

SAAS TERMS OF USE

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1. Definitions

In these SaaS Terms of Use, capitalized expressions shall have the meaning ascribed to them in the General License Terms. In addition, the following (capitalized) expressions shall have the following meanings:

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- (b) **SaaS or Software as a Service:** a service by which Licensor makes functionality available to Licensee remotely, in whole or in substantial part in an automated manner, through the Internet or another data network, without providing Licensee with a physical carrier with or a download of the underlying Software.
- (c) **SaaS Terms of Use:** these SaaS terms of use.
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2. General

- 2.1 **Applicability and interpretation of General License Terms.** The provisions of the General License Terms apply equally to SaaS except that the word "Software" should be read as "SaaS and/or Software" and "General License Terms" in the Sections 2 through 15 should be read as "General License Terms and SaaS Terms of Use". However, the following Sections of the General License Terms shall not apply to SaaS: 3.1, 4.1, 5.3, 5.5, 9.1 and 10.
- 2.2 **Order of precedence.** In the event of a conflict between a provision of the General License Terms and any provision included in these SaaS Terms of Use, the provision in these SaaS Terms of Use will prevail.

3. The SaaS

- 3.1 **Required facilities.** Licensee will ensure that it has the facilities required for the access to and use of the SaaS and that these are available directly after entering into the Agreement.
- 3.2 **Set-up of the SaaS.** Unless otherwise agreed between Licensor and Licensee in an Subscription Plan, Licensee itself is responsible for designing, configuring, parameterising and tuning the SaaS, converting and uploading possible data and, where required, for modifying the hardware and user environment used. Licensor is not obliged to perform data conversion.
- 3.3 **Hosting.** Licensor may host the Software and the Customer Data that is processed via or stored in the SaaS on its own servers or may use a third party to host the Software and such data.

- 3.4 **Changes to the SaaS or underlying Software.** Licensor may make changes to the content or scope of the SaaS or continue the performance of the SaaS using a new, modified and/or further developed version of the Software. If changes result in a substantial change in the functionality of the SaaS, Licensor will inform Licensee as soon as possible. Licensor is not obliged to maintain, modify or add particular features or functionalities of the SaaS specifically for Licensee.
- 3.5 **Maintenance.** Licensor may temporarily put all or part of the SaaS out of service for preventive, corrective or adaptive maintenance or other forms of service, to be scheduled by Licensor in its sole discretion.
- 3.6 Licensor may require that Licensee modifies its system (hardware, web browser, software etcetera) if this is required for the proper functioning of a new Version of the SaaS.
- 3.7 **Usage data.** Licensor may from time to time use and process data about Licensee's use of the SaaS for the purpose of creating statistics and analytics data. Licensor may use such data for its own internal business purposes, including to maintain and improve its products and services and to monitor and analyse its activities in connection with the performance of such services. In addition, Licensor may use the usage data to monitor Licensee's compliance with the terms of the Agreement, including compliance with any usage limitations, and to enforce Licensor's rights, including all Intellectual Property Rights. In the event that the actual usage exceeds the usage limitations specified in the Agreement (e.g. the amount of Named Users in the Subscription Plan) or if Licensee otherwise violates the Agreement, then Licensor shall be entitled, in its sole discretion, to (i) invoice Licensee for the additional Fees due in accordance with its then current price list + 25% or (iii) terminate the Agreement. Licensor shall not be responsible for any damages or losses incurred by Licensee as a result of termination pursuant to this Section and any prepaid Fees will not be refunded by Licensor to Licensee.
- 3.8 **Download and source code.** Licensor is never obliged to provide Licensee with a physical carrier or download of the underlying Software. Licensor is not obliged to make the source code of the Software available to Licensee as part of the SaaS.
- 3.9 **Suspension.** Licensor may temporarily suspend the SaaS in the event that:
- (a) Licensee or a Named User (i) poses a security risk to the SaaS or any third party, (ii) could adversely impact Licensor's systems, or the systems or content of any other customer of Licensor, (iii) could subject Licensor, or any third party to liability, or (iv) could be fraudulent;
 - (b) Licensee or any Named User is in breach of this Agreement or any reasonable instructions from Licensor with respect to Licensee's use of the SaaS; or
 - (c) Licensee is in breach of Licensee's payment obligations.
- 3.10 If Licensor exercises its suspension right included in Section 3.10;
- (a) Licensee remains responsible for payment of the Fees during the period of suspension; and
 - (b) Licensee will not be entitled to any reduction for any period of suspension.

4. Access rights and License

- 4.1 **Subscription License.** To the extent reflected in the Subscription Plan, subject to the terms and conditions of the Agreement including the payment of the corresponding Fees, Licensor

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5. Acceptable use

- 5.1 At all times, Licensee acts with due care and does not act unlawfully vis-à-vis third parties, including any other customers of Licensor, more in particular by respecting the intellectual property rights and other rights of third parties, and the privacy of third parties, by refraining from spreading information in a manner that is in violation of the law, from granting unauthorised access to systems and from spreading viruses or other harmful programs or data and by refraining from committing criminal offences and violating any other legal obligations by accessing or otherwise making use of the SaaS. Licensee shall not transmit Customer Data via the SaaS that is illegal, fraudulent, infringing, or in violation of any individual's or entity's privacy rights.
- 5.2 To prevent liability towards third parties or limit any consequences, Licensor shall at all times be entitled to take measures with respect to an act or omission of Licensee. At Licensor's first request, Licensee shall promptly remove any Customer Data from the SaaS. If Licensee fails to do so, Licensor shall be entitled, at its own option, to delete the Customer Data or block access to such Customer Data. In addition, in the event of a breach or an imminent breach of the provisions of article 6.1, Licensor shall be entitled to suspend Licensee's access to the SaaS with immediate effect and without prior notice. All of this is without prejudice to Licensor taking any other measures or exercising any other statutory and contractual rights with respect to Licensee. In addition, Licensor shall be entitled to terminate the Agreement by serving notice of termination (in Dutch: *opzeggen*) with immediate effect without being liable to Licensee for any damages or losses.

5.3 All use of server space, data traffic and other use made of the SaaS, the systems and infrastructure is restricted to the usage limitations agreed by parties in an Subscription Plan. If such usage limitations are not agreed in the Subscription Plan Licensee agrees to a reasonable use of the SaaS and to not use the SaaS excessively. Excessive use of the SaaS may be identified with reference to significant variations from the average consumption by comparable customers. Exposing the SaaS to unreasonable high loads will be considered excessive use. If the agreed usage limitations are exceeded or, in event of a lack of such limitations, in case of excessive use by Licensee, Licensor shall be entitled to charge Licensee for additional Fees at its then current rates. The agreement does not include specific server space exclusively reserved for Licensee, unless this is explicitly agreed in the Subscription Plan.

6. Disclaimer of warranties

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6.2 The SaaS consists of standard off-the-shelf software products and has not been prepared to meet Licensee’s requirements and Licensee acknowledges and agrees that Licensee is solely responsible for determining that the SaaS sufficiently meet Licensee’s requirements. The Documentation is for general information purposes only and does not constitute advice.

6.3 **Amendments in laws and regulations.** Licensor does not warrant that the SaaS is timely adapted to any amendments in the relevant applicable laws and regulations.

7. Customer Data

7.1 **Customer Data.** Licensee shall be solely responsible for each Named User that accesses the SaaS, and for all Customer Data. Licensee is, or its licensors are, the owner of the Customer Data. Licensee represents and warrants that it has the necessary rights, power and authority to transmit Customer Data to Licensor under the Agreement and that Licensee has and shall continue to fulfil all obligations with respect to individuals as required to permit Licensor to carry out the terms hereof, including with respect to all applicable laws, regulations and other constraints applicable to Customer Data. Licensee hereby grants, and is deemed to have granted as such comes into existence, to Licensor a non-exclusive, non-transferable, royalty-free, worldwide license to access, copy, and otherwise use the Customer Data solely for the purposes of administering the SaaS, Licensee’s access to the SaaS, and as otherwise

required for performing Licensor's obligations or set out in the Agreement. Licensee shall defend, indemnify and hold Licensor harmless from any claim, action, suit, damage, judgment or cost, including attorney's fees, based upon or arising out of the custody, possession, storage, transmission or management of Customer Data in accordance with the terms of this Agreement, including without limitation claims predicated on any law or regulation concerning protection of personal data or rights in data collections.

- 7.2 **No personal data.** Licensee is not entitled to process personal data in or via the SaaS and represents that Customer Data shall not contain any personal data. For the purpose of this Section, "personal data" shall have the meaning given to it under the General Data Protection Regulation (EU) 2016/679.
- 7.3 **Security and availability.** Licensor shall take reasonable technical and organizational measures to ensure the security of the SaaS and Customer Data (e.g. by following the OWASP top 10 and ISO-27001), but does not guarantee the security or availability of the SaaS or the Customer Data that is processed by making use of the SaaS or hosted in connection with the SaaS. Licensee shall be responsible for any backups of the Customer Data.