

Terms and Conditions for AHEAD

1. SCOPE OF APPLICATION

1.1 The present General Terms and Conditions are applicable to the main SaaS Agreement AHEAD ("Agreement") entered between AHEAD AG and the Customer ("Customer").

1.2 These General Terms and Conditions shall govern conclusion, subject matter and performance of the SaaS Agreement AHEAD services. If there is an inconsistency between any of the provisions in the main body of the Agreement incl. the Schedules and the General Terms and Conditions, the provisions in the main body of the Agreement shall prevail.

1.3 Modifications or amendments of these General Terms and Conditions must be confirmed in writing by the purchaser

2. SERVICES

2.1 Services means the subscription ahead services provided by AHEAD to the Customer under this Agreement via Offer or via <https://aheadintranet.com> or any other website notified to the Customer by AHEAD from time to time, as more particularly described in the Documentation.

2.2 AHEAD shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this Agreement.

2.3 AHEAD shall use Best Efforts to make the Services available 24 hours a day, seven days a week, except for the time during maintenance windows (updates, upgrades or other modifications) or scheduled downtimes.

2.4 AHEAD will, as part of the Services and at no additional cost to the Customer, provide the Customer with AHEAD's basic contractual support services. The Customer may purchase enhanced support or consulting services separately at AHEAD's then current rates.

3. CUSTOMER DATA

3.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data. The Customer consents to AHEAD's use of the Customer Data to provide the Services under the Agreement.

3.2 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for AHEAD to use Best Efforts to restore the lost or damaged Customer Data from the latest back-up of such Customer Data available to AHEAD. AHEAD shall

not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party.

3.3 If AHEAD processes any personal data on the Customer's behalf when performing its obligations under this Agreement, the parties record their intention that the Customer shall be the data controller and AHEAD shall be a data processor and in any such case:

- (a) the Customer acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out the Services and AHEAD's other obligations under this agreement;
- (b) the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to AHEAD so that AHEAD may lawfully use, process and transfer the personal data in accordance with this Agreement on the Customer's behalf;
- (c) the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
- (d) AHEAD shall process the personal data only in accordance with the terms of the Agreement and these General Terms and Conditions and any lawful instructions reasonably given by the Customer from time to time; and
- (e) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

4. THIRD PARTY PROVIDERS

4.1 The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from third parties. The Customer does so solely at its own risk. The Customer acknowledges that the Service may link to third party websites, third party services or feeds that are connected or relevant to the Service. Any link from the Service does not imply any AHEAD endorsement, approval or recommendation of, or responsibility for, those websites, services or feeds or their content or operators. To the maximum extent permitted by law, AHEAD excludes all responsibility or liability for those websites, services or feeds.

4.2 Through the use of the Service, the Service interoperates with a range of third party service features. AHEAD does not make any warranty or

representation on the availability of those features and the Customer is not entitled to any refund, discount or other compensation from AHEAD in such case.

5. AHEAD'S OBLIGATIONS

5.1 AHEAD undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.

5.2 The undertaking at clause 5.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to AHEAD's instructions, or modification or alteration of the Services by any party other than AHEAD or AHEAD's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, AHEAD will, at its expense, use Best Efforts to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 5.1. Notwithstanding the foregoing, AHEAD:

- (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
- (b) is not responsible or liable for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities caused by third parties.

5.3 The Agreement and the Term and Conditions shall not prevent AHEAD from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the Agreement and the present Term and Conditions.

5.4 AHEAD warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

6. CUSTOMER'S OBLIGATIONS

The Customer shall:

- (a) provide AHEAD with:
 - (i) all necessary co-operation in relation to this Agreement; and

- (ii) all necessary access to such information as may be required by AHEAD; in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;

- (b) comply with all applicable laws and regulations with respect to its activities under this Agreement;
- (c) carry out all other Customer responsibilities set out in the Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, AHEAD may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for AHEAD, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services.

7. TEMPORARY SUSPENSION

7.1 AHEAD may suspend the Customer's or any Authorized User's right to access or use any portion or all of the Services immediately upon prior notice to Customer if AHEAD determines:

- (a) the Customer's or an Authorized User's use of or registration for the Services
 - (i) poses a security risk to the Services or any third party,
 - (ii) may adversely impact the Services or the systems or content of any other customer of AHEAD,
 - (iii) may subject AHEAD or any third party to liability, or
 - (iv) may be fraudulent;
- (b) the Customer is, or any Authorized User is, in breach of the Agreement, including if the Customer is delinquent on its payment obligations for more than 15 Business Days; or
- (c) the Customer has ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or becomes the subject of any

bankruptcy, reorganization, liquidation, dissolution or similar proceeding.

7.2 If AHEAD suspends the Customer's right to access or use any portion or all of the Services:

- (a) the Customer remains responsible for all fees and charges it has incurred through the date of suspension;
- (b) the Customer remains responsible for any applicable fees and charges for any Services to which it continues to have access, as well as other applicable fees and charges, after the date of suspension; and
- (c) AHEAD will not erase any of the Customer Data as a result of the Customer's suspension, except as specified elsewhere in this Agreement.

7.3 AHEAD's right to suspend the Customer's or any Authorized User's right to access or use the Services is in addition to AHEAD's right to terminate this Agreement pursuant to Section 11.2 of the present General Terms and Conditions.

8. CONFIDENTIALITY

8.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:

- (a) is or becomes publicly known other than through any act or omission of the receiving party;
- (b) was in the other party's lawful possession before the disclosure;
- (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
- (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
- (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

8.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.

8.3 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

8.4 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute AHEAD's Confidential Information.

8.5 AHEAD acknowledges that the Customer Data is the Confidential Information of the Customer.

8.6 The above provisions of this clause 8 shall survive termination of this Agreement, however arising.

9. INDEMNITY

9.1 The Customer shall defend, indemnify and hold harmless AHEAD against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:

- (a) the Customer is given prompt notice of any such claim;
- (b) AHEAD provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- (c) the Customer is given sole authority to defend or settle the claim.

9.2 During the term of this Agreement, AHEAD shall defend any third party claim against the Customer subject to the notice provisions in this section 9 to the extent such claim alleges that the Services or the Documentation directly infringes upon any IP Right of a third party effective as of the Effective Date within the territory of the European Union, EFTA member state countries or Switzerland (the "IP Claim"). AHEAD shall pay the Customer the damages, costs, and expenses (including reasonable legal fees) finally awarded by a court of competent jurisdiction against the Customer, or agreed to in a written settlement agreement signed by AHEAD, directly attributable to the IP Claim and not exceeding the amount of the Subscription Fee in total.

9.3 Following notice of an IP Claim or any facts which may give rise to an IP Claim, AHEAD may, at its sole discretion, (a) procure for the Customer a license to continue using the Services, (b) modify the Services so that they become non-infringing or, if such remedies are not reasonably available, (c) terminate this Agreement on 10 Business Days' notice to the Customer without any additional liability or obligation to pay damages or other additional costs to the Customer.

9.4 The indemnification obligations set forth in this section shall only apply if:

- (a) the Customer notifies AHEAD of an IP Claim promptly upon learning of or receiving it;
- (b) the Customer provides AHEAD with reasonable assistance requested by AHEAD, for the defence and settlement of the IP Claim;
- (c) the Customer provides AHEAD with the exclusive right to control and the authority to settle any IP Claim, including, without limitation, conducting the lawsuit in its own name or on behalf of the Customer, conducting all procedural acts, and/or giving instructions to

the Customer, provided, however, that the Customer shall have the right to participate in the matter at its own expense; and

- (d) the Customer does not admit fault or liability of AHEAD or of itself.

9.5 AHEAD shall have no obligation to indemnify, and the Customer shall indemnify AHEAD for any damages relating to an IP Claim if such IP Claim is caused by, or results from:

- (a) the Customer's combination or use of the Services with other software or services, products or data, if such claim or action would have been avoided by an omission of such combination or use;
- (b) a modification of the Services or Documentation by anyone other than AHEAD or its sub-contractors; OR
- (c) the Customer's use of the Services or the Documentation in a manner contrary to the instructions given to the Customer or not in accordance with the provisions of this Agreement.

9.6 The indemnification rights and obligations according to this section are AHEAD's sole and exclusive obligations, and the Customer's sole and exclusive remedies, with respect to an IP Claim.

10. LIMITATION OF LIABILITY

10.1 Subject to wilful intent, gross negligence and compulsory law and unless expressly otherwise stipulated in the Agreement, AHEAD shall have no liability (including any liability for the acts or omissions of its employees, agents and sub-contractors) for any direct or indirect damages in connection with the Agreement, including any loss of use, interruption of business, lost profits, or any special, incidental, or consequential damages of any kind, regardless of the form of action whether in contract, tort (including negligence), strict products liability, or otherwise, even if the Customer has been advised of the possibility of such damages.

10.2 In any case, the limit of damage compensation under the breached agreement shall be equal to maximum twelve monthly payments of the relevant individual agreement.

11. TERM AND TERMINATION

11.1 The Agreement shall, unless otherwise terminated as provided in this clause 11, commence on the Effective Date till the end of the contract period. Thereafter, the Agreement shall be automatically renewed for successive periods of 12 months (each a Renewal Period), unless:

- (a) either party notifies the other party of termination, in writing, at least 60 business days before the end of the Initial Subscription

Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or

- (b) otherwise terminated in accordance with the provisions of the Agreement.

11.2 Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than 60 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of the Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (c) any step, application, order, proceeding or appointment is taken or made by or in respect of that other Party for a distress, execution, composition or arrangement with creditors, winding up, dissolution, administration, receivership (administrative or otherwise) or bankruptcy, or if that other Party is unable to pay its debts or if any event occurs which, under the applicable law of any jurisdiction to which it is subject, has an effect similar to that of any of the events referred to in this clause 14.2(c).

11.3 On termination of the Agreement for any reason:

- (a) all licences granted under the Agreement shall immediately terminate;
- (b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- (c) AHEAD may destroy or otherwise dispose of any of the Customer Data in its possession unless AHEAD receives, no later than ten days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. AHEAD shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by AHEAD in returning or disposing of Customer Data; and

- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced.

12. FORCE MAJEURE

12.1 AHEAD shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of AHEAD or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of AHEADs or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

13. GOVERNING LAW

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of Switzerland. The Convention on Contracts for the International Sale of Goods (CISG) is excluded.

14. JURISDICTION

Each party irrevocably agrees that the ordinary courts at AHEAD's domicile in Switzerland and, at AHEAD's choice, the ordinary courts at the Customer's domicile of shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).