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8.1 Without prejudice to any other rights and in addition to any other termination rights in this EULA, the Licensor (XBLEND) may terminate with immediate effect this EULA, through a written notification sent to the Licensee, if

- (a) the Licensee fails to comply with the terms and conditions of this EULA and does not amend that breach within fifteen (15) days from the date the Licensee receives from the Licensor the notification of said breach; or
- (b) the Licensee suspends, or threatens to suspend, payment of its debts or is unable to pay (its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts; or
- (c) the Licensee commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of Licensee (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of Licensee with one or more other companies or the solvent reconstruction of the Licensee; or
- (e) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Licensee (being a company); or
- (f) the holder of a qualifying floating charge over the assets of the Licensee (being a company) has become entitled to appoint or has appointed an administrative receiver; or
- (g) a person becomes entitled to appoint a receiver over the assets of the Licensee or a receiver is appointed over the assets of the Licensee; or
- (h) a creditor or encumbrancer of the Licensee attaches or Licensee takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Licensee's assets and such attachment or process is not discharged within 14 days; or

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Notwithstanding anything in this Agreement and except for liabilities arising from

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- (iii) the breach of a party's obligations under Clause 4 (IP), in no event shall
 - (a) the Licensor or Licensor's third-party suppliers be liable with respect to any subject matter of this Agreement under any contract; tort including negligence or strict liability; indemnity or other legal, contractual or equitable theory for any indirect, special, punitive, incidental or consequential damages, however caused and whether or not advised in advance of the possibility of such damages; damages for lost profits, revenue, fees, anticipated sales or savings, loss and interruption of opportunity and business, or loss and corruption of information and data, even if the Licensor has been advised of the possibility of such damages; or cost of procurement of substitute goods, technology or services; or
 - (b) the Licensor's aggregate liability arising under, with respect to, or in connection with this Agreement according to the damages

and loss of profits duly demonstrated and predicted under the liability limited and assumed in this Agreement. exceed the amount of 100€.

- (c) The Licensor shall not be liable for any damage, costs or other values not predicted in this Agreement.

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The Licensee agrees to execute the [Data Processing Addendum](#).

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This EULA may not be amended except with the written and specified agreement of the Licensor whose consent may be withheld at its complete discretion without any requirement to provide reasons.

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The Licensee may assign this EULA to:

- (i) succeeding parties in the case of a merger, acquisition or change of control; or
- (ii) if the Licensee is a supplier to a government agency; provided, however, that in each case,
 - (a) the Licensor is notified in writing within ninety (90) days of such assignment,
 - (b) the assignee agrees to be bound by the terms and conditions contained in this EULA and

- (c) upon such assignment the assignee makes no further use of the Software licensed under this EULA.

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17. GOVERNING LAW AND EXCLUSIONS

17.1 Governing Law and Venue

This EULA and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of Portugal and any legal action or proceeding arising out of it will be brought exclusively in the Tribunal da Comarca de Lisboa and each party irrevocably submits to the jurisdiction and venue of that court.

17.2 Exception from Jurisdiction.

Notwithstanding the foregoing, the parties reserve the right to seek and obtain injunctive relief, whether in the form of a temporary restraining order, preliminary injunction, injunction to enforce an arbitration award, or other order of similar import, from any court of competent jurisdiction (e.g. local courts at the Licensee's place of residence) prior to, during, or after commencement or prosecution of any other court or arbitration proceedings or the final decision and award of the arbitrators.

17.3 Exclusion of UN Convention

The terms of the United Nations Convention on Contracts for the Sale of Goods do not apply to this EULA.

18. ENTIRE AGREEMENT

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This EULA (and any addendum or amendment to this EULA which is included with the Software) is the entire agreement between the Licensee and the Licensor relating to the Software and they supersede all prior or contemporaneous oral or written communications, proposals and representations with respect to the Software or any other subject matter covered by this EULA.

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Each party acknowledges that, in entering into this EULA (and the documents referred to in it), neither relies on any statement, representation, assurance or warranty (“Representation”) of any person (whether a party to this EULA or not) other than as expressly set out in this EULA or those documents.

18.3

Nothing in this clause shall limit or exclude any liability for fraud.

19. NOTICES

All notices to Licensor must be sent to:

Xblend: Rua do Mar Vermelho nº 2 Fracção 2.3, 1990-152 Lisboa

E-mail: mail@xblend.com

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will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an electronic communication, that such e-mail was sent to the specified e-mail address of the addressee.

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20.1

If the Licensor fails, at any time during the term of this EULA, to insist upon the strict performance of any of the Licensee's obligations under this EULA, or if the Licensor fails to exercise any of the rights or remedies to which it is entitled under this EULA, this shall not constitute a waiver of such rights or remedies and shall not relieve the Licensee from compliance with such obligations.

20.2

A waiver by the Licensor of any default shall not constitute a waiver of any subsequent default.

20.3

No waiver by the Licensor of any of these terms and conditions shall be effective unless it is expressly stated to be a waiver and is communicated to the Licensee in writing.

21. SEVERABILITY

21.1

If any provision of the EULA (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

21.2

If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with the

minimum modification necessary to make it legal, valid and enforceable and to give effect to the commercial intention of the parties.

22. NO PARTNERSHIP

Nothing in the EULA is intended to, or shall be deemed to, establish any agency, partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorize any party to make or enter into any commitments for or on behalf of any other party.

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In this EULA, the following rules apply:

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- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) the headings in this EULA are inserted for convenience only and shall not affect its construction;
- (d) a reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it;
- (e) a reference to one gender includes a reference to the other gender;
- (f) any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (g) a reference to writing or written includes faxes, e-mails, communications via websites and comparable means of communication.

24. SURVIVAL

Clauses 1, 2, 3, 3.1, 4.1, 4.2, 4.4, 5, 8, 9, 11, 12, 19, 20, 21, 23 shall survive any termination of this EULA.