

## **BPO TERMS AND CONDITIONS [version 6.2/2018]**

### **1. Glossary**

For the purposes of this Contract, capitalised terms, whether used in the singular or plural, shall have the following meanings:

"**Customer**" is the entity identified as the customer on the Order Form.

"**BPO Terms and Conditions**" are the terms of this document, in their most recently published version as of the signature of the Contract.

"**Contract**" comprises all the terms of the Order Form, the BPO Terms and Conditions and the Description of Services.

"**Description of Services**" is the description contained in Appendix 2 detailing the features and terms of the Services.

"**Order Form**" is the form by which the Customer orders the Services.

"**Groupe T2i**" is the Groupe T2i SA company, with its registered office located at Techno-Pole 1, 3960 Sierre, Switzerland, and any company in which it holds a majority of the share capital and/or voting rights.

"**Software**" is the computer system set up and operated by the Service Provider to provide the Services.

"**Service Provider**" is the entity identified as the Service Provider on the Order Form or any other entity to which all or part of the Contract has been assigned, where applicable.

"**Services**" are the services listed and detailed in the Description of Services.

### **2. Contractual Documents and Purpose**

#### **2.1 DOCUMENTS**

The relationship between the Service Provider and the Customer is described in the following documents (as modified, where applicable, in accordance with their terms):

- a. The Order Form, duly completed and signed by the Customer;
- b. The BPO Terms and Conditions;
- c. The Description of Services.

#### **2.2 HIERARCHY**

In case of inconsistency or conflict between the documents mentioned in Article 2.1, the hierarchy is as follows: BPO Terms and Conditions, Description of Services, Order Form.

#### **2.3 PURPOSE**

The Contract covers the Services ordered by the Customer as per the Order Form, as further described in the Description of Services.

### **3. Services**

#### **3.1 LOCATION OF SERVICES**

The services are performed in the Service Provider's premises.

#### **3.2 SERVICE PROVIDER'S STAFF**

The Service Provider is solely responsible for choosing the staff used to perform the Services and is free to replace all or some of said staff at any time.

#### **3.3 SOFTWARE AND LICENCES**

The Service Provider implements and operates the Software to provide its Services. Subject to the Service Provider's compliance with its contractual obligations, and in particular the payment of the amounts stipulated in Article 4 of the Order Form, the Service Provider grants the Customer a non-exclusive and revocable licence to use the Software solely for the purposes of performing the Services as described in the Description of Services.

#### **3.4 COMPATIBILITY AND PERSONALISATION**

To adapt the Customer's software interfaces or hardware, so the Services can be performed, and to ensure the compatibility of the Customer's IT network with the Software, the Service Provider may perform other services comprising development and configuration work, in accordance with Article 2 of the Order Form. Unless otherwise agreed upon in writing by the parties, such additional services are invoiced to the Customer on a time spent basis.

Interfaces to/from an accounting or scheduling management system are one possible example of this.

#### **3.5 AUTHORISATIONS**

The Customer expressly authorises the Service Provider to take any necessary or useful actions in connection with the provision of the Services. If and insofar as the Services involve or require the execution of legal acts, the Customer shall execute such acts or authorise the Service Provider to do so, by all means available.

#### **3.6 SPECIFIC CONDITIONS APPLIED BY THE CUSTOMER**

Any specific condition or instruction implemented by the Customer relating to the Services shall be formally stipulated in Article 6 (Miscellaneous) of the Order Form when the Contract is concluded or, if later, by referencing this Contract in a written document signed by both parties, which will then be attached to and form part of the Contract.

### **4. Financial Terms**

#### **4.1 FEES AND PAYMENT TERMS**

The Customer will pay the fees for the Services to the Service Provider in accordance with Article 4 of the Order Form. The Customer must notify the Service Provider immediately of any changes to the reference elements that would affect the fees, in which case the Service Provider may increase the fees accordingly. Any change in the scope of the Services set out in the Description of Services will also result in a revision of the fees, if applicable.

#### **4.2 INDEXATION**

Regardless of any changes to the reference elements, the Service Provider reserves the right to increase its rates once per year based on the increase in the Swiss Consumer Price Index during the period concerned.

#### **4.3 SUSPENSION OF SERVICES**

If the Customer does not pay all or part of the fees, the Service Provider shall give a ten-day (10-day) warning to do so. After this period, the Service Provider reserves the right to suspend the Services until the payment of fees plus interest and collection costs, and to inform the Customer's employees and other persons concerned of this. Fees for the period when the Services were suspended remain due. This is without prejudice to the termination of the Contract under article 11.5.

#### **4.4 FEES IN THE EVENT OF TERMINATION BY THE CUSTOMER**

If the Customer terminates this Contract prematurely, the Customer shall pay the Service Provider for all Services performed up to the end of the Contract and any costs incurred by the Service Provider for the provision of the Services until the end of the Initial Term or current renewal period, including licensing fees for software used.

#### **4.5 OFFSETTING OF CLAIMS**

Offsetting any fees due to the Service Provider by the Customer under this Contract shall require the Service Provider's express written consent.

### **5. Other Customer obligations**

#### **5.1 GENERAL OBLIGATION REGARDING COOPERATION**

The Customer agrees to cooperate with the Service Provider for the purposes of the provision of the Services and shall share with it any information in its possession that is necessary or useful for the proper performance of the Services.

#### **5.2 IMPLEMENTATION, DATA MIGRATION AND TESTING**

The Customer must assist and actively cooperate with the Service Provider in implementation, data migration and testing. It must provide at least one qualified employee who has the necessary qualifications and skills for this purpose.

#### **5.3 PROVISION OF CUSTOMER INFORMATION AND DATA**

The Customer undertakes to provide the following to the Service Provider as per its instructions and/or the Description of Services

- a. all information and data required for a correct and timely launch of the Services;
- b. notices of any changes in such information and data; and

- c. all information and data the Service Provider considers useful or necessary for the provision of the Services.

#### 5.4 ACCESS TO CUSTOMER INFORMATION AND DATA

To enable the Service Provider to provide the Services, the Customer grants the Service Provider the right to access, use, process and transmit its information and data, in accordance with this Contract, including data concerning its employees. The Customer acknowledges that sufficient access to such information and data is essential for the Service Provider to provide the Services. The Service Provider cannot be held responsible for the provision of the Services if the Customer does not provide sufficient access to its information and data, for example if a Customer employee refuses or withdraws his/her consent to the processing of his/her data by the Service Provider under this Contract.

#### 5.5 COOPERATION WITH SUPPORT

To allow the Service Provider to provide any necessary software support services, the Customer agrees to promptly provide all the information requested by the Service Provider in order to provide the support requested (e.g.: detailed description of any problems and the conditions under which they occur).

#### 5.6 PREMISES AND INFRASTRUCTURE

At the Service Provider's request, the Customer will allow access to its premises and infrastructure insofar as this is necessary for the Service Provider to be able to properly fulfil its obligations. The Customer also agrees to follow the Service Provider's instructions and recommendations related to the Customer's computer infrastructure used in connection with the Services, and to obtain the Service Provider's approval prior to the acquisition of new infrastructure elements.

#### 5.7 THIRD PARTY SOFTWARE

If the Services involve the use of third party software, the licence terms for such software apply in addition to this Contract, and the Customer agrees to abide by them.

#### 5.8 BACKUPS

The Customer is responsible for the back-up and storage of:

- d. its historical information and data pre-dating the start of the Services,
- a. during the term of the Contract, its information and data which is not stored by the Service Provider, in accordance with the Description of Services and
- b. after the end of the Services, data generated by the Service Provider as part of the Services and delivered to the Customer at the end of the Services, in accordance with applicable legislation. The Service Provider assumes no obligation or liability in this regard. During the term of the Contract, the Service Provider stores and backs up certain Customer information and data in accordance with the Description of Services.

#### 5.9 DEFAULT BY THE CUSTOMER

If the Customer defaults on any of its contractual obligations, specifically those listed in this Article 5, and if consequently the Service Provider is prevented from performing all or part of the Services in accordance with the Contract, the Service Provider has no liability to the Customer or third parties in this regard.

### 6. Warranties

#### 6.1 SERVICE PROVIDER WARRANTIES

##### 6.1.1 LIMITED WARRANTY.

The Service Provider will make its best efforts to provide the Services in a professional manner and with the required care and attention, in accordance with the provisions of the Contract. These warranties are exclusive to the extent of applicable law.

##### 6.1.2 EXCLUSIONS

Without prejudice to the general nature of the foregoing, the Service Provider makes no warranty that

- c. the Software will be free from errors and/or available continuously or that the Service Provider will correct all errors affecting the Software

- a. the Software will function in combination with the Customer's content or applications, or with any other hardware, software, system, service or data not supplied by the Service Provider or
- b. the Services will meet the Customer's requirements, specifications or expectations.

#### 6.2 CUSTOMER WARRANTIES

##### 6.2.1 CONTENT AND APPLICATIONS

The Customer warrants that the use, processing and transmission of its own data and applications by the Service Provider for the purposes of providing the Services in accordance with this Contract does not affect any third-party rights.

##### 6.2.2 QUALITY OF CUSTOMER DATA AND INFORMATION

The Customer warrants that the data and information it provides to the Service Provider in connection with the Services is current, correct and complete at all times and that the provision of such data to the Service Provider complies with the law.

##### 6.2.3 PERSONAL DATA

If the data transmitted in connection with and/or for the use of the Services include personal data, the Customer warrants to the Service Provider that it is fully compliant with its data protection obligations, including those under the Federal Data Protection Act of 19 June 1992 and respectively the cantonal law applicable to it.

### 7. Liability and compensation

#### 7.1 LIABILITY

The Service Provider is liable for any fraud or gross negligence on its part that causes direct and immediate damage to the Customer.

#### 7.2 EXCLUSION

Within the limits of applicable law, the Service Provider is not liable for minor faults or indirect and/or consequential losses or damages. This includes (non-exhaustive list) loss of earnings, commercial loss, loss of turnover or income, loss of customers, loss of opportunity, the cost of obtaining a substitute product/service/technology related to or caused by the non-performance or faulty performance of the Services, to the extent that such exclusion is permitted in applicable law. These exclusions extend to all of the Service Provider's subcontractors.

#### 7.3 LIMITATION

The maximum amount of damages that the Service Provider may be required to pay to the Customer over the term of this Contract cannot exceed the actual amount of the damage sustained and proven by the Customer, but in all cases it must correspond to the average amount of fees actually paid by the Customer to the Service Provider for the Services over a period of twelve (12) months prior to the prejudicial event.

#### 7.4 FORCE MAJEURE

Neither party shall be considered in default under this Contract if the fulfilment of its obligations is wholly or partially delayed or prevented as a result of force majeure such as serious natural disasters, wars, riots, strike or electrical/internet malfunctions.

#### 7.5 THIRD PARTY CLAIMS

If a third party makes claims against the Customer or Service Provider related to an infringement of its intellectual property rights, caused by access to and/or use of the Services and/or the provision of Services as per the Contract, or if the Service Provider has reasons to think that a third party might assert such rights, the Service Provider can choose to do one of the following:

- c. acquire the necessary rights to allow the Customer to continue using the Services or the Software, according to this Contract;
- a. modify the Services or the Software so they do not infringe or cease to infringe the rights of the third parties concerned;
- b. replace the Services or the Software at any time by a reasonably alternative solution; or
- c. terminate this Contract with immediate effect and reimburse the Customer for any costs it might have already paid for the period after the termination, failing any other compensation.

#### 7.6 HOLD HARMLESS CLAUSE.

The Customer shall hold harmless and indemnify the Service Provider (including reasonable legal and lawyer's fees) for any action, law suit or legal proceeding brought against it by a third party and resulting from the Customer or its Authorised Users breaching any obligation under the Contract, including using the Services or the Software in a manner other than permitted by the Contract or third-party software licenses, or the Customer breaching its legal obligations regarding data protection.

#### 8. Intellectual Property

##### 8.1 SERVICE PROVIDER'S PROPERTY RIGHTS

The Service Provider and/or its potential licensors hold and shall continue to hold the property rights relating to any element of the Software made available to the Customer and any other computer infrastructure (software and hardware) implemented or developed under this Contract.

##### 8.2 CUSTOMER PROPERTY

The Customer and/or any third-party beneficiaries retain ownership of all hardware, software, documents and/or data transmitted to the Service Provider in connection with the Services.

##### 8.3 NO ASSIGNMENT

This Contract and/or the provision of the Services under the terms of this Contract shall not be construed as a transfer of any intellectual property rights to the Customer.

##### 8.4 NO REPRODUCTION

The Customer shall not copy, reproduce, or use any element of the Application Services and/or Documentation in any way or form or on any medium whatsoever, except as permitted by the Contract.

#### 9. Confidentiality

##### 9.1 PRINCIPLE

Each Party undertakes as follows:

- a. to keep confidential all information it receives from the other party and in particular,
- b. not to disclose the other party's confidential information to any third parties, other than employees or agents on a need to know basis; and
- c. to only use the other party's confidential information for the purposes of exercising its rights and fulfilling its obligations under the Contract.

##### 9.2 EXCLUSIONS

Notwithstanding the foregoing, neither of the parties will have any obligation concerning information that:

- a. is or becomes public knowledge without the fault of the receiving party,
- b. is independently developed by the receiving party,
- c. is known by the receiving party prior to disclosure by the other party,
- d. is rightfully received from a third party that is not bound by an obligation of confidentiality, or
- e. is to be disclosed by court order or as otherwise required by law (in which case the information must only be disclosed to the extent required and after giving written notice to the disclosing party).

##### 9.3 DURATION

The confidentiality obligations for both parties will remain in force throughout the term of the Contract and as long as the party who disclosed this information has an interest in the confidentiality of such information and for a period of three (3) years after the end of the Contract.

##### 9.4 THIRD PARTIES

The Parties also undertake to ensure that their staff, and any officer/third party involved in any way whatsoever in the Contract, shall comply with these provisions.

#### 10. Data Protection and Security

##### 10.1 ROLES OF THE PARTIES

The Client is responsible for all data processing related to the Services (*data controller*). Any data processing by the Service Provider or its subcontractors is done by order of the Customer and is limited by the implementation of the Service Provider's obligations under the Contract (*data processor*).

##### 10.2 RIGHTS OF DATA SUBJECTS

The Customer is accountable to the data subjects concerned for data processed in connection with the Services. In particular, the Customer undertakes that it shall at all times have the consent of the data subjects concerned or another justified basis for entrusting the data processing to the Service Provider, in accordance with this Contract, and will ensure that said data subjects can exercise their rights under the data protection legislation, including the rights to access and correct their data. If a data subject concerned by this Contract does not give his/her consent or withdraws such consent completely or partially, the Customer will immediately notify the Service Provider in writing. In such a case, the Service Provider is released from its obligation to provide the Services in relation to the data subject concerned until the Customer has obtained valid consent from said data subject, with no reduction in fees.

##### 10.3 DATA TRANSMISSION VIA THE INTERNET

The Customer accepts that data shall be transmitted via email or otherwise via the internet in the performance of the Services, while recognising that the Service Provider cannot guarantee the security, accuracy, completeness or confidentiality of data transmitted via the internet. The Service Provider declines all liability in connection with the transmission of data via the internet, including any data loss, corruption or destruction or security/privacy breaches of the Customer's computer system, related to this method of data transmission.

##### 10.4 DATA PROCESSING

Moreover, the processing of personal data by the Service Provider is governed by appendix 3 which is an integral part of the Contract.

#### 11. Term and Termination

##### 11.1 EFFECTIVE DATE

Unless otherwise stated in the Order Form, this Contract shall enter into force upon the signing of the Order Form by the parties.

##### 11.2 TERM

The Contract is entered into for the Initial Term specified in the Order Form from the effective date.

##### 11.3 RENEWAL AND ORDINARY TERMINATION

At the end of the Initial Term or any successive renewal period, the Contract shall be renewed by tacit agreement for successive one-year periods unless terminated by either party giving written notice six (6) months before the end of the Initial Term or current renewal period.

##### 11.4 SPECIAL TERMINATION

Subject to mandatory law, either party may terminate this Agreement with immediate effect in the event of a serious breach by the other party of its contractual obligations, provided that the other party has not remedied the breach within thirty (30) days from the receipt of a formal notice sent by registered mail.

##### 11.5 LATE PAYMENT

If the Customer does not pay all or part of the fees, and after the expiry of two ten-day (10-day) warning periods, the Service Provider reserves the right to terminate the Contract with immediate effect and claim damages. This is without prejudice to the suspension of the Services under article 4.3.

##### 11.6 CONTINUANCE

After the expiry of the Contract, the provisions relating to limitation of liability, confidentiality, data protection, payments and any other provisions which, by their nature, are intended to remain in force, shall continue to do so.

##### 11.7 RETURN OF DATA AND INFORMATION

At the request of either party, the other party will return all data and information transmitted in connection with the provision of the Services, (regardless of their nature, format and the manner in

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which they were transmitted) within thirty (30) days from the end of the Contract. Moreover, the Service Provider reserves the right to return all Customer data and information spontaneously and in the format in which they exist at the end of the Contract. The Customer undertakes to accept and manage such data.

## **12. Subcontracting**

### **12.1 SUBCONTRACTING CONDITIONS**

Unless stipulated otherwise in the Order Form, the Customer specifically authorises the Service Provider to subcontract the performance of all or some of its obligations under this Contract to entities belonging to the same group of companies as the Service Provider, or to any other third party, under the conditions set out in this article 12. The subcontractors listed in article 5 of the Order Form are presumed accepted by the Customer. The Service Provider undertakes to inform the Customer in advance and in writing of any planned change concerning the addition or substitution of other subcontractors so it can voice any objections in this regard.

### **12.2 OBJECTIONS**

The Customer has a period of 30 days after being informed of the planned addition or substitution of a subcontractor to submit its objections. If the Service Provider confirms the appointment of the subcontractor, the Customer is entitled to terminate the applicable Contract with immediate effect by written notification sent within a period of 2 weeks from receipt of the Service Provider's confirmation. This right of termination is the Customer's sole means of recourse in the event of objection to a new subcontractor. If the Customer fails to respond within either of the deadlines mentioned in this article 12.2 this will be interpreted as acceptance of the new subcontractor.

### **12.3 SUBCONTRACTOR RESPONSIBILITIES**

In any event, if the Contractor entrusts the performance of all or part of its obligations under this Contract to subcontractors, it remains solely responsible for the proper performance of the Services for the Customer according to the terms and conditions agreed upon in this Contract.

## **13. Non-solicitation**

### **13.1 UNDERTAKING**

Unless otherwise agreed between the parties, neither party shall hire or employ (directly or through an intermediary) any of the other party's employees or subcontractors without the other party's prior expressed consent. This undertaking is valid for the term of the Contract and for twelve (12) months after it ends.

### **13.2 PENALTY**

If either party does not comply with this obligation, it agrees to compensate the other party when requested by immediately paying a lump sum equal to twelve (12) times the employee's gross monthly salary when leaving.

## **14. Final Provisions**

### **14.1 ASSIGNMENT**

The Customer shall not assign all or part of its rights and obligations under the Contract, either by means of a permanent or temporary assignment, sub-licensing agreement or any other contract providing for the transfer of said rights and obligations. The Service Provider may assign all or part of the rights and obligations resulting from the Contract to any other entity within Groupe T2i, including as part of a restructuring of the group, without the Customer's consent.

### **14.2 INTERPRETATION**

Chapter titles and articles are inserted solely for convenience and shall not affect the interpretation of this Contract.

### **14.3 DIVISIBILITY**

If any provision of this Contract is found to be invalid, non-binding or unenforceable, this shall not affect the other provisions which shall remain in full force and effect. However, the Parties may agree to replace the invalid provision(s).

### **14.4 ENTIRE AGREEMENT**

This Contract constitutes the entire agreement between the parties regarding the Services and supersedes any prior or

contemporaneous agreement or statement, whether written or verbal, relating to such Services.

### **14.5 WAIVER**

Any tolerance or waiver by either party in the application of all or part of the commitments provided for in this Contract (whatever the frequency and duration) shall not constitute a modification of this Contract or create any other rights.

### **14.6 AMENDMENTS**

Any amendment to this Agreement shall be valid only by a written document duly signed by the parties.

### **14.7 CONFLICT RESOLUTION**

In the event of a dispute, and before appealing to the courts, both parties agree to make an attempt at conciliation and give enough time for the other party to decide in writing.

### **14.8 JURISDICTION**

If the parties fail to agree on a compromise or solution, they will then be free to submit the dispute to the competent courts where the Provider's registered office is located.

### **14.9 GOVERNING LAW**

The Contract is subject to Swiss law, excluding its conflict of law rules or any other legislation rules.