

General Terms of Service (TOS)

These TOS govern your use of certain services defined in one or more services and/or orders placed by elceedee UG (haftungsbeschränkt) ("elceedee"). By accessing or using these services and/or orders, you represent that you have read, understand, and agree to this Agreement. IF YOU ARE AGREEING TO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND THAT COMPANY AND ITS AFFILIATES TO THIS AGREEMENT. IN THIS CASE, THE TERM "YOU" OR "CUSTOMER" REFERS TO THAT COMPANY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY OR IF YOU DO NOT AGREE TO THIS AGREEMENT, YOU MAY NOT USE THE SERVICES.

elceedee may, in its sole discretion, modify or update this Agreement from time to time, so you should check this page periodically. If elceedee changes this Agreement, we will notify you of such changes either by sending a notice to the email address you provided in the sign-up process prior to implementing the change or by sending you a notice directly. Your continued use of the Service following any such change will signify your acceptance of the new Agreement. If you do not agree to any of these terms or any future agreement, you may not use or access (or continue to access) the Services. This Agreement applies to all Users.

1. Definitions

"Subscription Term" means the period during which Customer has the right to use the Services and/or Orders and related Documentation, including the Initial Term and any Renewal Terms.

"Aggregated Data" means anonymized compilations and analyses of Customer Data combined with data from numerous other Customers.

"Analytics" means reports, assessments, benchmarking tests, studies, analyses and other work products from Aggregated Data.

"Customer" means the holder of access to the elceedee Services. The Customer is the contractual partner of elceedee and may be a natural person or a legal entity.

"Customer Data" means the data entered by the Customer or its Users for the purpose of using the Services or facilitating the Customer's use of the Services.

"Documentation" means user documentation that describes and is embedded in the principles of operation or functionality of the Services (e.g., online help files).

"Maintenance Services" means ongoing maintenance and technical support services for the Services.

"Order" means the order documents for the purchase of Services, including amendments, entered into between the Customer and elceedee from time to time. In particular, this means sending information and requests for analytics data about the Services. Orders can be placed through elceedee's online form <https://app.cyanite.ai/subscriptions#Subscription> or through elceedee staff directly.

"Professional Services" means all implementations, training, configurations, data migrations and imports, consultations and services performed by or on behalf of elceedee for the Customer pursuant to this Agreement.

"Services" means the online services offered by elceedee accessible at the URL <https://app.cyanite.ai> and any audio file analysis and tagging software offered in this Services, as well as various audio file search algorithms and orders.

"Services" is the unified term for the Services, Maintenance Services and Professional Services.

"Users" are individuals authorized by Customer to use the Services and provided with elceedee-issued user IDs and passwords by Customer. "Users" may include, but are not limited to, Customer's employees, consultants, contractors and agents.

2. Use of the Services

2.1. Orders

The Customer shall have no right to use the Services unless one or more Orders are entered into with respect to the Services. The Customer's right to use the particular Services shall be valid only for the period during which both the particular Order and the particular Subscription Term are in effect.

2.2. Use of the Services

Subject to the terms and conditions of this Agreement, elceedee hereby grants Customer a limited, non-exclusive, revocable, non-transferable (except as permitted in Section 12 (Transferability)), non-sublicensable right during the applicable Subscription Term to enable Users to use the Services in accordance with the scope of use specified in the applicable Orders.

2.3. Use of the Documentation

Subject to the terms and conditions of this Agreement, elceedee hereby grants Customer a limited, non-exclusive, revocable, non-transferable (except as permitted in Section 12 (Transferability)), non-sublicensable license during the applicable Subscription Term to reproduce and internally use a reasonable number of copies of the Documentation without modification solely in connection with Users' use of the Services in accordance with this Agreement.

2.4 Restrictions on Use

Customer's right to use the Services is subject to and conditioned upon Customer's compliance with the restrictions on Customer's Use of the Services set forth in this Agreement and the applicable Order. In particular, this means sending information and requests for analytics data about the Services.

2.5. Reservation of Rights

elceedee and its licensors retain all rights, titles, and interest in and to all software, products, works and other intellectual property created, used or furnished by elceedee for the purposes of

this Agreement, including but not limited to the Services and all Documentation. elceedee owns all right, title and interest in and to all modifications or derivatives and improvements to the Services and all Documentation and all other portions of the Services (created by either party). Customer hereby makes all assignments necessary to provide elceedee with the ownership rights set forth in the preceding sentence.

2.6. Customer Data

elceedee acknowledges and agrees that all rights, titles, and interest in and to Customer Data is and shall remain the property of Customer and that all intellectual property rights, including copyright, trademark, and trade secret rights in Customer Data, are and shall remain the property of Customer. Customer hereby grants elceedee the necessary rights or licenses throughout the term of this Agreement to use, reproduce, promote, distribute, modify, publicly display, and perform, cache, and transmit Customer Data through the Services solely to the extent necessary for the purposes of this Agreement.

2.7. Aggregate Data

The Customer agrees that elceedee shall be free to disclose Aggregated Data for the use and performance of the Service and to reuse any general knowledge, experience, know-how, works and technologies (including ideas, concepts, processes and techniques) acquired during the provision of the Service. Customer further agrees that elceedee shall have the right to (a) create Aggregated Data and (b) create analytics. elceedee shall have the exclusive ownership and right to use and distribute such Aggregated Data and analytics for any purpose, including but not limited to advertising and marketing to other customers and potential customers of the Services; provided, however, that elceedee shall not distribute the Aggregated Data and analytics in a manner that is identifiable as Customer Data.

2.8. Feedback

If Customer provides elceedee with feedback on the functionality and performance of the Services (including identifying potential errors and improvements), Customer hereby assigns to elceedee all rights, titles, and interest in and to the feedback and intellectual property. elceedee shall be free to use the feedback without payment or restriction.

3. Responsibilities of the Customer

3.1. Account Credentials

Unless otherwise agreed upon, the Customer will receive a user identification, password, and web address (URL) for a website through which the Customer will use the Services. The user identification for registration is used by the Customer or its representative to establish access to the Services. Customer is solely responsible for maintaining the confidentiality of Customer's and User's user identification, passwords, and account information.

3.2. Compliance and Use

Customer is responsible for (i) ensuring User compliance with this Agreement, (ii) ensuring the accuracy, quality, integrity and legality of Customer Data and the means by which Customer

acquired Customer Data, (iii) taking commercially reasonable steps to prevent unauthorized access to or use of the Services and all Documentation and promptly notifying elceedee in writing of any such unauthorized access or use or breach of this Agreement by Customer or its Users, (iv) use the Services only in accordance with the Documentation; and (v) use the Services and all Documentation in compliance with all applicable laws and governmental regulations, including but not limited to laws relating to privacy (whether applicable within the European Union or otherwise), intellectual property, consumer and child protection, obscenity, libel and defamation. In the event of any unauthorized use of the Services or Documentation by any person who has obtained access to the Services or Documentation directly or indirectly through the Customer, the Customer will take all steps reasonably necessary to terminate such unauthorized use. Customer will cooperate with and assist in any action taken by elceedee to prevent or terminate any unauthorized use of the Services or Documentation. Customer shall not (1) make the Services available to anyone other than Users, (2) use the Services to store or transmit infringing, defamatory or otherwise unlawful or tortious material or to store or transmit material in violation of any third-party rights including but not limited to copyrights in music. Customer will not use the Services to store or transmit malicious code, interfere with the integrity or performance of the Services or elceedee's rights or data therein, or attempt to gain unauthorized access to the Services or their associated systems or networks.

3.3. Restrictions

Except as otherwise expressly provided in this Agreement or as expressly permitted by applicable law, Customer shall not and shall not permit or allow any third party to: attempt to download, display, transmit, reverse engineer, or distribute the Services or Documentation, in whole or in part, in any form or by any means; or attempt to implement compilation, disassembly, reverse engineering, or otherwise reduce to Customer data or third-party identity, in whole or in part, within the Services; or (1) access all or any part of the Services or Documentation to develop a product or service that competes with the Services or Documentation; (2) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit the Services or Documentation, or otherwise make the Services or Documentation available to third parties (e.g., as a service bureau) other than Users; or (3) circumvent or disable any security or other technological features or measures of the Services.

4. Maintenance Services

Provided Customer complies with the terms of this Agreement, elceedee will use commercially reasonable efforts to provide Customer with technical support and updates for the Services. Customer agrees that elceedee shall have the right to charge for any support service resulting from problems, errors, or requests unrelated to the support service or the Services. elceedee will attempt to ensure smooth, always-available usability of the Services, except for scheduled maintenance or downtime, including but not limited to that resulting from the unavailability of Customer Data or the unavailability of third-party services or technical malfunctions. elceedee will use reasonable efforts to notify Customer by email (or otherwise if email is not available) of any service interruption, unless such interruption is of minor importance. elceedee will use commercially reasonable efforts to restore service as soon as possible and will use reasonable efforts to notify Customer by email (or otherwise if email is not available) when service is restored. Technical support is available by email during weekday office hours from 10:00 a.m. to

6:00 p.m. Central European Time Zone, Monday through Friday excluding local and national German holidays. elceedee may, at its sole discretion, schedule scheduled maintenance without notifying the Customer. elceedee shall not be liable for any economic loss incurred by the Customer in the event of a Service outage.

5. Professional Services

Professional Services may be performed pursuant to an Order or the parties may negotiate separate statements of work (each a "Work Order"), each of which shall be deemed part of this Agreement. Each Order or Work Order shall specify the scope of work and specific terms and conditions of the project(s) to be performed by elceedee. Pre-approved travel expenses, including reasonable transportation, lodging and meal expenses, incurred in connection with the performance of professional services will be reimbursed by the Customer and will be in addition to the stated professional service fees.

6. Payment and Fees

6.1. Fees

The Customer will pay elceedee the fee and all other amounts due under this Agreement, as well as any applicable sales, use, excise or other taxes, as specified in the applicable Order or Work Order. Fees are based on services purchased and not on actual use. Unless otherwise specified in the applicable Order or Work Order, all amounts payable under this Agreement will be denominated in Euros, and Customer will pay all such amounts in Euros.

6.2. Renewal Fees

elceedee will notify Customer (by email) at least 30 days in advance of any proposed increase in service fees. Service fees for Renewal Terms are based on the then-current list price for the applicable service.

6.3. Invoices and Payment Terms

elceedee chooses to grant Customers access to some Services free of charge. Elceedee may change this in its sole discretion at any given point in time. Customers can place an Order to access other Services. Fees for access to Services (the "Subscription Fees") will be billed upon execution of the applicable Order or at the beginning of the applicable Renewal Term. Fees for Professional Services will be billed in advance unless otherwise specified on an Order or Work Order. Unless otherwise specifically stated on the applicable Order or Work Order, Customer shall pay all amounts due within 14 days of the date of issue of the applicable invoice. If Customer provides credit card information, Customer authorizes elceedee to charge such credit card for all Services for the initial term and any Renewal Terms in accordance with this Agreement and the applicable Order(s).

6.4. Late Payments

Any amount not paid on time will be subject to finance charges equal to the lesser of 8.12% of the unpaid balance per month or the highest rate permitted under applicable usury law, and will be calculated and compounded daily from the due date to the paid date. Customer will reimburse elceedee, any costs or expenses (including, but not limited to, collection agency fees, reasonable attorneys' fees and court costs) incurred by elceedee to collect any unpaid amount when due. In the event of default in the payment of undisputed invoices, installments or interest for a period of more than 60 days after their due date, elceedee may, without notice or demand, declare immediately due and payable the entire principal amount payable during the Term under all outstanding Orders and Work Orders. If the Customer believes that elceedee has incorrectly invoiced the Customer, the Customer must notify elceedee in writing no later than 30 days after the invoice date, otherwise the invoice will be conclusively deemed correct by the parties. Claims of the Customer under this Agreement may not be withheld by the Customer for any reason or offset against other claims of the Customer.

6.5. Taxes

Except for net income taxes imposed on elceedee, Customer shall bear all taxes, duties and other governmental charges (collectively, "Taxes") arising under this Agreement unless Customer provides elceedee with a valid tax exemption or a properly executed direct payment certificate. Customer shall pay any additional Taxes necessary to ensure that the net amounts received by elceedee after payment of all such Taxes are equal to the amounts to which elceedee would have been entitled under this Agreement as if the Taxes had not existed, regardless of whether such Taxes were included on the original invoice applicable to Customer.

7. Term, Extension and Termination

7.1. Term of Agreement

This Agreement shall commence on the effective date of this Agreement (the date the Customer agreed to the Agreement or, if no Effective Date is specified, on the date an Order is executed by Customer) and shall continue until the Subscription Term for each Order or Work Order has expired or is otherwise terminated in accordance with the terms of the applicable Order or Work Order, unless this Agreement is terminated earlier than set forth herein.

7.2. Order Term

The term of each Order shall commence on the effective date of the Agreement (the date the Customer agreed to the Agreement or, if no effective date is specified, on the date an Order is executed by Customer) and shall be for the term specified in the Order, provided that if no such term is specified in the Order, the initial term shall be one year (the "Initial Term"). The term of each Order will automatically renew for successive periods equal to the duration of the initial term (each, an "Renewal Term") unless either party notifies the other party in writing 30 days prior to the expiration of the Initial Term or the Renewal Term then in effect, as applicable, that it wishes to change the duration of the Renewal Term or terminate the Order. If Customer cancels an Order prior to the expiration of the Initial Term or the then-applicable Renewal Term, Customer will pay elceedee all unpaid Subscription Fees under such Order for the remainder of the Subscription Term.

7.3. Work Order Term

Each Work Order is valid for the period specified in the applicable Work Order.

7.4. Termination for Cause

Either party may terminate this Agreement, an Order, or a Work Order if the other party fails to cure its material breach of this Agreement or the applicable Order or Work Order within 30 days after receiving written notice of the material breach from the non-breaching party. At the option of the non-breaching party, such termination shall apply only to the applicable Order or Work Order and not to any other Orders for or Work Orders covered by this Agreement. Termination of this Agreement shall result in termination of all outstanding Orders and Work Orders. Termination under this Section 7 shall be effective when the breaching party receives written notice of termination from the non-breaching party, which notice shall not be served until the breaching party has failed to cure its material breach during the 30-day cure period. If Customer fails to pay any fees in a timely manner, elceedee may, without limiting any other rights or remedies, suspend performance of all Services and Services to Customer until elceedee has received all amounts due. In the event of termination as a result of Customer's failure to perform any of its obligations under this Agreement, Customer shall continue to be obligated to pay Subscription Fees and fees for Professional Services rendered. Termination of the Agreement or any Order or Work Order is in addition to, and not in lieu of, any equitable remedies available to elceedee.

7.5. Obligations After Termination

If an Order or Work Order is terminated for any reason, (i) Customer will pay elceedee all fees or other amounts incurred under the applicable Order or Work Order prior to the effective date of termination, (ii) all liabilities incurred prior to the effective date of termination will survive, and (iii) elceedee will destroy all Customer Data. Notwithstanding the foregoing, elceedee will provide the Customer with a copy of its Customer Data upon the Customer's written request at least 14 days prior to the effective date of termination and subject to the payment of a transfer fee of EUR 490.

7.6. Outlasting

2.5 (Reservation of Rights), 2.6 (Customer Data), 2.7 (Aggregate Data), 2.8 (Feedback), 3 (Customer Responsibilities), 6.1 (Fees), 6.3 (Invoices and Payment Terms), 6.4 (Late Payments), 6.5 (Taxes), 7 (Term, Renewal and Termination), 8 (Confidentiality), 9.2 (Disclaimer), 11 (Limitations of Liability) and 12 (General) shall survive termination of this Agreement.

8. Confidentiality

8.1. Definition

As used herein, "Confidential Information" means any confidential information disclosed or otherwise received by one party ("Disclosing Party") to or from the other party ("Receiving Party"), whether orally, visually or in writing, which is designated as confidential or which, given the nature of the information and the circumstances of disclosure, is reasonably to be understood

to be confidential. Customer's "Confidential Information" includes Customer Data; elceedee's "Confidential Information" includes the Services, all Documentation and products of all Services, and elceedee's financial, security, architectural or similar information; and each party's "Confidential Information" includes the terms of this Agreement and each Order and Work Order, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by or on behalf of such party. "Confidential Information" shall not, however, include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the disclosing party, (ii) was known to the receiving party prior to its disclosure by the disclosing party without breach of any obligation owed to the disclosing party, (iii) is received from a third party without breach of any obligation owed to the disclosing party, or (iv) was independently developed by the receiving party.

8.2. Protection of Confidential Information

Unless otherwise permitted in writing by the Disclosing Party, the Receiving Party shall (i) exercise the same care it exercises to protect the confidentiality of its own Confidential Information of a similar nature (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement. Notwithstanding the foregoing, elceedee shall also be permitted to disclose Customer's Confidential Information to its employees, contractors and agents of its direct and indirect parents, subsidiaries and affiliates on a need-to-know basis. The Receiving Party may disclose Confidential Information to the Disclosing Party if compelled to do so by law, provided that the Receiving Party notifies the Disclosing Party in advance of such compelled disclosure (to the extent permitted by law) and reasonable assistance at the Disclosing Party's expense if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is required by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party does not challenge the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable costs of assembling and providing secure access to such Confidential Information.

9. Guarantees and Disclaimer

9.1. Warranties

Each party represents and warrants to the other party that: (a) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such party in accordance with its terms; and (b) no authorization or approval of any third party is required in connection with the execution, delivery or performance by such party of this Agreement.

9.2. Disclaimer

EXCEPT AS PROVIDED IN SECTION 9. a (Warranties) the SERVICES, access thereto, Documentation and any services provided herein are provided on an "as is" basis, and ELCEEDEE AND ITS PARTNERS AND ASSOCIATES (A) MAKE NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT,

FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUALITY, ACCURACY AND ALL WARRANTIES ARISING OUT OF COURSE OF DEALING, USAGE OR TRADE PRACTICE; (B) WILL NOT WARRANT THAT ACCESS TO THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE OR SECURE, OR THAT ANY INFORMATION, SOFTWARE OR OTHER MATERIALS ACCESSED OR PROVIDED THROUGH THE SERVICES WILL BE ACCURATE, COMPLETE OR FREE OF VIRUSES OR OTHER HARMFUL CONTENT OR COMPONENTS; (C) IN NO EVENT WILL ELCEEDEE BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INACCURACIES, ERRORS OR OMISSIONS, FOR ANY LOSS, INJURY OR DAMAGE (INCLUDING LOSS OF DATA) CAUSED IN WHOLE OR IN PART BY ANY FAILURE, DELAY OR INTERRUPTION OF THE SERVICES, DOCUMENTATION OR SERVICES. ELCEEDEE DOES NOT EXERCISE ANY CONTROL OVER, AND EXPRESSLY DISCLAIMS ANY AND ALL LIABILITY ARISING OUT OF OR BASED UPON, THE RESULTS OF CUSTOMER'S USE OF THE SERVICES, DOCUMENTATION OR SERVICES. SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN WARRANTIES. IN SUCH JURISDICTIONS, ELCEEDEE'S LIABILITY IS LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

10. Limitations of Liability

10.1. Exclusion of Liability for Indirect Damages

Notwithstanding anything contained in this Agreement, ELCEEDEE SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING FROM (i) THE USE OR INFABILITY TO USE THE SERVICES, DOCUMENTATION OR SERVICE; (ii) the cost of obtaining substitute goods and services, (iii) the accuracy of the data transfer to any other software or service incur; or (iv) institutions in which Customer Data stored or communicated by the SERVICE is accessed by third parties through unlawful means; INCLUDING, BUT NOT LIMITED TO, SITUATIONS IN WHICH CUSTOMER DATA IS ACCESSED BY EXPLOITING SECURITY VULNERABILITIES, WEAKNESSES OR DEFECTS THAT MAY EXIST. EXCEPT FOR LIABILITY ARISING FROM BREACHES OF SECTION 8 (CONFIDENTIALITY), IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, WHETHER CAUSED IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

10.2. Limitation of Liability

EXCEPT FOR LIABILITY ARISING OUT OF A BREACH OF SECTION 8 (CONFIDENTIALITY), IN NO EVENT SHALL THE TOTAL, CUMULATIVE LIABILITY OF ANY PARTY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT OF SUBSCRIPTION FEES PAID BY CUSTOMER UNDER THIS AGREEMENT OR, WITH RESPECT TO ANY ONE INCIDENT, THE AMOUNT PAID BY CUSTOMER IN THE THREE MONTHS PRECEDING THE INCIDENT. THIS DOES NOT LIMIT THE CUSTOMER'S PAYMENT OBLIGATIONS UNDER THE "PAYMENT AND FEES" AND "TERM, RENEWAL AND TERMINATION " SECTIONS.

10.3. Independent Risk Allocation

ANY PROVISION OF THIS AGREEMENT THAT PROVIDES FOR LIMITATION OF LIABILITY, EXCLUSION OF WARRANTIES OR EXCLUSION OF DAMAGES IS INTENDED TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICES THAT ELCEEDEE OFFERS TO THE CUSTOMER AND IS AN ESSENTIAL PART OF THE BASIS FOR THE AGREEMENT BETWEEN THE PARTIES. EACH SUCH PROVISION IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT. THE LIMITATIONS IN THIS SECTION 10 SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY IN THIS AGREEMENT.

11. General

11.1. Relationship

elceedee will act and perform as an independent contractor (and not as an agent or representative of Customer) in the performance of this Agreement.

11.2. Transferability

Neither party may assign the performance of this Agreement or any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other party. Notwithstanding the preceding sentence, either party may assign this Agreement without the prior written consent of the other party in the event of a merger, acquisition or other change of control, and in such event this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

11.3 Notices

All notices to a party shall be given in writing to such party either by email, to the extent expressly permitted by email under this Agreement, by mail, overnight courier, or facsimile. elceedee may broadcast notices or messages on the Services or by posting notices or messages on elceedee's website, email mailout, or any of its Services to notify Customer of changes to the Services or other matters of importance; elceedee shall notify Customer of such broadcast by email to Customer.

11.4. Force Majeure

Neither party shall be liable for damages or have the right to terminate this Agreement or any Order or Work Order for any delay or failure to perform under this Agreement if such delay or failure is caused by conditions beyond its control, including, but not limited to, acts of God, governmental restrictions (including denial or cancellation of export of other necessary licenses), wars, riots, and/or other causes beyond the reasonable control of the party whose performance is affected (including mechanical, electronic, ISP, or communications failure).

11.5. Dispute Resolution

All disputes, controversies or claims relating to or arising out of this Agreement shall first be referred to an officer of each of the parties for informal resolution. If such informal resolution does not resolve the dispute within 30 days, the parties agree to submit the dispute to binding

arbitration. This provision does not limit a party's right to seek interim relief, such as a temporary restraining order, an eviction order, or similar relief. Such arbitration shall be conducted in accordance with German law and the place of such arbitration shall be Mannheim, Germany. Within ten calendar days after delivery of the request for arbitration to a party, the parties must jointly select an arbitrator with at least five years of experience in such capacity. If the parties do not agree on an arbitrator within ten calendar days, a party may file a motion to appoint an arbitrator. The decision of the arbitrator shall be final and binding and neither party shall have any right of appeal. Each party shall bear its own costs and fees in connection with the arbitration; provided, however, that the arbitrator shall have the authority to order a party to share in the reasonable costs and expenses of the other party or to pay all or a portion of the costs of the arbitration.

11.6. Waiver

The waiver by either party of any right based on a breach of any provision of this Agreement shall not constitute a waiver of any right based on any other breach. The failure of any party to insist upon strict performance of any obligation in accordance with this Agreement shall not constitute a waiver of that party's right to demand strict compliance in the future, nor shall it be construed as a novation of this Agreement.

11.7. Severability

If any provision of this Agreement is held to be illegal or otherwise unenforceable, it shall be severed from the remainder of this Agreement without affecting the legality or enforceability of the remaining portions.

11.8. Complete Agreement

This Agreement and the exhibits or attachments, if any, constitute the entire agreement between the parties relating to Customer's use of and receipt of all Services and supersede all prior agreements, representations, warranties, statements, promises, information, understandings and agreements, oral or written, express or implied, relating to the subject matter hereof. In the event of any conflict between the terms of any Order or work order and the terms contained herein with respect to the subject matter hereof, the terms of this Agreement shall control. These Terms and Conditions shall apply to future purchases of Services and Professional Services by elceedee's Customer. No application of trade or other regular practice or method of dealing between the parties will be used to modify, construe or amend the terms of this Agreement. elceedee will not be bound by any term or other provision that is different from or in addition to this Agreement (whether or not it would materially modify this Agreement) offered by Customer in any receipt, acceptance, acknowledgement, correspondence or otherwise, unless elceedee expressly agrees to such provision in writing and signed by an authorized representative of elceedee.