

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

### **1. Glossary**

For the purposes of this Contract, the terms beginning with a capital letter, whether used in singular or plural, shall have the following meanings:

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

"**Financial Conditions**" are the terms set out in Article 6 of the Order Form regarding the payment of the Service Provider by the Customer for the Services.

"**Contract**" comprises all the terms of the Order Form, the SaaS Terms and Conditions, the SLAs as well as the data protection clauses (Appendix 3).

"**Initial Term**" is the period specified in Article 5 of the Order Form.

"**Documentation**" is the documentation related to the use, functions and specifications of the Application Services made available to the Customer for the purposes of implementing the Services.

"**Order Form**" is the form that the Client uses to purchase the Services provided by the Service Provider under the Contract.

"**Service Provider**" is the entity identified as the service provider on the Order Form.

"**Services**" are the Application Services and Additional Services.

"**Application Services**" are the software programmes listed in Article 2 of the Order Form provided to the Customer by the Service Provider under this Contract.

"**Additional Services**" are the services listed in Article 3 of the Order Form provided to the Customer by the Service Provider under this Contract.

"**SLA**" are the terms specified in Appendix 2 regarding service levels.

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

"**Authorised Users**" are those persons who access and use the Application Services on behalf of the Client under the terms of this Contract.

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

#### **2.1 DOCUMENTS**

The relationship between the Service Provider and the Client is described in the following documents (amended in accordance with their terms when applicable):

- a. The Order Form, duly completed and signed by the Client;
- b. The SaaS Terms and Conditions;
- c. The SLA.

#### **2.2 HIERARCHY**

In case of inconsistency or contradiction between the documents mentioned in Article 2.1, the hierarchy is as follows: SaaS Terms and Conditions, SLA, Order Form.

#### **2.3 PURPOSE**

The Contract covers the Services ordered by the Customer according to the Order Form, namely the Application Services accessible on the Service Provider's servers through an internet connection and any Additional Services provided by the Service Provider.

### **3. Application Services**

#### **3.1 ACCESS RIGHTS**

Subject to compliance with its obligations, the Customer has a non-exclusive and non-transferable right to access the Application Services and use them in accordance with the Documentation. The Customer may also (and to the same extent) allow Authorised Users access to and use of the Application Services, but is solely

responsible for the Authorised User's compliance with the Contractual conditions.

#### **3.2 NO DELIVERY**

Unless otherwise stated in the Order Form, the Service Provider shall not deliver copies of the software used by the Services, including the Application Services, to the Customer.

### **4. Other Service Provider Obligations**

#### **4.1 SUPPORT**

The Service Provider agrees to provide support services under the conditions defined in the SLA, for the fees defined in the Financial Conditions, if such support services are included in the Services listed on the Order Form.

#### **4.2 TRAINING**

If stipulated on the Order Form or requested in writing by the Customer and under terms to be mutually agreed upon, the Service Provider may provide training services. The Service Provider may submit a proposal for training services, particularly if its work reports related to support services reveal recurring usage problems by the Customer and/or its Authorised Users, apart from anomalies and malfunctions. The fees for training services are defined in the Financial Conditions.

#### **4.3 MAINTENANCE**

The Service Provider agrees to provide maintenance services under the conditions set out in the SLA, for the payments set out in the Financial Conditions, if such maintenance services are included in the Services listed on the Order Form.

#### **4.4 BACKUPS**

The Service Provider agrees to provide backup services under the conditions defined in the SLA, for the payments set out in the Financial Conditions, if such backup services are included in the Services listed on the Order Form.

### **5. 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. The Customer also agrees to follow the Service Provider's instructions and recommendations in connection with the Services, including undertaking the training proposed by the Service Provider.

#### **5.2 CONTENT AND APPLICATIONS**

To enable the Service Provider to provide the Application Services, the Customer grants the Service Provider the right to access, use, process and transmit the Customer's content and applications, in accordance with this Contract. The Customer acknowledges that sufficient access to such content and applications is essential for the Service Provider to provide the Services. The Service Provider cannot be held liable in connection with the provision of the Services if the Customer fails to comply with this obligation.

#### **5.3 COOPERATION WITH SUPPORT**

To enable the Service Provider to provide support services, including the analysis, diagnosis and resolution of problems that are the cause of an Incident, according to the SLAs, the Customer agrees to promptly inform the Service Provider and provide all information and data relating to the incident in question.

#### **5.4 PREMISES AND INFRASTRUCTURE**

At the Service Provider's request, the Customer will allow access to its premises and infrastructure as 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 in connection with the Customer's computer infrastructure used to access and use the Application Services, and to obtain the Service Provider's approval prior to the acquisition of new infrastructure elements.

## 5.5 THIRD PARTY SOFTWARE

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

## 5.6 OPEN SOURCE LICENCES

The Services may include components under open source licences. The relevant components and the licences covering them are then listed in the Order Form. At the Customer's request, the Service Provider shall provide a copy of these licences in paper or electronic form.

## 5.7 SECURITY

The Service Provider shall assign identification codes allowing the Customer and/or its Authorised Users to access the Application Services. It is the Customer's responsibility to protect the confidentiality of such codes. The Service Provider shall not be liable if the codes are misused by the Customer or its Authorised Users, or in the event of unauthorised access by third parties.

## 6. Warranties

### 6.1 SERVICE PROVIDER WARRANTIES

#### 6.1.1 LIMITED WARRANTY

The Service Provider warrants that it has the rights necessary to enable the Customer to access and use the Application Services under the Contract. In addition, the Service Provider warrants that the Application Services shall be available according to the Documentation and in compliance with the SLAs. These warranties are exclusive within the limits of the applicable law.

#### 6.1.2 EXCLUSIONS

The Service Provider does not make any warranty concerning the Services and, in particular, does not warrant that :

- a. the Application Services will be free from errors and/or available continuously or that the Service Provider will correct all Application Services,
- b. the Application Services 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,
- c. the Services will meet the Customer's requirements, specifications or expectations.

#### 6.1.3 MALFUNCTIONS

If there are errors and/or other malfunctions in the Application Services, the Service Provider agrees to do make its best efforts to correct such errors and/or malfunctions by support and maintenance services, according to the conditions set out in the SLA

### 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 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. As such, the Customer indemnifies the Service Provider against any claim or complaint from an individual whose personal data was reproduced and hosted through the Services.

## 7. Liability and compensation

### 7.1 LIABILITY

The Service Provider shall be liable for any damage resulting from mistakes, errors or omissions on its part as well as on the part of its subcontractors that cause direct and immediate damage to the Customer, except for damages caused by minor faults.

## 7.2 EXCLUSION

The Service Provider and its subcontractors shall not be liable for any indirect and/or consequential losses/damages sustained by the Customer and/or third parties. This includes (non-exhaustive list): profit losses, business losses, revenue losses, customer losses, opportunity losses, costs for obtaining substitute products / services / technology in connection with or arising from the lack of or wrongful performance of the Services, to that extent that such exclusion is permitted under applicable law. In addition, the Service Provider is not liable for damages arising from the Customer's failure to use the Application Services in compliance with the Contract or Documentation, or illegal use by the Customer.

### 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 shall not exceed the actual amount of the damage suffered and proven by the Customer. It may not exceed the average amount of fees actually paid by the Customer to the Service Provider according to the Contract up to the prejudicial event over a period of twelve (12) months prior to the prejudicial event, insofar as such limitation is admitted in accordance with applicable law.

### 7.4 INSURANCE

The Service Provider has taken out appropriate insurance to cover risks associated with the performance of its activities. It shall provide any proof of such insurance at the Customer's request.

### 7.5 FORCE MAJEURE

Neither party shall be in default of this Contract if the performance of its obligations in entirety or partially delayed/prevented due to a force majeure such as catastrophic natural disasters, wars, riots, strike or electrical/Internet failures, etc.

### 7.6 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:

- a. acquire the necessary rights to allow the Customer to continue using the Services concerned, according to this Contract;
- b. modify the Services concerned so they do not infringe or cease to infringe the rights of the third parties concerned;
- c. replace the Services at any time by other reasonably equivalent services; or
- d. withdraw from the Customer the rights to access and use the Services concerned, in which case the Service Provider will reimburse the Customer for any Costs that it might have already paid in connection with the Services concerned and the Contract will end in relation to the Services concerned only.

### 7.7 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 Application Services 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 Provider and/or its potential licensors are and remain the rightful owners of property rights relating to any element of the Application Services made available to the Customer, as well as the entire IT infrastructure (hardware and software) implemented or developed as part of this Contract.

## 8.2 CUSTOMER'S PROPERTY RIGHTS

The Customer and/or any third-party beneficiaries remain the owners 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 Application Services as provided in this Contract shall not be construed as the assignment of any of the Customer's intellectual property rights.

### 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.

### 8.5 CUSTOMER PROPERTY

Insofar as the Customer owns the data it uses via the Application Services under the Contract, it shall retain ownership of such data.

## 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:

- d. is or becomes public knowledge without the fault of the receiving party,
- e. is independently developed by the receiving party,
- a. is known by the receiving party prior to disclosure by the other party,
- b. is rightfully received from a third party that is not bound by an obligation of confidentiality, or
- c. 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 TERM

The parties' confidentiality obligations shall remain in effect throughout the Contract term. After the Contract has ended, such obligations shall remain in effect as long the concerned information remains confidential for the disclosing party and, in any event, for a period of three (3) years after termination of the Contract.

### 9.4 RETURN OF DOCUMENTATION.

Each party shall return all copies of the other party's confidential documents and materials by the end of the Contract (no matter what caused the Contract to end) as soon as possible, but at most within ten (10) days from the end of the Contract.

### 9.5 THIRD PARTIES

The Parties also agree to ensure that their staff and any agent or third party that might be involved in the context of 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 DATA PROCESSING

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

## 11. Financial Terms

### 11.1 FEES AND PAYMENT TERMS

The fees for the various Services and the payment terms are stipulated in Article 6 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.

### 11.2 EXCLUSIONS

The analysis, diagnosis and resolution of incidents that are caused by acts and/or circumstances beyond the Service Provider's contractual responsibilities are not included in the fees. These services shall be billed separately at the Service Provider's usual rates.

### 11.3 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.

## 12. Term and Termination

### 12.1 EFFECTIVE DATE

This Contract comes into force upon signature of the Order Form by the contracting parties.

### 12.2 TERM

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

### 12.3 RENEWAL AND ORDINARY TERMINATION

At the end of the Initial Term or any subsequent renewal period, the Contract will be renewed by tacit agreement for the period set in the Order Form. Unless otherwise agreed upon, the financial conditions applicable to the renewal periods are those applicable at the time of the renewal.

### 12.4 SPECIAL TERMINATION

If one party seriously breaches its obligations under this Contract and if that party has not remedied this serious breach within thirty (30) days from receiving a notice sent by registered mail, the other party may automatically and immediately terminate this Contract.

### 12.5 LATE PAYMENT

If the Customer fails to pay the sums due to the Service Provider, after at least two formal notices sent by registered post each indicating a reasonable grace period, the Service Provider may rightfully terminate the Contract following the expiry of the second grace period.

### 12.6 TERMINATION FEES

If the Customer terminates this Contract for reasons not attributable to the Service Provider, the Customer agrees to pay the Service Provider termination fees as stipulated in the Financial Terms, as well as any other amount that may be due at the end of this Contract according to its terms.

### 12.7 REVERSIBILITY

At the end of the Contract, the Service Provider shall cease to provide the Services and the Customer will no longer be entitled to access or use the Services. Notwithstanding the foregoing, at the Customer's request, the Service Provider shall provide all reasonable assistance to enable the Customer to take over the activities internally or entrust them to a third party, within three (3) months following the end of Contract. At the Customer's request and for a period of up to three (3) months after the end of the Contract, the Service Provider shall provide the Customer with its data and applications for the purposes of their recovery. At the end of said three (3) month period, and without assuming any legal obligation in this regard, the Service Provider shall remove all or make inaccessible all of the Customer's data or applications still in its possession. The costs incurred by the Service Provider and the

assistance provided by the Service Provider's staff in respect of such assistance and data recovery will be invoiced to the Customer according to a quote submitted in advance.

#### 12.8 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.

### 13. Subcontracting

#### 13.1 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 13. The subcontractors listed in figure 7 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.

#### 13.2 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 13.2 this will be interpreted as acceptance of the new subcontractor.

#### 13.3 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.

### 14. Non-solicitation

#### 14.1 WAIVER

Unless agreed otherwise by the Parties, each Party undertakes not to employ or engage the services of any of the other Party's employees (whether directly or through an intermediary), unless it has said Party's prior written consent. This undertaking is valid for the term of the Contract and for twelve (12) months after it ends.

#### 14.2 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.

### 15. Final Provisions

#### 15.1 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.

#### 15.2 INTERPRETATION

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

#### 15.3 SEVERABILITY

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).

#### 15.4 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.

#### 15.5 WAIVER

Any tolerance or waiver by one party regarding the application of all or part of the commitments provided for in this Contract, despite the frequency or duration of such commitments, shall not constitute an amendment to this Contract and shall not result in any rights being created.

#### 15.6 AMENDMENTS

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

#### 15.7 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.

#### 15.8 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.

#### 15.9 GOVERNING LAW

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