

**GATLING FRONTLINE  
SOFTWARE LICENSE AND MAINTENANCE  
GENERAL TERMS AND CONDITIONS**

**1 - DEFINITIONS**

**Amendment:** any change to the Agreement after the Effective Date in accordance with the terms of the Agreement.

**Application(s):** the web application program(s) of Client, hosted on a server and accessible via the web browsers included in the Environment and defined in exhibit 1 of the Purchase Order, that may be tested by using the Software.

**Authorized Number of Injectors:** the maximum number of Injectors for which Client has paid the corresponding Fees; the Authorized Number of Injectors and the relating fees being defined in the corresponding Purchase Order(s).

**Blocking Error:** any Error making the use of the Software impossible.

**Business Days:** from Monday to Friday, excluding French public holidays.

**Business Hours:** the Business Days, from 9:00 AM to 6:00 PM (Paris time, France).

**Client:** the legal entity identified in the Purchase Order, which signs the Agreement and for which the License is granted and the Maintenance is provided.

**Cluster:** the Authorized Number of Injectors under the License and deployed on different machines, that run the same test simultaneously; it being specified that a same test may cover several Applications.

**Collector:** the computer program which collects response times from the Injectors, aggregates them, and pushes them in the Database.

**Corrective Maintenance:** the provision of the technical support relating to the Software.

**Current Version:** the most recent version of the Software commercialized by GATLING.

**Dashboard:** a web client which is able to pull the Data stored in the Database through its API.

**Data:** all types of data and contents collected and/or produced by Client as part of the use of the Software.

**Database:** the open source database "Cassandra" or its Enterprise version "DataStax" in its version as defined in exhibit 1 of the Purchase Order, with which the Software is intended to operate. Client is responsible for the purchase/subscription to the corresponding licenses and maintenance.

**Documentation:** the English version of the documentation, which describes the main processes and guidelines to facilitate the installation and use of the Software, and its Update if any, as provided to Client by GATLING on the media selected by GATLING.

**Effective Date:** the effective date of the Agreement, as defined in the Purchase Order.

**Environment:** the technical prerequisites which correspond to Client's minimal computer equipment (computer hardware, operating system, databases including the Database, third-party software, subscription to an Internet access service), required for the launching and use of the Software as defined in exhibit 1 of the Purchase Order, which. Client acknowledges having been informed before the Effective Date, and any evolution thereof throughout the Term.

**Error:** any bug or malfunction of the Software reproducible by GATLING, when used in accordance with the terms of the Agreement and the Documentation.

**Fees:** any amount due to GATLING by CLIENT under the corresponding Purchase Order(s), in consideration for the provision of the License and the Maintenance.

**GATLING:** Gatling Corp., a French société par actions simplifiée, whose registered office is at 152, avenue Aristide Briand 92220 Bagneux, France, with a capital of 50 000 Euros, incorporated and registered in Nanterre (France), with company number 812 810 216.

**General Terms and Conditions/GTC:** this document, including exhibit 1.

**Injector:** the software computer program which allows to generate requests to the Application being tested.

**License:** the right to use the Software in accordance with the terms of the Agreement.

**Maintenance:** the Corrective Maintenance and the Upgrade Maintenance, as defined in exhibit 1 of the GTC and provided through the Term.

**Major Error:** any Error which prevents the use of a part of the Software’s functionalities.

**Minor Error:** any Error which does not prevent the use of the Software in all its functionalities, even if such use is done by means of a workaround solution.

**Node:** one Cluster unit, i.e. one Injector instance.

**Scope:** the extent of the right of use for which the License is granted and the Maintenance is provided to Client, as defined in the Purchase Order(s), in consideration for the payment of the corresponding Fees.

**Software:** the English version of the standard computer program(s) in executable object code, for which the License is granted to Client under the Agreement, and defined in exhibit 1 of the Purchase Order, the Documentation, any Updates provided to Client under the Maintenance, and all copies in whole or in part of the Software.

**Term:** the term for which the License is granted and the Maintenance provided under the Agreement, as defined in the corresponding Purchase Order.

**Third-party software:** the third parties’ open source software, which may be included in the Software defined in the Documentation and subject to their own license terms and conditions, as contained in the Documentation.

**Update:** any correction and/or enhancement of the Software provided to Client as part of the Maintenance as they become available, excluding any additional modules.

**Upgrade Maintenance:** the provision of the Updates as they become available.

**2 - PURPOSE OF THE AGREEMENT**

**2.1** The Agreement defines the terms and conditions under which GATLING:

- (i) grants Client the personal, non-exclusive, non-assignable and non-

transferrable right to access and use the Software under the License, and

- (ii) provides Client with the Maintenance, in consideration for the payment of the Fees defined in the Purchase Order.

The License is strictly limited to the rights expressly granted under the Agreement, and shall in no event be construed as a contract of sale. GATLING shall retain the exclusive property of the Software including any reproduction thereof, in whole or in part, if any.

**3.2** The License being non-exclusive, GATLING reserves the right to commercialize directly or indirectly the Software and/or the Maintenance to any third party.

**3 - PREREQUISITES**

**3.1** Client is responsible for the purchase, the operation, the related maintenance and - where applicable - the subscriptions and licenses required by the Environment and generally, for the performance of the Software.

Client acknowledges that the Updates may require the modification of the Environment; it being understood that in all extent possible, GATLING shall inform Client at least thirty (30) days in advance, and that Client shall be responsible for the costs relating to any evolution of the Environment.

Client shall comply with the Environment throughout the Term, and acknowledges that any configuration which does not comply with the Environment may alter or even prevent the functioning of the Software, for which, under no circumstances, shall GATLING be held liable.

**3.2** Client shall cooperate closely and actively with GATLING in the performance of the Agreement. Client shall notably provide GATLING with all necessary information relating to its technical environment within the framework of the Maintenance.

**4 - PROVISION OF THE SOFTWARE**

The Agreement does not include any installation and/or setup services.

Consequently, and unless otherwise expressly agreed between the Parties, Client is solely

responsible for the downloading and installation of the Software, for which, under no circumstances shall GATLING be held liable.

Client shall bear the risks of loss or alteration of the Software as from the provision of the Software to Client in accordance with the aforementioned conditions.

## **5 - RIGHTS GRANTED**

### **5.1 Rights on the Software**

In consideration for the payment of the corresponding Fees, GATLING grants to Client the personal, non-assignable, non-exclusive and non-transferrable right to use the Software within a technical configuration that is compliant with the Environment, within the limits defined in this section and generally in accordance with the Agreement.

Client is allowed to use the Software under the form of executable object code, for its sole internal needs, throughout the Term and within the Scope, in particular the Authorized Number of Injectors, in accordance with the specifications of the Documentation and the Agreement.

Client is authorized to make a reasonable number of inactive copies of the Software, for back-up purpose only.

Client shall not:

- distribute or publish the Software license activation keys;
- activate and use any Software functionality or module which is not covered by the License;
- pledge, assign, sublicense, make available, rent, use in timesharing or service bureau, make any other use or allow any other people to use the Software for the benefit of a third-party and/or provide any software-as-a service (SaaS), application service provider (ASP), outsourcing, third party application maintenance, marketing, training, audit, advice services and/or any other commercial services corresponding to the operation of the Software for the benefit of a third party;
- translate, adapt, arrange or modify the Software in any way whatsoever;

- integrate or combine any element of the Software to any other software, or create any composite or derivative works based on the Software;
- reverse-engineer, decompile, disassemble, recreate the Software, even partially, or attempt to or enable third parties to perform such acts, except as otherwise permitted by French law. In the event that Client wishes to access information in order to achieve the interoperability of the Software with other software and before performing any decompilation task, Client shall firstly ask GATLING whether such information is promptly and/or easily accessible. If so, Client shall limit the reproduction of the code or the translation of the code only to the parts of the program which are required for the performance of the aforementioned interoperability;
- proceed with the correction of any Software errors - alone or with the assistance of a third party - to bring it into compliance with any given purpose; such right being reserved for GATLING, in accordance with the French intellectual property Code. GATLING shall correct the errors, if any, provided that such errors have been notified by Client to GATLING, are sufficiently documented by Client and may be reproduced by GATLING;
- modify, alter or remove any copyright identification, trademarks and any other intellectual property notice appearing on or included in the Software;
- disclose any result of benchmark and tests performed on the Software, if any.

Client acknowledges and agrees that in the event of any use of the Software by Client beyond the limits defined in the Agreement, GATLING shall be entitled to invoice Client for the amount that would be due if same use was made under the applicable License, without prejudice to any other provision of the Agreement and any other right to which GATLING may be entitled to.

## **5.2 Rights on Documentation**

Client may print the Documentation for the sole purpose of using the Software and make it available internally to its employees for its own needs only. However, Client shall not (i) distribute the Documentation to third parties and generally make the Documentation available to third parties by any means whatsoever and/or (ii) create derivative works from the Documentation.

## **5.3 Third-party software**

Client acknowledges and agrees that the Software may include Third-party software subject to open source license agreements, notwithstanding any clause to the contrary in the GTC, and provided by GATLING “as is”, without any warranty of any kind. In no event shall GATLING be liable for any damage suffered by Client or a third party, resulting directly or indirectly of the use of such Third-party software.

## **6 - MAINTENANCE**

In consideration for the payment of the corresponding Fees, GATLING provides Client with the Maintenance in accordance with the terms and service levels as defined in exhibit 1 of the GTC; it being understood that independently of the provisions relating to the Maintenance, GATLING reserves the right to correct any possible error contained in the Software, at its sole discretion.

Unless otherwise stated in the Purchase Order, the Maintenance comes into force on the Effective Date for the Term.

## **7 - INTELLECTUAL PROPERTY; NON-INFRINGEMENT WARRANTY**

**7.1** The Software is an original intellectual work, protected as such by the relevant national and international legislations, and the exclusive ownership of GATLING. The Software remains the exclusive ownership of GATLING and the Third-party software remains the property of their respective owners. All the results of the works performed under the Maintenance and the tools, methods and know-how used and/or developed by GATLING under the Agreement shall remain the exclusive ownership of GATLING. In addition, the Agreement does not include any license of

use, nor trademarks and other distinctive signs of GATLING and/or its licensors.

**7.2** Client shall promptly inform GATLING of any unlawful use of the Software or contrary to the Agreement of which it might be aware. If, as a result of such information, GATLING decides to take legal action against any third-party, Client shall provide all necessary assistance that GATLING may reasonably require.

## **7.3 Non-infringement warranty**

**7.3.1** GATLING warrants Client against all third-party claims alleging that the use of the Software by Client in accordance with the Documentation and the provisions of the Agreement infringes an intellectual property right belonging to said third-party, provided that, Client informs GATLING without delay of such claim and collaborates actively and in good faith with GATLING in seeking a solution to the dispute.

**7.3.2** GATLING shall, at its own discretion and under its own control and management, seek to reach a potential settlement with such third-party. In the event of the conclusion of a settlement which amount will be agreed upon between GATLING and such third-party, GATLING shall pay the full amount to the third-party, which may be at the charge of Client as part of the settlement. If GATLING fails to reach a settlement, GATLING shall, under its own control and management, ensure the defense of Client with the active and good faith collaboration of Client. Under no circumstances, shall Client conduct on its own the legal defense of the claim brought by the third-party against itself, and Client undertakes to call GATLING into warranty without delay.

In the event of a final court decision having the force of *res judicata*, GATLING will indemnify Client for the amount of the monetary remedies and any interest accrued, provided that Client can provide evidence of payment of such sums to the third-party.

**7.3.3** The non-infringement warranty stated in 7.3 shall not apply in the following cases:

- (i) the Software is combined with other software, hardware or third-party equipment, where the alleged infringement results from such a combination;
- (ii) Client continues the infringing activity despite the signing of a settlement agreement or the notification of the *res judicata* of a final court decision having the force of *res judicata*;
- (iii) Client has not implemented the modifications recommended by GATLING and/or Client uses a version of the Software which is not the Current Version, that would have prevented the qualification of infringement, or
- (iv) infringement results from the failure of Client to strictly comply with the Documentation and the provisions of the Agreement.

In the event of any such claim from a third-party against Client and/or GATLING, or threat of action or if GATLING deems it likely to happen, GATLING may, at its sole discretion, and subject to the conditions referred to above, choose:

- (i) to attempt to obtain the right for Client to continue to use the disputed part of the Software, or
- (ii) to provide Client, at its expense, a software or a component with substantially similar functionalities or performances, or
- (iii) in case of failure to do so, to terminate the Agreement, and pay Client, as damages, an amount corresponding to the paid Fees under the ongoing contractual period.

**7.3.4** It is specified that the warranty stated in this section 7.3 is restrictive. GATLING expressly disclaims any express or implied warranty, which is not expressly defined in the Agreement.

**7.4** Client ensures that it owns the necessary intellectual property rights and/or rights of use required by their respective owners, relating to any elements made available to GATLING in the

performance of the Agreement, in particular the Applications and the Database, and that the conclusion and the performance of the Agreement shall not infringe any agreement concluded by Client with a third party or any third-party's rights. Failing that, Client shall bear all the consequences thereof and guarantee GATLING against all claims, upon the first request.

## **8 - DATA**

### **8.1 Data property**

Client is the owner of the Data and in particular the test results obtained by using the Software.

### **8.2 Personal Data**

Client expressly acknowledges that it has fulfilled all the necessary formalities for the data protection and data processing used within the framework of its activity, with regard to the law n°78-17 of 6th January 1978 on data processing, data files and individual liberties. In any case, Client acts as "data controller" and GATLING as "processor" as defined by the aforementioned law. In the event GATLING processes personal data in the performance of the Agreement, GATLING shall perform such processes in the name and on behalf of Client and only under its instructions.

## **9 - WARRANTIES**

**9.1** GATLING declares that it owns the necessary rights to conclude the Agreement, and notably that it is the owner of the Software (to the exclusion of the rights on Third-party software, if any) and the Documentation, for which the right of access and use is granted to Client under the License.

**9.2** As from the provision of the Software to Client and for a ninety (90) days period thereafter, GATLING exclusively warrants that the Software, as unmodified and used in accordance with the terms of the Agreement and the Documentation, substantially conforms to the specifications of the latest published version of the Documentation.

Under the above conformity warranty, and provided that Client complies with its obligations under the Agreement, GATLING shall - at its sole option and provided that GATLING's non-compliance does not result from any force majeure event - (i) replace the

Software initially provided by another version of the Software, it being agreed that the replacement Software will be warranted for the remainder of the original warranty period, or (ii) terminate the relevant License and refund to Client the portion of the corresponding Fees already paid; such refund being in full discharge of GATLING's liabilities under this section.

GATLING expressly disclaims any warranty whether express or implied, non-expressly defined in the Agreement, notably (i) that the functionalities contained in the Software will meet Client's needs and and/or that the performance will be uninterrupted or free from bugs and/or to the results obtained from the use and/or the performance of the Software and/or (ii) relating to the damages that may occur to Client's computer equipment, in particular its local infrastructure.

In no event, shall the warranty as stated in this section replace the Maintenance.

**9.3** Client warrants that it owns the necessary rights for the conclusion and the performance of the Agreement, in particular the rights relating to the Environment and the data.

## **10 - LIABILITIES AND INSURANCE**

### **10.1 GATLING's liability**

Client acknowledges that GATLING has duly fulfilled its pre-contractual obligations of advice under the Agreement and that GATLING is bound by an obligation of means under the Agreement.

The Parties expressly agree that notwithstanding the nature and/or the cause for the action:

- GATLING shall only be liable for direct and foreseeable damages. Consequently, under no circumstances shall GATLING be held liable for any indirect or unforeseeable, material or immaterial damages (and notably commercial prejudice, loss of clientele, sales revenue or benefits, shortfall, any commercial disruption, loss of brand image, loss of opportunity, loss of or corruption to

files or data and/or costs relating to a replacement solution), which may be suffered by Client and/or any third party;

- in the event that the liability of GATLING is recognized, GATLING'S aggregate liability - for all types of causes and damages whatsoever - shall not exceed the Fees exclusive of value added tax paid by Client to GATLING under the ongoing yearly period.

Under no circumstances, shall GATLING be liable in case of (i) modification of the Software not made by GATLING, (ii) any use of the Software non-compliant with the Documentation and/or the Agreement and/or the instructions of GATLING, and/or (iii) any use of the Software in a technical environment non-compliant with the Environment.

Client acknowledges that the Fees reflect the allocation of the risks under the Agreement and the economical balance required by the Parties, and that the Agreement would not have been concluded without the limitations of liability defined in this section. Such limitation of liability will remain in force, even in the event of termination or dissolution of the Agreement.

It is expressly agreed that, in any event, any claim for damages against GATLING in connection with the Agreement will be time-barred twelve (12) months after the event that generated the claim.

### **10.2 Client's liability**

**10.2.1** Client is solely responsible for:

- the choice of the Software and its use;
- the verification and the analysis of the results of the test obtained with the Software; the use of the results being under Client's own and sole responsibility and risks;
- its premises, Applications, computer equipment and the evolution of the minimum Environment (in particular Third-party software licenses) which may be necessary for the compatibility of such Environment

with the Updates. Client shall comply with all GATLING's instructions in this respect;

- the information that it enters into the Database through the Collector.

Client shall take all measures required to ensure the backup and the storage of the files and data that it processes or keeps on a regular basis, and generally, their protection and safety.

**10.2.2** Client will defend GATLING, at Client's own expense, against any third-party claim and/or action relating to the data and other information provided by Client, and undertakes to bear any indemnification for damages that may have been suffered by GATLING.

### **10.3 Insurance**

The Parties certify that they have taken out a professional liability insurance policy which covers any and all activities related to the Agreement in a well-known and solvent insurance company established in France and that the premium are duly paid and will remain paid on time. In addition, each Party shall - upon first request by the other Party - provide the latter with a certificate of its insurance policy, concerning the nature of the risks covered and the premium payments.

### **11 - FORCE MAJEURE**

**11.1** Neither Party shall be liable to the other Party for any failure or delay in performing its obligations under the Agreement when such failure or delay is the exclusive result of the occurrence of the case of force majeure.

**11.2** The events provided for in article 1218 of the French Civil Code and recognised as such by French courts, constitute force majeure events.

**11.3** The force majeure event will suspend the performance of the Agreement, excluding payment obligation. As soon as the impediment of performance due to the case of force majeure stops, the said obligations shall continue for the remaining term of the Agreement, increased to take into account the term of the suspension. However, if the case of force majeure lasts longer than forty-five (45)

days, the Agreement may be terminated by either Party without notice or compensation.

**11.4** Each Party shall bear its own costs incurred due to a case of force majeure.

### **12 - EXCLUSION OF UNFORESEEABILITY**

The Parties represent that they understand, accept and assume the risks relating to the performance of the Agreement. It is expressly agreed that the provisions of Article 1195 of the French Code civil shall not apply to the Agreement.

Therefore, the Parties waive to renegotiate the terms and conditions of the Agreement in case of change of unforeseeable circumstances when concluding the Agreement, whatever their cause or their consequences.

### **13 - CONFIDENTIALITY**

Each Party shall consider as strictly confidential any data, information or knowledge, whatever their form or nature, and on whatever media, disclosed to it by the other Party in performing the Agreement (hereinafter referred to as the "Confidential Information"), and agrees that it shall not disclose any Confidential Information to any third party.

Client expressly acknowledges that the structure and the organization of the Software (in particular its software components, applications, technical information, functional and technical specifications, functions, methods, ideas, know-how and similar information) are Confidential Information of GATLING and/or its licensors. Therefore, Client shall not disclose such Confidential Information.

The Parties may disclose Confidential Information only to those persons allowed to receive such Confidential Information for the exclusive purpose of performing the Agreement and who agree to be bound by the provisions of the Agreement; each Party being responsible for such persons' compliance with the aforementioned provisions.

Confidential Information does not include information, documents and/or tools which:

- was part of the public domain at the time of their disclosure or become part

- of the public domain without any breach to the provisions of this section;
- result from independent development by one of the Parties without any breach to this obligation of confidentiality by the concerned Party, or has been obtained through a third party, not bound by an obligation of confidentiality;
- has been explicitly considered as non-confidential by the disclosing Party for the purpose of the Agreement;
- is required to be disclosed by applicable law or judicial or administrative Court order.

The undertaking provided in this section shall come into force as from the period of negotiations between the Parties and shall survive during five (5) years after the termination of the Agreement for any reason whatsoever, it being agreed that in any event, such undertaking - when it relates to any Confidential Information relating to the intellectual property rights of GATLING - shall remain valid during the term of the related intellectual property rights.

#### **14 - REFERENCE**

GATLING is expressly allowed to inform any third-party that Client has concluded a license of use the Software, and to mention its trade name, trademark as a business reference in its marketing and advertising documents, and notably its website or affiliates' websites.

#### **15 - TERM; TERMINATION; EFFECTS AT THE END OF THE AGREEMENT**

##### **15.1 Term**

The Agreement comes into force at the Effective Date and for the Term. At the end of such initial period and following contractual period if any, and unless otherwise stated in the Purchase Order or early termination of the Agreement in accordance with the terms of the GTC, the License and the Maintenance shall be tacitly renewed for one (1) year, subject to the Price revision in accordance with the GTC.

Each Party may terminate the Agreement in writing by notice to the other Party, at least thirty (30) Business Days before the termination of the ongoing contractual period.

##### **15.2 Termination**

Each Party may automatically terminate as of right the Agreement, by notice to the other Party, in the event that such Party is in material breach of its obligations, and such breach has not been remedied within thirty (30) days from receipt of notice to remedy, without prejudice to any damages that such Party might claim. It is expressly agreed that any infringement of GATLING's intellectual property rights and non-payment of Client constitute a material breach by Client of its contractual obligations under the Agreement.

##### **15.3 Effects at the end of the Agreement**

The termination of the License for any reason whatsoever entails ipso facto the termination of the Maintenance, without notice or compensation for Client.

Upon termination of the Agreement for any reason whatsoever, Client agrees to:

- cease any use of the Software and immediately withdraw all copies of the Software from the computers' memory and destroy them, or return the Software to GATLING;
- promptly return to GATLING any Confidential Information, and more generally, any material provided by the latter in order to perform the Agreement;
- immediately pay any and all amounts due to GATLING under the Agreement, without any possibility of rebate, refund or offset; all the amounts paid to GATLING under the Agreement being not refundable; and
- certify in writing, upon GATLING's request, that it has fulfilled its obligations as stated in this section.

Furthermore, all the provisions which should survive the expiration or termination of the Agreement by nature shall remain applicable, for the term necessary to give them full force.

#### **16 - ASSIGNMENT**

**16.1** Client shall not assign - whether in whole or in part, free of charge or against payment, for any reason and under any form whatsoever - any of its rights and obligations under the Agreement to any third party, without the prior written consent of GATLING. In addition, Client



shall expressly inform GATLING in the event of change of control of its share-capital.

**16.2** GATLING may transfer any of its rights and obligations under the Agreement to any third party; it being understood that as from the effective date of the transaction, GATLING shall not be held liable under the Agreement.

**16.3** In case of assignment or transfer of the Agreement pursuant to the conditions defined in this section, the assignee or the successor will be automatically bound by the Agreement.

### **17 - SUBCONTRACTING**

GATLING reserves the right to subcontract its contractual obligations in whole or in part to any third party of its choice; it being agreed that GATLING shall remain solely responsible for the execution of the contractual obligations as stated in the Agreement.

### **18 - NON-SOLICITATION**

**18.1** Each Party undertakes not to solicit the recruitment of any employee of the other Party throughout the term of the Agreement and for a period of twelve (12) months following its expiration or termination, unless the other Party gives its prior written consent.

**18.2** The Party that breaches the provisions of this section shall be required to pay immediately to the other Party, as a penalty, liquidated damages in an amount equal to the gross salary paid to such person recruited over the eighteen (18) month period before his/her departure.

### **19 - NON-COMPETITION**

Client shall not acquire or develop and/or directly or indirectly and/or market, any competitive solution of the Software during the term of the Agreement and for a period of one (1) year from the end of the Agreement for any reason whatsoever.

### **20 - COMPLIANCE WITH LAWS AND REGULATIONS**

**20.1** The use of the Software shall in no event infringe the applicable laws and regulations in particular, with regard to the export of French technologies. Therefore, Client shall not export or re-export the Software and the Confidential

Information (including by remote electronic access), directly or indirectly, to any source for use in any country in contravention of any applicable export laws or regulations.

**20.2** Client acknowledges that it is subject to an automatic processing of personal data within the framework of the Agreement, for the purpose of creating files to manage GATLING's base of prospects. In this respect, Client has a right of access and deletion of such data with GATLING, under the conditions stated by French law.

### **21 - GENERAL PROVISIONS**

#### **21.1 Independent contractors**

The Parties are independent contractors, acting in their own name and on their own account. In no event shall the Agreement establish any mandate, franchise, employment relationship or any type of legal entity. Neither Party may bindingly commit the other Party with regard to any third party.

#### **21.2 Entire agreement**

The Agreement constitutes the entire agreement between the Parties. It cancels and replaces all prior or simultaneous agreements and understandings, whether oral or written, relating to the subject matter of this Agreement. The Agreement prevails over any Client's general terms and conditions. It cannot be modified unless by Amendment (which may not be a pre-printed form of contract or general terms and conditions) signed by a duly authorized representative of each Party.

#### **21.3 Notice**

Except as may be expressly agreed otherwise, all notices pertaining to the Agreement shall be in writing and either personally delivered or sent via postage prepaid certified mail which can be tracked, addressed to Client's representative as stated in the Purchase Order if Client is the recipient or addressed to GATLING's representative at GATLING's address set forth in the General Terms and Conditions if GATLING is the recipient. All notices shall be effective upon the following day of the first presentation of the notice to the recipient Party.

#### **21.4 Proof**

Unless otherwise provided in the Agreement, the files, data, messages and digitized records stored in the Parties' data processing systems shall be admitted as proof of the facts and communications between the Parties, provided that the transmitting Party may be identified and that such materials are established and stored under conditions which permit to ensure their integrity. In particular, Client acknowledges that all measures related to the use of the Software shall be measured through GATLING's tools.

#### **21.5 Severability**

If any provision of the Agreement is held to be illegal, invalid or unenforceable, as a result of any statutory or regulatory provision or after the decision of a competent court, which has become final, all the other provisions of the Agreement shall continue in full force and effect, unless the purpose of the Agreement is consequently affected. In such event, the Parties shall consult each other to replace such provision by a solution agreeable and which is in the spirit of the Agreement

#### **21.6 Waiver**

The waiver or the failure by either Party to claim a breach by the other Party of any of its obligations under the Agreement shall not be construed as a waiver of such obligation for the future. Any waiver shall only be effective subject to a writing (which may not be a pre-printed form of contract or of terms and conditions) signed by a duly authorized representative of each Party.

#### **21.7 Parties' addresses**

For the purpose of the Agreement, GATLING's official address shall be the one set forth in the General Terms and Conditions, and Client's

official address shall be the one stated in the Purchase Order.

#### **21.8 Language**

The Agreement is in the English language only, which language shall be controlling in all respects. Furthermore, all communications and notices made or given pursuant to the Agreement shall be in English or French language.

### **22 - GOVERNING LAW AND DISPUTE RESOLUTION**

The Agreement shall be governed by and construed in accordance with French Law.

Except where a breach of the defaulting Party makes the contractual relation impossible to maintain, the Parties will try to reach an out-of-court settlement for any dispute arising out of or relating to the interpretation, the enforcement or the termination of the Agreement. In the event that the Parties cannot reach an amicable solution within fifteen (15) Business Days as from the delivery of the corresponding notice by a Party to the other Party, the Parties irrevocably agree that the commercial Court of Paris shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Agreement or its subject matter, except for any dispute regarding intellectual property rights, which shall be submitted to the exclusive jurisdiction of the "Tribunal de grande instance" of Paris, notwithstanding the plurality of defendants, claim against guarantor, summary or conservatory proceedings.

## EXHIBIT 1 - DESCRIPTION OF THE MAINTENANCE

In consideration for the payment of the corresponding Fees, GATLING provides Client with the Maintenance services as following defined:

### **1. Corrective Maintenance**

Client shall appoint and maintain, at least one (1) and up to two (2) technician(s) already trained to the use of the Software who will be the sole person(s) in charge of the communication with GATLING under the Corrective Maintenance. Client shall notify without delay GATLING of any change of the person(s) in charge; it being agreed that the substitute technician will have sufficient competence to carry out the relationship with GATLING technical support, and that Client bear any costs incurred by the required training of such technicians.

Client acknowledges that the proper training of the aforementioned representatives, constitutes a material obligation under the Agreement and a prerequisite for the good performance of the Corrective Maintenance by GATLING.

Generally, Client shall:

- promptly notify to GATLING all Errors and requests of intervention in chronological order, and record them on an incident record book;
- equip itself with the technical means, notably regarding electronic communications means, necessary for GATLING to properly provide the Corrective Maintenance;
- cooperate actively to the correction of the Errors notably by providing GATLING with any document and/or information (and notably its databases) that GATLING may deem necessary to ensure the Corrective Maintenance; it being understood that such cooperation is imperative within the framework of the Corrective Maintenance;
- comply with GATLING's instructions and recommendations and implement the Updates;
- employ the necessary personnel in order to test the solutions recommended by GATLING within the framework of the Corrective Maintenance.

Under the Corrective Maintenance, GATLING shall provide Client with a technical support in French or English language available during the Business Hours.

Client acknowledges and agrees that only requests for the Corrective Maintenance assistance with respect to the Errors by e-mail at: [contact@gatling.io](mailto:contact@gatling.io) or by phone at: +33 (0) 1 41 24 43 29 which comprise the following information needed to analyze the Error - notably the precise path which leads to the Error and the concerned screen shots - shall be taken into account by GATLING. Client's authorized contact under Corrective Maintenance shall be able to reproduce the Error exactly and be perfectly aware of the conditions of its occurrence. GATLING takes into account the Errors identified as such by Client, depending on their priority levels.

Errors will be processed by GATLING's technicians according to the following priority levels and response time:

- Priority 1: Blocking Error  
Response time: eight (8) hours
- Priority 2: Major Error  
Response time: twenty-four (24) hours

The Minor Errors are not subject to any response time.

Response time means the receipt by GATLING of the Error report, which is provided by email. The response time shall commence as from the Error report by Client or, if Client reports the Error outside

the Business Hours, as from the first Business Hour following the Error report. In no event, shall response time be considered as resolution or workaround solution time of the Error.

GATLING shall take reasonable care and skill and use all reasonable endeavors to answer, correct and/or circumvent the Errors identified as such by GATLING within the best delays; it being specified that:

- (i) The severity level of an Error may be requalified by GATLING, it being agreed that Client will be expressly informed by Client as soon as possible of such requalification;
- (ii) In the event that GATLING has corrected an Error in a more recent version of the Software than the version used by Client and that GATLING provided such version to Client, GATLING shall not be held liable under the Corrective Maintenance.

GATLING will address to Client, a report of its interventions by any means of its choice, at the term of its intervention under a Blocking Error or a Major Error.

In the event of a Blocking Error or a Major Error cannot be corrected or circumvented, GATLING may intervene in the premises where the Software is installed, as part of related professional services.

For the sake of clarity, it is specified that Corrective Maintenance does not include any recovery data services.

In addition, Client acknowledges that GATLING shall not be liable under the Corrective Maintenance in the event that the Error is caused by (i) a use of the Software which does not comply with the Documentation and/or the Agreement, (ii) a use of the Software with another configuration than the Environment, and notably with third-parties software, (iii) a use of a different version from the Current Version or the immediately previous version not exceeding a period of two (2) months as from the date of availability of the Current Version, (iv) use of a version of the Software modified by Client or by a third party and generally, and/or (v) any other reason independent from the Software and/or GATLING.

In any event, Client shall ensure its technical environment complies with the Environment and its updates, the organization (including its updates), and that it has the necessary internal skills for the good use of the Software and for the efficient management of the Errors by GATLING and GATLING's interventions in accordance with the terms of the Agreement.