

# *BioRICS NV TERMS & CONDITIONS*

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## GENERAL TERMS AND CONDITIONS OF USE

These general terms and conditions apply between the Customer and BioRICS NV, a Belgian limited liability company, with its registered offices at Technologielaan 3, 3001 Heverlee (Leuven), Belgium, with company number BE 0880.194.826, RLE Leuven.

By using the BioRICS App, the BioRICS Platform and/or any of the Services, the Customer accepts these general terms and conditions, as well as the terms and conditions that apply to the BioRICS app, when downloading such app from the App store or Google Play.

### DEFINITIONS

Term	Definition
App	means The BioRICS app' "Mindstretch by BioRICS", "InfectAlert by BioRICS" either based on Android or iOS.
Consultancy Services	means professional services, such as implementation, configuration, custom development and training Services provided by Supplier to Customer.
Custom Software	means an enhancement, modification or add-on expansion of a Service or a software application, separately developed by Supplier on the request of Customer.
Customer	means the contracting party of Supplier for the delivery of Services, by using the App and/or Platform.
Customer Data	means data owned by Customer, which is generated by using the App and Platform and as used in the Service as further defined in clause 14.4.
Defect	means a malfunction in the App, the Platform and/or the Services, which is (not caused by incorrect configuration or by the Customer not correctly following the usage instructions in the Documentation and which materially degrades the functionality of the App, Platform and/or Services as described in the then current Documentation.
Documentation	means the then current version of the user manuals for the Services as issued by Supplier via its website or directly to the Customer from time to time.
Hardware	means all hardware products, devices and/or systems provided by Supplier and made available to the Customer in relation to the Services and as specified in the Order issued by the Customer.
Intellectual Property Rights	means all copyrights, patents, database rights, rights in trademarks, designs, know-how, logos, confidential information, rights in domain name registrations and similar rights (whether registered or unregistered), and all applications for such rights.

Term	Definition
Modification	means changes made to the Service, such as implementation of Custom Software, changing its configuration, settings, functionality, interfaces or technical capabilities.
Offer	means a written offer issued by an authorised representative of Supplier for the provision of Services to the Customer.
Order	means an order issued by the Customer accepting the Offer made by Supplier.
Platform	means the BioRICS “ <i>Body and Mind Center</i> ” Platform, hosted, managed, maintained and supported by or for Supplier in relation to the BioRICS App and Services.
Services	means all services of Supplier as provided to the Customer, including but not limited to services such as Consultancy Services, Support Services, services related to the use of the BioRICS Platform, BioRICS App.
Supplier	means BioRICS NV a Belgian company with as registered address Technologielaan 3, B-3001 Heverlee, Belgium, with company number BE 0880.194.826, RLE Leuven.
Support Services	means the standard support services as agreed to be provided by Supplier to Customer in the Order.
Support SLA	means the then current service level policy of Supplier for the relevant Support Service, which details the operational aspects of the Support Services agreed to be provided under an Order (subject to Customer specific arrangements if expressly agreed to apply as documented in the Order or a Customer specific Support SLA as attached to or referred to in the Order). If Hosting of the Service is part of the Services agreed to be provided to the Customer, the Support SLA for the Hosting will also set out the committed service levels for such Hosting Services.

## 1. APPLICABILITY OF TERMS

### 1.1 Introduction

These are the general terms and conditions of Supplier that apply to all Services of Supplier, all Offers of Supplier, all Hardware delivered by Supplier and all agreements entered into by Supplier with the Customer with respect to the supply of Services and/or Hardware by Supplier.

The use of the BioRICS App and BioRICS Platform, are subject to specific terms of use, including a specific data protection statement, which are to be accepted on the App Store or Google Play prior to downloading or accessing the App or Platform.

### 1.2 Customer Terms & Conditions

These general terms and conditions apply and prevail over any terms and conditions (whether or not in conflict or inconsistent with these terms and conditions) contained or referred to in any documentation submitted by the Customer or otherwise. The applicability of the Customer's purchasing or other general terms and conditions is expressly rejected. If Customer accepts a proposal made by Supplier by issuing a separate written statement - for example a purchase order - which refers to the proposal of Supplier, then additional or deviating terms or conditions contained in or referred to in such separate document shall not apply between the parties unless such deviating terms

are explicitly accepted in a written statement issued and signed by an authorized representative of Supplier.

Any amendment, modification or variation of these general terms and conditions must be formally accepted by the Supplier in writing before they can become effective.

### **1.3 Quotations, Offers and Orders**

A quotation by the Supplier does not constitute a binding offer and the Supplier reserves the right to withdraw or revise a quotation at any time prior to the Supplier's acceptance of the Customer's Order. All offers and pricing of Supplier are provided for information purposes only and do not legally bind Supplier. Customer may accept Offers issued by Supplier by signing them and sending these to Supplier or by accepting them online (if the Order is offered online such as on websites, in app-stores or in apps). No Order submitted by the Customer is deemed to be accepted by the Supplier (and no agreement shall arise) unless and until confirmed by the Supplier in writing. Offers for Orders expire if not accepted by Customer within thirty (30) days of the date they were issued, unless another validity term is expressly included in the Offer. Apparent typo's and errors in Offers do not bind Supplier and Supplier may reject or terminate Orders based on Offers containing such apparent errors.

## **2. PRICE AND PAYMENT**

### **2.1 Taxes and costs**

All prices of Supplier are, unless explicitly otherwise agreed, exclusive of VAT and any other taxes, levies or duties imposed by governmental authorities. All prices are specified in EURO or in the currency agreed between the parties. Pricing of Services and/or Hardware does not include applicable transportation, travel and accommodation costs, which will be charged separately, as incurred to provide the agreed Services or to deliver the agreed Hardware, except as explicitly agreed otherwise in the relevant Order. All such transportation, travel and accommodation costs will be mentioned explicitly on any related invoice.

All Hardware shall be invoiced on an Ex Works (INCO term 2020) basis, unless otherwise agreed with the Customer.

### **2.2 Payment terms**

Subscription fees for Services are payable monthly, quarterly or yearly in advance, as specified in the Offer, from the date Supplier first provides access to the Services by making user names and passwords available to Customer to start the configuration and use of the Services. Fees for Consultancy Services are payable in accordance with the payment schedule set out in the Order or in absence thereof, monthly in arrears on the basis of actual hours spent in the past month. Fees for the delivery of Hardware are payable in accordance with the payment schedule set out in the Offer or in absence thereof, at the latest on the date of delivery of such Hardware at the premises of the Customer. The Customer shall pay each invoice within thirty (30) days after the invoice date. The Customer shall not be entitled to set off any counterclaims or to suspend payment of an invoice.

The contractually agreed payment dates cannot be changed unilaterally by the Customer for any reason whatsoever, even in the event of dispute.

The Customer shall not be entitled to a discount for any early payment made by the Customer, unless otherwise explicitly agreed by the Supplier.

### **2.3 Late payment consequences**

Any delay of payment may result in the application of an interest charge on the overdue amount at an interest rate equal to the maximum legal interest applicable in Belgium and as specified in the law of August 2, 2002 on combating late payments in commercial transactions.

In the event that the Customer defaults on all or part of a payment, the Supplier reserves the right, after formal notice and a cure period of five (5) calendar days, to:

- claim the entire amount due immediately from the Customer;
- suspend the provision of the Services or the delivery of the Hardware on the Order concerned and, at the Supplier's discretion, all Orders outstanding with the Customer;
- cancel the Order concerned after a formal demand for payment has been served by registered letter with notice of receipt which has not been acted upon by the Customer within eight (8) calendar days from receipt and, at the Supplier's discretion, cancel all Orders outstanding with the Customer;

- ask for guarantees of payment from the Customer, if the Supplier considers it necessary;
- to the maximum extent permitted by law, keep all advances received by way of indemnity, without prejudice to any other damages and costs.

The fact that the Supplier might exercise one or more of the options listed above does not deprive it of the option of implementing the 'reservation of title' conditions stipulated in Article 3.5 for the Hardware or other products delivered to the Customer.

#### **2.4 Pricing**

For Services, the pricing in the Order is valid for the initial subscription term of the Services as specified in the Order. In case of renewal of the term of Services, the then current standard prices for the Services as published by Supplier on its website or notified by Supplier to the Customer in writing at least three (3) months prior to the next renewal date will be applicable to the Services as of the date of renewal.

#### **2.5 Retention of Title**

The Supplier shall retain title to the Hardware, and any other products or devices provided and/or delivered under these general terms and conditions, until effective payment of the full price, including any late payment interests and costs, if any. Default on payment of the Hardware and/or any other products or devices provided and/or delivered, on any one of the due dates can result in a claim by the Supplier for the Hardware and/or any other products or devices and the Supplier reserves the right to repossess and resell any Hardware and/or any other products or devices to which it has retained title. The Supplier's consent to the Customer's possession of the Hardware and/or any other products or devices and any right the Customer may have to possession of the Hardware and/or any other products or devices shall in any event cease.

Failing payment of the full price, the Customer undertakes to unconditionally return, at its own cost, the Hardware and/or any other products or devices at the Supplier's first request, served by registered letter at the Customer's principal place of business.

Notwithstanding reservation of ownership, the Customer shall bear all risks connected with the Hardware and/or any other products or devices supplied from the moment of delivery on the contractual terms. Until payment of the full price, the Customer shall maintain the Hardware and/or any

other products or devices with the greatest care and shall insure the Hardware in favour of the Supplier against all risks which they may incur from the date of delivery. The Customer shall keep the Hardware identifiable as the Supplier's Hardware until full payment is made.

The Customer is not entitled to pledge or in any way charge by way of a guarantee or security for any indebtedness any of the Hardware which remain the property of the Supplier but if the Customer does so, all amounts owing by the Customer to the Supplier (without prejudice to any other right or remedy of the Supplier) forthwith become due and payable. In case of seizure or any other intervention by a third party, the Customer shall immediately notify the Supplier.

### **3. Scope of Services**

The Services provided by the Supplier include the hosting and technical management of the Software on the Platform (SaaS) in a secured third-party data center located in the European Economic Area (EEA). As part of the Services, Supplier shall ensure that the Customer can use the App in combination with the Platform.

#### **3.1 Service commitment**

Supplier will ensure that the Services, the Platform and the App are provided in a professional manner and that they will function for the duration of the subscription of Customer in conformity with the Documentation. However, the Supplier does not warrant that the Services, the Platform and the App will operate error free or uninterrupted at all times. The Supplier commits to address Defects in the Services, the Platform and the App in accordance with the obligations specified in clause 6.

#### **3.2 Evolution of Services – Additional features and functions**

The Services provided by Supplier may be updated, changed and upgraded by Supplier from time to time. For material changes to the Services with a foreseeable material impact on Customer, Supplier will (where reasonably possible) provide at least one (1) month prior notice (via email or via the login screen of the Services or the App) to inform the Customer of such change. Supplier will not charge Customer additional fees for any updates or bugfixes, which are so provided. However if such changes concern new features or functions Supplier shall have the option to install these based on the terms and conditions thereof, which may include the payment of additional charges or an increase of the subscription fees. However separately

charged new features or functions will not be activated and charged to Customer until Customer has confirmed its will to use such new features or functions, in the App or by concluding an Order in which the related additional charges are agreed.

## **4. LICENSE TERMS SUPPLIER SERVICES**

### **4.1 Usage limitations**

Any license granted under an Order to use the Services will be personal to Customer, non-transferable, non-exclusive, for its own internal business purposes, and for the expressly permitted scope of use as set out in the Order and subject to the usage limitations set out in such Order and these general terms and conditions. Use beyond the agreed usage scope or quantity by the Customer entitles Supplier to invoice Customer for the additional usage made at Supplier's then current standard pricing for such expanded use. Where a maximum number of users for the use of the Services is defined in the Order, this is a maximum number of 'named' users and determines the maximum number of user accounts which may at any time be configured in the Services for Customer. Customer may not copy and use any part of the Services, including any software, concept, knowhow or other proprietary aspect of the Services outside the scope of the rights granted. Customer must in using the Service observe the usage instructions and guidelines in the Documentation and may not use the Services in a manner interfering or disrupting the integrity of the proper functioning of the Services and the data stored thereon. In the event the Customer is using the Services outside the agreed scope, Supplier shall be entitled to suspend the provision of the Services and/or terminate or stop the Services and/or access to the Platform.

### **4.2 No use or/by third parties allowed**

Customer may only use the Services for its own internal business purposes and may not make the Services available to any third party by sale, rent, sublicensing, timesharing or on any other basis nor use the Services for the benefit of any third party on any basis including by reselling them or by combining them with the services provided by Customer to third parties, except where this is expressly agreed and permitted by Supplier in writing. This expressly includes a prohibition to use the Services for, or allow the use by, corporate affiliates / group companies / subsidiaries of Customer unless this is expressly otherwise agreed in the Order.

### **4.3 Return of Customer Data**

Supplier will upon termination of the Services for up to one (1) month after such termination allow Customer to download from the Services any copies of Customer Data available for download from the Services or otherwise provide such data on an electronic data carrier in an open, structured format.

### **4.4 Third party license terms**

If the parties agree in the relevant Order that the Services to be provided by Supplier will use data sources and/or standard software tools of third-party licensors (hereafter Third Party Tools), then with respect to the use of these Third Party Tools, the relevant license and usage conditions will apply to the use thereof. The fees payable for the use of these Third Party Tools are included in the fees agreed for the Services to be provided by Supplier and are not separately payable by Customer, unless expressly otherwise agreed in the relevant Order.

### **4.5 Test/ beta/ evaluation license**

Any right to use Services granted on a 'test'/ 'beta'/ 'acceptance'/ 'training'/ 'demo' basis (or similar indication that Services are not intended for full commercial use), shall be used by Customer for the sole purpose of evaluation or testing of the Service and may not be used for normal operational / commercial use. Such Services are provided without warranty on an "as is" basis and without entitlement to any Support Services (except as may be expressly otherwise agreed in the Order) and may be revoked by Supplier at any time for any reason.

### **4.6 Reverse engineering**

Customer may not, directly or indirectly through a third party, disassemble, reverse engineer or decompile any part of the Supplier Services, Platform, App or other software. If applicable law in the European Union or in any other part of the world allows Customer to perform any of these activities in spite of the prohibition in the previous sentence, then Customer shall provide prior written notice to Supplier of its intention to perform such activities and shall allow Supplier the opportunity to supply the data Customer would lawfully wish to obtain through such activities. If Supplier is lawfully obliged to provide such information, both Parties agree that such information shall be considered as Confidential Information of Supplier.

## **5. Support services for supplier Services**



### **5.1 Support Services**

Customer is entitled to receive Support Services from Supplier as specified in the Order for the Services and provided Customer has paid all applicable fees for the Services and Support Services when due. The scope of the Support Services is as agreed in the relevant Order and the related procedures, service levels and operational and technical terms of use are described in the then current Support SLA of Supplier. Material changes to procedures, service levels and operational and technical terms of use of the Support SLAs will be announced by Supplier to Customer in writing and at least 2 months in advance. Changes reducing service level commitments in the Support SLA can only be made with the prior consent of the Customer.

### **5.2 Support Services – general support**

Support Services included in the subscription fees for the Services include the following:

- a. access to the Documentation of the Services and self-help tooling (such as the FAQ lists, white papers, example materials and use cases) as made available from time to time via the Services or a designated website or portal of Supplier to Customer;
- b. general usage support via email and phone (during Belgian business hours for a maximum of two (2) hours per month or such other maximum number as may be agreed in the Order to answer reasonable usage related questions regarding the Services regarding aspects not covered by the Documentation and other self-help tooling made available by Supplier; and
- c. proactive monitoring by Supplier of key performance statistics of the Services to help prevent Defects and to identify Defects occurring in the Services.

### **5.3 Support Services – Defects**

Supplier will use its reasonable efforts to address and resolve Defects in accordance with the procedures and service levels, as set out in the Support SLA. In case a Defect effectively blocks Customer from accessing the Services or using material parts of the functionality of the Services, Supplier will use all reasonable efforts to provide at least a work around to allow Customer to resume use of the (affected part of) the Services as soon as practical, which work around may require Customer to temporarily accept to apply alternative working procedures or a reduction of minor functionality.

### **5.4 Customer responsibilities and obligations for receiving support**

Customer must ensure that employees contacting Supplier to receive general support and/or to report Defects have been suitably trained to use the Services, Platform and/or App and have consulted the Documentation of the Services before contacting Supplier for support. Customer must when reporting a Defect provide all relevant information and co-operation to Supplier to enable Supplier to identify and reproduce the Defect. Resolving Defects or other issues caused by failures to follow usage instructions set out in the Documentation, by uploaded materials not compliant with the related technical requirements or with respect to restoring Customer data are not part of standard Support Services, and assistance with respect thereto may be separately charged by Supplier as Consultancy Service to Customer.

### **5.5 Support Updates**

As part of the Support Services, Supplier may install updates of the Service. The implementation of updates may temporarily affect the availability of the Service for use by Customer. Supplier will announce and perform update implementations in accordance with the procedures set out in the relevant Support SLA. Supplier may refuse to address Defects or to provide Support if Customer does not enable the installation of an update that would prevent or resolve such Defect.

### **5.6 Modifications**

Creating and implementing Modifications is not part of standard Support Services and are performed as Consultancy Services. Supplier may also offer optional Modifications to Supplier's Products to offer new or improved functionality, which may be subject to additional license fees. License fees for such optional Modifications are not mandatory for the Customer to order and are only chargeable to Customer if Customer expressly agreed to the applicable additional license fee in writing.

### **5.7 Quality commitment Support Services**

Supplier will provide Support Services in a professional and diligent manner and commits to use its reasonable efforts to address and resolve Defects in the Service for which the Support Services are provided in accordance with the applicable Support SLA. Supplier expressly does not warrant that it will be able to resolve all Defects or

that the Services will operate without Defect and/or interruption. Resolution of a Defect in the Service may require the co-operation of Customer and may require Customer to temporarily accept a reduced Service or to install an update of the Service.

## **6. CONSULTANCY SERVICES**

### **6.1 Consultancy Services**

All forms of services provided by Supplier other than the Services and related standard Support Services as set out above, such as general consultancy, work on customizations, assistance in implementing and customizing the Services for Customer, assisting in uploading and tailoring Customer Data for use with Services, are considered as Consultancy Services, which are not included in the subscription fees for the Services provided by Supplier and are separately chargeable to Customer.

### **6.2 Terms and dates**

All delivery dates and other periods stated or agreed by Supplier for Consultancy Services are based on data known to Supplier when it agreed or communicated such dates or periods and may be subject to change. Supplier will use its reasonable efforts to observe agreed delivery dates and other periods as much as possible, subject to the Customer's timely performance of its obligations, and will give notice to Customer in case any specifically communicated period or date is expected to change.

### **6.3 Fees for Consultancy Services:**

Unless expressly otherwise agreed, Consultancy Services are charged on a time and material basis against the then-applicable standard hourly rates of Supplier or such hourly rates as may be agreed in the relevant Order. Communicated budgets for performing certain activities are (unless expressly otherwise agreed) non-binding estimations and not fixed prices. Supplier will only with the prior written consent from Customer spend time beyond the agreed budget. Agreed fixed prices for Consultancy Services for certain specific activities are subject to the assumptions and conditions set out in the Order and on the general assumption that the Customer provided correct, up to date and complete information for Supplier to provide its price offer and that the Customer will fully co-operate with Supplier, as per clause 7.4 below. The Customer further acknowledges and agrees that for Consultancy Services provided on a fixed price basis and which are related to the

designing, tailoring of a look and feel, implementing of a house style, aligning to the Customer policies or other elements and which are subject to the approval of Customer, one correction round is included in such fixed price. Additional iterations to finetune such aspects of the relevant deliverables are not included in the fixed price and may be separately charged by Supplier.

### **6.4 Customer co-operation:**

The Customer shall furnish Supplier in a timely manner with all information and provide all cooperation which is reasonably requested by Supplier to execute its obligations. Customer will ensure that any Customer Data provided for inclusion in the Services complies with the relevant technical standards as set out in the Documentation and that such Data is . Where the Consultancy Services are provided with respect to integrating / connecting the Services with third party services or data services which are provided by third parties under a direct agreement between Customer and the relevant third party providers, then Customer is responsible to ensure the timely and correct co-operation by such third party provider to enable Supplier to perform the Consultancy Services and subsequently deliver the Services. With respect to Custom Software, where a business specific functionality is implemented the Customer shall provide all information and support that is required for the effective performance of the obligations of Supplier.

### **6.5 Quality commitment Consultancy Services**

Supplier will provide Consultancy Services in a professional and diligent manner. In case deliverables created as the result of Consultancy Services contain manifest errors or shortcomings caused by a failure by Supplier to perform the Consultancy Services to the standard set out in this clause, and Customer reports this to Supplier within three (3) months after the delivery of the deliverable, Supplier will as a sole remedy and without additional charge use its reasonable efforts to correct such error or shortcoming or alternatively offer Customer a proportional reduction in the fees charged for the relevant Consultancy Services.

## **7. CONSULTANCY SERVICES - CUSTOM SOFTWARE SERVICES**

### **7.1 Custom Software**

If Supplier agrees to develop Custom Software as customization of a pre-existing standard Service on request



of a Customer and/or if Supplier agrees to develop additional functionality on request of a Customer, such Custom Software will, unless expressly otherwise agreed in the Order, be owned by Supplier and will be implemented by Supplier in generally distributed standard updates of the Service. Supplier decides in which update of the Service the Custom Software will be included, which may not be the first update released by Supplier after the enhancement is agreed to be developed for Customer. The update of the Service containing the enhancement is also covered by the Support Services procured by Customer for such Service under the same terms unless expressly otherwise agreed in the Order for the creation of such Custom Software. Notwithstanding the above, Supplier can agree with Customer, in a mutually signed amendment, on specific terms of use that will apply to specific customizations or functionalities developed and created by Supplier for Customer.

#### **7.2 License Custom Software**

Customer will be granted a License for the Custom Software in accordance with the License Conditions. Customer will not acquire any ownership rights in the Intellectual Property Rights or obtain rights to exclusivity in any Service, any Documentation or any Custom Software, modification or addition thereto developed by Supplier or a third party engaged by Supplier, including those paid for, suggested or requested to be developed by Customer.

#### **7.3 Acceptance of Custom Software**

Within fourteen (14) days from delivery of the Custom Software by Supplier to Customer, Customer will perform testing to establish that the delivered Custom Software operates and performs in accordance with the agreed upon Specifications. If it becomes apparent that the Custom Software contains material Defects or functional deviations, the Customer shall report the test results to Supplier in writing, with sufficient detail to enable Supplier to reproduce and address the reported Defect or functional deviations. Supplier will use its reasonable commercial efforts to remedy the reported Defect or functional deviation and subsequently make the Custom Software available for a renewed test by Customer. In case Customer has not reported a Defect or functional deviations in the delivered Custom Software within fourteen (14) days after delivery of the Custom Software and/or has started operational use of the Customer Software, whichever comes first, it shall be deemed that the Custom Software

has been accepted by Customer, at the latest at the end of the fourteen (14) day period.

#### **7.4 Minor issues do not block acceptance**

Minor Defects or functional deviations which, by their nature and/or number, do not prevent the (start of) operational use by Customer of the Custom Software and/or (the start of) the delivery of subsequent Services (e.g. next round of development), will not prevent acceptance, without prejudice to Supplier's obligation to correct such minor Defects or functional deviations.

#### **7.5 Warranty Custom Software**

For a period of eight (8) weeks following the date the relevant Custom Software is accepted by Customer, Supplier will correct (subject to the conditions of clause 7.4 above and under the commercial terms agreed in the Order): (i) Defects; and (ii) functional deviations, which Customer could not reasonably have identified at the time of the acceptance of the Custom Software.

#### **7.6 Scrum / agile**

For Consultancy Services in the form of 'agile' / 'scrum' development of Custom Software, the budgets agreed in the Order for 'development sprint(s)' are on a fixed price basis for performance of the relevant development sprint(s) with the agreed number of developers with the agreed expertise for the agreed number of days. The actual output in terms of software functionally ('user stories' / 'story points') realised by the end of each such sprint (and all sprints combined) is not fixed or guaranteed. Supplier and Customer will in each development sprint work intensively together in good faith on a best efforts basis to maximise the number of realised 'user stories' / 'story points' in the form of Custom Software ready for use by Customer by the end of each sprint. For 'agile' / 'scrum' development, the warranty as per clause 8.5 for the created Custom Software is strictly limited to the commitment to correct Defects reported during the warranty period which are caused by the development work by Supplier staff (and the warranty expressly does not include creating or finishing the creation of not realised functionality per the end of the sprint). The warranty period for this limited warranty starts on the day after the results of the relevant development sprint are made available to or delivered to the Customer.

### **8. Hardware**

### **8.1 Hardware Specifications and use**

The delivered Hardware shall materially comply with the agreed specifications and technical standards.

The Customer is responsible and liable for implementing the Hardware in its products or its use in its services, under the normal conditions foreseeable for use and in full application of the applicable laws and regulations in force at the place of use, and by application of state-of-the art technology, techniques and processes.

In particular, the Customer is responsible and liable for choosing the Hardware that corresponds to its technical requirements and, if necessary, for ensuring with the Supplier that the Hardware is fit for the intended purpose.

### **8.2 Title and Risk**

Unless otherwise agreed between the Parties, delivery of the Hardware shall take place at Supplier's premises, EX WORKS (INCO term 2020). Risks are transferred to the Customer accordingly from the moment of delivery. The title to the Hardware shall pass from Supplier to the Customer at the moment of full payment of all Hardware delivered. Until such full payment, Supplier shall assert the benefit of the reservation of title in accordance with article 3.5.

## **9. INTELLECTUAL PROPERTY RIGHTS**

All intellectual property rights including, but not limited to, know-how, specifications, inventions, processes, drawings, databases, copyright, patents, trademarks, tradenames, or any trade secrets ("Intellectual Property Rights") incorporated into or used in connection with the Platform, App, and or documents transmitted, the Hardware delivered and/or the Services performed shall remain the sole property of the Supplier and its licensors, if any. The Customer shall retain all ownership rights in any and all documentation, specifications, know-how and other trade secrets that it discloses to Supplier in relation to this Agreement.

If the Parties agree to any transfer of Intellectual Property Rights to the Customer, e.g. in the event of the development of Custom Software, this shall be subject to a separate written contract with the Supplier, outlining the specific terms and conditions.

The Supplier reserves all rights and use of the Intellectual Property Rights in and the results of its own research and development work, as well in all Services provided, the Platform and/or App delivered and/or any Custom Software made under these general terms and conditions.

The Parties further agree that all suggestions made, or any input or reporting made by Customer to Supplier with regards to the Services, Platform, App or otherwise, can be used and incorporated by Supplier in its Services, Platform or App, without any further compensation or payment to Customer and such changes, amendments or modifications shall be the sole property of Supplier.

## **10. IPR INFRINGEMENT and INDEMNITY**

### **10.1 IPR indemnity commitment**

As far as Supplier is aware, the Services, the Platform and the App do not infringe upon any third party Intellectual Property Rights when used in accordance with the applicable terms. Supplier shall, as sole and exclusive remedy, defend the Customer at its expense against any claim from a third party that the use of the Supplier Services by the Customer infringes any third party's Intellectual Property Rights.

### **10.2 Conditions for IPR indemnity**

Subject to the limitation of liability as stated in Article 14, Supplier shall pay all direct damages and attorney's fees that a court finally awards as a result of such a claim or make all payments related to a settlement agreed by Supplier with such third party concerning such claim, provided that:

- a. Such claim is not in any way caused by any Customer Data or any act or omission of Customer;
- b. Customer promptly notifies Supplier in writing of such claim; and
- c. allows Supplier to control, and fully co-operates with Supplier in, the defense against, such claim and any related settlement negotiations.

### **10.3 Resolving infringement**

If a claim for infringement of Intellectual Property Rights of a third party is made or in the reasonable opinion of Supplier is likely to be made then, at Supplier's option:

- a. Supplier will procure a license from the holder of the relevant Intellectual Property Rights to enable the

Customer to continue to use the Services, Platform and/or App; or

b. Supplier will replace the relevant part to the Services, Platform and/or App with a modified version thereof, which does not infringe the third party Intellectual Property Rights; or

c. Supplier may terminate the relevant Order against a proportional repayment of the fees pre-paid by the Customer for unused portions of the Services.

## 11. DATA PROTECTION (PRIVACY) COMMITMENTS

### 11.1 Commitment to comply to data protection laws and regulations

Since the performance and the provision of the Services may involve the processing of Personal Data, the Customer, as the Data Controller, and the Supplier, as the Data Processor, must comply with the applicable data protection laws and regulations. The terms and definitions used in this Article 11 shall have the same meaning as in the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (“GDPR”) and any applicable laws implementing it, as well as any subsequent amendments thereto.

With respect to the Personal Data provided to it by the Data Controller or otherwise obtained from the Data Controller, the Data Processor warrants that it will act as the Data Processor of such Personal Data and that it will therefore:

- process the Personal Data obtained solely based on the (written) instructions of the Data Controller and for the provision of the Services, except for deviating legal obligations in which case the Data Processor will inform the Data Controller thereof in advance, unless such notification is prohibited by law;
- create and maintain a register of its processing activities under this Agreement; upon first request, the Data Processor shall make the register available to the Data Controller, to an auditor appointed by the Data Controller and/or to the supervisory authority;
- not process Personal Data for purposes other than the provision of the Services and the performance of its obligations under this Agreement;
- not disclose Personal Data to persons other than its employees (in the broader sense, e.g. including consultants and subcontractors) and this to the extent necessary to fulfil its obligations under this Agreement, and

that it will thereby ensure that such employees are subject to legal or contractual confidentiality obligations;

- take appropriate technical and organisational measures against any form of unauthorised or unlawful processing and regularly evaluate the adequacy of these security measures and adjust them where necessary;
- ensure that access to and the inspection, processing and provision of the Personal Data will only take place based on a “need-to-know” principle, i.e. that information will only be provided to those persons who require the Personal Data for the performance of their work in the context of the performance of the Services;
- immediately inform the Data Controller of (i) any legally binding request for the provision of the Personal Data by a Data Subject or any judicial or regulatory authority unless prohibited, such as the obligation imposed by criminal law to protect the confidentiality of a judicial inquiry, and that it will assist the Data Controller thereby; (ii) any incidental or unlawful access and, more generally, any unlawful processing; and will assist the Data Controller thereby;
- handle all reasonable inquiries from the Data Controller in connection with the processing of Personal Data or in connection with this Agreement;
- make all necessary information available to the Data Controller to demonstrate compliance with applicable data protection laws and regulations;
- have its data-processing facilities audited or inspected at the request and expense of the Data Controller;
- appoint only other (sub-)Processors which are necessary to perform the Services, and which will provide the same level of data security and demonstrate the same commitment to comply with the provisions of this Agreement;
- assist the Data Controller in complying with its obligations under the applicable data protection laws and regulations.

If the Personal Data processed under this Agreement are transferred to a country outside the European Economic Area, the Data Processor will ensure that the personal data are adequately protected and that the transfer takes place in accordance with data protection legislation. If the processes, tools and systems of the Data Controller are used for such transfer, the Data Controller shall ensure that the Personal Data are correctly and sufficiently protected outside the EEA, if applicable.

The Customer and its end users, shall be responsible to consult, check, agree and comply with the privacy policy of Supplier as indicated in the App and/or Platform, prior to downloading or use of such App or Platform. This privacy policy clearly outlines how the Personal Data are treated, processed, stored and/or transferred in accordance with the requirements of the General Data Protection Regulation (GDPR) or other applicable data protection laws and regulations.

Personal Data that is directly collected by the Customer is processed under the responsibility of the Customer.

If the Supplier is collecting or processing Personal Data directly from the Customer or its users as a controller, such shall be done in compliance with the privacy statement, which is included in the App and on the Platform.

Furthermore, the Supplier shall be allowed to process and use anonymised data for research purposes and/or to improve its applications, products and services.

#### **11.2 Security commitment**

If Supplier as part of the Services will store and process personal data of Customer on systems managed and made available by Supplier to Customer, then Supplier shall implement appropriate technical and organizational measures to secure such systems against unauthorized access and use as agreed in the Order. Customer is responsible to verify the level of security committed to be provided is appropriate for the Customer Data it from time to time wishes to process by means of the Service. Upgrades of security measures to meet increased or changed requirements compared to those expressly agreed in the Order or the relevant Support SLA may be separately charged (provided no upgrade or change chargeable to Customer will be implemented without its express approval of the related costs).

## **12. LIMITATION OF LIABILITY**

#### **12.1 Liability limit direct damage**

The total liability of Supplier under any Order for breach of contract, tort or under any other legal theory in any calendar year is limited to direct damages and to a maximum amount equal to the 50% of the total fees actually paid by Customer to Supplier during the previous full calendar year under the Order (or if no Services were provided in the previous calendar year to Customer under

the Order, the total fees paid in the initial 6 months of the term of the Order).

#### **12.2 Exclusion liability indirect damage**

Supplier shall not be liable towards Customer or towards third parties for any consequential or incidental damage, damage to data, lost turnover, lost profits, lost savings or damage to good name, whether such damages arise under a tort, contract or other claim, even if Supplier has been informed of the possibility of such damages.

#### **12.3 No limitation**

The limitations mentioned in the preceding paragraphs of this clause shall not apply if and insofar as the damage or injury are the result of intentional misconduct or gross negligence of a party.

#### **12.4 Third party claims**

The Customer will indemnify and hold Supplier harmless from any third-party claims and related reasonable legal costs and all damages caused by or related to Customer's use of the Services, Platform or App, expressly including but not limited to any claim from any third party caused by a violation of such third party's (intellectual property) rights or of applicable data protection or other laws by Customer in using the Services, Platform and/or App.

#### **12.5 Use or link with other applications**

Supplier states that applications or services of third parties might be included or linked into the Platform and/or App and that Customer and its users should check and agree on the terms and conditions of use of such third parties prior to using such services or applications. To the maximum extent permitted by law, Supplier shall in no event be liable or take any liability for such services or applications.

#### **12.6 Use of the App and/or Platform**

The Supplier clearly states and the Customer acknowledges and agrees that the use of the Platform and/or App by the Customer and or its end users shall be at their own risk, and the Supplier clearly indicates that the use of the Platform and/or App can in no event replace a medical diagnosis, medical advise or treatment. Any data provided by the Platform and/or App cannot be considered or used as a replacement of a medical diagnosis.

## **13. TERMINATION**

### **13.1 Term and renewal of Services**

The right for Customer to use the Services is granted for the relevant subscription period as set out in the Order. If no subscription period is specified in the Order, the initial subscription period is one (1) year starting on the date the Services are first made available for use to Customer, after which the subscription is automatically renewed for additional one year periods until either party gives at least three (3) months prior written notice of its desire not to renew the Services. Customer may reduce the scope of the Services for the following renewal period (e.g. by reducing the number of licensed users) by giving three (3) months prior written notice to Supplier.

### **13.2 Term of Order for Consultancy Services**

The applicable term of an Order with respect to Consultancy Services will be as agreed in each Order. Orders for one-time activities will automatically terminate when all Consultancy Services agreed have been provided by Supplier and paid for by Customer. Orders for recurring or on-going Consultancy Services will specify the initial and renewal terms and in absence of any explicit initial and renewal term, will be deemed to have been agreed for an initial term of one (1) year with subsequent renewals for additional one-year terms until either party gives at least three (3) months prior written notice of its intent not to renew the Consultancy Services for an additional one-year term.

### **13.3 Termination rights, both parties**

A party may terminate an Order by giving written notice to the other party in the following circumstances:

- a. if the other party violates an obligation under an Order or these terms and conditions and does not remedy such violation within a period of thirty (30) days after receipt of a written notice of default sent by registered mail to the defaulting party; or
- b. if the other party is declared bankrupt or a receiver is appointed to administer its assets or otherwise becomes unable to satisfy its debts when due.

### **13.4 Services Discontinuation**

Supplier may early terminate the then current term of a subscription for Services and the related Order(s) in case Supplier decides to end support for the relevant Service for all its customers. Supplier will in such case provide at least six (6) months prior notice of such termination. Supplier will in such case re-imburse any prepaid fees for the Services for the period after the date of actual termination of the

Services. Where possible Supplier will offer a migration path for Customer to alternative Services replacing the terminated Services which Customer will be free to accept or reject.

### **13.5 Consequences of termination**

Upon termination or expiration (for whatever reason) of an Order all amounts owed under such Order shall immediately become fully due to be paid, including for subscription fees that would have become due for the remainder of the agreed initial term of the subscription period for the Services. No refunds are provided for amounts pre-paid for Services, except in case the Order was justly terminated by the Customer for an uncured default of Supplier or where Supplier early terminates pre-paid Services as per clause 14.4 above, and such always to the maximum extent permitted by law.

## **14. CONFIDENTIALITY**

### **14.1 Confidentiality commitment**

Each party (Recipient) undertakes to the other party (the Disclosing Party) to treat as confidential all information in any medium or format (whether marked "confidential" or not) which the Recipient receives from the Disclosing Party either directly or indirectly which concerns the business, operations, software or customers of the Disclosing Party and which can reasonably be deemed to be of a confidential nature (Confidential Information). The contents and existence of this Agreement is considered Confidential Information.

### **14.2 Usage restriction**

The Recipient may only use the Confidential Information for the purposes of performing the activities set out in this Agreement. The Recipient may only provide its employees, directors, subcontractors and professional advisers (Permitted Users) with access to the Confidential Information on a strict "need-to-know" basis for this purpose. The Recipient shall ensure that each of its Permitted Users is bound to hold all Confidential Information in confidence. Where a Permitted User is not an employee or director of the Recipient (and is not under a professional duty to protect confidentiality) the Recipient shall ensure that the Permitted User shall enter into a written confidentiality undertaking with the Recipient on substantially equivalent terms to this clause.



### 14.3 Exclusions

This clause 15, shall not apply to any information which:

- a. is in or subsequently enters the public domain other than as a result of a breach of this clause 15;
- b. has been or is subsequently received by the Recipient from a third party which is under no confidentiality obligation in respect of that information; or
- c. is required to be disclosed any competent governmental or regulatory authority.

### 14.4 Ownership Customer Data

All data which Customer uploads in the Services or sends to the Services or gathers from its users via the Services, expressly including, but not limited to usage data, collected data, messages, texts, and other Customer prepared texts and images, are considered "Customer Data" and are and will remain to be fully and wholly owned by Customer and its licensors. Supplier will not use the Customer Data for any other purpose then to provide the Services to Customer, to manage maintain and improve the Services and to comply with applicable laws. Customer Data expressly does not include data provided by Supplier itself or via third party suppliers to Customer by means of the Services. Such data is only licensed for use by the Customer for the term of the Services and subject to the applicable license terms. Customer represents and warrants that (i) he has and will have sufficient rights to all Customer Data provided to Supplier or loaded on to the Platform or used with the Services and (ii) that all Personal Data included in the Customer Data are collected and processed in full compliance with the GDPR and applicable legislation.

## 15. FORCE MAJEURE

Neither party to this Agreement shall be held liable for its delay or its failure to perform any of its obligations under the Agreement if this delay or failure to perform is the direct or indirect effect of a force majeure event, such as, but not limited to: the occurrence of an act of God; earthquake, storm, fire, flooding, armed conflict, war, dispute, attacks, industrial conflict, total or partial strike by either party's workforce; industrial conflict, total or partial strike at the Supplier's, service providers, carriers, post office, public services, imperative injunction by the public authorities (ban on importing, embargo), epidemics, pandemics or operating accidents, machine breakdown and explosion.

Each party shall inform the other, without delay, of the occurrence of force majeure of which it is aware and which, in its opinion, may affect performance of the Agreement.

If the force majeure event continues for more than thirty (30) days, the parties shall consult with one another within five (5) business days following expiration of the period of thirty (30) business days in order to examine, in good faith, whether the Agreement is to continue or to be terminated or if alternative solutions can be implemented.

## 16. MISCELLANEOUS

### 16.1 Non-solicitation of employees

Neither party will during the term of an Order and up to one (1) year after the end of such term directly or indirectly employ, hire or procure services from any employee or freelancer hired by the other party which was during the term of such Order involved for the other party in providing the Services or using the Services. Violation of this clause will entitle the other party to claim as liquidated damages the higher of 50.000 euro or a year's salary (or other yearly total compensation) of the relevant individual, without limiting the right to claim specific performance.]

### 16.2 Applicable law – Dispute Resolution

These terms and conditions and all agreements to which they apply shall be governed by the laws of Belgium.

All disputes arising in connection these terms or any agreement they are applicable to, shall be submitted to the exclusive jurisdiction of the competent courts of Leuven - Belgium.

### 16.3 Null or void provision

If any provision of these general terms and conditions is null and void or annulled, the other provisions of these general terms and conditions shall remain in full force and the annulled or void provision shall be deemed replaced by a clause which is not void or unenforceable and in its effect is as close to the annulled or void clause as is possible without making the replacing clause annulled and void.