

## POWERFORGE SaaS TERMS AND CONDITIONS

Last updated: February 9, 2019

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Those terms and conditions (the "Agreement") apply to the Services provided by POWER DESIGN TECHNOLOGIES, a French Company incorporated under the law of France, whose registered office is located 28 boulevard Lazare Carnot – 31000 TOULOUSE, France and registered under the number 822 983 052 (hereinafter referred to as the "Company").

This Agreement is made by and between the Company and the Customer

### 1. DEFINITIONS

Terms word the first letter capitalized have the definitions set forth herein:

**"Access(es)"** means the right to get access to the Platform with an ID;

**"Agreement"** means this software as a service agreement including any exhibit, and any amendments to this Agreement from time to time;

**"Content"** means information obtained by the Company from publicly available sources or its third party content providers and made available to the Customer through the Services, including through the Documentation;

**"Customer"** means any natural person accepting this Agreement on his or her own behalf or any legal person on behalf of which this Agreement is accepted;

**"Customer Confidential Information"** means:

- (I) any information disclosed by or on behalf of the Customer to the Company during the Subscription Term (whether disclosed in writing, orally or otherwise) that at the time of disclosure was marked or described as "confidential"; or
- (II) the Customer Data;

**"Customer Data"** means any data, works and materials: uploaded to or stored on the Platform by the Customer; transmitted by the Platform at the Customer's will; supplied by the Customer to the Company for uploading to, transmission by or storage on the Platform; as well as any data or outcome generated as a result of the use of the Software by the Customer as well as well as non-public data provided by Customer to the Company to enable the provision of the Services;

**"Customer Personal Data"** means any Personal Data that is processed by the Company on behalf of the Customer in relation to this Agreement;

**"Data Protection Laws"** means all applicable laws relating to the processing of Personal Data including, while it is in force and applicable to Customer Personal Data, the General Data Protection Regulation (Regulation (EU) 2016/679);

**"Distributor"** means, as the case may be, the legal person which provides Access to the Platform to the Customer;

**"Documentation"** means the applicable Service's documentation, as updated from time to time, accessible via the Website or login to the Services;

**"Education Access"** means an Access granted by the Company only for educational purposes;

**"Effective Date"** means the date of execution of this Agreement which can be the date stated in the Offer, or the date of online purchase of the Services according to an Online Offer;

**"Fees"** means the fees the Customer is to pay to use the Services as described in the Price List or in the Offer;

**"Force Majeure Event"** means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

**"Free Trial"** means a right to use the Services for testing purposes granted by the Company free of charge;

**"ID"** means, together, the login and the password enabling the Customer and its User(s) to access the Platform and use the Services;

**"IPR"** means all the rights, titles or the following interests, whether these rights are or not filled, confirmed or recorded, registered or not, whatever they are divulged or acquired, currently or later on, including all their renewals:

- (I) Patents, patent filings and rights in the patents, including all the licensed rights at the time of a new disclosure, of a new examination, a division or an extension of these rights, whether they are provisional or whether they continue to be filled in whole or part, as well as any equivalent or similar rights on inventions and discoveries in the whole world;
- (II) Rights on the creation and author's rights including, in particular, copyrights, filled and/or recorded copyrights;
- (III) Know-how, including, in particular, ideas, concepts, methods, techniques, invention discoveries (whether patentable or not in any country), invention disclosures, improvements, trade secrets, proprietary information, technology, technical data and other works, developed or exploited or not;
- (IV) Filing of inventions and drawings and models certificates as well as any other evidence of the property of the inventions (like Documentation); and

Any other rights similar to those mentioned in the above paragraphs and all other rights of ownership relating to the intellectual property, in the whole world;

**"Maintenance"** means the maintenance of the Software and of the Platform, including the implementation of Updates or Upgrades;

**"Offer"** means the technical and commercial offer issued by POWER DESIGN TECHNOLOGIES or by the Distributor at the request of the Customer, which describes the Services the Customer may order from POWER DESIGN TECHNOLOGIES;

**"Online Offer"** means the standard technical and commercial offer to use the Services available on the Website;

**"Personal Data"** means any information relating to an identified or identifiable natural person;

**"Platform"** means the distant servers hosting the Software, including the operating system of the server, the database and the server software used to provide access to the Software;

**"Price List"** means the prices of the Services available on the Website;

**"Research-Academic Access"** means an Access granted by the Company only for academic research purposes;

**"Services"** means the right to use the Software through the access to the Platform, the access to the Platform, the Support, the Maintenance as well as any additional services stated in the Offer;

**"Software"** means the PowerForge software and any other software developed and maintained by the Company, hosted on the Platform, and made available to the Customer as a service through an Access;

**"Subscription Term"** means the duration of the subscription according to the purchased Services or to the Free Trial allowed by the Company;

**"Support"** means reasonable technical support services in relation to the use of the Services but excluding training services;

**"Update"** means a patch or a minor version update of the Software;

**"Upgrade"** means a major version of Services and/or the Software;

**"User"** means any natural person authorized by the Customer to access to the Platform and to use the Software on behalf of the Customer;

**"Website"** means the Company's website.

## 2. GENERAL PRINCIPLES

### Scope of the Agreement:

This Agreement governs the Customer's access to the Platform and use of the Services.

Free Trials allowed by the Company are governed by the Agreement.

The Agreement applies without restriction or reservation to the access to the Platform and to the use of the Services by the Customer. The Agreement is accessible at any time on the Website and will prevail, if necessary, on any other version or any other contradictory document, to which the Customer expressly renounces.

Unless otherwise stated in writing, use of the Services is governed at least by the terms and conditions set forth in the Agreement.

### Agreement's acceptance:

By accepting this Agreement, by (1) clicking a box indicating acceptance, (2) executing an Offer that references this Agreement, or (3) using Free Trial, the Customer agrees to the terms and conditions of this Agreement.

Any natural person accepting this Agreement on behalf of legal person represents that he/she has the authority to bind such legal person to these terms and conditions.  
Use of the Services implies unreserved acceptance of the Agreement which the Customer acknowledges having read prior to its use.

**Agreement's modification:**

The Agreement may be modified at any time by POWER DESIGN TECHNOLOGIES.  
POWER DESIGN TECHNOLOGIES will then notify the Customer thirty (30) days prior to the application of the new terms and conditions. If the Customer has not ended its subscription or ceases to use the Services, the Customer will be deemed to have accepted the new terms and conditions.

**3. SERVICES**

**Provision of the Services:**

Subject to the terms of this Agreement, the Company will use commercially reasonable efforts to provide the Services to the Customer according to an Offer or the Online Offer.  
Provision of the Services is limited to the Offer or the Online Offer, the Subscription Term and the Fees accordingly paid by the Customer.  
In particular, the Company shall provide to the Customer an access to the Platform hosting the Software.

**Services' availability:**

The Company shall use any reasonable means to maintain the availability of the Services, but does not guarantee 100% availability.

Any unavailability of the Platform or the Software caused directly or indirectly by any of the following shall not be considered as a breach of this Agreement:

- (a) a Force Majeure Event;
- (b) a fault or failure of the internet or any public telecommunications network;
- (c) a fault or failure of the Customer's computer systems or networks;
- (d) any breach by the Customer of this Agreement; or
- (e) scheduled Maintenance carried out in accordance with this Agreement.

The Company may suspend access to the Platform or the right to use the Software if any amount due to be paid by the Customer to the Company is overdue.

**Access and IDs:**

Access to the Platform and right to use the Services are granted to the Customer following (i) an Offer issued by the Company or a Distributor, (ii) an online purchase made on the Website according to an Online Offer, or (iii) a Free Trial allowed by the Company.

Subject to Services' purchase or to Free Trial's subscription, the Company provides an Access to the Customer.

User's Accesses and available Services are managed by the Customer according to the Offer or the Online Offer.

Access is allowed to the Customer and its Users by using their ID.

The ID are (i) to reserve the access to the Platform and to the Services to the Customer and its Users, (ii) to protect the integrity and availability of the Software (iii) to protect the integrity, the availability and the confidentiality of the Customer Data and (iv) to allow simultaneous use of the Software by multiple Users.

Each ID is personal and confidential. The Customer undertakes to make every effort to keep the IDs secret and not to disclose them in any form whatsoever. The Customer shall use reasonable endeavors, including reasonable security measures relating to the IDs, to ensure that no unauthorized person may gain access to the Platform.

The Customer is responsible for the use of the IDs, in particular by any User. As such, the Customer undertakes to inform the Company without delay by any means of unauthorized use of the IDs.

If any ID was to be lost or stolen, the Customer will immediately notify the Company by email, ensuring that the Company receives this notification. The Company will then cancel the stolen or lost ID in dispute and will communicate new one to the Customer.

## 4. RIGHTS AND RESTRICTIONS

### **Use of the Services:**

Access to the Platform and the right to use the Services are limited to the Subscription Term.

Access and use of the Services is personal to the Customer and to the Users designated by the Customer. The right to use the Services, including the Software, is granted only for internal business purposes of the Customer.

Access to the Platform and use of the Services by the Customer is limited to the Users. The Customer shall not allow any unauthorized person to access the Platform or use the Software.

The Customer is responsible for any Access the Customer may provide. Access shall be provided according to any limitations contained in this Agreement.

Use of the Services is subject to technical requirements such as described in the Documentation.

The Customer represents, covenants, and warrants that the Customer will use the Services only in compliance with the Agreement, the Offer, the Documentation and all applicable laws and regulations. The Customer hereby agrees to indemnify and hold harmless the Company against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise from the Customer's use of Services. Although the Company has no obligation to monitor the Customer's use of the Services, the Company may do so and may prohibit any use of the Services or access to the Platform it believes may be (or alleged to be) in violation of the foregoing.

The Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "Equipment"). The Customer shall also be responsible for maintaining the security of the Equipment, IDs and files, and for all uses of the Credentials or the Equipment with or without Customer's knowledge or consent.

### **Research-Academic Access(es) and Educational Access(es):**

Research-Academic Access(es) shall be granted by the Company to schools, educational institution and university according to an Offer or an Online Offer or a collaboration agreement.

Educational Access(es) shall be granted by the Company to schools, educational institution and university for students according to the corresponding to an Offer or an Online Offer or a collaboration agreement.

Research-Academic Accesses and Educational Accesses are strictly limited to non-commercial research, teaching and studying activities.

Non-commercial research activities mean use for academic/teaching/scientific/studying purposes, or mere internal use, and

- excludes use in contract research (rendering a research service against payment to a customer, using the Access, even when the charge is mere cost reimbursement without profit);
- excludes use of Access for royalty bearing activities (such as licensing) or other activities leading to monetary benefits (e.g. use in developing, creating or marketing a product or process or creating and providing a service);
- includes use in further (funded or unfunded) cooperative research projects.

In case of breach of the Agreement regarding those limitations, the Company may terminate the Agreement and/or charge the beneficiary of the Research-Academic Access or the Educational Access with the Fees it would have paid for a commercial use of the Services.

### **Free Trials:**

At a Customer's request, the Company may grant at its sole discretion a Free Trial. Accordingly, the Company will make the applicable Service(s) available to the Customer on a trial basis free of charge until the earlier of (i) the end of the free trial period for which the Customer was allowed to use the applicable Service(s), or (ii) the purchase of any Services ordered by the Customer, or (iii) the termination by the Company in its sole discretion.

Free Trials may be subject to additional terms and conditions. Any such additional terms and conditions are

incorporated into this Agreement by reference and are legally binding.

Notwithstanding the “Warranty” and the “Liability” sections below, during the Free Trial the services are provided “AS-IS” without any warranty and the Company shall have no indemnification obligations nor liability of any type with respect to the Services for the Free Trial period unless such exclusion of liability is not enforceable under applicable law in which case the Company’s liability with respect to the services provided during the free trial shall not exceed \$500.00. Without limiting the foregoing, the Company do not represent or warrant to the Customer that: (a) the Customer’s use of the Services during the Free Trial period will meet the Customer’s requirements, (b) the Customer’s use of the Services during the Free Trial period will be uninterrupted, timely, secure or free from error, and (c) usage data provided during the Free Trial period will be accurate. Notwithstanding anything to the contrary in the “Liability” section below, the Customer shall be fully liable under this Agreement to the Company for any damages arising out of the Customer’s use of the Services during the Free Trial period, any breach by the customer of this Agreement and any of the Customer’s indemnification obligations hereunder.

## **5. INTEROPERABILITY**

From time to time, the Company may issue an Upgrade.

The Company does not warrant that Customer Data or finished work can be displayed following an Upgrade. When Upgrade is deployed, the Company will, if necessary, make available to the Customer an export version of any the Customer Data or any finished work.

## **6. SUPPORT**

According to the Support conditions available on the Website and subject to the terms hereof, the Company, or the Distributor as the case may be, will provide standard Support to the Customer.

## **7. CONFIDENTIALITY; PROPRIETARY RIGHTS**

### **Proprietary Information:**

Each party (the “Receiving Party”) understands that the other party (the “Disclosing Party”) has disclosed or may disclose business, technical or financial information relating to the Disclosing Party’s business (hereinafter referred to as “Proprietary Information” of the Disclosing Party). Proprietary Information of the Company includes non-public information regarding features, functionality and performance of the Services and any Order. Proprietary Information of Customer includes the Customer Data.

### **Confidentiality:**

The Receiving Party agrees: (i) to take reasonable precautions to protect the Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information.

The Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party or (e) is required to be disclosed by law.

### **Customer Data:**

The Customer shall own all right, title and interest in and to the Customer Data, as well as any data that is based on or derived from the Customer Data and provided to Customer as part of the use of the Services. The Customer hereby grants to the Company a non-exclusive license to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Customer Data to the extent reasonably required for the performance of the Company’s obligations and the exercise of the Company’s rights under this Agreement. The Customer also grants to the Company the right to sub-license these rights to its technical service providers if necessary for providing the Services to the Customer.

The Customer warrants to the Company that the Customer Data will not infringe any third party's right including any IPR and will not breach the provisions of any law, statute or regulation under any applicable law.

**Services:**

The Company shall own and retain all right, title and interest in and to (a) the Services and the Software, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with implementation Services or support, and (c) all intellectual property rights related to any of the foregoing.

Notwithstanding anything to the contrary, the Company shall have the right collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning the Customer Data and data derived therefrom), and the Company will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Company's offerings, and (ii) disclose such data solely in aggregate or other identified form in connection with its business.

**Business reference:**

The Customer authorizes POWER DESIGN TECHNOLOGIES to quote its name as a business reference.

**8. PERSONAL DATA PROTECTION**

Each party shall comply with the Data Protection Laws with respect to the processing of the Customer Personal Data.

The Customer warrants to the Company that it has the legal right to disclose all Personal Data it discloses to the Company under or in connection with this Agreement.

The Company shall only process the Customer Personal Data for any extent strictly necessary for the performance of the Agreement.

The Customer Personal Data is stored either on the Company's servers or on the servers of various hosting services the Company engage, located in the European Union.

The Company shall only process the Customer Personal Data during the Subscription Term and for not more than one (1) year following the end of the Term, subject to the other provisions of section 7.

The Company shall promptly inform the Customer if, in the opinion of the Company, an instruction of the Customer relating to the processing of the Customer Personal Data infringes the Data Protection Laws.

Notwithstanding any other provision of this Agreement, the Company may process the Customer Personal Data if and to the extent that the Company is required to do so by applicable law.

The Company shall ensure that persons authorized to process the Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

The Company and the Customer shall each implement appropriate technical and organizational measures to ensure an appropriate level of security for the Customer Personal Data.

The Company must not engage any third party to process the Customer Personal Data without the prior authorization of the Customer.

The Company shall report any Personal Data breach relating to the Customer Personal Data to the Customer in a reasonable time following the Company becoming aware of the breach.

The Company shall make available to the Customer all information necessary to demonstrate the compliance of the Company with its obligations under this Section 7 and the Data Protection Laws.

The Company shall, at the choice of the Customer, delete or return all of the Customer Personal Data to the Customer after the provision of services relating to the processing, and shall delete existing copies save to the extent that the applicable law requires storage of the relevant Personal Data.

The Company shall allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer in respect of the compliance of the Company's processing of Customer Personal Data with the Data Protection Laws.

## **9. PAYMENT OF FEES**

### **Access provided by the Company:**

Access to the Platform and right to use the Services are subject to payment of Fees by the Customer according to the corresponding Offer or Online Offer.

The Customer will pay the Company the Fees according to the Offer or to the Online Offer.

If the Customer's use of the Services exceeds the Service capacity set forth in the Offer, the Online Offer, the Documentation or otherwise requires the payment of additional fees, the Customer shall be billed for such usage and the Customer agrees to pay the additional fees in the manner provided herein.

The Company reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Subscription Term or then-current renewal term, upon fifteen (15) days prior notice to the Customer (which may be sent by email).

If the Customer believes that the Company has billed the Customer incorrectly, the Customer must contact the Company no later than sixty (60) days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to the Company's customer support department.

All amounts stated in or in relation to this Agreement are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Customer to the Company.

The Company may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by the Company thirty (30) days after the mailing date of the invoice.

Unpaid amounts are subject to late payment penalty whose rate equals to European Central Bank (ECB) interest rate applied in its current refinancing operation, plus an increment of ten (10) percentage point on any outstanding balance, plus all expenses of collection and may result in immediate termination of the Service.

### **Access provided by a Distributor:**

When provided by a Distributor, Accesses are chargeable, billable and payable according to the Distributor's terms and conditions.

### **Suspension of Services:**

If any charge owing by the Customer to the Company, or to the Distributor as the case may be, under this or any other agreement for Services is overdue, The Company may, without limiting its other rights and remedies, accelerate the Customer's unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Services until such amounts are paid in full.

## **10. SUBSCRIPTION TERM AND TERMINATION**

### **Subscription Term:**

This Agreement begins on Effective Date until all Accesses have expired or have been terminated.

The Subscription Term of each Access or Service shall be as specified in the applicable Offer or in the Online Offer as the case may be.

### **Renewal:**

Except as otherwise specified in the Offer or the Online Offer as the case may be, Accesses and/or Services will automatically renew for additional periods equal to the expiring Subscription Term or one (1) year (whichever is shorter), unless either party gives the other notice of non-renewal at least thirty (30) days before the end of the relevant Subscription Term.

For any renewal, price of the Services shall be at the applicable Price List in effect at the time of the renewal except otherwise agreed by the Customer and the Company.

### **Termination:**

In addition to any other remedies it may have, either party may also terminate this Agreement upon thirty (30) days' notice (or without notice in the case of nonpayment according to payment conditions), if the other party materially breaches any of the terms or conditions of this Agreement.

The Customer will pay in full for the Services up to and including the last day on which the Services are provided.

In case of any Termination, prepaid Services shall not be reimbursed.

**Customer Data:**

Upon any termination, the Company will delete stored Customer Data within five (5) months after such termination.

The Customer Data will be permanently lost unless the Customer purchases a subscription to the same Services as those covered by the terminated Accesses, (i) a subscription to upgraded Services within thirty (30) days following the termination, and (ii) a Customer Data restoration Fee if the subscription of the Services is purchased more than (30) days following the termination. The Customer cannot transfer Customer Data entered or customizations made during the previous Subscription Term to a Service that would be a downgrade from that covered by the previous Subscription Term.

**Customer Data at Free Trial's termination:**

The Customer shall so make any export of backup of the Customer Data. The Customer is sole responsible for making such export or backup.

Any Customer Data stored on the Platform during the Customer's Free Trial will be permanently lost unless the Customer purchases (i) a subscription to the same Services as those covered by the Free Trial, (ii) a subscription to upgraded Services, or (iii) exports such data, before the end of the Free Trial period. The Customer cannot transfer Customer Data entered or customizations made during the Free Trial to a Service that would be a downgrade from that covered by the Free Trial; therefore, if the Customer purchases a Service that would be a downgrade from that covered by the Free Trial, the Customer must export the Customer Data before the end of the Free Trial period or the Customer Data will be permanently lost.

**Surviving provisions:**

All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, limitations of liability and miscellaneous.

## **11. LICENCES AND IPR**

**License to use the Software:**

Subject to Services' purchase or to Free Trial's subscription, the Company grants to the Customer a worldwide, non-exclusive, non-transferable, non-sublicensable license to use the Software hosted by the Platform.

Such license is limited to the Subscription Term.

The Customer will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Software, the Documentation or the data related to the Software; modify, translate, or create derivative works based on the Software (except to the extent expressly permitted in writing by the Company ); use the Software for timesharing or service bureau purposes or otherwise for the benefit of a third party; or remove any proprietary notices or labels.

**Content:**

The Customer has the right to access and use the Content according to the Offer of the Online Offer, the Agreement and the Documentation.

**Restrictions:**

No rights or licenses are granted except as expressly set forth herein.

Except as stated otherwise, nothing in this Agreement shall operate to assign or transfer any IPR from the Company to the Customer, or from the Customer to the Company.

**Infringement:**

The Company warrants to the Customer that the Services, when used by the Customer in accordance with this Agreement and the Documentation, will not infringe the third party's IPR.

If the Company reasonably determines, or any third party alleges, that the use of the Software by the Customer in accordance with this Agreement infringes any person's IPR, the Company may at its own cost and expense:

- (a) modify the Services in such a way that they no longer infringe the relevant IPR; or
- (b) procure for the Customer the right to use the Services in accordance with this Agreement.

The Customer warrants to the Company that it has the legal right and authority to upload, implement or use any content on the Platform and that this content does not infringe any third party's right.

## **12. WARRANTY**

### **The Services:**

The Company shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the implementation services in a professional and workmanlike manner.

The Services may be temporarily unavailable for scheduled Maintenance or for unscheduled emergency Maintenance, either by the Company or by third-party providers, or because of a Force-Majeure Event, but the Company shall use reasonable efforts to provide advance notice in writing or by e-mail or through the Platform of any scheduled service disruption.

The Customer acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this Agreement, the Company gives no warranty or representation that the Services will be wholly free from defects, errors and bugs.

The Customer acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this Agreement, the Company gives no warranty or representation that the Hosted Services will be entirely secure.

THE COMPANY DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES AND THE IMPLEMENTATION ARE PROVIDED "AS IS" AND THE COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

### **The Content:**

The Content is provided "AS-IS".

The Company makes no warranty whatsoever related to the Content available to the Customer.

When using the Content, it is at the sole and entire Customer's liability to check if the Content is relevant for the Customer's needs.

### **Export Features:**

The Services may include Customer Data export features and/or links to external software and/or services. Those export features are provided "AS-IS" and the Company makes no warranty related to those export features, and in particular related to the compatibility of interoperability of the exported Customer Data with third party software and/or services.

## **13. LIABILITY**

NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON, THE COMPANY AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND THE COMPANY'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT,

TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY THE CUSTOMER TO THE COMPANY FOR THE SERVICES UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

#### **14. MISCELLANEOUS**

**Severability:**

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

**Assignment:**

This Agreement is not assignable, transferable or sublicensable by the Customer except with the Company's prior written consent.

The Company may transfer and assign any of its rights and obligations under this Agreement without the Customer's consent.

**Entire Agreement:**

This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein.

**Order of precedence:**

In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Offer, (2) this Agreement, and (3) the Documentation.

**Waiver:**

Except otherwise stated herein, no failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

**Independent parties:**

No agency, partnership, joint venture, or employment is created as a result of this Agreement and the Customer does not have any authority of any kind to bind the Company in any respect whatsoever.

**Attorney's fees:**

In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees.

**Notices:**

All notices under this Agreement will be in writing and will be deemed to have been duly given

- when received, if personally delivered;
- when receipt is electronically confirmed, if transmitted by facsimile
- when sent, if transmitted by e-mail;
- the day after it is sent, if sent through the internal notification system;
- the day after it is sent, if sent for next day delivery by recognized overnight delivery service;
- and upon receipt, if sent by certified or registered mail, return receipt requested.

**Governing Law:**

This Agreement shall be governed by the laws of the French Republic without regard to choice or conflict of laws rules.

**Jurisdiction:**

The courts of Toulouse shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.