fully liable for compliance with the *Terms and Conditions*.

4   Licenses

4.1   *License by Subscriber*

Data Vault. By uploading, creating or otherwise providing information or *Data* on the *Platform*, *Subscriber* grants to *NxtPort* a worldwide, non-exclusive, non-transferable and non-sublicensable license which is limited to store the Data in the Data Vault. Notwithstanding any further license pursuant to the Article below, NxtPort will not be entitled to disclose, share or use the Data in the Data Vault for purposes other than for data quality assurance activities on the Data.

Data Sharing. Subject to the conclusion of API Terms and Conditions, *Subscriber* grants to *NxtPort* a worldwide, non-exclusive, non-transferable and non-sublicensable license which is limited to:

(i)   make the *Data* available to *Authorized Users* of other subscribers, in strict compliance with the instructions made available by the Subscriber through the *Platform Services* (the "**Data Sharing Rules**"), who will (subject to payment of a *Fee*, if any) be granted the right to copy, share within their organization, create derivatives from, make commercial use of and display specified *Data*, all in strict accordance with (i) the *Data Sharing Rules* (which may impose additional restrictions to these rights) and (ii) in accordance with the applicable confidentiality obligations pursuant to these Terms and Conditions*.*

The Parties may agree to different Data Sharing Rules for specific uses cases. These different Data Sharing Rules will be attached to the relevant API Terms and Conditions. The Parties accept and acknowledge that for ECLIC API's the Data Sharing Rules will be agreed upon between ECLIC and NxtPort;

(ii)   ameliorate or enrich the *Data* in an identifiable manner through the *Platform Services* to the extent necessary to provide the *Platform Services* in strict accordance with the *Data Sharing Rules.* For avoidance of doubt, the Data Sharing Rules may impose restrictions on such amelioriation and/or enrichment of the Data.

The license provided by the *Subscriber* does not prevent the *Subscribe*r from providing such *Data* to any other party. Unless explicitly agreed upon between Subscriber and NxtPort, in no event will NxtPort be entitled to use any of the Data for business or commercial intelligence.

NxtPort is not allowed to use the *Data* in a manner not authorized by *Subscriber*. *NxtPort* shall use the *Data* solely in full compliance with (i) the *Data Sharing Rules* and (iii) any applicable legislation, rules or regulations.

Unless otherwise agreed upon in the relevant API Terms and Conditions and/or Data Sharing Rules *NxtPort* will delete any and all Data provided by the Data Provider promptly upon request from the Data Provider

from its Data Vault and, unless otherwise provided for in the API Terms and Conditions from disclosure through the relevant NxtPort and/or ECLIC APIs. *Subscriber* acknowledges that to be entitled to participate in certain *NxtPort and/or ECLIC APIs* it may be required to provide certain *Data*. This will be clearly set out in the applicable *API Terms and Conditions*.

ISSV Applications. By uploading, creating or otherwise distributing an *Application* on the *Platform*, the *Subscriber* grants *NxtPort* a worldwide, non-exclusive, non-transferable and non-sublicensable license which is limited to:

(i) Use, perform, make available, display to the public, reproduce and distribute the *Application* in accordance with the instructions given by the Subscriber through the *Platform Services* and use *Subscriber*'s name, likeness or brand (which include all of *Subscriber*'s trademarks, services marks, logos, brand names or trade names ("**Marks**")) to the extent it is incorporated into the *Application*, all solely to the extent required for the distribution of the *Application* on the *Platform Services* to *Subscribers*;

(ii) use, copy, store, modify, transmit and display such *Application* to the extent necessary to provide the Platform Services and maintain the *Platform*;

(iii) sublicense the foregoing rights to *NxtPort* Affiliates, *Technical Partners*, or any third parties working with *NxtPort* as development partners, hosting facilities and in similar capacities, solely in order to enable them to perform their services for *NxtPort* and only in so far, those services are necessary for the provision of the Platform Services and maintenance of the *Platform*.

4.2 *License by NxtPort*

Data Provision. *NxtPort* shall grant *Subscriber* a worldwide, limited, non-exclusive, non-transferable, limited sublicensable (as set out in this *Article*) license to use, modify, upload, access and view its *Data* and the *Platform Services* in accordance with these Terms and Conditions.

Data Usage. *NxtPor*t shall grant the *Subscriber* a worldwide, limited, non-exclusive, non-transferable, personal license to copy the *Data*, create derivative works from the *Data*, and to sublicense and distribute commercial products developed by or on behalf of the *Subscriber* incorporating the *Data* in accordance with the *Terms and Conditions* and in strict accordance with and as permitted under the applicable *Data Sharing Rules*. For avoidance of doubt, commercial use of the Data of other Subscribers under the eECD API is not allowed.

App development. *NxtPor*t grants *Subscribe*r a limited, non-exclusive, non-transferable, non-sublicensable license to use the *Platform Services* to (i) develop and distribute *Applications* in accordance with these *Terms and Condition or* (ii) provide additional services on the *Platform* on behalf of one or more *Data Providers or Data Users*. The *ISSV* warrants to only allow use of the *Data* in accordance with the respective applicable *Data Sharing Rules* and solely on behalf of one or more specific Data Users or Data Providers. *Subscriber* may sub-license this license to any third party working with *Subscriber* as development partners and in similar capacities, solely in order to enable them to perform their services for *Subscriber* and only in so far, those services are necessary for the development, creation of derivative works and commercial products on behalf of *Subscribe*r in accordance with these *Terms and Conditions*. If the *Subscriber* grants any rights, pursuant to this Section to third parties with respect to the Platfrom,

such third parties will be bound by this *Terms and Conditions* and the *Subscriber* agrees to be jointly and severally liable for any actions of such third parties related to their use of the *Services*.

Restrictions on use. The Subscriber agrees to use the Services, and procures that each Authorised User will use the Services and its Account only for its intended use as set forth in these Terms and Conditions. Within the limits of the applicable law, Subscriber is not permitted, unless explicitly allowed on the Services, to

(i)   adapt, alter, translate or modify in any manner the Services;

(ii)   decompile, reverse engineer, disassemble, or otherwise derive or determine or attempt to derive or determine the source code of the Services, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation;

(iii)   use or copy the Services except as expressly allowed under this Article 4;

(iv)   gain unauthorized access to Accounts of other Authorized Users or use the Services or its Account to conduct or promote any illegal activities;

(v)   use the Services or its Account to generate unsolicited email advertisements or spam;

(vi)   use the Data for any illegal activities;

(vii)   use the Data through a specific API for any other purposes than the intended purpose of such API as set out in the API Terms and Conditions and relevant Data Sharing Rules;

(vii)   impersonate any person or entity, or otherwise misrepresent its affiliation with a person or entity;

(viii) use any high volume automatic, electronic or manual process to access, search or harvest information from the Services other than through the documented use of the NxtPort and/or ECLIC APIs;

(ix)   alter, remove, or obscure any copyright notice, digital watermarks, proprietary legends or other notice included in the Services;

(x)   intentionally distribute any worms, Trojan horses, corrupted files, or other items of a destructive or deceptive nature or use the Services or its Account for any unlawful, invasive, infringing, defamatory or fraudulent purpose; or

(xi)   remove or in any manner circumvent any technical or other protective measures on the Services.

The *Subscriber* is not allowed to use the *Services* in a manner not authorized by *NxtPort* and these *Terms and Conditions*. *Subscriber* shall use the *Services* solely in full compliance with (i) these Terms and Conditions, (ii) any additional written instructions or policies issued by *NxtPort*, including, but not limited to, those posted within the Platform to the extent that these are clearly visible and accessible and (iii) any applicable legislation, rules or regulations.

No implied licenses. Except as expressly set forth herein, no express or implied license or right of any kind is granted to the *Subscriber* regarding the *Services* or its *Account* thereof, including but not limited to any right to obtain possession of any source code, *Data* or other technical material relating to the *Services*.

Accounts. The Subscriber shall receive certain Account information from NxtPort to be able to access its Account on the Platform Services and shall be free to set up Account communities within its own Account

to register Authorized Users (i.e. employees, contractors, consultants or professional advisers of the Subscriber (or of its Affiliates, in accordance with the section 'Sublicensing to Affiliates' below). The Subscriber shall be liable for any breaches by its Authorized Users of the terms and conditions of these Terms and Conditions. The Subscriber shall be solely responsible for all access to and use of the Platform Services and its Account through its Account details and passwords.

Sublicensing to Affiliates. Subscriber may sub-license the licenses provided for in this Article to its Affiliates, by registering such Affiliates in the Platform Services. By registering such Affiliates, Subscriber warrants that it has the authority to bind such Affiliates. If the Subscriber grants any rights, pursuant to this Section, to Affiliates with respect to the Platform Services, such Affiliates will be bound by these Terms and Conditions and the Subscriber agrees to be jointly and severally liable for any actions of such Affiliates related to their use of the Platform Services and the Data.

5 Information Security

5.1 Information security

Throughout the term*, NxtPort* shall adopt and use appropriate technical and organizational safeguards, in accordance with the instructions as set out on the *Platform Services*, to preserve the confidentiality, integrity and availability of the *Data* and to prevent accidental, unlawful or unauthorized access, use, destruction, loss, alteration, disclosure or transfer of such Data, other than as permitted by the *Terms and Conditions*, or as required by law.

Detailed controls for how *NxtPort* handles and secures the *Data* are available on the Information Security Policy page of the *NxtPort* platform. The current version of the Information Security Policy is attached to these General Terms and Conditions as Annex 1 . NxtPort shall maintain complete and accurate records of the controls that it has in place. As a minimum NxtPort shall:

- Be by the end of Q4 2019 be compliant with ISO27001 and by the end of Q1 2020 be certified as compliant. NxtPort will provide, upon completion and upon reasonable request by Subscriber, any and all policies applicable to the Subcriber.
- Align its operationws with Open Web Application Security Project (OWASP) to prevent the occurrence of internal or external attacks on Subscriber's systems and NxtPort's systems, including hacking, denial of service, phishing and similar phenomena. In this respect NxtPort shall be solely responsible for the information technology infrastructure, including all computers, software, databases, electronic systems (including database management systems), and networks used by or for NxtPort to access the Subscriber's systems. NxtPort shall share any relevant documentation on the measures taken by NxtPort in this regard no later than at the beginning of Q2 2019.
- perform network and application penetration testing in the course of 2019. NxtPort will use best efforts to resolve any vulnerabilities discovered during the black box penetration testing
- Take all reasonable measures to:
    - Prevent: (a) Subscribers from having unauthorized access to the data of NxtPort's other customer or such other customer's users of the Services, (b) Subscriber's Confidential

Information from being commingled with or contaminated by the data of other NxtPort customers or third parties (and vice versa); and (c) unauthorized access to any of Data;

- o Periodically test its systems for potential areas where such security could be breached;
- o Immediately report to Subscriber any breach of security or unauthorized access to Data and/or other Confidential Information that NxtPort detects or becomes aware of and remedy such breach of security or unauthorized access as soon as possible and deliver to the Subscriber a root cause assessment and future incident mitigation plan.
- o Refrain from notifying, for or on behalf of Subscriber, any regulatory authority of any such security breach or unauthorized access unless Subscriber specifically requests in writing NxtPortl to do so, and when otherwise required by the applicable law.

5.2 Business continuity

NxtPort shall ensure that at all times it has in place an appropriate business continuity and disaster recovery plan for its business which will ensure the continued performance and operational resilience of the Platform Services by means of back- up and recovery facilities and services.

The business continuity and disaster recovery plan shall:

- be developed and updated from time to time in accordance with Good Industry Practices. NxtPort shall promptly provide the Subscriber with a copy of such plan as updated from time to time;
- if required by the Subscriber, explain how the procedures set out in it will interfere with any business continuity and disaster recovery plans and procedures of the Subscriber notified to NxtPort from time to time.

If Subscriber considers (on reasonable grounds) that NxtPort's business continuity and disaster recovery plan is insufficient to ensure the continued performance and operational resilience of the Platform Services , then Subscriber shall inform NxtPort and ECLIC thereof. NxtPort and ECLIC shall discuss whether NxtPort needs to modify its business continuity and disaster recovery plan to cure such insufficiency or failure via the governance. NxtPort will inform Subscriber of any progress in this regard.

5.3 Data Backup

NxtPort has build high availability into the Platform and API's by co-locating compute, storage, networking and data resources in multiple availability zones in Microsoft Azure.

Availability Zones is a high-availability offering that protects applications and data from datacenter failures. Availability Zones are unique physical locations within an Azure region. Each zone is made up of one or more datacenters equipped with independent power, cooling, and networking.

A complete overview of the high-availability architecture, as well as recovery plans in case of an emergency will be made available in Q4 2019.

6 Services

6.1 Service Level Agreement – Support Services

During the Term, NxtPort will provide the Support Services in accordance with the Service Level Agreement. NxtPort does not warrant that the services will be available all the time. *NxtPort* strives to keep the *Platform Services* up and running; however, all online services suffer occasional disruptions and

outages. Any service levels, maintenance and support provided by *NxtPort* shall be provided in accordance with the Annex 2 (*NxtPort Service Level Agreement*). The *Subscriber*s acknowledge and agree that there are risks inherent to transmitting information over and storing information on the internet and that *NxtPort* is not responsible and cannot be held liable for any loss or corruption of *Subscribers*' *Data* which result from a failure of the Subscriber to have and maintain a stable internet connection.

6.2   Professional Services

Any professional services (other than the provisioning of the Platform Services), (the "**Professional Services**") will be rendered by NxtPort with the required care based on an offer provided to the Subscriber. Art. 7 (*Payment Terms*), 8 (*Confidential Information*), 9 (*Data Protection*), 10 (*Intellectual Property Rights*), 11 (*NxtPort's rights and obligations*), 13 (*Liability*) through 16 (*Term and termination*) are applicable to these Professional Services.

Professional Services will be provided in accordance with Good Industry Practices and NxtPort will timely make available sufficient qualified and skilled personnel to perform these Professional Services.

Unless otherwise agreed between the Parties in writing, the Subscriber is granted a personal, restricted, worldwide license on the deliverables provided in the course of the Professional Services (the "**Deliverables**") for the full duration of the underlying Intellectual Property Rights, for use in its internal business.

7   Payment terms

7.1   Platform Fees

Unless otherwise agreed upon between Subscriber, NxtPort (and ECLIC concerning the ECLIC APIs) in the Subscription Order Form, a *Fee* will be charged to the *Data Users* and *ISSVs*, consisting of a subscription fee, a transactional fee and/or a data fee in accordance with the pricing schedules (the "**Fees**"). Unless otherwise agreed, payment of such *Fees* shall be managed through the *Subscriber*'s *Account* on the *Platform,* or for the ECLIC API's via a Subscription Order Form. In the event of ECLIC API's the Fees will be in line with the Agreement between ECLIC and NxtPort.

7.2   Data Fees

Unless otherwise agreed upon between Subscriber and NxtPort, no costs will be charged to *Data Providers* for the provisioning of the *Data*. Unless otherwise agreed upon between Subscriber and NxtPort each *Data Provider* can freely determine in his dashboard the data fee applicable to the use of its *Data*. *NxtPort* will transfer all received data fees to the *Data Provider*. Unless otherwise agreed upon between Subscriber and NxtPort at any given moment, a *Data Provider* will be free to adjust its data fees downwards. A *Data Provider* can only once every three (3) months increase its data fees. In deviation of the foregoing, the Subscriber shall not be entitled to charge any data fees in relation to the ECLIC API's. Any changes to this principle will be agreed upon between ECLIC an NxtPort.

7.3   Invoicing and Payments

Unless otherwise provided for in the *Platform,* all undisputed invoices are due and payable by the Subscriber within thirty (30) days from receipt of the valid invoice. Unless otherwise set out in this

Agreement, all payments made by the *Subscriber* to *NxtPort* under these Terms and Conditions shall be final and non-refundable.

7.4   Currency

All fees are in EURO unless stated otherwise and do not include any VAT, which shall be charged additionally to the *Subscriber*.

7.5   Dispute

In the event the *Subscriber* disputes any portion of an invoice, such *Subscriber* shall notify *NxtPort* of such disputed amount and the basis for the *Subscriber*'s dispute within fifteen (15) calendar days from the invoice date via registered mail, failure of which shall result in the invoice being irrevocably deemed accepted by the *Subscriber*. Any undisputed portion shall be paid as provided herein. Pending resolution of any payment dispute, NxtPort shall continue performing its obligations in accordance with this Agreement.

Notwithstanding the foregoing, the Parties accept that the making of any payment or payments by Subscriber or the receipt thereof by NxtPort, will in no way affect the responsibility of NxtPort to perform its obligations in accordance with this Agreement, and will not imply acceptance of any Services or the waiver of any requirements of this Agreement.

7.6   Late payment

In the event of non-payment or insufficient payment on the due date, the following shall apply automatically and without any formal notice or court order being required:

(i)   all amounts not paid when due shall bear an interest in accordance with the Law of 2 August 2002 on Late Payments in Commercial Transactions calculated from and including the day the sum became due for payment up to but excluding the date of payment;

(ii)   without prejudice to *NxtPort*'s right to prove higher damages, the *Subscriber* shall owe a flat fee compensation equivalent to 10% of the unpaid invoice amount with a minimum of EUR 100 EUR.

8   Confidential Information

8.1   Non Disclosure

All software, plans, documents, know-how, *Data* and other information relating to a *Party*'s business, technology, products or services or other proprietary or confidential information in any form, written or oral, furnished or provided directly or indirectly by a *Party,* (the "**Disclosing Party**") to the other *Party* (the "**Receiving Party**") under the *Terms and Conditions* shall be considered and treated as confidential (the "**Confidential Information**"). The Confidential Information remains at all times the property of the Disclosing *Party*.

8.2   The Receiving *Party* shall

(i)   only use or access such Confidential Information for the purposes of complying with its obligations under the *Terms and Conditions*;

(ii)   store such Confidential Information with at least the same level of care applied when storing its own Confidential Information, and in no case with a less than reasonable level of care; and

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(iii) not disclose such Confidential Information to any other person (including other Subscribers – unless these Subscribers would have access to this Data by making use of the Platform Services) in accordance with this Article 8 (*Confidential Information*).

8.3 Exclusion

The confidentiality obligations as specified in this *Article* 8 shall not apply to information which that the Receiving Party can demonstrate by written or other documentary records:

(i) has become publicly known in a way other than by violation by the Receiving *Party* of its obligations under the *Terms and Conditions*;

(ii) was disclosed to the Receiving *Party* by a third *Party* that was not or is not, at the time of such receipt under any obligation of confidentiality to the Disclosing *Party*;

(iii) was developed by the Receiving *Party* independent of the Disclosing *Party*'s Confidential Information, or was already known by the Receiving *Party* prior to the information being disclosed by the Disclosing *Party*; and/or

(iv) is disclosed with the prior written consent of the Disclosing *Party*.

8.4 Disclosure

Notwithstanding *Article* 8.2, the Receiving *Party* may disclose the Confidential Information to its employees, affiliates, consultants,and subcontractors which are directly involved with and/or should be informed of such Confidential Information for the execution of the Receiving *Party*'s obligations as set forth in the *Terms and Conditions*. The Receiving *Party* shall impose on them confidentiality obligations which are at least similar to those included in this *Article* 8.

If the Receiving Party, or any of its representatieves is compelled by applicable law to disclose any Confidential Information, then, to the extent permitted by the applicable law, the Receving Party shall promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy. The Receiving Party shall only disclose that portion of the Confidential Information that the Receiving Party is legally required to disclose.

In the event the Receiving Party becomes aware of any actual or suspected misuse, unauthorised disclosure or loss of, or inability to account for, any Confidential Information of the Disclosing Party, the receiving Party shall promptly:

(i) notify the furnishing Party upon becoming aware thereof;

(ii) furnish to the other Party full details of the unauthorised possession, use or knowledge, or attempt thereof, and use reasonable efforts to assist the other Party in investigating or preventing the reoccurrence of any unauthorised possession, use, or knowledge, or attempt thereof, of Confidential Information;

(iii) take such actions as may be necessary or reasonably requested by the disclosing Party to minimize the violation; and

(iv) cooperate in all reasonable respects with the furnishing Party to minimise the violation and any damage resulting there from.

9 *Data* Protection

To the extent any *Personal Data* is controlled or processed by *NxtPort*, such processing shall be done in accordance with the applicable data protection legislation and the applicable Data Processing Agreement.

Data controller. Detailed information is available on the Privacy Policy page of the *NxtPort* platform for purposes where NxtPort would act as Data Controller.

Data processor. *NxtPort* may be provided access to any *Personal Data* and/or must process any *Personal Data* on behalf of the *Subscriber* when performing its obligations under these Terms and Conditions. In such case, Parties will enter into a Data Processor Agreement, as attached to these Terms and Conditions as Annex 3.

10 Intellectual Property Rights

10.1 Platform Services

The *Platform Services* and related documentation, including any rights, title and interest (including *Intellectual Property Rights*) therein, shall at all times remain the sole and exclusive property of *NxtPort* and/or its licensors, and the Subscriber shall obtain no rights, title or interest (including without limitation *Intellectual Property Rights*) in the *Platform Services* pursuant to these *Terms and Conditions* except the rights expressly granted hereunder. The *Platform Services* (including the *Intellectual Property Rights*) may not be modified, copied, printed, reproduced, distributed, republished, performed, downloaded, displayed, posted, transmitted and/or otherwise used in any form or by any means, unless expressly permitted by the applicable laws and/or in these Terms and Conditions. Except as expressly set forth herein, no express or implied license or right of any kind is granted to the *Subscriber* regarding the *Platform Services* or any part thereof, including any right to obtain possession of any source code, *Data* of NxtPort and/or other subscribers or other technical material related to the *Platform Services.*

10.2 Deliverables

The *Deliverables*, including any rights, title and interest (including *Intellectual Property Rights*) therein, shall at all times remain the sole and exclusive property of *NxtPort* and/or its licensor, and the Subscriber shall obtain no rights, title or interest (including without limitation *Intellectual Property Rights*) in the *Deliverables* pursuant to these *Terms and Conditions* except the rights expressly granted hereunder.

10.3 Data

The *Data* including any rights, title and interest (including *Intellectual Property Rights, if any*) therein, shall at all times remain the sole and exclusive property of the *Data Provider* and/or its licensor and NxtPort and the Authorized Users shall obtain no rights, title or interest (including without limitation *Intellectual Property Rights*) in the *Data* pursuant to these *Terms and Conditions* except the rights expressly granted hereunder (including in the Data Sharing Rules). The *Data* may not be modified, copied, printed, reproduced, distributed, republished, performed, downloaded, displayed, posted, transmitted, sold or monitised in any way and/or otherwise used in any form or by any means, unless expressly permitted in this *Terms and Conditions (*including in the Data Sharing Rules and/or API Terms and Conditions).

In relation to the Data, NxtPort shall:

(i) preserve, as far as possible, the integrity of the Data and prevent any loss, disclosure, theft, manipulation or interception of the Data;

(ii) Immediately notify the Subscriber if any of the Data is lost, becomes corrupted, is damaged or is deleted accidentally.

Subject to Article 11 paragraph 1 and 2 (*NxtPort's Rights and Obligations')* NxtPort shall not attempt to gain access or provide access to Data to which they do not have access under this Agreement. If such access is obtained (or is reasonably suspected to be obtained), NxtPort shall immediately report such incident to the Subscriber when it becomes available. The report shall give a detailed description of the Data which were accessed.

NxtPort shall protect itself against (i) any unauthorised access to the systems over which it has control or ought to have control, or (ii) modification or destruction of the Data by using system security measures. Where relevant and applicable, such measures will include the use of software which:

(i) require all users to enter a user ID and password before accessing the information system;

(ii) controls and monitors the addition and deletion of users;

(iii) controls and monitors the access to the areas and functions of the information systems.

11 NxtPort's Rights & Obligations

NxtPort shall perform its obligations under this Agreement in accordance with Good Industry Practices.

NxtPort may to monitor any *Data* or information for the purpose of verifying that Data or information (i) does not violate of any rights of third *Parties* or any applicable legislation or regulation or acceptable use policy ('AUP') which may be agreed upon between the Parties ('Violation'), or (ii) may materially and adversely impact the functioning of the *Platform Services*, or pose a security risk to *Subscriber*s ('Threat'). In the former cases, NxtPort shall also be entitled to remove the Data (i) after it has informed the Subscriber of a Violation and Subscriber has not stopped the Violation within 3 calendar days or (ii) in the event imminent Threat in which case they will notify the Subscriber in advance.

If *NxtPort* becomes aware or suspects, in its sole discretion, any material violation by *Subscriber* of the *Terms and Conditions*, or any other written instructions, guidelines or policies provided by *NxtPort* to the Subscriber, then *NxtPort* shall notify Subscriber in writing of such breach. If the Subscriber does not terminate the breach within 3 calendar days, NextPort may suspend or limit *Subscriber*'s access to its *Account*. The duration of any suspension by *NxtPort* will be until *Subscriber* has cured the breach which caused such suspension or limitation.

Upon termination of the Agreement NxtPort will delete any *Data* which is stored within the Data Vault in accordance with the terms of this Agreement, and such *Data* shall not be recoverable. *NxtPort* shall not be responsible for any *Data* that is lost due to deletion in accordance with this paragraph.

NxtPort will use reasonable efforts to make each *NxtPort API* available for a minimum period of thirty-six (36) months, unless otherwise set forth in the *API Terms and Conditions* (the "Minimum Lifespan"). Following such Minimum Lifespan, *NxtPort* may, following prior notice of twelve (12) months through the *Platform Services*, in its sole discretion decide to discontinue such *NxtPort API*. Unless otherwise set out

in the relevant API Terms and Conditions or Data Sharing Rules, the foregoing shall not apply to the ECLIC API's.

NxtPort shall comply with all applicable laws as they concern this Agreement or the subject matter hereof, including securing and maintaining all required and appropriate business licenses and other documentation and clearances necessary for the performance of the Platform Services.

NxtPort shall be entitled to subcontract the Services (or any part thereof) provided that:

(i)   NxtPort shall ensure each NxtPort subcontractor ("Subcontractor") complies with all relevant terms of this Agreement, including all provisions relating to Data, Data Protection and Confidential Information;

(ii)   the appointment of any such Subcontractor shall not relieve NxtPort of its representations, warranties or obligations under this Agreement;

(iii)   NxtPort will remain responsible and liable for any and all performance of the Service and acts and ommissions of each Subcontractor to the same extent as if such acts or omissions where by NxtPort;

(iv)   prior to the appointment of the Subcontractor, Provider shall obtain from each Subcontractor the identity of such Subcontractor and the location of its data centers, if any, that will be used in the processing of Personal Data.

12 *Subscriber*'s Rights and Obligations

The *Subscriber* shall receive *Account* information from *NxtPort* to be able to access its *Account* on the *Platform* and shall be free to set up *Account* communities within its own *Account* to provide access to several authorized individuals appointed by the *Subscriber*.

Subject to NxtPort complying with its obligations under this Agreement, the *Subscriber* shall be solely responsible for all access to and use of the *Platform Services* and its *Account* and through its account community.

*Subscriber*s acknowledge to solely use the *Services* in accordance with
(i)   the *Terms and Conditions*, and
(ii)   any applicable legislation, rules or regulations (including any legislation regarding the transfer of *Data* between countries).

*Subscriber*s agree that any use of the *Services* contrary to or in violation of these representations and warranties shall constitute unauthorized and improper use of the *Services* for which *NxtPort* cannot be held liable to the extent that such unauthorized and improper use would be the cause of the damages.

13 Liability /Insurance

13.1   To the maximum extent permitted under applicable law, the Party's liability arising out of or in connection with these Agreement be limited to the higher of (i) one hundred twenty five(125) per cent of the aggregated Fees paid and payable by the *Subscriber* during a period of twelve (12) months preceding the claim (or an estimate thereof based on the charges during the month preceding the first claim multiplied by twelve (12) for claims arising during the first contract year) or (ii) EUR 125,000.

13.2   Subject to Article 13.5. and to the extent legally permitted under applicable law, neither Party shall be liable to the other Party, for any special, indirect, exemplary, punitive, incidental or consequential damages of any nature including, but not limited to damages or costs due to loss of profits, reconstruction of Data (it being understood that foreseeable loss of data will not be regarded as an indirect damages pursuant to this clause 13.2.), revenue, goodwill, or arising out of or in connection with the *Services* under the *Terms and Conditions*, regardless of the cause of action or the theory of liability, even if *NxtPort* has been notified of the likelihood of such damages.

13.3   Each Party agrees that the other Party can only be held liable as per the terms of this *Article* 13 to the extent damages suffered are directly attributable to the former and/or the Parties for whom it is responsible. For the avoidance of doubt, *NxtPort* shall not be liable for any damages directly resulting from (i) *Subscribers*' unauthorized use of the *Services*, (ii) *Subscribers*' or any third *Party*'s modification of (any parts) of the *Services* which are not authorised by NxtPort, (iii) the nature, accuracy, completeness or legality of the *Data* provided by a *Data Provider, subject to NxtPort complying with its obligations under this Agreement*, (v) the use by *Subscriber*s or any third *Party* of the *Data,* unless these damages would result from a failure to comply with its obligations under this Agreement. The exclusions and limitations of liability under this *Article* shall operate to the benefit of any of *either Party's* Affiliates, used subcontractors and ECLIC under the *Terms and Conditions* to the same extent such provisions operate to the benefit of *that Party*.

13.4   Notwithstanding the foregoing and subject to *Article* 13.1 and 13.2, *NxtPort* may be held liable for an IT security breach towards the *Data Provider* to the extent (i) set forth on the Service Level section of the Platform or (ii) a failure by NxtPort to comply with the business continuity and disaster recovery obligations pursuant to Article 5 (*Information Security)*.

13.5   Neither Party shall exclude or limit its liability for (i) death or personal injury, (ii) damages resulting from fraud, willful misconduct or gross negligence and (iii) any indemnity under this Agreement. In addition the limitation in this Section 13.1 shall not apply to the damages resulting out of the breach by *a Party* of its obligations under *Article* 8 and 9.

NxtPort shall, throughout the term, maintain, without interruption, insurance coverage by a reputable insurance company in respect of the performance by NxtPort of this Agreement, providing coverages of up to EUR 1,000,000 for general professional liability and up to EUR 1,000,000 for cyber risks liability. NxtPort shall, upon Subscriber's request, provide a certificate of insurance evidencing the above insurance coverages.

14 Warranties and disclaimers

NxtPort warrants to the Subscriber that it is authorised to grant the rights and undertake the obligations on the terms and conditions contained in this Agreement.

NxtPort warrants to the Subcriber that : (i) the Platform Services provide and shall provide the functions specified in this Agreement and/or the API Specific Terms & Conditions; (ii) the Documentation shall be of a satisfactory standard to understand and use the Services; (iii) the Services shall be performed with due skill, care and diligence, in accordance with the Service Level Agreement and Good Industry Practice;

NxtPort does not warrant that all errors can be corrected, or that access to or operation of the *Platform Services* shall be uninterrupted, secure, or error-free.

The *Subscriber* warrants that he is the owner of the *Data* uploaded by the *Subscriber* or that he has the necessary rights, licenses or permissions to make such *Data* available in accordance with these Terms and Conditions. The *Subscriber* warrants that such *Data* does not contain any restrictions such as confidentiality, privacy/personal information, sensitive data or other restrictions which would cause the use of the *Data* as permitted under these Terms and Conditions to breach any rights of third parties or applicable laws.

A *Subscriber* shall only be liable for any errors, malfunctions or inaccuracies in the *Data* provided on the *Platform* and will only be held liable for any errors or inaccuracies in enrichments or ameliorations of such *Data* to the extent specific, explicit warranties were given by such Subscriber on the accuracy of the *Data* or its enrichments or ameliorations in the *API Specific Terms*.

15 Indemnification

15.1 IPR Indemnification

NxtPort hereby agrees to indemnify and hold harmless Subscribers and its current and future Affiliates, officers, directors, employees, agents and representatives from each and every demand, claim, loss, liability, or damage of any kind whatsoever, including reasonable attorney's fees, whether in tort or in contract, that it or any of them may incur by reason of, or arising out of, any claim by any third *Party* based on an infringement of the *IPR* of such third *Party* by the *Services* and excluding any claims resulting from

(i)   *Subscriber*'s unauthorized use of the *Services* in accordance with this Agreement;

(ii)   any *Data* provided by a *Data Provider* provided that NxtPort has complied with its obligations under this Agreement in relation to the use of such Data;

(iii)   alteration or modification of any of the *Services by or on behalf of Subscriber* without NxtPort's authorization ("Subscriber's Modification") provided that no infringement or other violation of third party rights would have occurred without such Customer Modifications; and

(iv)   Use of the Services by Subscriber pursuant to these Terms and Conditions in combination with any software or service not provided, authorised or approved by or on behalf of NxtPort, if no violation of third party rights would have occurred without such combination.

Such indemnity obligation shall be conditional upon the following:

(i)   *NxtPort* is given prompt written notice of any such claim it being understood that a failure to notify NxtPort shall not relieve NxtPort of its obligations under this Agreement except to the extent that it can demonstrate damages attributable to such failure;

(ii)   *NxtPort* is granted sole control of the defense and settlement of such a claim. Provided that provided that: (i) Subscriber shall be entitled to participate in the defence of such claim and to employ counsel at its own expense to assist in the handling of such claim, and (ii) NxtPort shall obtain the prior written approval of Subscriber before entering into any settlement of such claim which does not unconditionally relieve Subscriber of any liability in respect of such a claim, or before ceasing to defend against such claim, which approval should not be unreasonably delayed or withheld ;

(iii)	upon *NxtPort*'s request, the *Subscriber*s reasonably cooperate with *NxtPort* in the defense and settlement of such a claim, at *NxtPort*'s expense; and
(iv)	the *Subscriber*s make no admission as to *NxtPort*'s liability in respect of such a claim except as necessary to safeguard its rights and remedies under the Agreement, nor do the *Subscriber*s agree to any settlement in respect of such a claim without *NxtPort*'s prior written consent.

Provided these conditions are met, *NxtPort* shall indemnify the *Subscriber*s for all damages and costs incurred by the *Subscriber*s as a result of such a claim, as awarded by a competent court of final instance, or as agreed to by *NxtPort* pursuant to a settlement agreement.

In the event the *Services*, in *NxtPort*'s reasonable opinion, is likely to or becomes the subject of a third-*Party* infringement claim (as per *Article* 15.1), *NxtPort* shall have the right, at its sole option and expense, to:

(i)	modify the ((allegedly) infringing part of the) *Services* so that they becomes non-infringing while preserving materially equivalent functionalities or quality of the affected component of the Services;
(ii)	obtain for the *Subscriber*s a license to continue using the *Services* in accordance with the *Terms and Conditions*; or
(iii)	if (i) or (ii) ar not reasonably possible terminate the *Terms and Conditions* and refund to the *Subscriber*s an amount equal to a pro rata portion of the fees for that portion of the *Services* which is the subject of such infringement.

The foregoing states the entire liability and obligation of *NxtPort* and the sole financial remedy of the *Subscriber*s with respect to any infringement or alleged infringement of any *IPR* caused by the *Services* or any part thereof.

16 Term and termination

16.1 Duration

This Agreement is made and entered into for a period of one (1) year ('Initial Term'). The term of this Agreement shall automatically extend for a period of twelve (12) months ('Extended Term') at the end of the Initial Term and at the end of each Extend Term, unless either Party gives written notice to the other Party, no later than three (3) months before the end of the Initial Term or the relevant Extended Term, to terminate this Agreement at the end of the Initial Term or the relevant Extended Term, as the case may be..

16.2 Termination for breach

Either Party may, at its option, terminate this Agreement in the event of a material breach by the other Party. Such termination may be effected only through a written notice to the other Party, specifically identifying the breach or breaches on which termination is based. Following receipt of such notice, the Party in breach shall have thirty (30) days to cure such breach or breaches and this Agreement shall terminate in the event that such a cure is not made by the end of said period. The claim of material breach

justifying termination shall be limited to the specific breach set forth in the above written notice as explained and supported by evidence.

Either Party may, at its option, terminate this Agreement in the event of an irremediable material breach by the other Party. Such termination may be effected only through written notice to the other Party, specifically identifying the irremediable breach or breaches on which the termination is based.

NxtPort may terminate with immediate effect the *Subscriber*'s or a *specific Authorized User's* right to access and use of the *Services*

(i) if *NxtPort* has reasonable grounds to suspect that such *Subscriber* or Authorized User is violating its license granted pursuant to these Terms and Conditions or its confidentiality obligations,, or

(ii) if such *Subscriber* remains suspended for non-payment for more than 60 (sixty) days.

16.3 Termination in case of insolvency

Each Party has the right to terminate this Agreement, with immediate effect and without prior recourse to a court by written notice to the other Party, if the other Party files for or has filed against bankruptcy, becomes insolvent, or enters into liquidation whether compulsory or voluntary (except for the purposes of bone fide reconstruction or amalgamation) regardless whether this proceeding takes place under domestic or foreign bankruptcy or insolvency laws, or compounds with or make any arrangement with its creditors or make a general assignment for the benefit of creditors, or suffer or permits the appointment of a receiver, manager, administrative receiver, trustee or administrator over the whole or substantially the whole of its undertaking or assets, or ceases (or threatens to cease) to conduct business in the normal course, or suffers any analogous process under any act or law relating to insolvency or the protection of the rights of creditors.

16.4 Effects of termination

Upon the termination of the *Account* for any reason whatsoever in accordance with the provisions of the *Terms and Conditions*, at the moment of effective termination:

(i) the *Subscriber*s will no longer be authorized to access or use the *Platform* or *Services*;

(ii) Subscriber will be granted a reasonable period extract its Data from the *Data Vault*, subject to a fair use policy, unless the termination of this Agreement results from the abuse of Data of other Subscribers.

(iii) Following such reasonable period, *NxtPort* may delete all *Data* associated with *Subscriber*'s *Account*, including but not limited to the *Data*, on the *Platform*; and

(iv) all rights and obligations of *NxtPort* or *Subscriber* under the *Terms and Conditions* shall terminate, except those rights and obligations under those *Article*s specifically designated in *Article* 17.2.

Parties may deviate from the foreging in the API Specific Terms and Conditions.

17 Miscellaneous

17.1 Force Majeure

A Party shall not be liable for any failure or delay in the performance of its obligations with regard to this Agreement if such delay or failure is due to a Forece Majeure Event and which directly causes the Party to be unable to comply with all or a material part of its obligations under this Agreement... On the occurrence of a Force Majeure Event, the affected Party shall be excused from further performance or observance of the obligations so affected for as long as such circumstances prevail and the affected Party continues to use reasonable efforts to recommence performance or observance without delay, provided however that a Force Majeure Event shall not relieve NxtPort of its obligations to perform all of the Platform Services relating to disaster recovery and business continuity set out in in these General Terms and Conditions. If any Force Majeure Event substantially prevents, hinders or delays performance of any material portion of the Services under the Terms and Conditions for a period than more than thirty (30) calendar days (unless another period is agreed between the Parties), then the Subscriber may terminate this agreement.

17.2 Survival.

*Article*s 8, 9, 13, 14, 15 and 17 (where applicable) shall survive any termination or expiration of these *General Terms and Conditions*.

17.3 Governing law and jurisdiction.

The *Terms and Conditions* shall be exclusively governed by and construed in accordance with the laws of Belgium, without giving effect to any of its conflict of law principles or rules.

In the event of a dispute between the Parties arising out or in relation to these Terms and Conditions, the Parties shall attempt to resolve their disputes informally and amicably. If the Parties are unable to resolve a dispute in an informal and amicable way within a period of sixty (60) days as from the moment the escalation process has stared or any other period agreed between the Parties, either Party may pursue its remedies under these Terms and Conditions through litigation.

The courts and tribunals of Antwerp (district Antwerp) shall have sole jurisdiction should any dispute arise relating to the *Terms and Conditions*.

17.4 Amendment.

NxtPort may revise the *Terms and Conditions* from time to time to better reflect:

(i) changes to the law, (ii) new regulatory requirements, or (iii) improvements or enhancements made to the Services.

Prior to the implementation of any update to the Terms and Conditions, such changes will be agreed upon between NxtPort and ECLIC.

If an update affects a Subscriber's use of the Services or legal rights as a Subscriber of the Platform, NxtPort will notify such Subscriber(s) prior to the update's effective date by sending an email to the email address

associated with the Account or via an in-product notification. These updated *Terms and Conditions* will be effective no less than 15 days from the notification.

If a Subscriber does not agree to the updates made, the Subscriber may cancel its Account before the new Terms and Conditions become effective. Unless otherwise set out in the Relevant API terms, the Subscriber shall not be refunded if it cancels its Account. By continuing to use or access the Platform after the updates come into effect, the Subscriber agrees to be bound by the revised *Terms and Conditions*.

17.5 Assignment

This Agreement is not assignable (including by operation of law), transferable or sub-licensable by either Party except with the other Party's prior written consent.

17.6 Waiver

The failure of either Party to insist upon strict performance of any provision of this Agreement or the failure of either Party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Agreement. A waiver of any breach of the terms and provisions of this Agreement or of any default hereunder shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of this Agreement. No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing.

17.7 Severability

If any provision of this Agreement is held to be invalid or unenforceable in whole or in part, it shall (to the extent that it is invalid or unenforceable) be deemed to be severable and the validity of the other provisions of this Agreement and the remainder of the provisions in question shall not be affected. If the severed provision is fundamental to the achievement of the purpose of this Agreement, the Parties will negotiate in good faith to remedy the invalidity, illegality or unenforceability of the provision or otherwise amend this Agreement to give effect to its purpose.

17.8 Relationship between the Parties

The Parties acknowledge and agree that NxtPort, in providing the Services, is acting as an independent contractor, and NxtPort has the sole right and obligation to supervise, manage, contract, direct, procure, perform or cause to be performed all work to be performed by NxtPort under the Agreement. No contract of agency and no joint venture are intended to be created hereby. Neither Party is an agent of the other Party and has authority to represent the other Party as to any matters. None of the NxtPort's employees shall be deemed employees of Subscriber and the NxtPort shall be responsible for reporting and payment of all wages, unemployment, social security and other payroll taxes, including contributions from them when required by law.

17.9 Notices

All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or email; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.

IN WITNESS WHEREOF, the authorized representatives of the Parties have executed these General Terms and Conditions on the dates written below.

For and on behalf of SUBSCRIBER

By: _____

Name:

Title:

Date:

For and on behalf of NxtPort

By: _____

Name:

Title:

Date:

Annex 1: NxtPort Information Security Policy

Annex 2: NxtPort Service Level Agreement

Annex 3: Data Processor Agreement