

OMNICOACH

Terms Of Service

Last updated: 12th May, 2022

This Terms Of Service is entered into as of the date when the Order Form is signed by both parties (the “Effective Date”) by and between:

OMNICOACH Korlátolt Felelősségű Társaság, a company incorporated and registered in Hungary, with company registration number 02-09-083790, and whose registered office is at Megyeri tér 1/B fszt. 9., Pécs, H-7623 (“Omnicoach”).

and

the company indicated and signed for in the Order Form with the details set out therein (“Customer”).

RECITALS

Whereas, Omnicoach is a gaming and esports service provider offering gaming and esports related services to businesses and consumers, including gameplay analysis of videogames.

Whereas, in accordance with the terms set forth in this Agreement, Customer wishes to use the Omnicoach Services, as defined below, and Omnicoach wishes to provide Customer with access to such Omnicoach Services.

NOW THEREFORE, in consideration of the promises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Omnicoach and Customer agree as follows:

1. Definitions. The following definitions apply in this Agreement. Terms defined directly in clauses and the Schedule shall have the meanings assigned them.
 - 1.1 “Agreement” means together this Agreement, its Schedule and the Order Form which set out the set of terms under which Omnicoach and Customer enter into a contractual relationship for the provision of the Omnicoach Services.
 - 1.2 “Aggregated Data” means data generated in the course of using the Omnicoach Services that is created and/or collected by Omnicoach and anonymized and/or de-identified such that the data is not linked with and does not identify any Customer or natural person.
 - 1.3 “Affiliate” means in respect of Omnicoach, any entity that from time to time, directly or indirectly, Controls, is Controlled by, or is under common Control with Omnicoach, and any other entity agreed in writing by the parties as being an Affiliate in respect of Omnicoach.
 - 1.4 “Business Day” means any day which is not a Saturday, Sunday, or public holiday in Hungary.
 - 1.5 “Claim” has the meaning given to it in Clause 10.3.

- 1.6 “Commencement Date” means the date specified in the Order Form, from which Omnicoach shall provide Customer with access to the relevant Omnicoach Services.
- 1.7 “Competitor” means a service provider offering gaming and esports coaching services.
- 1.8 “Confidential Information” means any and all information or data, in whatever form or storage medium, whether tangible or intangible, and disclosed on or after the Effective Date by or on behalf of the Discloser to the Recipient in writing, orally, through visual means, which is now or at any time after the Effective Date, owned or controlled by the Discloser. Confidential Information shall, without limitation, include trade secrets, discoveries, knowhow, designs, specifications, drawings, present or future products or services (including the Omnicoach Services) and markets, inventions, prototypes, algorithms, software of any kind or nature, including, but not limited to object or machine codes, source codes (whether revealed in the Omnicoach Services or disclosed by other means), computer models and applications, developments, processes, formulae, technology, engineering, architectures, hardware configuration information, diagrams, data, computer programs, business activities and operations, customer lists, reports, studies and other technical and business information and any other information which, by its nature, would reasonably be considered to be of a confidential nature either intrinsically or due to the context and circumstances in which it was disclosed, including, for the avoidance of doubt, information concerning the parties’ customers, which is of a confidential nature.
- 1.9 “Control” means the ownership of, or power to vote in respect of more than 50% of the voting stock, shares, quotas or interests of an entity.
- 1.10 “Customer Data” means data that Customer provides to Omnicoach in order to implement Customer’s use of the Omnicoach Services, to create Customer Subdomain, or data provided by Customer through Customer’s use of the Omnicoach Services, including the quests, training exercises, guides, branding elements, logos, text, or videos uploaded to the Customer Subdomain or otherwise provided to Omnicoach.
- 1.11 “Customer Subdomain” means the subdomain created under the omnicoach.gg domain, or any other domain provided by Omnicoach for the Customer to facilitate the use of the Omnicoach Services.
- 1.12 “data controller”, “personal data”, “processing” shall be interpreted in accordance with applicable Data Protection Legislation.
- 1.13 “Data Protection Legislation” means the General Data Protection Regulation (EU) 2016/679 (“GDPR”), European Directive 2002/58/EC and any legislation and/or regulation implementing or made pursuant to them, or which amends, replaces, re-enacts or consolidates any of them (including the GDPR).
- 1.14 “Defect” means an error in the Omnicoach Services that causes the Omnicoach Services to fail to operate substantially in accordance with the Omnicoach Documentation.

- 1.15 “Discloser” means a party disclosing its Confidential Information to the Recipient. In the case of Customer, Discloser may be Customer, and in the case of Omnicoach, Discloser may be Omnicoach and/or Omnicoach’s Affiliates and/or third parties used by Omnicoach in order to provide any part of the Omnicoach Services, as applicable.
- 1.16 “Fees” means the Usage Fees, the Subscription Fees, the Implementation Fee, or any other fee as agreed in the Order Form, payable to Omnicoach by Customer, as set out in this Agreement.
- 1.17 “Games” means the videogames, all interfaces available to interact with the videogames, including graphical interfaces, or application programming interfaces, and all other related service provided by the Publishers that are compatible with and used by the Omnicoach Services provided to the Customer.
- 1.18 “Implementation Fee” means the fee payable by Customer as consideration for technical implementation work performed by Omnicoach enabling Customer to access and use the Omnicoach Services as agreed by the parties in the Order Form.
- 1.19 “Intellectual Property Rights” means (a) patents, inventions, designs, copyright and related rights, database rights, knowhow and Confidential Information, trade marks (whether registered or unregistered) and related goodwill, trade names (whether registered or unregistered), and rights to apply for registration; (b) all other rights of a similar nature or having an equivalent effect anywhere in the world which currently exist or are recognised in the future; and (c) all applications, extensions and renewals in relation to any such rights.
- 1.20 “IPR Claim” means any claim or action against Customer by any third party wherein the use of the Omnicoach Services (or any part of the Omnicoach Services) by Customer in accordance with this Agreement directly infringes the Intellectual Property Rights of that third party.
- 1.21 “Normal Working Hours” means the hours commencing at 9 am CET and ending at 5 pm CET each Business Day.
- 1.22 “Omnicoach Data” means any data created or generated by Omnicoach or generated by Customer's use of the Omnicoach Services (excluding Customer Data).
- 1.23 “Omnicoach Documentation” means the current published documentation at docs.omnicoach.gg or at such other URL as Omnicoach may use and as may be amended from time-to-time.
- 1.24 “Omnicoach Platform” means the platform operated by Omnicoach and accessible at www.omnicoach.gg, at the Customer Subdomain, or at any other channel provided by Omnicoach, such as an application programming interface, where the Omnicoach Services are provided in accordance with the terms of this Agreement.

- 1.25 “Omnicoach Services” means the gaming and esports related services provided by Omnicoach through the Omnicoach Platform including but not limited to the implementation of the Customer Subdomain, the video analysis services, and the quest set up system used by the Customer.
- 1.26 “Order Form” means the form duly signed by or on behalf of Omnicoach and Customer as an inseparable part of this Agreement incorporating the terms of this Agreement, and which identifies (a) the Omnicoach Services ordered (including the Games to which the Omnicoach Services relate to); (b) the Fees; (c) the Commencement Date, (d) the Service Period; (e) the Trial Period; and (f) other information as Omnicoach may reasonably require or the parties agree upon.
- 1.27 “Publisher” means the publisher, or other rights holder of the Games used in relation to the Omnicoach Services.
- 1.28 “Publisher Terms and Conditions” means all terms and conditions set by the Publisher that are applicable to the use of the Games.
- 1.29 “Recipient” means a party receiving Confidential Information from the Discloser. In the case of Customer, Recipient may be Customer. In the case of Omnicoach, Recipient may be Omnicoach and/or Omnicoach’s Affiliates, and/or third parties used by Omnicoach in order to provide any part of the Omnicoach Services as applicable.
- 1.30 “Registered Users” means any and all users and persons authorized by Omnicoach to use the Omnicoach Services in accordance with the terms and conditions set by Omnicoach.
- 1.31 “Sales Tax” means any applicable national, federal, state, and local sales, use, value added, excise and other similar taxes, fees and surcharges that are legally or by custom borne by a purchaser of goods or services.
- 1.32 “Service Period” means the period of provision of the Omnicoach Services by Omnicoach which shall be twelve (12) months as from the Commencement Date unless specified otherwise in the Order Form.
- 1.33 “Subscription Fees” means the fees payable to Omnicoach by Customer as consideration for Omnicoach providing access to the Omnicoach Services or their parts as set out in Clause 2.1 below.
- 1.34 “Trial Period” means the first seven (7) days of the first Service Period unless specified otherwise in the Order Form.
- 1.35 “Usage Fees” means the usage based fees payable to Omnicoach in addition to the Subscription Fees and the Implementation Fee as defined in the Order Form, including, but not limited to any fees calculated based on the number of gameplays analysed by Omnicoach in each month during the Service Period.
2. Omnicoach Services.
- 2.1 Grant of license to use the Omnicoach Services.

- 2.1.1 In accordance with this Agreement, and subject to Customer's compliance at all times with this Agreement and the Order Form, Omnicoach grants Customer access to all Omnicoach Services or their parts as may be limited in the Order Form. For this reasons Omnicoach grants Customer a limited, non-exclusive, revocable license for the duration of the Service Period to use the Omnicoach Services solely for the purposes in accordance with this Agreement. This license is not transferable or sub-licensable and does not include a right to adapt the work. The license granted includes software and other data necessary for the provision of the Omnicoach Services, along with the applicable updates, upgrades, improvements, modifications, changes and additions. Except and solely as expressly granted to Customer in this Agreement, Omnicoach reserves all other rights of ownership of any kind to itself and its applicable licensees.
- 2.1.2 Ownership. The Omnicoach Platform, the Customer Subdomain, the Omnicoach Services and their original content, features and functionality are owned by Omnicoach or its licensees, and are protected by international copyright, trademark, patent, trade secret and other intellectual property or proprietary rights laws. All such rights are reserved.
- 2.1.3 Ownership of the Games. Parties acknowledge that the Games are exclusively owned by the Publishers and the relevant Publisher Terms and Conditions are applicable to the use of the Games with which the Customer shall comply.
- 2.2 Expiry of Omnicoach Services. Customer's right to use the relevant Omnicoach Services by accessing the Omnicoach Platform shall cease at midnight of the Service Period's last day. At this time the Customer Subdomain shall also be made unavailable.
- 2.3 Updates. Omnicoach may update the Omnicoach Services from time-to-time provided such changes do not materially and negatively impact the functionality, performance, or security of the Omnicoach Services as a whole. Omnicoach shall inform Customer of such changes as practicable.
- 2.4 Timing. Omnicoach shall use reasonable endeavours to meet any performance dates set out in the Order Form.
- 2.5 Registered Users. Customer acknowledges that Omnicoach in its absolute sole discretion may refuse, terminate, or suspend the access to the Omnicoach Services by any Registered Users or any groups of Registered Users. Omnicoach reserves the right to refuse or suspend in its absolute sole discretion the possibility for anyone to register to the Omnicoach Services as Registered Users. Omnicoach reserves the right to freely define the terms and conditions upon which anyone can access the Omnicoach Services as Registered Users.
- 2.6 Refusal. Without limitation on any other rights and remedies hereunder Omnicoach may in its absolute sole discretion refuse the acceptance, processing, storage or analysis of any Customer Data in the Omnicoach Services without notification, and without providing any reasoning. This includes but is not limited to Omnicoach's right to refuse the analysis of

gameplays that, in Omnicoach's reasonable opinion are excessive in duration, or do not conform with Omnicoach's quality of content standards.

2.7 Suspension. Without limitation on any other rights and remedies hereunder, Omnicoach may suspend Customer's right to access the Omnicoach Services or use any portion or all of the Omnicoach Services immediately upon notice to Customer if it determines:

2.7.1 that Customer's use of or access to the Omnicoach Services (i) poses a security risk to Omnicoach, its Affiliates, the Omnicoach Services or any third party; (ii) may adversely impact availability or performance of the Omnicoach Services used by any customer of Omnicoach; (iii) may subject Omnicoach or any third party to any liability; or (iv) may be fraudulent.

2.7.2 that Customer, is in breach of this Agreement, the Publisher Terms and Conditions or any other agreement by which software being used on or in conjunction with the Omnicoach Services is licensed..

2.7.3 Omnicoach shall reinstate the suspended Omnicoach Services once it has established the cause of the suspension has been remedied or ceased to exist. Where the cause of the suspension persists for more than thirty (30) days, Omnicoach may terminate this Agreement with immediate effect.

2.7.4 Omnicoach may immediately, partially, or fully suspend the access of Customer to the Omnicoach Services for the period of its investigation at any time with immediate effect without refunding or compensating Customer if Omnicoach reasonably suspects that any of the circumstances listed under Clauses 6.5, or 6.6 may have arisen concerning the use of the Omnicoach Services by the Customer.

2.8 All Rights Not Granted Are Reserved. Omnicoach and its licensors, if any (including Omnicoach's Affiliates) own any and all Intellectual Property Rights in the Omnicoach Services. Except solely as expressly stated herein, this Agreement does not grant Customer any rights to, or in, any Intellectual Property Rights in respect of the Omnicoach Services, the Omnicoach Platform or any Omnicoach Data or Omnicoach Documentation.

3. Omnicoach support and service level availability

3.1 Omnicoach support. Omnicoach shall ensure that support is available by telephone and e-mail during Normal Working Hours to provide assistance to Customer in respect of remedying Defects and providing advice on the use of the Omnicoach Services.

3.2 Omnicoach shall use reasonable endeavours to correct Defects notified to it by Customer in a timely manner appropriate to the seriousness of the circumstances.

3.3 Omnicoach shall endeavour to correct Defects in accordance with the following procedure:

3.3.1 Customer shall promptly notify Omnicoach of all Defects. Where such notification is made orally, Customer shall provide written confirmation

(which may be sent by e-mail) of the notification within two (2) Business Days;

- 3.3.2 within four (4) hours of such written notification or if such written notification is received after 1 pm CET then until 1 pm CET of the next Business Day immediately following the day when such written notification is received by Omnicoach, Omnicoach shall acknowledge receipt of the notification;
 - 3.3.3 Omnicoach shall start work on correcting the Defect as soon as Omnicoach's workload allows and shall use commercially reasonable efforts to correct the Defect.
 - 3.4 Customer shall not, without Omnicoach's prior written consent, allow any person other than a representative of Omnicoach to modify, repair or maintain any part of the Omnicoach Services.
 - 3.5 Customer shall co-operate with Omnicoach in any manner reasonably required by Omnicoach, including provision of information and data, in order to enable Omnicoach to provide the support services set out in this Clause 3.
 - 3.6 Customer shall comply, as soon as reasonably practicable, with all Omnicoach's reasonable requests for information or assistance.
 - 3.7 Service level availability. During the term of this Agreement Omnicoach shall use all commercially reasonable efforts to maintain availability of the Omnicoach Services. Omnicoach shall, in accordance with Clauses 9, 10 and 11 make no representations as to service availability levels of the Omnicoach Services and shall, to the maximum extent permitted by applicable law, limit its liability for any claims in connection to service availability levels.
4. Customer Obligations
- 4.1 Obligations. Customer shall:
 - 4.1.1 ensure that it will comply with all terms of this Agreement, including, but not limited to Schedule 1 (Acceptable Use Policy);
 - 4.1.2 ensure that the Customer Data, Customer's instructions to Omnicoach, and Customer's use of Omnicoach Services are at all times in compliance with the Publisher Terms and Conditions and all applicable laws.
 - 4.1.3 provide such assistance as may be reasonably requested by Omnicoach from time-to-time for the proper and contractual provision of the Omnicoach Services;
 - 4.1.4 carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner;
 - 4.1.5 remain solely liable for any third party software Customer uses on its systems and/or in connection with the Omnicoach Services; and
 - 4.1.6 prevent any unauthorized access to, or use of, the Omnicoach Services, and shall notify Omnicoach promptly of any such unauthorized access or use.

4.2 Customer Data, and Customer's instructions.

- 4.2.1 Customer or its licensors shall own all right, title, and interest in and to all of the Customer Data.
- 4.2.2 Customer shall at all times have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data and Customer's instructions to Omnicoach, as well as for the compliance with the Publisher Terms and Conditions, and for ensuring that these do not infringe the rights of any third parties.
- 4.2.3 Customer hereby grants to Omnicoach on and subject to the terms and conditions of this Agreement a license to use the Customer Data for the purpose of Omnicoach performing under this Agreement.
- 4.2.4 Customer shall provide Omnicoach with access to only such information, including Customer Data, as may be required to perform Omnicoach obligations under the Omnicoach Services.
- 4.2.5 In no event shall Omnicoach be responsible for any loss, destruction, alteration, or disclosure of Customer Data to the extent caused directly or indirectly by Customer, a Registered User, or any third party.
- 4.2.6 Omnicoach may destroy or otherwise dispose of any of the Customer Data in its possession at any point thirty (30) days or more after termination of this Agreement.
- 4.2.7 Omnicoach may collect, use and analyze general information and data from its Customers, including Aggregated Data, for purposes of improving and enhancing the quality and nature of the Omnicoach Services, or other services, for its business purposes and/or to market or publish general information and statistics, provided that Omnicoach does not specifically identify the Customer. Aggregated Data will be owned solely by Omnicoach.

4.3 Customer Subdomain

- 4.3.1 Customer shall solely be responsible to ensure that all content published on the Customer Subdomain is in compliance with this Agreement, all applicable laws, and the Publisher Terms and Conditions. Omnicoach shall not be responsible to review, validate or ensure the legality, or compliance with the Publisher Terms and Conditions of the content published on the Customer Subdomain.
 - 4.3.2 Customer acknowledges that parts of the Omnicoach Services (e.g. parts of the Customer Subdomain) can only be accessed by Registered Users.
- 4.4 Marketing. Subject to Customer's prior written consent, Customer grants Omnicoach the right to use Customer's name, mark and logo in Omnicoach's marketing materials, and to identify Customer as an Omnicoach customer.

- 4.5 Results. Except solely as expressly stated in this Agreement, Customer assumes sole responsibility for results obtained from the use of the Omnicoach Services by Customer, and for conclusions drawn from such use.
- 4.6 Responsibility. Customer is responsible for the compliance at all times of itself with all terms of this Agreement.
- 4.7 Feedback. Customer hereby grants to Omnicoach a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the Omnicoach Services any feedback provided by Customer.
5. Payment Terms.
- 5.1 Payment. Customer shall pay all Fees in accordance with this Clause 5 and the Order Form.
- 5.2 Fees, Billing Cycle and Due Dates. Unless specified otherwise in the Order Form (i) the Implementation Fee is payable, and is billed subsequently as a one-off payment following the implementation work performed by Omnicoach required to provide Customer access to the Omnicoach Services, (ii) Subscription Fees are payable, and are billed in advance for the Service Period, and (iii) Usage Fees are payable subsequently on a monthly basis, and are billed following the last day of the given month for all months in the Service Period. The first payment obligations become due on the day following the last day of the Trial Period (if any), save for the Implementation Fee which shall be paid by Customer regardless of the Trial Period. Subscription Fees and Usage Fees are not calculated for the Trial Period. Customer shall pay all sums due to Omnicoach in cleared funds in the currency specified in the Order Form. The Fees shall be paid in accordance with the due date and bank account indicated in the Agreement, the Order Form or on the invoice issued by Omnicoach.
- 5.3 No Withholding. Customer shall not withhold, offset or deduct any amounts from payments for Fees due.
- 5.4 Disputed Amounts. Should Customer have any questions over the amount of any invoice issued by Omnicoach, Customer shall notify Omnicoach no later than five (5) Business Days before the due date of the relevant invoice, failing which Customer shall be deemed to have accepted such invoice as conclusive evidence of the correct amount to be charged.
- 5.5 Sales Tax. All sums due to Omnicoach under or in relation to this Agreement are exclusive of any Sales Tax which shall be charged in addition in accordance with the relevant regulations in force at the time and shall be paid by Customer in full at the same time as payment is due under the relevant invoice.
- 5.6 Payment Issues. If Customer fails to make payment in accordance with this Clause 5, then Omnicoach shall be entitled to charge interest on the overdue amount at the greater of the maximum rate allowed by law or a rate of eight percent (8%) per annum above the base rate of the National Bank of Hungary (or other relevant central bank, depending on the currency in which the relevant

Fees are payable) from time to time in force, from the date on which such amount fell due until payment, whether before or after judgment.

5.7 Refunds. All Fees paid shall be non-refundable in any circumstances including upon early termination of this Agreement. Notwithstanding the foregoing, solely in the event this Agreement is terminated pursuant to (i) Customer's termination in accordance with Clause 6.5.2; or (ii) Omnicoach's termination in accordance with Clause 6.4 below, Omnicoach shall refund to Customer on a pro rata basis for any unused proportion of the Subscription Fees paid in advance.

5.8 Billing Information. Customer shall provide accurate, current and complete information on Customer's billing and payment information, address and billing contacts, including email address and phone number, and will promptly notify Omnicoach if this information changes.

6. Term, Renewal, and Termination.

6.1 Term. This Agreement shall come into force on the Effective Date and shall continue until terminated in accordance with its terms.

6.2 Renewals.

6.2.1 Unless the Order Form expressly states otherwise, upon expiry of the Service Period, the Service Period shall automatically renew for a further period of twelve (12) months ("first Renewal Date"), and shall thereafter renew for a further period of twelve (12) months on each anniversary of the first Renewal Date (each of the first Renewal Date and each such anniversary being a "Renewal Date").

6.2.2 Without prejudice to the provisions of Clause 6 if either party wishes for the Agreement to expire on the next Renewal Date, that party may cause the Omnicoach Services to expire on the Renewal Date by providing a written termination notice to the other party not less than thirty (30) days prior to that Renewal Date. If notice is not served as set forth in the preceding sentence, the Omnicoach Services shall renew at the next Renewal Date in accordance with Clause 6.2.1.

6.3 Termination during Trial Period. Either party may terminate this Agreement with immediate effect by giving written notice to the other party during the Trial Period. Should the parties not terminate this Agreement during the Trial Period as set out herein this Agreement shall, upon expiry of the Trial Period automatically remain in force during the Service Period and all terms of this Agreement shall apply accordingly.

6.4 Termination for Convenience. Omnicoach may terminate this Agreement at any time by giving not less than thirty (30) days' written notice to Customer. Customer shall not be entitled to terminate this Agreement for convenience during a Service Period.

- 6.5 Termination for Cause. Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- 6.5.1 the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than fourteen (14) days after being notified in writing to make such payment;
 - 6.5.2 the other party commits a material breach of any term of this Agreement or the Order Form and fails to remedy that breach within a period of ten (10) days after being notified in writing to do so, unless the breach cannot be remedied in which case no notification is required; or
 - 6.5.3 a receiver or similar officer is appointed for the other party or its property; the other party makes a general assignment for the benefit of its creditors; the other party commences, or has commenced against it, proceedings under any bankruptcy, insolvency or debtor's relief law; the other party becomes insolvent or is liquidating, dissolving or ceasing business operations.
- 6.6 Termination for Cause by Omnicoach. Without affecting any other right or remedy available to it, Omnicoach may terminate this Agreement with immediate effect by giving written notice to the other party if Omnicoach believes that the use of the Omnicoach Services is infringing or is likely to infringe, any laws, regulations, third party rights (including any right of the Publisher), the business interests of Omnicoach, or Customer is in any other way committing fraudulent or unethical activity in the use of the Services.
- 6.7 Events upon Termination. On termination of this Agreement, Customer shall immediately cease all use of the Omnicoach Services.
- 6.8 Survival. The following clauses shall survive termination of this Agreement: Clauses 1 (definitions), 4.3 (marketing), 4.7 (feedback), 7 (data protection), 8 (confidentiality), 10 (indemnities), 11 (limitation of liability), and 12 (general provisions).
7. Data Protection
- 7.1 Omnicoach may process the personal data of Customer's employees in order to facilitate access to the Omnicoach Services and provide customer and technical support or perform billing activities in relation to the Omnicoach Services as set out in this Agreement. The parties agree that in the context of the GDPR Omnicoach acts as an independent data controller concerning all personal data transferred to it by the Customer for the purpose of providing the Omnicoach Services as set out in this Agreement.
 - 7.2 Customer Data may not include personal data unless Omnicoach has provided its prior written permission to include personal data in Customer Data, and all legal requirements are met in accordance with the applicable Data Protection Legislation.

- 7.3 Customer represents and warrants that any personal data transferred to Omnicoach is collected and processed by Customer in compliance with all applicable Data Protection Legislation.
- 7.4 Omnicoach may transfer personal data to the Customer. The parties agree that in the context of the GDPR Omnicoach and the Customer act as independent data controllers concerning all personal data transferred to the Customer by Omnicoach.

8. Confidentiality

- 8.1 The Recipient shall protect all Confidential Information which the Discloser provides to it (whether orally, in writing or in any other form) using the same standards as the Recipient applies to its own comparable confidential information but in no event less than reasonable measures. The Recipient may only use Confidential Information for the purposes of this Agreement. The Recipient may provide its employees, professional advisors, agents and consultants (all "Permitted Users") with access to Confidential Information on a "need to know" basis only. The Recipient shall ensure that each of its Permitted Users are bound to hold all Confidential Information in confidence to the standard required under this Agreement.
- 8.2 The Recipient's confidentiality obligations will not apply to information: (i) that is qualified as Aggregated Data, (ii) already known to it at the time of disclosure without restrictions on disclosure; (iii) in the public domain or publicly available other than as a result of a breach of this Agreement; (iv) provided to it by a third party who is under no such obligation of confidentiality; or (v) independently developed by it.
- 8.3 If any court, regulatory authority or legal process requires the Recipient to disclose information covered by this confidentiality obligation, then the Recipient may make any such disclosure, provided that the Recipient will, if permitted by law, advise the Discloser promptly of any such requirement and cooperate, at the Discloser's expense, in responding to it.
- 8.4 Upon termination of this Agreement, each party shall return, delete, and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party (except both parties shall have the right to retain information and documents in accordance with applicable law and their respective document retention schedules).

9. Warranties.

- 9.1 Omnicoach warrants that the Omnicoach Services will operate in all material respects in accordance with Omnicoach Documentation, but makes no representation, and gives no warranty or undertaking, that the operation or availability of the Omnicoach Services will be uninterrupted or error-free.
- 9.2 The warranty in Clause 9.1 shall not apply to the extent of any non-conformance which is caused by the Customer systems, Customer's breach of this Agreement, use of the Omnicoach Services contrary to Omnicoach's

instructions or modification or alteration of the Omnicoach Services, the Games, or the Publisher Terms and Conditions by any party other than Omnicoach.

9.3 If Omnicoach fails to comply with the warranty set out in Clause 9.1, Omnicoach shall use reasonable endeavours to rectify such failure as soon as reasonably practicable. Omnicoach's obligations under this Clause 9.3 shall be Customer's sole and exclusive legal remedy in respect of a breach of any of the warranty set out in Clause 9, this means that Omnicoach excludes liability for its failure to comply with the warranty set out in Clause 9.1, to the maximum extent permitted by applicable law. Omnicoach's failure to comply with the warranty set out in Clause 9.1 shall not entitle the Customer to terminate this Agreement for cause under Clause 6.5.

9.4 EXCEPT SOLELY AS EXPRESSLY PROVIDED IN CLAUSE 9, THE OMNICOACH SERVICES ARE PROVIDED "AS IS," AND OMNICOACH MAKES NO REPRESENTATION, WARRANTY OR GUARANTEE AS TO THE OMNICOACH SERVICES. ALL CONDITIONS, REPRESENTATIONS, WARRANTIES OR OTHER TERMS IMPLIED BY STATUTE ARE HEREBY DISCLAIMED BY OMNICOACH TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, INCLUDING WITHOUT LIMITATION, THOSE OF SATISFACTORY QUALITY, DEFAULT PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ABILITY TO ACHIEVE A PARTICULAR RESULT. OMNICOACH DOES NOT PROMISE, GUARANTEE, REPRESENT, OR WARRANT IN ANY WAY THAT IT WILL BE ABLE TO PROVIDE THE OMNICOACH SERVICES IF THE GAMES OR THE PUBLISHER TERMS AND CONDITIONS ARE CHANGED, ALTERED, MODIFIED, AMENDED BY THE PUBLISHERS.

9.5 Notwithstanding anything to the contrary in this Agreement, to any extent that Customer elects to make use of any third party products or services in any way when using the Omnicoach Services, Customer's sole and exclusive recourse for such use shall be from such third party service provider. Without limitation on the foregoing, Omnicoach shall not be liable for any disruption or error to the Omnicoach Services caused as a result of Customer's use of such third party products or services, whether or not access to or use of them made possible by or through or perceived to be a part of the Omnicoach Services.

10. Indemnities

10.1 Customer Indemnities. Subject to Clause 10.3, Customer shall defend, indemnify and hold harmless Omnicoach, its Affiliates and third parties used by Omnicoach in order to provide any part of the Omnicoach Services against any and all third party claims, actions, proceedings, losses, damages, expenses and costs (including, without limitation, court costs and reasonable legal fees) arising out of or in connection with (a) Customer's use of the Omnicoach Services in breach of this Agreement, the Publisher Terms and Conditions, or any reasonable instructions from Omnicoach, or (b) claims that Customer Data, Customer's use of Customer Data, or Omnicoach's use of Customer Data in the provision of the Omnicoach Services infringes applicable laws, or infringes the

Intellectual Property Rights or privacy rights of, or has otherwise harmed, a third party.

10.2 Omnicoach Indemnities.

10.2.1 Subject to the provisions of Clauses 10.2 and 10.3, Omnicoach shall defend, indemnify and hold Customer harmless in respect of all damages and reasonable costs (including reasonable legal fees) and expenses arising directly from an IPR Claim which is valid and enforceable in the legal jurisdiction in which the IPR Claim is commenced.

10.2.2 If any IPR Claim is made, or in Omnicoach's reasonable opinion is likely to be made, against Customer, Omnicoach may at its sole option and expense:

- (a) obtain for Customer the right to continue using the Omnicoach Services in the manner permitted under this Agreement; or
- (b) modify or replace the infringing part of the Omnicoach Services so as to avoid the infringement or alleged infringement, but in such a way that does not materially adversely affect the functionality of the Omnicoach Services as a whole; or
- (c) terminate the Agreement with immediate effect and refund Subscription Fees on a pro rata basis paid in advance by Customer in respect of any period following such termination.

10.2.3 Clauses 10.2.1 and 10.2.2 shall not apply to any IPR Claim which arises from: (i) any changes, modifications, updates, add-ons or enhancements made to or available through the Omnicoach Services other than those developed by Omnicoach, its Affiliates or third parties used by Omnicoach in order to provide any part of the Omnicoach Services; (ii) combination or use of the Omnicoach Services with any other software, program, hardware or device not developed by Omnicoach or which is combined in a manner other than that specified by Omnicoach, if such infringement would not have arisen but for such combination or use; or (iii) compliance by Omnicoach with designs, plans, instructions or specifications furnished by Customer.

10.2.4 The provisions of this Clause 10.2 state the entire liability of Omnicoach to Customer in connection with an IPR Claim, and shall be Customer's sole and exclusive legal remedy in connection with an IPR Claim. Clause 11 applies to Omnicoach's indemnity obligation set out in this Clause 10.2

10.3 Conduct of Claim: Losses which fall within the scope of Clauses 10.1 and 10.2 above shall be a "Claim". The indemnifying party's obligations thereunder are subject to the following:

10.3.1 the indemnified party shall not admit any liability or agree to any settlement or compromise of a Claim without the prior written consent of the indemnifying party;

- 10.3.2 the indemnifying party shall be entitled at any time from notification in accordance with Clause 10.3.4 to assume exclusive conduct of the Claim (which shall include, but not be limited to, the exclusive right to conduct any proceedings or action, negotiate the settlement of the Claim and to conduct all discussions and dispute resolution efforts in connection with the Claim);
- 10.3.3 the indemnified party shall, at the indemnifying party's request, cost and expense, give the indemnifying party all reasonable assistance in connection with the conduct of the Claim;
- 10.3.4 the indemnified party gives the indemnifying party prompt notice of any Claim or threatened Claim; and
- 10.3.5 the indemnified party takes all reasonable steps to mitigate any liabilities which are the subject of the indemnity in this Clause 10.

11. Limitation of Omnicoach's Liability.

- 11.1 Omnicoach's Maximum Liability. Subject only to Clause 11.3, Omnicoach's aggregate liability arising out of or in connection with this Agreement, whether based on contract, tort (including negligence) or otherwise, shall not exceed the amounts paid by Customer to Omnicoach during the twelve (12) months prior to the event giving rise to the claim.
- 11.2 Limitation of Customer's Remedy. Subject only to Clause 11.3, to the maximum extent permitted by applicable law, Omnicoach shall not be liable for any indirect, consequential, incidental, special, punitive or exemplary loss or damages or for any loss or damage to data, arising out of or in connection with this Agreement, even apprised of the possibility or likelihood of such damages occurring.
- 11.3 Publishers' control of the Games. Customer acknowledges that Publishers have an ultimate right to control the Games. For this reason, Parties agree that Omnicoach's liability is excluded to the greatest extent allowed by applicable law with regards to any changes alterations, modifications, amendments made by the Publishers in the Games, or the Publisher Terms and Conditions, or any decisions made by Publishers that affect the Games or the Omnicoach Services in any way.
- 11.4 Exceptions. Nothing in this Agreement excludes or limits the liability of Omnicoach for any breach of this Agreement caused deliberately or resulting in death or personal injury.
- 11.5 Customer Instructions. Notwithstanding anything to the contrary in this Agreement, Omnicoach shall have no liability for any actions taken by Omnicoach at Customer's direction, or any errors or omissions in any information or data provided by Customer.

12. General Provisions.

- 12.1 Force majeure. Omnicoach shall not be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Omnicoach or any other party), failure of a utility service or transport or telecommunications network or the internet, act of God, war, riot, civil commotion, pandemic (including COVID-19 related events), epidemic, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers, sub-contractors or third party service providers. In such circumstances Omnicoach shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for three (3) months, either party may terminate this Agreement by giving thirty (30) days' written notice to the other party.
- 12.2 Waiver. No failure, delay or omission by either party in exercising any right provided by law or under this Agreement shall operate as a waiver of that right nor shall it preclude or restrict any future exercise of that or any other right. A waiver of any right under this Agreement is only effective if it is in writing and signed by the waiving party and it applies only in the instance and to the circumstances for which it is given.
- 12.3 Severability. If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were modified, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 12.4 Assignment. Customer may, subject to prior written consent of Omnicoach, assign, mortgage, charge, transfer, novate or otherwise deal with its rights and/or obligations under this Agreement. In any case such dealings shall not involve a Competitor.
- 12.5 Interpretation. The table of contents, recitals section and the clause, paragraph, schedule or other headings in this Agreement are included for convenience only and shall have no effect on interpretation.
- 12.6 Independent contractors. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, appoint either party as the agent of the other party, nor authorize either party to make or enter into any commitments for or on behalf of the other party.
- 12.7 Use of third parties by Omnicoach. Omnicoach shall be entitled to use third parties in order to provide any part the Omnicoach Services.
- 12.8 Third party rights. A person who is not a party to this Agreement shall not have any rights to enforce any of its provisions.

12.9 Notices.

- 12.9.1 Any notice required to be given under Clause 10 of this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid registered postal delivery to the other party at its address set out in the Order Form, or such other address as may have been notified by that party for such purposes in writing.
- 12.9.2 Other notices may be delivered in writing via e-mail or sent by pre-paid registered postal delivery or by hand to the other party at its e-mail, or postal address set out in the Order Form, or such other address as may have been notified by that party for such purposes in writing..
- 12.9.3 Any notice delivered by hand shall be deemed to be delivered at 9:00 a.m. CET on the first Business Day following delivery, refusal of delivery by the addressee, or a failed delivery attempt to the postal address set out in the Order Form, or such other address as may have been notified by that party for such purposes in writing.
- 12.9.4 Any notice sent in writing by pre-paid registered postal delivery shall be deemed to be delivered (i) on the day of signature of the confirmation of receipt by the addressee of the notice, or on the 5th (fifth) Business Day reckoned from sending the notice to the addressee, whichever is earlier; (ii) on the day the addressee's failure or refusal of the receipt of the delivered notice; or (iii) on the day of a failed delivery attempt to the postal address set out in the Order Form, or such other address as may have been notified by that party for such purposes in accordance with the terms of this Agreement.
- 12.9.5 Notices delivered via e-mail shall be deemed to be delivered at 9:00 a.m. CET on the first Business Day following delivery.
- 12.10 Compliance with Applicable Law. The parties shall comply with all applicable laws and regulations with respect to its activities under this Agreement.
- 12.11 Governing Law. This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and shall be construed in accordance with, the law of Hungary.
- 12.12 Dispute Resolution. In the event of a dispute arising out of or related to the terms of the Agreement (each a "Dispute"), the parties agree as follows:
- 12.12.1 The parties shall use good faith efforts using discussion among their respective management to settle such Dispute within thirty (30) days of a party's receipt of written notice of a dispute from the other party. The parties may, by mutual agreement, extend such period by successive thirty (30) day periods.
- 12.12.2 In the event of any dispute arising from or in connection with the present Agreement, so especially with its breach, termination, validity or

interpretation, the parties exclude the state court procedure and agree to submit the matter to the exclusive and final decision of the Permanent Arbitration Court attached to the Hungarian Chamber of Commerce and Industry (Commercial Arbitration Court Budapest). The Arbitration Court proceeds in accordance with its own Rules of Proceedings (supplemented with the provisions of the Sub-Rules of Expedited Proceedings). The number of arbitrators shall be three and the language to be used in the arbitral proceedings shall be English. The parties exclude the possibility of the retrial of the proceedings as regulated in Section IX of Act no. LX of 2017 on Arbitration. In order to settle the legal dispute Hungarian substantive law shall apply, excluding its private international law rules.

12.12.3 Parties accept the arbitration clause set out in Clause 12.12.2 and consider it valid. If this arbitration clause will not be applicable for any reasons the parties agree that the courts of Hungary are to have jurisdiction to settle any disputes that may arise in connection with this Agreement, its formation and validity.

12.13 Entire Agreement and Precedence.

12.13.1 Precedence. In case of a conflict between the terms and conditions of this Agreement and/or any of the documents referred to herein the following order of priority shall prevail (in descending order of priority): (a) the Order Form; (b) this Agreement, including its Schedule.

12.13.2 All other terms rejected. This Agreement applies to the exclusion of any other terms that Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing, including, but not limited to, any terms referenced in a Customer purchase order.

12.13.3 Amendments. Subject to amendments to Schedule 1 (Acceptable Use Policy) which can be made unilaterally by Omnicoach upon notice to Customer, no variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorized representatives).

12.13.4 Entire Agreement. This Agreement constitutes the entire agreement between the parties in relation to its respective subject matter, and replaces and extinguishes all previous agreements, draft agreements, arrangements, promises, assurances, warranties, representations, undertakings and understandings between them, whether written or oral, relating to such subject matter. Each party acknowledges that it has not entered into this Agreement in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in this Agreement.

12.13.5 Additional Services. Any services of any kind that are not (i) expressly Omnicoach Services or (ii) expressly set out in this Agreement shall be subject to separate written agreement(s).

SCHEDULE 1 – ACCEPTABLE USE POLICY

This Schedule 1 sets out the terms under which Customer may access and use the Omnicoach Services.

1 Prohibited Uses

Customer may use the Omnicoach Services only for lawful purposes. Customer may not:

- use the Omnicoach Services in any way that breaches any applicable local, national, or international law or regulation;
- use the Omnicoach Services in breach of the Publisher Terms and Conditions;
- use the Omnicoach Services in any way that is unlawful or fraudulent, or has any unlawful or fraudulent purpose or effect;
- use the Omnicoach Services for the purpose of harming or attempting to harm any persons in any way;
- use the Omnicoach Services on behalf of a Competitor, to support a Competitor in any way, or to create a Competitor.
- attempt to copy, duplicate, modify, create derivative works from or distribute all or any portion of the Omnicoach Services;
- access all or any part of the Omnicoach Services in order to build a product or service which competes with the Omnicoach Services;
- attempt to undertake any security testing of the Omnicoach Services without the prior written consent of Omnicoach;
- access without authority, interfere with, damage or disrupt any part of the Omnicoach Services or any software used in the provision of the Omnicoach Services;
- unless otherwise provided in this Agreement, use the Omnicoach Services to provide services to third parties;
- attempt to obtain, or assist third parties in obtaining, access to the Omnicoach Services;
- use the Omnicoach Services to send, knowingly receive, upload, download, use or re-use any material which does not comply with the terms of this Acceptable Use Policy;
- use the Omnicoach Services to transmit, or procure the sending of, any unsolicited or unauthorised advertising or promotional material or any other form of similar solicitation (spam);
- use the Omnicoach Services to store, distribute or transmit any material, information or data through the Omnicoach Services that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities; and/or
- use the Omnicoach Services to knowingly transmit any data, send or upload any material that contains viruses, Trojan horses, worms, time-bombs, keystroke loggers, spyware, adware or any other harmful programs or similar computer code designed to adversely affect the operation of any computer software or hardware.

2 Changes to the Acceptable Use Policy

Omnicoach may revise this Acceptable Use Policy at any time by written notice.