

ULEX Innovative Systems

General terms and conditions of license and support

VOXIMAL SOFTWARE

1. DEFINITIONS

Each term mentioned hereinafter shall have the meaning set forth below :

- **Business Hours:** 9:00 AM through 6:00 PM CET, Monday through Friday, excluding legal observed holidays.
- **Client :** the legal entity having issued an Order, or accepted a Quote issued by ULEX, and which shall act as Licensee under the Contract.
- **Configuration :** hardware and operating system software described in the Quote on which the Software will be installed and will run.
- **Contract :** the contract is formed by (i) the Order and (ii) these General Terms and Conditions. In case of discrepancy, the provisions of the Order shall prevail over the General Terms and Conditions.
- **Corrective Maintenance :** correction of Errors affecting the Software
- **Documentation :** Software documentation (available on line) that ULEX makes generally available to its Clients: (i) a complete set of ULEX's user operating manuals for the Software, and (ii) a complete set of ULEX's specifications documents for the Software.
- **Error :** a dysfunction in the Software which results from a non-compliance with its specifications as described in the Documentation, reproducible by the Client and non resulting from a misuse or its use with any other software program.
- **Error Correction :** means either (i) a software modification or addition that, when made or added to the Software, corrects an Error, or (ii) a procedure or routine that, when observed in the operation of the Software, eliminates or reduces the practical adverse effect of an Error on the Client.
- **New Release :** Software including new functionalities compared to the functionalities of the current version
- **On-Going Maintenance :** delivery to the Client of Updates and New Releases
- **Order:** a purchase order issued by the Client, for license and support of the Software, based on Quote issued by ULEX; or any other written and unreserved acceptance by Client of ULEX's Quote.
- **Quote :** the proposal made by ULEX including the description of the Software and of the Support services, including their duration and the financial conditions.
- **Software :** the VXI*computer program, developed by ULEX in executable object code form, and registered at the APP (Agence pour la Protection des Programmes) under number ES.001.250007.000.S.C.2012.000.10000., which last update has been registered under number FR001.250007.001.S.C.2012.000.10400, Support Services: assistance services to the Client, including Corrective Maintenance, On-Going Maintenance and User Assistance.
- **UID :** unique identifier, generated by ULEX and used to run, control or configured the Software.
- **ULEX :** the ULEX INNOVATIVE SYSTEMS company, whose headquarters are located, 4 rue des Prairies 38460 Saint-Romain-de-Jalionas, registered with the Vienna Trade and Companies Register (France) under number 514 204 163, and acting as Licensor of the Software.
- **Update :** Software integrating Error corrections and improvement of current functionalities

- decided by ULEX.
- User : Natural person acting under the authority of the Client, and duly authorized to use the Software, under the terms and conditions provided by the Contract,
- User Assistance: on-going assistance services of Users, in their use of the Software, provided by ULEX by telephone, email or any other appropriate form.

2. PURPOSE

2.1 The purpose of these General Terms and Conditions is to define the conditions under which, ULEX grants to the Client a non exclusive, non transferable license to use, integrate, and resell the Software as listed in the Order and, if desired by the Client, the conditions of supply of Support Services.

2.2 Unless otherwise agreed to in writing, any acceptance by the Client of Quote issued by ULEX, or any Order issued by the Client, based on Quote by ULEX, implies and results in the full acceptance of the hereby General Terms and Conditions to the exclusion of all other document issued by the Client.

2.3 These General Terms and Conditions shall prevail over any other document or particular condition specified by the Client and shall not be enforceable against ULEX unless formally accepted by the latter.

3. TERM

3.1 The Contract shall be effective as from the date of either: (i) Client's unreserved acceptance of ULEX's Quote; or (ii) ULEX's acceptance of the Order issued by the Client.

3.2 The Client may choose one of the two following options, as regards duration of the Contract:

- (i) Either he acquires a "one-shot" license of the Software and subscribes to Support Services, on an annual basis;
- (ii) Or he subscribes to an annual Contract, which includes license and Support Services of the Software.

The applicable option shall be stipulated in the Quote or the Order.

3.3 Unless otherwise specified in the Order, Support Services set forth in Section 3.2 (i) and Contracts set forth in Section 3.2 (ii) are subscribed for a one-year period, which shall be automatically renewed by tacit agreement for successive periods of one (1) year unless terminated by either party by registered letter with an acknowledgement of receipt delivered to the other party at the latest three (3) months prior the initial or renewal term.

4. TERMINATION

In the event of a breach by either party of any obligation under the Contract, which would remain uncured for a period of thirty (30) calendar days, starting from the date of a certified letter with return receipt notifying the breach to the breaching party, the non-breaching party may terminate, as a matter of right, the Contract, without prejudice to any indemnity such party could claim.

In case of termination of the Contract, when the Client subscribed to an annual Contract as provided in Section 3.2 (ii), whatever its cause, the Client's rights to use the Software shall cease immediately. The Client shall, at ULEX's discretion, either return or destroy all copies of the

Software in its possession and, in this latter case, shall certify in writing the fulfillment of this obligation.

5. DELIVERY OF THE SOFTWARE

The Software is delivered in object code form executable by the Configuration.

Upon payment of the License and (if applicable) Support Fees by the Client, ULEX shall either send to the Client a license key, that will enable the Client to run the Software, or activate the Software remotely, on the basis of the UID generated for the Client.

However, ULEX may agree to send the Client a temporary license key, pending payment of the initial, additional, or renewed license fee.

Unless otherwise specified in the Order, the installation and implementation of the Software is made by the Client under its exclusive liability.

The installation and the first use of the Software by the Client implies full acceptance and acknowledgement of the Software's compliance with the specifications set forth in the documentation.

6. RIGHTS GRANTED

6.1 ULEX grants to the Client a non-exclusive, non-transferable, license to :

- use the Software, for the Client's internal needs,
- integrate the Software in another software solution, for resale to the Client's own customer
- use the Software, in order to provide services to third parties.

6.2 Such License may be granted either (i) for the legal duration of copyright protection, under the applicable law if Section 3.2 (i) applies; or (ii) for a definite period, set forth in the Order, that will automatically be renewed, if Section 3.2 (ii) applies.

6.3 The licensed rights are granted for the limited number of "channels" (or "ports") and, if applicable, for the limited features of the Software, indicated in the Order.

6.4 Except as otherwise provided herein, the Client shall not: (i) translate, adapt, modify, change, arrange the Software with the purpose of creating and/or marketing new or derivative functions and/or derivative software or a new software (ii) copy the Software except for backup and archival purposes; (iii) use the Software except as is contemplated by the end user manual documentation; (iv) reverse engineer, create derivative works based on the Software, decompile or disassemble the Software (except to the extent applicable law overrides); (v) use the Software, except as authorized herein; (vi) represent, distribute or market the Software for free or for valuable consideration; (vii) remove any proprietary notice, labels, or marks on the Software, documentation, and containers. The Client shall take all reasonable precautions to prevent third parties from using the Software or any part thereof in any way that would constitute a breach of these General Conditions.

6.5 The Client shall have no rights with respect to the Software or Documentation except as expressly set forth herein. All rights relating to the Software and Documentation that are not expressly granted hereunder to the Client are reserved and retained by ULEX.

7. AUDIT

During the term of the Contract and one (1) year after its expiration or termination, ULEX may inspect and audit and/or may engage an independent third party to inspect and audit, at any time during normal business hours, the Client's performance of its obligations under the Contract.

ULEX shall provide the Client with reasonable notice, not less than five (5) working days in advance, of such audit.

The sole purpose of such audit shall be to verify the compliance of the Client's use of the Software with the license granted or the destruction of the Software copies after termination.

8. SUPPORT SERVICES

The following support services shall be supplied by ULEX:

- Corrective Maintenance
- On-Going Maintenance
- User Assistance

8.1 Corrective Maintenance

8.1.1.1 Classification of Errors

Errors are classified into two severity classes, as follows:

- "Serious Error" means an Error that renders the Software inoperative or materially affects the performance of critical functions of the Software.
- "Minor Error" means an Error that does not materially affect the performance of critical functions of the Software.

8.1.1.2 ULEX Obligations

Subject to Sections 8.1.14 and 8.1.1.5, ULEX will have the following obligations with respect to Errors:

- Serious Errors. ULEX will promptly confirm receipt of Client's notification and use commercially reasonable efforts to develop and provide an Error Correction to Client.
- Minor Errors. ULEX will promptly confirm receipt of Client's notification and use commercially reasonable efforts to provide an Error Correction in the next Update.

In the case the Serious Error is not fixed by ULEX within forty-five (45) days after Client's request, Client shall be entitled to access the source code of the Software, under the conditions provided in the "Escrow Agent" Section.

ULEX shall not be responsible for any delay attributable to Client or in the event an Error is not reproducible.

8.1.1.3 Updates

Furthermore, ULEX will provide Client with Updates if, as and when ULEX makes any such Updates generally available during the Support Period for which Client has paid the applicable support fees. Installation of Updates may result in generating a new license key for the Client.

8.1.1.4 Conditions

ULEX' obligations under Corrective Maintenance are conditioned upon the following:

- Client makes reasonable efforts to solve the reported Error after consulting with ULEX;
- Client provides ULEX with sufficient information and resources to correct the reported Error either at ULEX's Client support center or via dial-up access at Client's site, as well as access to the personnel, hardware and any additional software involved in discovering or analyzing the Error;
- Client procures, installs and maintains all equipment, telephone lines, communication interfaces and other hardware necessary to operate the Software; and
- Client has paid all Support Services fees when due, and is otherwise in compliance with the terms and conditions of the Contract.
- Client has implemented all Updates of the Software
- Client can give remote access to ULEX to its servers or any equipment on which the Software is installed.

8.1.1.5 Exclusions

ULEX shall have no obligations under Corrective Maintenance in connection with any Errors caused by:

- abuse, misuse, change, modification or damage to any Software (excluding modifications made under the direct supervision of ULEX); or
- Client's negligence or other causes beyond the reasonable control of ULEX.
- interconnection of the Software with other software products not supplied by ULEX;
- third party components, whether proprietary or open source.

Any intervention by ULEX for a non-supported Error shall be invoiced to the Client, on ULEX's current hourly rate at the date of the intervention.

Client may subscribe to specific and additional Support Services, on specific quote by ULEX.

8.2 On-Going Software Maintenance

ULEX shall regularly propose to the Client to purchase and install New Releases.

Such installation implies that:

- Client has paid all Support Services fees when due, and is otherwise in compliance with the terms and conditions of the Contract.
- Client implements all Updates of the Software.

In case the Client would like to develop, or have developed and implement, a new functionality of the Software, which would not be included in a New Release, such development shall be made, independently of the Contract, on ULEX's quotation.

8.3 User Assistance

ULEX will provide to Client all necessary assistance with the installation and use of the Software, including Updates and New Releases, in the following conditions.

The Client may send an email to Customer Support Center at <https://support.voximal.com> during Business Hours: Monday to Friday from 09:00 a.m. to 12:00 p.m. and 2:00 p.m. to 6:00 p.m., or request assistance via instant messaging (chat/skype).

Assistance is limited to 3 requests per day, with a combined average treatment duration can not exceed 30 minutes per day. If this threshold is exceeded, ULEX reserves the right to charge for the time spent in the assistance of the user, based on an hourly rate of 100 €. This invoice will be

possible only if ULEX has previously informed the client achieve that threshold and billing related thereto.

This threshold does not apply to calls or requests for minor or major abnormalities covered by corrective maintenance.

Alternatively to the above billing, the Client may, once informed of the threshold reached, choose to follow a specific training, proposed by ULEX, and upon quotation.

As a last resort, if ULEX deems it necessary, assistance may be made by telephone, or on site.

Travel and, if applicable, accommodation expenses shall be charged to the Client, for any intervention on Client's site.

9. PRICES - PAYMENT CONDITIONS

9.1 In consideration for the Software license granted under Section 6, and for the Support Services performed by ULEX, the Client shall pay License and Support fees as set forth in the Quote.

9.2 License and Support fees are set for a number of channels (ports) indicated in the Order. Unless otherwise determined in the Order, Support Fees account for 20% of the License fees. Any request of the Client for additional channels shall result in (i) either an additional license fee, and increase in the annual Support fees, on a prorata temporis basis up the term of the Contract; or (ii) increase in the annual License and Support fees, on a prorata temporis basis up the term of the Contract.

Support and, if applicable, yearly License fees may be revised at any time by ULEX, provided that it notifies the Client of such revision, with at least thirty (30) days written notice. Unless the Client decides to terminate the Contract, in the written form specified in Section 3.2, within 30 days of such notice, the revised prices shall apply to the Contract, upon expiration of the said period.

9.3 Unless otherwise specified in the Quote, the Client shall pay within thirty (30) days from the invoice date, by cheque or bank transfer, or any form of online payment, net and without discount.

9.4 Should the Client be delinquent in payment of any sum, all sums owed will become immediately payable as of right without serving formal notice. Past-due payments shall accrue automatically, without any notice, an interest equal to 12 % per year. In addition, ULEX may suspend or terminate, totally or partially the Contract. Furthermore, in accordance with Sections L.441-3 et L.441-6 of the Code Commerce, in case of delayed payment ULEX will claim the payment of a minimal fixed allowance amount of 40 euros for recovery costs without prejudice of any other claim or remedy, if the actual costs override the minimal fixed allowance.

10. INTELLECTUAL PROPERTY RIGHTS AND INFRINGEMENT

10.1 ULEX shall retain all title and intellectual property rights in the Software. The license granted to the Client by ULEX shall not result in any assignment of intellectual property rights to the Client. Consequently, the Client shall not infringe, directly or indirectly, ULEX's intellectual property rights

10.2 If any third party claims or asserts in any suit, that Client's permitted use of the Software infringes or violates any intellectual property right, ULEX shall, at its own expense, defend such action and indemnify and hold harmless the Client from and against any award of damages in favor of the third party arising there from or caused thereby, within the limits set forth in the "Liability" Section, provided that :

- (i) The Client is notified promptly in writing of any claim
- (ii) ULEX is given full authority to control the defense, the costs and settlement of the claim
- (iii) The Client provides all available information and assistance regarding such claim.

10.3 If any portion of the Software becomes, or in ULEX's opinion is likely to become, the subject of a claim of infringement, ULEX may, at its expense, and its sole option, (i) procure for the Client the right to use the Software, or applicable portion thereof; (ii) modify the same so that it is no longer infringing, but still substantially conforms to the Documentation; or (iii) terminate the Contract entirely, and as ULEX's sole liability and Client's sole remedy for such termination, refund to Client (i) the license fees actually paid by Client for the affected Software, and (ii) a pro-rated refund of Support fees paid by Client hereunder for the remainder duration of the Contract.

10.4 The foregoing indemnity obligation shall not extend to any claims of infringement arising out of or related to (i) a modification of the Software Product by anyone other than ULEX or its duly authorized agents; (ii) the incorporation into a Software of any information provided by or requested by or on behalf of the Client; (iii) a combination of the Software with any other software or equipment where the infringement or misappropriation would not exist without such combination.

11 ESCROW

11.1 In order to guaranty a peaceful use by the Client of the Software during the term of the Contract, ULEX has registered the Software with the "Agence pour la Protection des Programmes", located 54 rue de Paradis 75010 PARIS (hereafter "the Escrow Agent"), under the references specified in Section 1.

11.2 ULEX agrees to provide the Client with the source code of the Software (hereafter the "Source Code") under the conditions set forth below.

11.3 The Client may access the Source Code of the Software in the following limitative events:

- a. ULEX fails to remedy a Serious Error, within forty-five (45) days of its notification by the Client, provided that (i) such Error is not excluded from Support Services, and (ii) all Conditions provided in the Support Section are met, in particular that the Client has paid all Support Services fees when due, and has implemented all Updates and New Releases provided by ULEX, and (iii) the Client is otherwise in compliance with all the conditions set forth in the Contract. For the sake of clarity, no access to the Source Code is granted if the Client has not been licensed with and installed the latest Release of the Software, even if such failure results from the Client's termination of Support Services. No request for access to the Source Code shall be grounded on a claim that the Software does not fit with all needs of the Client, or does not fully comply with all functionalities of the Documentation, in particular with the VoiceXml standard.
- b. ULEX institutes or suffers to be instituted any proceeding for the liquidation or winding-up of its affairs; or ceases to carry on its business,
- c. ULEX elects to dissolve, dissolves or winds-up otherwise than in furtherance of a scheme for amalgamation and reconstruction;
- d. ULEX undergoes, directly or indirectly, a change of control, but only in the event that the support services are discontinued as a consequence of such change of control. For the purpose of the interpretation of this clause, the terms "control" shall mean the direct or

indirect ownership of at least fifty (50) percent of the rights to vote for the election of directors or controlling management of ULEX.

11.4 Request for accessing the Source Code shall be made by the Client in accordance with the Escrow Regulations (article 6 of the APP General Regulation, available at www.app.asso.fr/). ULEX commits to pay all relevant fees to maintain such escrow of the Source Code with APP, and allow the Client to exercise its rights under this Section.

11.5 Provided that the Client is given lawful access, by the Escrow Agent, to the Source Code, ULEX grants the Client a fully paid up, royalty free assignable license, with the right to grant sub-license to its sub-contractors, to use the Source Code, for the sole purposes of correcting Errors that may affect the Software. Such license does not allow the Client to modify, alter, or make any further developments of the Source Code, other than any those modifications necessary to use and run the Software properly.

11.6 ULEX shall remain, under all circumstances, the sole owner of all intellectual property rights on the Software, and the dispositions of this Section may not be construed as an assignment of transfer of any intellectual property rights on the Software to the Client.

11.7 Moreover, the Source Code shall be treated as Confidential Information, as provided in the “Confidentiality” Section.

12. WARRANTY

ULEX warrants that the Software shall substantially operate in accordance with the specifications as described in the Documentation, if properly installed on the appropriate Configuration. ULEX does not warrant that the operation of the Software will be uninterrupted or error free and that all Errors will be corrected. ULEX does not warrant that the Software will fit with specific needs of the Client.

Any request for Error Correction shall be treated within the conditions set forth in the “Corrective Maintenance” Section.

ULEX HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS, EITHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO ANY IMPLIED WARRANTIES, DUTIES OR CONDITIONS OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE.

13. LIABILITY

It is expressly agreed by the parties that the Client shall do all reasonable efforts to meet its obligations. Consequently ULEX shall only be liable for a default evidenced by the Client. In any case, the operation of the Software is under the sole liability, management and control of the Client. Any use of the results obtained through the operation of the Software shall be under the sole control and liability of the Client.

EXCEPT IN CASE OF WILFULL MISCONDUCT, OR GROSS NEGLIGENCE, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES, OR ANY DAMAGES FOR LOST PROFITS, LOST DATA OR LOST BUSINESS, LOSS OF GOODWILL, LOSS OF PROFITS, DAMAGE TO BRAND IMAGE ARISING FROM THE OPERATION OF

THE SOFTWARE OR FROM THE INCAPACITY TO OPERATE THE SOFTWARE OR FROM THE USE OF RESULTS OBTAINED BY THE SOFTWARE. ALL ACTIONS OR CLAIMS INSTITUTED OR FILED AGAINST THE CLIENT BY A THIRD PARTY CONSTITUTE INDIRECT DAMAGES.

Notwithstanding the foregoing, it is expressly agreed between the parties that ULEX's liability, in case of a default evidenced by the Client, shall not exceed the sums paid by the Client under the Contract during the twelve months prior the occurrence of the damage.

This Section shall apply to any liability arising from an alleged infringement of Third Party Rights, as provided in Section "Infringement".

14. CONFIDENTIALITY

Each party shall not disclose to any third party the confidential information ("Confidential Information") disclosed by the other party, and shall use the Confidential Information solely for the performance of this Contract in accordance with its terms and shall apply all security measures to prevent unauthorized disclosure of the Confidential Information.

The following are to be considered as Confidential Information :

- information disclosed by one party to the other in writing when such document is marked "confidential"
- all strategic information, marketing information, technical information, trade secrets, list of customers, list of installed products, list of potential customers, requirements regarding future developments, and all confidential or commercially sensitive information even when not disclosed in writing or not marked "confidential".

Such obligation of confidentiality shall continue for a period of 10 (ten) years the termination of the present Agreement.

Confidential information shall not include information which :

- is known to the receiving party from third party sources prior to disclosure by the other party, or
- enter the public domain through no fault of the receiving party, or
- is independently conceived by the receiving party.

15. NO WAIVER

Any one or more failure by either party to enforce any provision of these General Terms and Conditions or to exercise any right shall in no way constitute a waiver of such right or remedy on any future occasion.

16. ASSIGNMENT

The Client may not assign or transfer, directly or indirectly in any manner, any of the rights or responsibilities set forth herein, without ULEX's prior written consent
ULEX may, at any time, assign or transfer any of the rights or responsibilities set forth herein, provided that the Client is informed of such assignment.

17. DISPUTE RESOLUTION, CONTROLLING LAW, JURISDICTION

These General Terms and Conditions will be governed by and interpreted in accordance with the laws of France

FOR ALL DISPUTES OR CLAIMS ARISING OUT OF OR RELATING TO THESE GENERAL TERMS AND CONDITIONS, OR THE VALIDITY, INTERPRETATION, BREACH, VIOLATION, OR TERMINATION THEREOF, THE COMMERCIAL COURTS OF GRENOBLE (FRANCE) SHALL HAVE EXCLUSIVE JURISDICTION, IF THE PARTIES FAILED TO REACH AN AMICABLE SETTLEMENT NOTWITHSTANDING THE CASE OF PLURALITY OF DEFENDANTS, OR EMERGENCY PROCEDURE.

Postal enquires :

Ulex Innovative Systems
4 rue des Prairies
38460 Saint Romain de Jalionas
France
Phone : +33 (0)4 28 35 03 44

Web sites :

<https://www.ulex.fr>
<https://www.voximal.com>

Documentation and support :

<https://wiki.voximal.com>
<https://support.voximal.com>

Contact us :

contact@ulex.fr
support@voximal.com