

Stratokit | General Terms & Conditions

These general terms and conditions (**GTC**) form together with any signed order form referencing these GTC (**Order Form**), and any schedule thereto (**Schedule**) a legal agreement (**Agreement**) between Stratokit SA (CHE-374.998.374), rue de Médran 3, 1936 Verbier, Switzerland (**Provider**) and its customer indicated in an Order Form (**Customer**, and together with Provider, the **Parties**).

Content

Date: 31st March 2020

A. Terms of Use

1. Scope
2. Right to Access and Use
3. Credentials

B. Products & Services

4. Services
5. Integration and Customization
6. Deliverables
7. Availability and Maintenance
8. Customer's Obligations
9. Customer Materials

C. Intellectual Property & Third-Party Content

10. Provider Intellectual Property
11. Third-Party Content

D. Financial Terms

12. Financial Terms

E. Data Protection and Confidentiality

13. Data Protection
14. Confidentiality
15. Advertising and Publicity

F. Disclaimer of Warranty, Liability & Indemnification

16. Warranty
17. Limited Liability
18. Indemnification

G. Term and Termination, Miscellaneous & Governing Law and Jurisdiction

19. Term and Termination
20. Miscellaneous
21. Governing Law and Jurisdiction

A. Terms of Use

1. Scope

- 1.1. In General. These GTC apply the services (**Services**) and to the software (**Software**) specified in an Order Form signed by the Parties.
- 1.2. No Further Obligation. Provider shall have no obligation to provide any service or software which are not expressly specified in the Order Form or in these GTC.

2. Right to Access and Use

- 2.1. In General. Subject to Customer's compliance with all terms and conditions of these GTC, in particular payment of the applicable Fees in accordance with Section 12, Provider grants to Customer, during the Term, a revocable, non-exclusive and non-transferable right to access and use the Software and the content displayed on or through the Software (the **Content**, and together the Software, the **Licensed Products**), strictly in accordance with the documentation provided by Provider, on Customer's own behalf and for its own benefit.
- 2.2. Restrictions. Customer shall use the Licensed Products through its own employees, agents and/or duly authorised representatives only (the **Authorised Users**) and shall take appropriate steps to ensure compliance with the GTC by such Authorised Users. Customer is expressly prohibited from using the Licensed Products on behalf or for the benefit of any third party (including any Customer's affiliate), or to sublicense the Licensed Products to any third party, without Provider's express prior written consent.
- 2.3. No Delivery. Except as otherwise specified in the Order Form, the Licensed Products are provided as a SaaS offering (Software as a Service). Therefore, Provider shall only grant to Customer a right to access and use the Licensed Products and shall not deliver any copy of the Licensed Products.
- 2.4. Developments. If, in connection with Services, Provider customizes, develops or makes available additional features for, respectively provides patches, bug-fixes, updates or upgrades to the Licensed Products (**Developments**) such Developments shall automatically become part of the Licensed Software, unless otherwise stipulated by Provider.
- 2.5. Modifications. Customer acknowledges that Provider may implement modifications to the Licensed Products which may include modifications to the layout or functionality of the Licensed Products as Provider determines, and Provider will have the unfettered right to remove any Content from the Licensed Products at its sole discretion.

3. Credentials

- 3.1. User Credentials. If Provider issues user credentials on a named user basis, such user credentials shall be used exclusively by the individual Authorized Users for which they have been issued, on behalf and for the benefit of Customer. If user credentials are issued to Customer without specifying the individual users, such user credentials may be used by any Authorised User, strictly on behalf and for the benefit of Customer.
- 3.2. Confidentiality. Customer shall be fully responsible for the confidentiality of any user credentials issued by Provider and immediately inform Provider of any loss or unauthorised disclosure of such user credentials, which shall then be deactivated and replaced by Provider. Provider may charge an appropriate fee for the replacement of any user credentials. Customer shall further immediately notify Provider if any named user for whom Provider has issued user credentials quits Customer's organization.

B. Products & Services

4. Services

- 4.1. In General. Subject to Customer's compliance with all terms and conditions of these GTC, in particular to its payment of the applicable Fees in accordance with Section 12, Provider undertakes to provide the Services which are specified in an Order Form. Services may include, if and to the extent so provided in a Order Form: (i) Integration Services pursuant to Section 5 GTC, (ii) Maintenance Services and Support Services pursuant to Section 7 GTC, and/or (iii) consultancy or advisory Services, as well as other additional services described in a Order Form.
- 4.2. Obligation of Means. By default, Provider is only bound by an obligation of means under an Order Form for the supply of Services. Provider will supply the Services in accordance with standard professional practice, with the care and diligence required from a supplier of similar services.
- 4.3. Deliverables. Provider only has an obligation of result if such obligation is expressly provided for in an Order Form in relation to Deliverables if their Specifications (as such terms are defined in Section 6.1) are described therein. In this case, the provisions of Section 6 GTC apply.
- 4.4. Planning. Provider will endeavour to supply the Services within the deadlines set out in the Order Form. However, if the agreed deadlines are not expressly stipulated as binding in an Order Form, they will only be indicative in nature.

5. Integration and Customization

- 5.1. Description. The integration Services include the initial configuration of the Licensed Software into the Customer environment, data migration, tests and training as well as any Customer-specific Developments (the **Integration Services**).
- 5.2. Scope. Provider will provide Integration Services if, and to the extent, so provided for in writing in the relevant Order Form. Provider may accept to provide additional Integration Services not described in the relevant Order Form on a time and material basis, in which case Provider will inform Customer prior to providing the Services.
- 5.3. Customer's Duties. Customer shall have the following duties (in addition to those specified in Section 8 GTC) in relation to the providing by Provider of Integration Services: (i) provisioning of the necessary IT infrastructure (hardware and network); (ii) provisioning of its project staff; (iii) access to (test) data and provision of adjusted Customer data in the format specified for implementing the migration; (iv) prompt implementation of interim tests and interim decisions according to project plan; and (v) acceptances and partial acceptances. Customer-side delays and additional work for Provider caused by incorrect or late fulfilment of obligations by the Customer will be charged to the Customer.
- 5.4. Go-Live. The Integration Services are deemed to have been completed at the latest upon the start of the go-live phase.

6. Deliverables

- 6.1. In General. If the relevant Order Form expressly identifies one or more specific work product(s) to be delivered by Provider (**Deliverables**) and if the detailed technical specifications of such Deliverables (**Specifications**) have been set forth by the Parties in writing and approved by Provider in writing, such Deliverables shall constitute on the part of Provider an obligation to deliver a specific result. The provisions of this Section 6 shall only apply to such Deliverables with a result obligation.
- 6.2. Verification. Immediately upon delivery of any Deliverables, Customer shall verify whether such Deliverables contain any material non-conformities with respect to their Specifications which have an effective adverse impact on their use by Customer (**Major Defects**).
- 6.3. Notification. If any Deliverable contains any such Major Defects, Customer shall notify Provider in writing and within no more than 10 days from the date of delivery, subject to any longer period of time expressly agreed in

writing. With its written notification, Customer shall provide a reasonably detailed description of the claimed Major Defects.

- 6.4. **Correction.** Provider shall then correct any Major Defects at no additional cost and within a reasonable period of time. The Customer shall provide to Provider any additional information as may be reasonably required by Customer to correct any Major Defects, at no cost to Provider. If, following two unsuccessful attempts, the third acceptance test is again unsuccessful, Customer shall be entitled to continue to demand rectification or to withdraw from the Agreement and claim reimbursement of any Fee paid to Provider, to the exclusion of any other remedy.
- 6.5. **Acceptance.** If Customer has not notified any Major Defects to Provider within 10 days from delivery of any Deliverables, or any longer period of time expressly agreed in writing, or if Customer starts to use any Deliverables (go-live), such Deliverables shall be deemed accepted with no reservation, and Section 6.4 shall no more apply. Should Customer request that changes be made to Deliverables that have already been accepted, and if Provider accepts to provide such services, the additional services involved will be invoiced separately.
- 6.6. **Minor Defects.** Should any deficiencies be revealed during the performance of an acceptance test that do not qualify as Major Defect, Customer shall accept the Deliverable. As a rule, these deficiencies will be corrected as part of the Maintenance Services (as defined in Section 7.2), subject to the Parties agreeing in writing otherwise.
- 6.7. **Sole Remedy.** The right to claim the correction of any Major Defects at no additional cost, under Section 6.4, shall be Customer's sole and exclusive remedy and, to the extent permitted under applicable law, Customer hereby expressly waives any other remedies it might have thereunder, including the right to claim a reduction of the Fees and the right to have a third party correct any Major Defects or other deficiencies at Provider's cost and expense.

7. Availability and Maintenance

- 7.1. **Availability of Licensed Products.** Provider shall use reasonable endeavours to maintain the availability of the Licensed Products but does not guarantee their availability.
- 7.2. **Maintenance Services.** As part of the providing of the Licensed Products, Provider shall continuously seek to identify and attempt to resolve problems which may negatively affect the proper functioning and availability of the Licensed Products (the **Maintenance Services**). Such Maintenance Services comprises repairs (rectification of faults and errors to restore functionality) and servicing (maintenance to maintain functionality). Further development, adaptation or improvement of the Licensed Products (evolutive maintenance) do not form part of the Maintenance Services.
- 7.3. **Maintenance Windows.** As a rule, Maintenance Services are deployed once a week during maintenance windows (i.e. on weekdays between 6pm and 9am CET or during the weekend and no longer than 1 hour during which the Licensed Products may be fully or partly unavailable. Provider shall inform reasonably in advance Customer if Maintenance Services have to be performed outside of such timeframe and/or for a duration leading to foreseeable full or partial unavailability of Services during more than 1 hour.
- 7.4. **Support Services.** As part of the Maintenance Service, Provider will provide technical support Services for the notification and correction of defects or errors affecting the Licensed Products support Services to Customer for the Licensed Products (the **Support Services**). The Support Services will be available between 9 AM and 5 PM CET during business days (at Provider's registered office) by email and/or phone, as specified from time to time.

8. Customer's Obligations

- 8.1. **Payment of Fees.** Customer shall pay the Fees as indicated in the Order Form or by any other appropriate means (e.g. pricing schedules provided to Customer by Provider) (the **Fees**), in accordance with the payment terms set forth in Section 12.
- 8.2. **Proper Use.** Customer shall – and shall cause its Authorised Users to – at all times comply with all laws and regulations applicable to the use of the Licensed Products, as well as the conditions and limitation of any license or other right granted, as set out in the Agreement or as otherwise specified in writing by Provider. In particular,

Customer or the Authorised Users shall not, without the prior consent of Provider, and either during or after the Term: (i) abuse the Licensed Products for any illegal purposes; (ii) republish or redistribute any Content or material from the Licensed Products; (iii) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Licensed Products or of its infrastructure; (iv) make any alteration to the Licensed Products, or insert any malicious software into the Licensed Products or its infrastructure; (v) access the Licensed Products' code, attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Licensed Products or its infrastructure; or (vi) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Licensed Products or any part of their infrastructure available to any third party.

- 8.3. Licenses and Authorization. Customer shall maintain all permits and licenses that are required for it to use the Licensed Products.
- 8.4. SPoC. Customer shall make available to Provider a reliable single point of contact (the **SPoC**) to provide feedback and up-to-date information on Customer's business, as may be required by Provider for providing the Licensed Products and to ensure effective communication in support of a successful collaboration.
- 8.5. Verifications. The Licensed Products may contain tools allowing Provider to verify Customer's compliance with these GTC and Provider shall have the right to temporarily or permanently suspend the access to the Licensed Products and/or deactivate any user credentials issued for the use thereof in case of none compliance with these GTC.
- 8.6. Customer Default. In case of default by Customer to comply with its obligations set forth herein or in the Order Form, Provider shall be excused from the performance of its obligations under the Agreement and assume no liability in relation therewith (without prejudice to Provider's other rights under this Agreement).

9. Customer Materials

- 9.1. Customer Materials. Customer shall provide Provider with the document, information and data specified in the Order Form or as otherwise reasonably required by Provider (**Customer Materials**).
- 9.2. Ownership. As between the Parties, Customer Materials is and shall remain the sole and exclusive property of Customer. Nothing herein shall be construed or interpreted as a transfer of ownership in any Customer Materials to Provider.
- 9.3. Use of Customer Materials. Customer grants to Provider a global, royalty-free, irrevocable, non-exclusive license to use Customer Materials for the sole and exclusive purpose of providing or improving the Licensed Products and/or the Services, including a license to collect, process, store, generate, modify, and transfer Customer Materials to third parties.
- 9.4. Warranty. Customer warrants that (i) it has valid grounds and, if required, it has obtained all authorisations and consents for the processing of any Customer Materials within the frame of these GTC and (ii) Customer Materials do not infringe on any law or regulation, these GTC, or any third party rights.
- 9.5. Return of Customer Materials. Upon termination of the Agreement, Provider shall, within reasonable time following a written request by Customer, provide Customer with a final extract of Customer Materials and permanently delete any copies of such Customer Materials still under its control. In any case, Provider shall be allowed to permanently delete Customer Materials 60 days after termination or non-renewal of the Agreement.

C. Intellectual Property & Third-Party Content

10. Provider Intellectual Property

- 10.1. Licensed Products. As between Provider and Customer, Provider shall be and remain the sole owner of all rights, title and interest, registered or not, whether arising from Swiss or any other national or international legislation,

in copyright, databases, trademark, domain names, designs and patents of invention, know-how, confidentiality and/or business secrets, and all other intellectual property or similar proprietary rights of whatever nature (**Intellectual Property Rights**) in and to the Services and the Licensed Products, including any Deliverable or Development (except only for Customer Materials). Nothing in these GTC shall operate any assignment or transfer of any Intellectual Property Rights to Customer.

- 10.2. Usage Data. Provider shall own all rights and titles on, and may freely use for any purpose, any data or information collected, processed, developed, produced or obtained from tracking and analytics technology present on the Software (including any tracking data related to user traffic), as well as any data generated through Customer's use of the Licensed Products (**Usage Data**). Usage Data may relate to, amongst other things, Customer's or third parties' access to and use of the Licensed Products, including *inter alia* the number and duration of visits to the Contents.
- 10.3. Notice of Infringement. Should Customer become aware of any infringement or imminent risk of any infringement of any Intellectual Property Rights pertaining to the Licensed Products or Services, Customer shall immediately inform Provider and provide all useful information on such infringement or risk of infringement. Provider shall have the exclusive power to decide on any action to be taken with respect to such infringement or risk of infringement. Customer shall, at its own costs, provide Provider with all reasonable assistance required by Provider to protect its Intellectual Property Rights, in accordance with its instructions.
- 10.4. Intellectual Property Rights Infringement. In the event that Provider is enjoined from providing the Licensed Products or Services due to any third-party Intellectual Property Rights claims and such injunction is not dissolved within thirty (30) calendar days, or in the event that Customer is adjudged, in any final order of a court of competent jurisdiction from which no appeal is taken, to have infringed upon or misappropriated any third-party Intellectual Property Rights due to the use of the Licensed Products or Services as permitted hereunder, then Provider shall, at its expense: (a) obtain for Customer the right to continue using such Licensed Products or Services; (b) replace or modify such Licensed Products or Services so that they do not infringe upon or misappropriate such Intellectual Property Rights and are free to be used by Customer; or, (c) in the event that Provider is unable or determines, in its reasonable judgment, that it is commercially unreasonable to do either of the aforementioned, Provider may terminate the relevant Agreement, with immediate effect, reimbursing Customer any prepaid Fees for the period during which the latter is thus unable to use the Licensed Products or Services, as its sole and exclusive remedy.
- 10.5. Relief. Customer expressly acknowledges that any infringement of Provider's Intellectual Property Rights will cause irreparable harm to Provider, for which monetary damages alone would be inadequate, and that Provider may thus seek injunctive relief or any other remedy available at law in any jurisdiction, in case of such infringement.

11. Third-Party Content

- 11.1. In General. The Licensed Products or Services may contain Content and/or software components incorporated into the Licensed Products or provided therewith, developed, distributed and/or licensed by third parties (**Third-Party Content**). Such Third-Party Content shall be licensed, and Customer shall use such Third-Party Content under, and strictly in accordance with, the applicable terms and conditions by the respective third-party. Provider shall use its best efforts to identify any Third-Party Content in the documentation of the Licensed Products.
- 11.2. OSS. Nothing in these GTC shall restrict, limit or otherwise affect any rights or obligations that Customer may have, or conditions to which Customer may be subject, under any applicable open source licenses to any open source software which may be incorporated in and/or provided together with the Licensed Products.

D. Financial Terms

12. Financial Terms

- 12.1. Subscription Fees. Except as otherwise specified in the Order Form, subscription Fees for the use of the Licensed Products shall be due and payable in advance, on a yearly basis, and non-refundable in case of termination. Additional Fees as incurred through Customer's use of the Licensed Products are invoiced in arrears, on a monthly basis.
- 12.2. Services Fees. Except as otherwise specified in the Order Form, Fees for the providing of Services shall be due and payable in advance and non-refundable in case of termination.
- 12.3. Taxes. Fees and rates indicated by Provider shall be exclusive of all taxes (in particular, VAT) if and as applicable.
- 12.4. Disbursement. Payment of the Fees shall be made within 20 calendar days from the date of invoice by wire transfer to Provider's bank account, as indicated from time to time to Customer.
- 12.5. Suspension of Services. The continued use of the Licensed Products and Services by Customer is subject to the timely payment of all the Fees. Provider may temporarily stop providing Services or suspend any right to access or use any Licensed Product and/or any user credentials issued to Customer, if applicable, if Customer is in default for payment of any Fees due.
- 12.6. Changes. Changes of the Fees and/or the subscription models, if applicable, shall become effective as of the next al Term, subject to a prior written notice of 2 months by Provider. If Customer's subscription model is no longer available, the subscription shall automatically be transformed into a subscription under the next closest subscription model existing as of its Renewal Term, as advised by Provider in its notice to Customer.

E. Data Protection and Confidentiality

13. Data Protection

- 13.1. Customer Personal Data. If the provision of the Licensed Products or Services implies the processing by Provider of (i) any personal data forwarded by Customer or of Customer's Authorised Users (**Customer Personal Data**), in particular as part of Customer Materials, or (ii) personal data relating to Usage Data (**Usage Personal Data**), Provider and Customer shall fully comply with their respective obligations under applicable data protection laws and regulations.
- 13.2. Roles of the Parties. In such cases, Provider shall process (i) Customer Personal Data, as data processor, exclusively for the purpose agreed in these GTC and only to the extent necessary to fulfil the obligations hereunder, in accordance with Customer's instructions, which shall act as data controller and (ii) Usage Personal Data as sole data controller thereof.
- 13.3. Customer's Obligations. Customer shall ensure, with respect to any Customer Personal Data processed by Provider within the frame of the Licensed Products, if any, that such Customer Personal Data has been collected and transferred to Provider in strict compliance with the applicable data protection or data privacy laws and regulations. In particular, Customer shall
 - a) have, and maintain at all times, valid grounds for the processing of such personal data;
 - b) have adopted and implemented appropriate technical and organisational measures to protect such personal data; and
 - c) have complied and comply with all registration and/or notification requirements, if and as required under applicable data protection or data privacy laws and regulations, prior to granting Provider access to such Customer Personal Data within the frame of the Licensed Products.

- 13.4. Responsibility. Customer shall bear sole responsibility for the processing of Customer Personal Data, if any, within the frame of the Licensed Products. Customer acknowledges and accepts that Provider shall deem any processing of any Customer Personal Data within the frame of the Licensed Products, as permitted under the Agreement, as well as any instructions by Customer with respect to such processing activities as compliant with applicable data protection or data privacy laws and regulations.
- 13.5. Transfer. By accepting these GTC, Customer expressly acknowledges and agrees that Customer Personal Data or Usage Personal Data may be transferred to and processed on servers located outside of its jurisdiction, including in jurisdictions which may not have data protection and privacy laws and regulations equivalent to those in Customer's jurisdiction.
- 13.6. Compliance Actions. Provider may forward to Customer any request, investigation or other action by any supervisory authority and/or any third-parties (including data subjects), directed at Provider with respect to the processing of any Customer Personal Data. If Provider is required to undertake any compliance action itself, e.g. responding to a request by any supervisory authority or third-party and/or cooperating in investigations, and/or to provide assistance to Customer, Customer shall fully indemnify Provider for its effort and costs, including reasonable attorney's fees, incurred in such context. Requests, investigations, or actions relating to Usage Personal Data shall be addressed by Provider only.
- 13.7. Ad hoc DPA. The Parties may agree in a separate agreement or contract or any other document to specific provisions regarding the processing of Customer Personal Data as part of the Licensed Products and Services, in which event such provisions shall have precedence over and supersede this Section 13.

14. Confidentiality

- 14.1. Definition. **Confidential Information** shall mean any information disclosed by either Party (as the context requires, the **Disclosing Party**) to the other (as the context requires, the **Receiving Party**), either directly or indirectly, in writing, orally, or by inspection of tangible objects that is designated as "confidential", "proprietary", or some similar designation or can reasonably be considered of confidential nature. Confidential Information includes the content of the Agreement, (but not the fact that the Parties are collaborating), all information about the Disclosing Party's business and operations, and more generally all information relating to or owned or controlled by the Disclosing Party of which the Receiving Party shall acquire knowledge in the performance of their agreement. The Licensed Products and Services, as well as any data generated through their providing or use, shall be deemed Confidential Information and the property of Provider only, Provider acting as Disclosing Party in relation to such data. Confidential Information shall not, however, include any information which: (i) was made public without restriction prior to the time of disclosure by the Disclosing Party; (ii) becomes publicly known without restriction after disclosure by the Disclosing Party through no action or inaction of the Receiving Party; (iii) is already in the possession of the Receiving Party at the time of disclosure by the Disclosing Party as shown by the Receiving Party's files, records, and/or other competent evidence immediately prior to the time of disclosure; (iv) is obtained by the Receiving Party from a third party without a breach of such third party's obligations of confidentiality; or (v) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information, as shown by the Receiving Party's records.
- 14.2. Obligation of Confidentiality. The Receiving Party shall not, and shall cause its employees and representatives not to (a) disclose, sell, license, transfer, or otherwise make available to any person or entity any Confidential Information of the Disclosing Party, except to its employees, agents, or subcontractors having a legitimate need to know such Confidential Information for the performance of the Receiving Party's obligations under the Agreement (and only to such extent), and/or (b) use, reproduce, or copy any Confidential Information of the Disclosing Party, except as necessary to perform its obligations hereunder.
- 14.3. Ownership. All Confidential Information shall remain the Disclosing Party's property and all documents, electronic media, and other tangible items or portions thereof, which contain Confidential Information of the Disclosing Party will be delivered to the Disclosing Party promptly upon the Disclosing Party's written request.

- 14.4. Cooperation and Assistance. Each Party shall use its best efforts to assist the other Party in identifying and preventing any unauthorised use or disclosure of any Confidential Information. Without limiting the foregoing, each Party shall advise the other Party immediately in the event either Party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to breach confidentiality and each Party shall cooperate with the other Party in seeking injunctive or other equitable relief against any such person.
- 14.5. Compliance. Nothing contained in the Agreement shall prevent Provider or Customer from complying with applicable laws. The Receiving Party may disclose Confidential Information of the Disclosing Party in connection with subpoenas, court orders, other legal processes, or as otherwise required by law, provided that the Receiving Party gives the Disclosing Party prompt written notice of such requirement (unless expressly prohibited in writing in such subpoena, court order, or other legal process) prior to such disclosure and takes reasonable steps to protect the Confidential Information from public disclosure, and provided further that any such disclosure is limited to the minimum extent necessary to comply with the legal requirement.
- 14.6. Reliefs. Customer acknowledges that breach of its obligation of confidentiality may give rise to irreparable harm to Provider, which might not be adequately compensated in the form of monetary damages. Accordingly, Provider may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, in contract or at law.

15. Advertising and Publicity

Provider may refer to Customer as a customer of Provider for the Licensed Products and Customer grants to Provider a limited license to use its name, logos and trademarks for the sole purpose of referring to it within the frame of its marketing activities.

F. Disclaimer of Warranty, Liability & Indemnification

16. Warranty

- 16.1. Maintenance. Defects affecting the normal use of the Software or any Deliverable will be addressed as part of the Maintenance Services in accordance with Sections 7.2 and 4.2. In case of Material Defects which Provider considers cannot be reasonably repaired as part of the Maintenance Services, Provider shall, at its option, either (i) replace the defective Software or Deliverable; or (ii) refund or credit the Fee(s) pertaining to such Software and/or Deliverable; or (iii) terminate the Agreement in relation to such Software and/or Deliverable and reimburse the Fees paid in relation therewith. This Section 16.1 sets forth Customer's exclusive remedy and is subject to timely notice in accordance with Section 6.3. Provider's obligations under this Section 16.1 are limited to defects which are exclusively caused by Provider. Third Party Content, and defects to which Customer or third parties have contributed are expressly excluded and shall only be addressed by Provider if so agreed in writing by the Parties in an ad hoc Order Form.
- 16.2. No warranty. The Licensed Products and any Services (including for the avoidance of doubt any Deliverable) are provided AS IS and AS AVAILABLE. To the maximum extent permitted by applicable law, Provider disclaims all warranties with respect to the Licensed Products and Services, whether express, implied or statutory, including any warranties of merchantability, fitness for a particular purpose, quiet enjoyment and non-infringement of third-party rights.
- 16.3. Exclusions. In particular, Provider does neither represent nor warrant that the Licensed Products or Services shall meet Customer's requirements, that the operation of the Licensed Products or Services will be uninterrupted or error-free, that the Content will be error-free, that any errors in the Licensed Products or Services will be corrected (without prejudice to Provider's undertaking pursuant to Section 16.1), that it will ensure continued compatibility of the Licensed Products or Services with any third-party products, even if they were compatible at any given moment, that the Licensed Products or Services will always be available and remain available unchanged or that certain subscription models for the Licensed Products or Services available

at any given moment will remain available for renewal at the end of the applicable subscription period. The use of the Licensed Products and Services is entirely at Customer's own risk, and Provider expressly disclaims any warranties regarding Customer's use thereof and/or any decisions taken by Customer based on the insights gained from its use of the Licensed Products or Services.

17. Limited Liability

- 17.1. Limited Liability. Provider's liability under the Agreement, whether in contract, tort or any other theory of liability, shall be excluded to the maximum extent permitted under applicable law.
- 17.2. Disclaimer. In particular, without prejudice to the generality of the foregoing, to the extent permitted under applicable law, Provider disclaims any liability for simple negligence as well as for any damages or losses, whether foreseen or foreseeable, or whether Provider has been advised of the risk thereof, related to the loss of use, interruption of business, loss of actual or anticipated profit, loss of revenue, loss of anticipated savings, loss of opportunity, loss of goodwill, loss of reputation, loss of, damage to or corruption of data, or any other indirect, special, incidental, exemplary, or consequential damages or losses of any kind, regardless of the form of action, whether in contract, tort, strict liability or otherwise.
- 17.3. Limited Amount. In no event, Provider's total liability during any period of 12 months shall exceed the amount of the Fees actually paid by Customer during the 12 months preceding the events giving rise to Customer's claims.
- 17.4. Auxiliaries. The exclusions and limitations under this Section 17 shall extend to Provider's directors, officers, employees, agents, representatives and auxiliaries.

18. Indemnification

- 18.1. Indemnification. Customer shall defend, hold harmless from, and indemnify Provider, its directors, officers, employees and auxiliaries, from and against all liability, loss, cost, damage or expense, including reasonable attorney's fees, resulting from (i) Customer's use of the Licensed Products other than as permitted under these GTC and strictly in accordance with any documentation provided for the Licensed Products; or (ii) Provider's use of any Customer Materials as permitted hereunder.
- 18.2. Indemnification Procedures. In case of any claims or proceedings made against Provider, its directors, officers, employees or auxiliaries in relation to Customer's use of the Licensed Products, Provider shall (i) inform Customer without undue delay; and (ii) allow Customer to assist Provider in the defence and settlement of such claims or proceedings with a counsel of its choosing and at its own expense, if and as permitted under applicable procedural rules.

G. Term and Termination, Miscellaneous & Governing Law and Jurisdiction

19. Term and Termination

- 19.1. Entry into Force. These GTC shall enter into force upon any of the following events, whichever occurs first: Customer's subscription for the use of the Licensed Products or first use of the Licensed Products or Services.
- 19.2. Term. The GTC shall remain in effect for the initial term indicated in the Order Form or by any other appropriate means by Provider, as applicable, and in the absence of a term specified, for a initial duration of 1 year, subject to non-renewal or termination in accordance with this Section 19 (the **Initial Term**).
- 19.3. Renewal. Subscriptions shall be automatically renewed upon expiry of the Initial Term, or then current renewed term (each a **Renewed Term**, and together with the Initial Term, the **Term**), for consecutive Renewed Term of the same duration as the Initial Term, subject to prior written notice of non-renewal by either Party with a 1 month prior notice.
- 19.4. Termination for Cause. Provider may terminate the Agreement with immediate effect, in case of any material breach by Customer, provided that, if Customer's breach may be cured, at Provider's sole judgement, Provider

shall first give Customer 15 calendar days' prior written notice to cure such breach at Provider's entire satisfaction. Provider may further terminate the Agreement, in case of any infringement of third party rights or risk of infringement of such rights, through Customer's use of the Licensed Products.

- 19.5. Effects of Termination. Upon non-renewal or termination of the Agreement, and in addition to the consequences described elsewhere in the GTC:
- a) Provider shall stop providing and Customer shall stop using the Licensed Products and the Services;
 - b) all rights to use and access granted to Customer hereunder (inter alia under Section 2.1) shall cease. All access to the Licensed Products and credentials shall be deactivated and suppressed;
 - c) Customer shall permanently delete any part of the Licensed Products stored or installed on its IT systems, if any;
 - d) Confidential Information shall be returned to the Disclosing Party and/or permanently deleted from any support of the Receiving Party, at the Disclosing Party's option, and Receiving Party shall cease using the Confidential Information; and
 - e) all Fees already paid by Customer shall remain acquired to Provider and are not reimbursable to Customer. Customer shall immediately pay all outstanding amounts due to Provider.

20. Miscellaneous

- 20.1. Independent Contractors. The Parties acknowledge and agree that they shall be considered as independent contractors with no authority to contract for the other or in any way to bind or to commit the other or in a way to bind or to commit the other to any agreement of any kind or to assume any liabilities of any nature in the name of or on behalf of the other. Under no circumstances shall either Party, or any of its staff, if any, hold itself out as or be considered an agent employee, joint venture, or partner of the other. Neither Party shall not pay any contributions to social security, unemployment insurance, federal or state withholding taxes, any other applicable taxes whether federal, state, or local, nor provide any other contributions or benefits which might be expected in an employer-employee relationship.
- 20.2. Subcontractors. Provider may use subcontractors for the provision of the Licensed Products and Services. Provider's use of subcontractors shall not relieve Provider of any of its duties or obligations hereunder, which shall be imposed on subcontractors.
- 20.3. Force Majeure. Neither Party shall be liable for any delay or failure to perform its obligations hereunder due to causes beyond its reasonable control, such as natural catastrophes, war, strikes, black-outs, Internet failure, virus outbreaks, or similar events. Any such excuse for delay shall last only as long as the event remains beyond the reasonable control of the delayed Party. However, the delayed Party shall use its best efforts to minimize the delays caused by any such event beyond its reasonable control. The delayed Party must notify the other Party promptly upon the occurrence of any such event, or performance by the delayed Party will not be considered excused pursuant to this Section, and inform the other Party of its plans to resume performance.
- 20.4. Amendment. The Order Form may be amended only by written instrument signed by both Parties. Provider reserves the right to amend these GTC by written notice to Customer at least 2 months prior to the end of the Initial Term or any Renewal Term, in which case Customer's sole remedy shall be to terminate the Agreement in accordance with Section 19.3. In the absence of termination, such amendments shall become effective as of the beginning of the Renewal Term.
- 20.5. Entire Agreement. The Agreement constitutes the entire agreement between the Parties and supersedes any and all previous representations, understandings, or agreements between them, as to the subject matter hereof.
- 20.6. Hierarchy. In the event of a conflict or contradiction between the provisions of the GTC and those of any other contractual documents such as the Order Form or any Schedule, the GTC shall take precedence, subject to express and specific deviations, deletions or additions contained in the proper section of the Order Form to that effect, citing the section(s) of these GTC it shall amend.

- 20.7. **Severability.** If any provision of the Agreement is held to be invalid or unenforceable for any reason, the Parties hereby agree to replace such provision with a valid and fully enforceable provision reflecting the original intent of the Parties to the fullest extent possible. In any event, all other provisions of the Agreement shall remain valid and enforceable to the fullest extent possible.
- 20.8. **Electronic Form.** The words “execution”, “signature” and similar words in the Agreement shall be deemed to include unqualified electronic signatures (e.g. Docusign or any equivalent e-signature provider) which shall be of the same legal effect, validity or enforceability as a manually executed signature; while the term “in writing” shall include communications by email or other electronic forms.
- 20.9. **No Waiver.** The failure of either Party at any time to require performance by the other Party of its obligations hereunder shall in no way affect that Party’s right to fully enforce the other Party’s obligations thereafter.
- 20.10. **Assignment.** Neither Party shall assign and transfer any or all of its rights and obligations hereunder, in whole or in part, to any third party without the other Party’s prior written consent; provided however, that Provider may assign and transfer all of its rights and obligations hereunder to any third party acquiring all or substantially all of its business related to the Licensed Products, without Customer’s consent.
- 20.11. **No Third Party Beneficiaries.** The Agreement shall be binding and inure solely to the benefit of the Parties (and their respective lawful successors and assigns). Nothing in the Agreement is intended to or shall confer upon any third party any rights, benefits or remedies of any nature whatsoever under or by reason of these GTC or any Order Form.

21. Governing Law and Jurisdiction

- 21.1. **Governing Law.** The Agreement shall be governed by and construed in accordance with Swiss substantive law, at the exclusion of its conflict of laws provisions.
- 21.2. **Jurisdiction.** Any dispute or controversy arising out of or in relation to the Agreement and/or Customer’s use of the Licensed Products shall be subject to the exclusive jurisdiction of the competent courts at the registered office of Provider, Switzerland. Notwithstanding the preceding, nothing in these GTC shall prevent Provider from seeking injunctive relief or any other remedy available at law in any jurisdiction in case of any infringement of its Intellectual Property Rights.

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