

## TERMS OF SERVICE

Please read these Terms of Service, carefully before registering for a subscription for the Services offered on this website operated by MHPR Advisors GmbH, a company registered in Switzerland under company number CHE-380.235.161, whose registered office is at Ziegelwies 7, CH-8852 Altendorf, Switzerland, (“**Company**”, “**MHPR**” or “**we**”). Our value-added tax number is CHE-380.235.161\_MwSt.

If you do not wish to be bound by these Terms of Service, DPA, Privacy Policy and the policies and agreements they refer to, then you may not register to purchase access to the Services.

You must be at least 18 years of age to use the Services. By using this website and by agreeing to these terms of service you warrant and represent that you are at least 18 years of age.

### Single User Licence

Where you register online for a chargeable **individual** subscription for one Authorised User to use the Services offered at [www.mhpradvisors.com](http://www.mhpradvisors.com) and you click the “accept” buttons relating to our Terms of Service, DPA and Privacy Policy, the individual registering is the “Customer” and you agree to be legally bound by these Terms of Service, DPA and Privacy Policy as they may be modified and posted on our website from time to time. The terms of Section B, Single User Licence will apply to the Services.

### Multiple User Licence

Where you register online for a chargeable **enterprise** subscription which permits more than one Authorised Users to use the Services offered at [www.mhpradvisors.com](http://www.mhpradvisors.com) and you electronically sign our order form, you agree, on behalf of the organization referenced as the “Customer” in the order form and on behalf of all Authorised Users, to be legally bound by these Terms of Service, DPA and Privacy Policy as they may be modified and posted on our website from time to time. The terms of Section C, Multiple User Licence will apply to the Services.

## IT IS AGREED BETWEEN THE PARTIES THAT:

### A. GENERAL TERMS

#### 1. Definitions

In this Agreement the following capitalized terms will have the following meanings:

“ <b>Agreement</b> ”	means these Terms of Service, DPA, Privacy Policy and Order Form together;
“ <b>Authorised User</b> ”	means: (i) the Customer for a Single User Licence; or (ii) for a Multiple User Licence any employees, agents, consultants or independent contractors of the Customer who have been expressly authorised by the Customer to receive a password in order to access the Services online;
“ <b>Business Day</b> ”	means 9.00 am to 5.00 pm Swiss local time on a Monday to Friday (excluding any national holiday in Switzerland);
“ <b>Company</b> ”	means MHPR Advisors GmbH, Ziegelwies 7, CH-8852 Altendorf, Switzerland,
“ <b>Confidential Information</b> ”	means any and all information in whatsoever form relating to the Company or the Customer, or the business, prospective business, finances, technical processes, computer software (both source code and object code), IPRs or finances of the Company or the Customer (as the case may be), or compilations of two or more items of such information, whether or not each individual item is in itself confidential, which comes into a party’s possession by virtue of its entry into this Agreement or provision of the Services, and which the party regards, or could reasonably be expected to regard, as confidential and any and all

	information which has been or may be derived or obtained from any such information;
<b>“Consequential Loss”</b>	means pure economic loss, special loss, losses incurred by the Customer, any Authorised Users or other third party, losses arising from business interruption, loss of business revenue, goodwill or anticipated savings, losses whether or not occurring in the normal course of business, costs of procuring substitute goods, products or services or wasted management or staff time;
<b>“Customer Data”</b>	means all data imported into the Services for the purpose of using the Services or facilitating the Customer’s use of the Services;
<b>“Customer”</b>	means the company, entity or person who acquires a Single User License or completes the Order Form for a Multi User License for a chargeable subscription to use the Services;
<b>“DPA”</b>	means the data processing agreement of the Company published at <a href="https://s3.amazonaws.com/kajabi-storefronts-production/file-uploads/sites/2147694863/themes/2154435934/downloads/8fee5e-ed0a-a36e-73ec-82e01c2ebfe4_DPA_Agreement.pdf">https://s3.amazonaws.com/kajabi-storefronts-production/file-uploads/sites/2147694863/themes/2154435934/downloads/8fee5e-ed0a-a36e-73ec-82e01c2ebfe4_DPA_Agreement.pdf</a> as amended from time to time;
<b>“Effective Date”</b>	means the start date of this Agreement which is: (i) the date that the Customer registers for a Single User Licence online; or (ii) the effective date set out in the Order Form completed by the Customer for a Multiple User Licence;
<b>“Feedback”</b>	means feedback, innovations, improvements or suggestions created by the Customer or Authorised Users regarding the attributes, performance or features of the Services;
<b>“Fees”</b>	means the fees payable by the Customer during the Term of this Agreement, as set out in each Order Form;
<b>“Force Majeure”</b>	means anything outside the reasonable control of a party, including but not limited to acts of God, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, war, rebellion, insurrection, sabotage, epidemic, pandemic, quarantine restriction, labour dispute, labour shortage, power shortage (including where the Company ceases to be entitled to access the Internet for whatever reason, server crashes) transportation embargo, failure or delay in transportation, any act or omission (including laws, regulations, disapprovals or failure to approve) of any government or government agency;
<b>“Initial Term”</b>	means a fixed period of 12 months starting on the Effective Date, unless stated otherwise in an Order Form;
<b>“IPR”</b>	means all copyrights, patents, utility models, trademarks, service marks, registered designs, moral rights, design rights (whether registered or unregistered), technical information, know-how, database rights, semiconductor topography rights, business names and logos, computer data, generic rights, proprietary information rights and all other similar proprietary rights (and all applications and rights to apply for registration or protection of any of the foregoing) as may exist anywhere in the world;
<b>“Order Form”</b>	means the online registration form completed by a Customer, or the order form signed by a Customer, as applicable in each case;
<b>“Privacy Policy”</b>	means the privacy policy of the Company published at: <a href="https://s3.amazonaws.com/kajabi-storefronts-production/file-uploads/sites/2147694863/themes/2154435934/downloads/60687c-35b2-6b7a-0ff0-14a0cd4a702b_MHPR_-_Privacy_Policy.pdf">https://s3.amazonaws.com/kajabi-storefronts-production/file-uploads/sites/2147694863/themes/2154435934/downloads/60687c-35b2-6b7a-0ff0-14a0cd4a702b_MHPR_-_Privacy_Policy.pdf</a> as amended from time to time;
<b>“Renewal Term”</b>	means a fixed period of 12 months, unless stated otherwise in an Order Form;

- “Services”** means the digital learning services of the Company, ordered by the Customer and set out in each Order Form, which are made available to the Customer online, including and computer software programmes and updates thereto. website, set out in each Order Form;
- “Statistical Data”** means aggregated, anonymised data derived from Customer and Authorised User’s use of the Services which does not include any personal data or Customer Confidential Information;
- “Terms of Service”** means these terms and conditions of the Company published at <https://mhpradvisors.mykajabi.com/terms-of-service> as amended from time to time;
- “Term”** means the Initial Term plus any Renewal Terms together;

## **2 Services**

- 2.1 The Customer engages the Company and the Company agrees to provide the Services to the Customer in accordance with the terms of this Agreement from the Effective Date for the Term.

## **3 Licence to use the Services**

- 3.1 Subject to payment of the Fees, the Customer is granted a non-exclusive, non-transferable and non-transferable licence to permit the Customer and Authorised Users to access and use the Services (including any associated IPR and Confidential Information of the Company) from the Effective Date for the Term for the Customer’s internal business operations. Such licence permits the Customer to make cache copies of software or other information necessary for the Customer to access the Services via the Internet. Where open source software is used as part of the Services, use of such software will be subject to the terms of the open source licences.
- 3.2 No right to modify, adapt, or translate the Services or create derivative works from the Services is granted to the Customer. Notwithstanding the Customer’s statutory rights, nothing in this Agreement will be construed to mean, by inference or otherwise, that the Customer has any right to obtain source code for the software comprised within the Services.
- 3.3 Disassembly, recompilation or reverse engineering and other source code derivation of the software comprised within the Services is prohibited. To the extent that the Customer is granted the right by law to decompile such software in order to obtain information necessary to render the Services interoperable with other software (and upon written request by the Customer identifying relevant details of the Services(s) with which interoperability is sought and the nature of the information needed), the Company will provide access to relevant source code or information. The Company has the right to impose reasonable conditions including but not limited to the imposition of a reasonable fee for providing such access and information.
- 3.4 Unless otherwise specified in this Agreement, the Services are provided and may be used solely by the Customer as part of the Customer’s website/desktop architecture. Except as specifically stated in this Agreement, the Customer may not:
- 3.4.1 Lease, loan, resell or otherwise distribute the Services save as permitted in writing by the Company;
- 3.4.2 Use the Services to provide ancillary services related to the Services; or
- 3.4.3 Permit access to or use of the Services by or on behalf of any third party.
- 3.5 The Customer and Authorised Users may view and download content from the Services for their own personal use, subject to the restrictions set out below and elsewhere in this Agreement.
- 3.6 If the Customer prints off, copies or downloads any part of the Services in breach of the above, the Customer’s right to access the Services will cease immediately and the Customer must, at the Company’s option, return or destroy any copies of the materials it has made.
- 3.7 The Customer warrants and represents that it will maintain reasonable security measures (as may change over time) covering, without limitation, confidentiality, authenticity and integrity to ensure that the access to the Services granted under this Agreement is limited as set out under this Agreement.

- 3.8 We reserve the right to withdraw or amend our website and any Service or material we provide in our sole discretion without notice. We will not be liable if for any reason all or any part of the Services is unavailable at any time or for any period. From time to time, we may restrict access to some or all parts of the Services to users, including registered users.
- 3.9 To access the Services or some of the resources it offers, you may be asked to provide certain registration details or other information. It is a condition of your use of the Services and any resources downloaded that all the information you provide is correct, current, and complete.
- 3.10 If you choose, or are provided with, a user name, password or any other piece of information as part of our security procedures, you must treat such information as confidential, and you must not disclose it to any other person or entity. You also acknowledge that your account is personal to you and agree not to provide any other person with access to this Website or portions of it using your user name, password or other security information. You agree to notify us immediately of any unauthorized access to or use of your user name or password or any other breach of security. You also agree to ensure that you exit from your account at the end of each session. You should use particular caution when accessing your account from a public or shared computer so that others are not able to view or record your password or other personal information.
- 3.11 The Company may suspend access to the Services, or portion thereof, at any time, if in the Company's sole reasonable discretion, the integrity or security of the Services is in danger of being compromised by acts of the Customer or its Authorised Users. Where possible, the Company will give the Customer 24 hours written notice, before suspending access to the Services, giving details of its reasons.

#### **4 Intellectual Property Rights**

- 4.1 All IPR and title to the Services (save to the extent incorporating any Customer Data, Customer or third party owned item) will remain with the Company and/or its licensors and subcontractors. No interest or ownership in the Services, the IPRs or otherwise is transferred to the Customer under this Agreement. .
- 4.2 The Customer is not allowed to remove any proprietary marks or copyright notices from the Services.
- 4.3 The Customer will retain sole ownership of all rights, title and interest in and to Customer Data and its pre-existing IPRs and will have the sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data. The Customer grants the Company a non-exclusive, non-transferable, royalty free licence to use Customer Data, Customer Intellectual Property Rights and any third party owned item from the Effective Date for the Term to the extent required for the provision of the Services.
- 4.4 The Customer assigns all rights, title and interest in any Feedback to the Company. If for any reason such assignment is ineffective, the Customer will grant the Company a non-exclusive, perpetual, irrevocable, royalty free, worldwide right and licence to use, reproduce, disclose, sub-licence, distribute, modify and exploit such Feedback without restriction.
- 4.5 The Customer grants the Company the perpetual right to use Statistical Data and nothing in this Agreement will be construed as prohibiting the Company from using the Statistical Data for business and/or operating purposes, provided that the Company does not share with any third party Statistical Data which reveals the identity of the Customer or Customer's Confidential Information.
- 4.6 The Company may take and maintain technical precautions to protect the Services from improper or unauthorised use, distribution or copying.

#### **5 Term**

- 5.1 This Agreement will commence on the Effective Date for the Initial Term. On the expiry of the Initial Term, this Agreement will automatically renew for successive Renewal Terms and continue until the Customer terminates the Agreement by giving the other at least 30 days notice in writing prior to the start of a Renewal Term unless terminated earlier pursuant to section 12 (Termination).

#### **6 Confidential Information**

- 6.1 Each party may use the Confidential Information of the other party only for the purposes of this Agreement. Each party must keep confidential all Confidential Information disclosed to it, except where the receiving party is required to disclose the Confidential Information by law to any regulatory, governmental or other authority with relevant powers to which the receiving party is subject.
- 6.2 Each party may disclose the Confidential Information of the other party to those of its employees and agents who need to know the Confidential Information for the purposes of this Agreement, but only if the employee or agent is bound by confidentiality undertakings equivalent to those set out in this Agreement.
- 6.3 Each party agrees to return (or destroy) all documents, materials or data containing Confidential Information of the other party without delay upon completion of the Services or termination or expiry of this Agreement.
- 6.4 The obligations of confidentiality under this Agreement do not extend to information that:
  - 6.4.1 Was in the other party's lawful possession before the negotiations leading to this Agreement; or
  - 6.4.2 Is, or after the Effective Date, becomes publicly known other than through any act or omission of the receiving party; or
  - 6.4.3 Is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
  - 6.4.4 Is independently developed by the receiving party, which independent development can be shown by written evidence; or
  - 6.4.5 Is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 6.5 If the receiving party is required to disclose any Confidential Information, under clause 6.3.5, the receiving party will, where lawfully permitted to do so:
  - 6.5.1 Promptly consult with and take into account any comments from the disclosing party prior to making any disclosure; and
  - 6.5.2 Work with the disclosing party to ensure that any exemptions or other legitimate means of preventing disclosure or limiting disclosure are used to the fullest extent possible.
- 6.6 The parties acknowledge and agree that without prejudice to the general confidentiality provisions in this clause 6 and without limitation, all information falling within the definition of Confidential Information as set out in clause 1 of this Agreement and any information which is supplied by the disclosing party to the receiving party pursuant to this Agreement or the negotiation thereof is:
  - 6.6.1 Confidential Information the disclosure of which by the receiving party would be an actionable breach of confidence; or
  - 6.6.2 A trade secret of the disclosing party; and
  - 6.6.3 Information, the disclosure of which would be likely to prejudice the commercial interests of the disclosing party or of any other person.

## **7 Data Protection**

- 7.1 Each party undertakes to comply with its obligations under relevant applicable data protection laws, principles and agreements.
- 7.2 To the extent that personal data is processed when the Customer or Authorised Users use the Services, the parties acknowledge that the Company is a data processor and the Customer is a data controller and the parties will comply with their respective obligations under applicable data protection law and the terms of the DPA.
- 7.3 Where the Company collects and processes personal data as a data controller, when providing the Services to the Customer or Authorised Users, such collection and processing will be in accordance with the Privacy Policy
- 7.4 If a third party alleges infringement of its data protection rights, the Company will be entitled to take measures necessary to prevent the infringement of a third party's rights from continuing.

## **8 Representations and Warranties**

- 8.1 Each party warrants and represents that:
- 8.1.1 It has full corporate power and authority to enter into this Agreement and to perform the obligations required hereunder;
  - 8.1.2 The execution and performance of its obligations under this Agreement does not violate or conflict with the terms of any other agreement to which it is a party and is in accordance with any applicable laws; and
  - 8.1.3 It will respect all applicable laws and regulations, governmental orders and court orders, which relate to this Agreement.
- 8.2 The Company warrants and represents to the Customer that it has the right to licence the Services.
- 8.3 The Company warrants and represents that the Services will be performed with reasonable skill and care, in a professional manner in accordance with good industry practice.
- 8.4 No warranty is made regarding:
- 8.4.1 The results the Customer can achieve from using the Services;
  - 8.4.2 That the Services will operate uninterrupted or error free;
  - 8.4.3 That the information in the Services is complete, true, accurate or non-misleading.
- For example, the Company may suspend, withdraw or restrict the availability of all or any part of the Services for business and operational reasons.
- 8.5 The Customer warrants and represents that it rightfully owns the necessary user rights, copyrights and ancillary copyrights and permits required for it to fulfil its obligations under this Agreement.
- 8.6 The Customer warrants and represents that it and Authorised Users will treat any identification, password or username or other security device for use of the Services with due diligence and care and take all necessary steps to ensure that they are kept confidential, secure and are used properly and are not disclosed to unauthorised persons. Any breach of the above will be immediately notified to the Company in writing. The Customer will be liable for any breach of this Agreement by an Authorised User.
- 8.7 The Customer warrants and represents that it will ensure that its network and systems comply with the relevant specification provided by the Company from time to time and that it is solely responsible for procuring and maintaining its network connections and telecommunications links from the Customer's systems to the Company's data centres and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the Internet.
- 8.8 All third party content or information provided by the Company via the Services, is provided "as is". The Company provides no warranties in relation to such content or information and will have no liability whatsoever to the Customer for its use or reliance upon such content or information.
- 8.9 Except as expressly stated in this Agreement, all warranties and conditions, whether express or implied by statute, common law or otherwise (including but not limited to satisfactory quality and fitness for purpose) are excluded to the fullest extent permitted by law.

## **9 Liability**

- 9.1 The information contained as part of the Services and the resources available for download through this website are for educational and informational purposes only. The information contained on this website and the resources available for download are not intended as, and shall not be understood or construed as legal, financial, tax, medical, health, or any other professional advice. No guarantees as to results are made.
- 9.2 Neither party excludes or limits its liability to the other for:
- 9.2.1 Fraud;
  - 9.2.2 Death or personal injury caused by their negligent act or omission;
  - 9.2.3 Wilful misconduct; or

- 9.2.4 Any other liability that cannot be excluded or limited by law.
- 9.3 Neither party will be liable for any Consequential Loss whether arising out of or related to this Agreement or in tort (including negligence or breach of statutory duty), misrepresentation or however arising, even if the party was advised of the possibility of such damages.
- 9.4 Neither party will be liable for any loss of profits (whether categorised as direct or indirect) arising out of or related to this Agreement, whether based on contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, even if a party was advised of the possibility of such damages.
- 9.5 Subject to clauses 9.1 to 9.3 inclusive, the total liability of the Company to the Customer in aggregate (whether in contract, tort or otherwise) for any and all claims relating to or arising under this Agreement or based upon any claim for indemnity or contribution will be limited to the total Fees (excluding all taxes) paid by the Customer to the Company during the 12 month period prior to the date on which any such claim arose. If the duration of the Agreement has been less than 12 months, such shorter period will apply.
- 9.6 The Customer will be liable for any breaches of this Agreement caused by the acts, omissions or negligence of any Authorised Users who access the Services as if such acts, omissions or negligence had been committed by the Customer itself.
- 9.7 The parties acknowledge and agree that in entering into this Agreement, each had recourse to its own skill and judgement and have not relied on any representation made by the other, their employees or agents.

## **10 Indemnities**

- 10.1 The Company will at its own expense, defend or at its own option settle any claim brought against the Customer by a third party on the basis of an infringement of any IPRs by the Services (excluding any claim deriving from any Customer provided item) and pay any final judgment entered against the Customer on such issue or any settlement thereof, provided that:
- 10.1.1 The Customer notifies the Company promptly of each such claim;
- 10.1.2 The Company is given sole control of the defence and/or settlement; and
- 10.1.3 The Customer fully co-operates and provides all reasonable assistance to the Company in the defence or settlement.
- 10.2 If all or part of the Services becomes, or in the opinion of the Company may become, the subject of a claim or suit of infringement, the Company will at its own expense and sole discretion:
- 10.2.1 Procure for the Customer the right to continue to use the Services or the affected part thereof;
- 10.2.2 Replace the Services or affected part with another suitable non-infringing service or software;
- 10.2.3 Modify the Services or affected part to make the same non-infringing.
- 10.3 The Company will have no obligations under clauses 10.1 and 10.2 above to the extent that a claim is based on:
- 10.3.1 A modification of the Services by anyone other than the Company;
- 10.3.2 The combination, operation or use of the Services with other services or software not provided by the Company if such infringement would have been avoided in the absence of such combination, operation or use; or
- 10.3.3 The use of the Services in any manner inconsistent with the terms of this Agreement; or
- 10.3.4 The negligence or wilful misconduct of the Customer.
- 10.4 Clauses 10.1 to 10.3 state the Customer's sole and exclusive rights and remedies and the Company's entire obligations and liability for any claims made under these clauses.
- 10.5 The Company will defend, indemnify and hold the Customer and its employees, sub-contractors or agents harmless from and against any costs, losses, fines, liabilities and expenses, including reasonable legal costs arising from any claim relating to or resulting directly or indirectly from

any breach of the Company's obligations under data protection law or regulations or the terms of the DPA.

10.6 The Customer will defend, indemnify and hold the Company and its employees, sub-contractors or agents harmless from and against any costs, losses, fines, liabilities and expenses, including reasonable legal costs arising from any claim relating to or resulting directly or indirectly from:

10.6.1 Any claim that use by the Company of any Customer Data, supplied by the Customer or an Authorised User or any Customer IPRs, in accordance with the terms of this Agreement, breaches a third party's IPRs; or

10.6.2 Any access to or use of the Services by an Authorised User in breach of the terms of this Agreement; and

10.6.3 Any breach of the Customer's obligations under data protection law or regulations or the terms of the DPA; and

10.6.4 Any breaches of the terms of this Agreement by an Authorised User;

and the Company will be entitled to take reasonable measures in order to prevent breaches of third party rights from continuing.

## **11 Security**

11.1 The Company will permit the Customer to specify which Authorised Users may access the Services through its standard application security options.

11.2 The Customer and Authorised Users must ensure that each password is only used by the user to which it has been assigned. The Customer is responsible for any and all activities that occur under the Customer's account and via the Customer's passwords. The Customer will immediately notify the Company if the Customer becomes aware of any unauthorised use of the Customer's account, the Customer's passwords or breach of security known to the Customer. The Company will have no liability for any loss or damage arising from the Customer's failure to comply with these requirements.

11.3 Without prejudice to the Company's other rights under the Agreement, the Company may take such action as the Company deems appropriate to deal with any breach of this Agreement, including suspending access to Services, prohibiting the Customer or Authorised Users from accessing the Services in whole or in part.

## **12 Termination**

12.1 Either party may terminate this Agreement immediately, with cause, if the other party:

12.1.1 Ceases or threatens to cease or carry on business; or

12.1.2 Is unable to pay its debts or enters into compulsory insolvency or voluntary liquidation; or

12.1.3 Convenes a meeting of its creditors or has a receiver, manager or similar official appointed in respect of its assets; or

12.1.4 Has an administrator, receiver, manager or similar official appointed; or

12.1.5 Is affected by a similar event under the law of any other jurisdiction; or

12.1.6 A Force Majeure event lasts for more than 30 days.

12.2 The Company may terminate this Agreement or the provision of any Services with immediate effect upon giving written notice if:

12.2.1 The Customer has used or permitted use of the Services other than in accordance with this Agreement

12.2.2 The Customer or the Customer's actions threatens harm to the Company's reputation; or

12.2.3 The Company is prohibited under applicable law, or otherwise from providing the Services

12.3 The Company may terminate this Agreement or the provision of any Services after giving at least 30 days' written notice for convenience and without reasons.



- 12.4 The Customer may terminate the Agreement with or without cause pursuant to section 6.
- 12.5 Either party may terminate this Agreement for material breach of any term by giving the breaching party written notice. However, where the breach is capable of remedy, provided that the breach is specified and remedy of the breach is requested, the notice will only be effective if the breaching party fails to remedy the breach within 10 days of receipt of the notice.
- 12.6 Termination of this Agreement for any reason will not affect the accrued rights of the parties arising under this Agreement and in particular without limitation the right to recover damages against the other. All clauses which by their nature should survive termination or expiry of this Agreement will survive the expiry or termination of this Agreement and will remain in force and effect.
- 12.7 Upon termination of this Agreement the Customer will promptly pay the Company any unpaid Fees and all licences granted under the Agreement will terminate on the effective date of termination. The Company will:
- 12.7.1 Cease providing the Services to the Customer;
- 12.7.2 At the option of the Customer, following receipt of a request from the Customer the Company will delete (in accordance with the terms of the DPA) or return all Customer Data stored in the Company's database in a common machine readable format, free of charge, provided that such request is made within 14 days of termination. If the Customer requires any Customer Data to be returned in a different format the Company reserves the right to charge for this additional service.

### **13 Assignment**

- 13.1 No party may assign or transfer its rights under this Agreement without the prior written consent of the other party, such consent will not be unreasonably withheld, however the Company will be entitled to assign the Agreement to:
- 13.1.1 Any company in the Company's group of companies; or
- 13.1.2 Any entity that purchases the shares or assets of the Company as the result of a merger, takeover or similar event, who is not a competitor of the Customer.

### **14 Relationship between the Parties**

- 14.1 The Company and the Customer are independent contractors and nothing in this Agreement will be construed as creating an employer-employee relationship.

### **15 Miscellaneous**

- 15.1 Should a provision of this Agreement be invalid or become invalid then the legal effect of the other provisions will be unaffected. A valid provision is deemed to have been agreed which comes closest to what the parties intended commercially and will replace the invalid provision. The same will apply to any omissions.
- 15.2 This Agreement constitutes the whole agreement and understanding between the parties and supersedes all prior agreements, representations, negotiations and discussions between the parties relating to the subject matter thereof.
- 15.3 All notices to be sent under this Agreement must be sent in writing (which includes email). Notices will be deemed to have been duly given if sent:
- 15.3.1 By registered post to a party at their physical address stated in this Agreement; or
- 15.3.2 By email to the email address of the receiving party used for invoicing.
- Notices will be deemed received on the second Business Day after sending, where sent by registered post and on the first Business Day after sending where sent by email.
- 15.4 All amendments to the terms of this Agreement must be made in writing. The Company may change or modify the terms of this Agreement, upon giving the Customer 30 days notice via email. All changes will be deemed to have been accepted by the Customer unless the Customer terminates the Agreement prior to the expiry of the 30 day period.
- 15.5 Except with respect to the Customer's obligation to pay the Fees, if a party is wholly or partially unable to comply with its obligations under this Agreement due to Force Majeure, then that

party's obligation to perform in accordance with this Agreement will be suspended for the duration of the Force Majeure. As soon as practicable after an event of Force Majeure arises, the party affected by Force Majeure must notify the other party of the extent to which the notifying party is unable to perform its obligations under the Agreement.

- 15.6 In the event of any inconsistency between the content of the Terms of Service, an Order Form, the DPA or the Privacy Policy, the Order Form will prevail followed by the Terms of Service, the DPA, and then the Privacy Policy. If after the Effective Date any subsequent Order Form is signed by the parties and added to this Agreement during the Term and there is a conflict between the terms of such subsequent Order Form, its attachments and the Terms of Service, the newest Order Form will prevail over the terms of any previous Order Form and its attachments.
- 15.7 Failure to exercise, or any delay in exercising, any right or remedy under this Agreement, or at law or equity, will not be a waiver of that or any other right or remedy, nor will it preclude or restrict any further exercise of that or any other right or remedy.
- 15.8 Nothing contained in this Agreement is intended to be enforceable by a third party pursuant to any statutory rights that a third party may have, where these rights can be lawfully excluded in any applicable jurisdiction.
- 15.9 Where the Services contain links to other websites and resources provided by third parties, these links are provided for information only. Such links should not be interpreted as approval by the Company of those linked websites or information the Company may obtain from them. The Company has no control over the content of such websites or resources.

## **16 Dispute Resolution**

- 16.1 The parties will use their respective reasonable efforts to negotiate in good faith and settle any dispute that may arise out of or in relation to this Agreement and any breach of it.
- 16.2 If any such dispute cannot be settled amicably through ordinary negotiations of the sales directors of each party, the dispute will be escalated in writing to the chief technology officer of the Company and the chief financial officer of the Customer who will in good faith try and resolve the dispute. If the dispute or difference is not resolved within 14 days of the dispute being escalated the parties will then be entitled to pursue their claim in accordance with clause 17 below.

## **17 Governing Law and Jurisdiction**

- 17.1 This Agreement will be governed by the laws of Switzerland. The courts of the jurisdiction where the Company is registered in Switzerland will have exclusive jurisdiction for the settlement of all disputes arising under this Agreement.

## **B. SINGLE USER LICENCE**

### **18 Ordering, Fees and Invoicing**

- 18.1 The Company is entitled to refuse any order placed by a Customer. If an order is accepted, the Company will confirm acceptance via email. Refusals will be communicated promptly and will be entitled to a full refund.
- 18.2 The Company will invoice the Customer the Fees set out on the Company's website on the date of registration. All invoices will be issued and Fees will be paid in the currency stated in each invoice. All Fees exclude any Value Added Tax legally payable on the date of the invoice; Value Added Tax which will be paid by the Customer in addition to the Fees, where applicable.
- 18.3 Once Customer clicks "accept" as provided for in the Company's website ordering process, Customer has entered into a legally binding contract. All Fees are due, in advance of any Services being rendered or any license being validly issued.
- 18.4 Fees are either one-time fees or are recurring annually in advance of the Initial Term and on the anniversary date until the license under this Agreement is terminated. For annual fees, after expiry of the Initial Term the current list price for the Services published on the Company's website on the date of each renewal will apply to each Renewal Term, and the Company will inform Authorized Users in advance of any change in list price becoming effective.

## **19 Payment**

- 19.1 The Customer will pay the Fees to the Company via the Company's payment provider once Customer clicks "accept" as part of the website's ordering process. Payment will be without prejudice to any claims or rights which the Customer may have against the Company. If the Customer believes that any amount or invoice is incorrect, it must notify the Company in writing within 7 days of the invoice date. Invoices are available for download on the Company's website for at least 12 months after purchase.
- 19.2 The Customer agrees that all details provided for the purpose of using the Services will be correct and that any credit card details used are its own and that there are sufficient funds or credit facilities to cover the Fees.
- 19.3 Where payment of any Fees is not received when due, the Company may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and the Company will be under no obligation to provide any or all of the Services while the invoice(s) concerned remains unpaid. The Company will be entitled to charge interest on overdue Fees at 18% per annum or the maximum allowable statutory rate whichever is less.
- 19.4 The Company reserves the right to recover any costs and reasonable legal fees it incurs in recovering overdue payments.

## **C. MULTIPLE USER LICENCE**

### **20 Ordering, Fees and Invoicing**

- 20.1 The Company is entitled to refuse any order placed by Customer. If an order is accepted, the Company will confirm acceptance via email after the Customer signs the Order Form (which will include electronic signature). Refusals will be communicated promptly and will be entitled to a full refund.
- 20.2 The Company will invoice the Customer the Fees set out on the Company's website on the date of registration or in the Order Form. The Company will invoice the Customer the Fees set out on the Company's website on the date of registration. All invoices will be issued and Fees will be paid in the currency stated in each invoice. All Fees exclude any Value Added Tax legally payable on the date of the invoice; Value Added Tax which will be paid by the Customer in addition to the Fees, where applicable.
- 20.3 Once Customer clicks "accept" as provided for in the Company's website ordering process or has digitally signed the Order Form, Customer has entered into a legally binding contract. All Fees are due, in advance of any Services being rendered or any license being validly issued, unless set out differently in the Order Form.
- 20.4 Fees are either one-time fees or are recurring annually in advance of the Initial Term and on the anniversary date until the license under this Agreement is terminated. For annual fees, after expiry of the Initial Term the current list price for the Services published on the Company's website on the date of each renewal will apply to each Renewal Term, and the Company will inform Authorized Users in advance of any change in list price becoming effective.
- 20.5 If any term in the Order Form conflicts with these terms, the Order Form prevails.

### **21 Payment**

- 21.1 The Customer will pay the Fees to the Company for the Services, either as set out in the Order Form or as set out via the Company's payment provider once Customer clicks "accept" as part of the website's ordering process.
- 21.2 Unless stated otherwise in the Order Form, all Fees are payable in advance pursuant to the ordering process on the Company's website or, if invoiced terms have been agreed, within 7 days after the date of each invoice. Payment will be without prejudice to any claims or rights which the Customer may have against the Company. If the Customer believes that any amount or invoice is incorrect, it must notify the Company in writing within 7 days of the invoice date. Invoices are available for download on the Company's website for at least 12 months after purchase.
- 21.3 The Customer agrees that all details provided for the purpose of using the Services will be correct and that any credit card details used are its own and that there are sufficient funds or credit facilities to cover the Fees.

- 21.4 Where payment of any Fees is not received when due, the Company may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and the Company will be under no obligation to provide any or all of the Services while the invoice(s) concerned remains unpaid. The Company will be entitled to charge interest on overdue Fees at 18% per annum or the maximum allowable statutory rate whichever is less.
- 21.5 The Company reserves the right to recover any costs and reasonable legal fees it incurs in recovering overdue payments.