

SERVICES TERMS AND CONDITIONS **[version 2.0/2018]**

These Services Terms and Conditions v.2.0 (**Services Terms and Conditions**) are an integral part of the Contract between Groupe T2i Suisse SA, Techno-pôle 1 – 3960 Sierre (**Service Provider**) and its customer as indicated in the Order Form (**Customer** and jointly with the Service Provider, the **Parties**).

I. GENERAL

1. Definitions

1.1 The capitalised words not defined in the Order Form or these Services Terms and Conditions have the following meaning:

- a. **Defect:** the non-compliance of a Deliverable to its Specifications, which is reproducible and exclusively attributable to the Service Provider.
- b. **Major Defect:** a Defect that objectively prevents the Customer from using the key functions of the Deliverable concerned.
- c. **Error:** a repetitive and reproducible malfunction that occurs when using a Deliverable, which is not necessarily due to a Defect, such as bugs, etc.
- d. **Installation:** deployment of a product in the Customer's computer environment with a view to it being put into production.
- e. **Deliverable:** a result of work to be implemented by the Service Provider under the terms of an Order Form, which is expressly designated as a deliverable and the Specifications of which are defined in writing by both Parties.
- f. **Specifications:** written description of elements that can be objectively determined and have to be realised by a Deliverable.

2. Scope and acceptance

2.1 These Services Terms and Conditions apply to the provision of the Services indicated in an Order Form signed between the Service Provider and the Customer, as well as any other service ordered by the Customer not covered by the Service Provider's special contractual clauses.

2.2 By signing the Order Form or ordering Services from the Service Provider, the Customer agrees to be bound by these Services Terms and Conditions, in their most recent version published to date.

3. Service provider obligations

- a. **Principles.** Subject to the Customer fulfilling its obligations under the Contract, notably the payment of Charges, the Service Provider undertakes to provide the Services stipulated in the Order Form.
- b. **Best-endeavours obligation** By default, the Services stipulated in the Order Form represent a best-endeavours obligation for the Service Provider. The Service Provider will provide the Services in accordance with professional practices, applying the care and attention required of a specialised IT service provider, without assuming an absolute obligation in this regard.
- c. **Absolute obligation.** The Service Provider only assumes an absolute obligation if such an obligation for a given Deliverable is expressly stated in the Order Form defining the Deliverable, and provided that the relevant Specifications have been duly validated in writing. The provisions of art. 15 of these Services Terms and Conditions then also apply in this case.
- d. **Supply times** The Service Provider shall make its best endeavours to provide the Services within the times indicated in the Order Form. However, supply times are given purely as a guide, unless it is expressly indicated that they are binding.

4. Customer obligations

4.1 **Assistance.** The Customer provides all necessary or useful assistance to the Service Provider to enable the performance of the Services. In particular, the Customer:

- a. shall spontaneously provide all information that is necessary or useful for the proper performance of the Services of which it might have knowledge;
- b. shall promptly follow up any request made by the Service Provider regarding such information;
- c. shall allow the Service Provider access to its premises and infrastructures, if such access is necessary or useful for the performance of the Services, and shall provide all appropriate means and resources (e.g. equipped offices, networks, access and so on); and
- d. shall follow up any reasonable instruction and/or order made by the Service Provider related to the Services.

4.2 **Licensing to Service Provider.** To enable the Service Provider to provide the Services, the Customer grants the Service Provider the right to access and use the Customer's content and software, solely to the extent required to perform the Services. The Customer acknowledges that sufficient access to such content and applications is essential for the Service Provider to supply the Services. The Service Provider cannot be held liable in connection with the provision of such services if the Customer fails to comply with this obligation.

4.3 **Responsibility.** The Customer is solely responsible for work carried out by its own staff, as well as the installations on which the Services are provided.

5. Financial Terms

5.1 **Charges.** The Customer undertakes to honour the payments stipulated in the Order Form or, in the absence of an Order Form, the payments agreed with the Service Provider (Charges).

5.2 **Time and materials invoicing.** Unless indicated otherwise in the Order Form, Charges are invoiced on a time and materials basis, based on the hourly rates and costs indicated in the Order Form or communicated to the Customer in any other way.

5.3 **Fixed sum invoicing.** The amounts indicated are in principle given as a guide. When the Order Form expressly stipulates a fixed amount, this only covers the Services expressly indicated in the Order Form, and is provided on the basis of information known by the Service Provider at the time of the signature of the Order Form. This fixed amount might have to be corrected if there is a change in conditions, or if the information provided proves to be incorrect or incomplete, or if the performance of the Services is delayed for a reason not attributable to the Service Provider. When possible, the Service Provider will inform the Customer as soon as possible if and when the fixed amount is exceeded.

5.4 **Payment.** The Charges due by the Customer in accordance with the Contract must be paid within 30 days from the issue date of the invoice sent to the Customer. The Service Provider can however request that all or some of the Charges are paid before the Services are provided. The Order Form may set out a payment schedule for fixed amounts.

5.5 **Taxes.** The Charges due under the Contract are exclusive of tax, including VAT. Such taxes are payable exclusively by the Customer and must be settled directly with the relevant authorities.

5.6 **Currency** Any sum relating to the Contract is expressed, and must be paid, in Swiss Francs, unless expressly indicated otherwise.

5.7 **Costs.** Unless stipulated otherwise, the Customer will reimburse the Service Provider for all reasonable costs and expenses it incurs in connection with the provision of the Services, including travel, accommodation and meal costs if the Services are provided outside the Service Provider's premises.

5.8 **Late payment** If any sum due by the Customer to the Service Provider is wholly or partially unpaid on its due date, the Service Provider can choose to do one of the following

- a. refuse to perform all or part of the Services
- b. refuse to deliver all or some of the Deliverables and/or
- c. subject to 30 days' notice sent to the Customer (including by email), terminate the Contract with immediate effect.

6. Intellectual Property

6.1 **Service Provider's Property Rights.** Except in the cases mentioned in art. 6.3 of these Services Terms and Conditions, the Service Provider and/or its potential licensors are and remain the rightful owners of the intellectual property rights relating to any element of the Services made available to the Client, as well as the entire IT infrastructure (hardware and software) implemented or developed as part of this Contract.

6.2 **No assignment.** Except in the cases mentioned in art. 6.3 of these Services Terms and Conditions, the provision of any Service under the terms of this Contract cannot be construed as the assignment of any intellectual property rights to the Customer.

6.3 **Right to Deliverables.** From

- a. the acceptance of the Deliverable in accordance with art. 15 of these Service Terms and Conditions and
- b. the payment in full of all the Charges due (whichever is the last of these events to occur), the Service Provider assigns title to all of its intellectual property rights in the Deliverable concerned to the Customer. In return, the Customer simultaneously grants the Service Provider a non-exclusive, free and irrevocable right to the intellectual property rights relating to the Deliverable concerned, authorising the Service Provider to use, modify, reproduce or transfer all or part of the Deliverable, particularly for the purposes of subsequent projects undertaken by the Service Provider.

6.4 **Third party claims.** The Customer will immediately inform the Service Provider of any third party claim in connection with an infringement of its intellectual property rights. The Service Provider will be entitled to assume control of the proceedings, direct investigations and be responsible for the settlement of any claim. The Customer undertakes to cooperate fully with the Service Provider in defending against such claims, including by providing all information available and other evidence reasonably required by the Service Provider. The Service Provider can choose to do one of the following, without any obligation in this regard and excluding any other form of compensation:

- a. acquire the necessary rights to allow the Customer to continue using the Services or Deliverables concerned;
- b. modify any Service or Deliverable so that it does not infringe or ceases to infringe the rights of the third parties concerned;
- c. replace any Services or Deliverables at all times by other reasonably equivalent services or deliverables; or
- d. reimburse the Customer for any Charges that it might have already paid in relation to the Services or Deliverables concerned (subject to a deduction for use for the period concerned). The Service Provider shall not be held liable if the third party claims are related to actions or omissions on the part of the Customer. Art. 7 and 8 of these Services Terms and Conditions are moreover applicable.

7. Service Provider Guarantees

Subject to art. 15 of these Services Terms and Conditions, the Services, as well as all other services provided by the Service

Provider, are provided "as is" and "as available". The Service Provider does not make any warranty in their respect and, in particular, does not warrant that they will

- a. be free from errors and/or available at all times or that the Service Provider will correct all errors affecting them;
- b. function in combination with the Customer's content or applications, or with any other hardware, software, system, service or data not supplied by the Service Provider, even if such compatibility existed in the past or
- c. meet the Customer's requirements, specifications or expectations.

8. Liability of Service Provider

8.1 **Principle.** To the fullest extent permitted by law, the Service Provider is exempt from any liability, resulting in particular from any faults, errors or omissions by the Service Provider, except in the event of fraud or negligence on the part of the Service Provider, as well as faults, errors or omissions by any subcontractors and causing any direct or indirect damage to the Customer.

8.2 **Indirect damages.** The Service Provider and its subcontractors, where applicable, are expressly released from liability for any indirect and/or consequential losses or damages sustained by the Customer and/or third parties. This includes loss of profits, business losses, revenue losses, customer losses, loss of opportunity, costs of obtaining replacement products/services/technology in connection with or resulting from the lack of performance or wrongful performance of any Service or any other service provided by the Service Provider, to the extent that such exclusion is permitted under applicable law.

8.3 **Limitation.** In any event, the total amount of damages the Service Provider may be required to pay to the Customer throughout the term of the Contract is limited to the actual amount of damages sustained and proven by the Customer, but in all cases to the amount corresponding to the average of the Charges actually paid by the Customer to the Service Provider for the Services provided by the Service Provider under the Contract up to the prejudicial event over a period of 12 months prior to the prejudicial event, to the extent that such limitation is permitted under applicable law.

9. Confidentiality

9.1 **Principle.** Each Party undertakes as follows:

- a. to keep confidential all information it receives from the other Party and in particular,
- b. not to disclose the other Party's confidential information to any third parties, other than employees or agents on a need to know basis; and
- c. to only use the other Party's confidential information for the purposes of exercising its rights and fulfilling its obligations under the Contract.

9.2 **Exclusions.** Notwithstanding the foregoing, neither of the Parties will have any obligation concerning information that:

- a. is or becomes public knowledge without the fault of the receiving Party,
- b. is independently developed by the receiving Party,
- c. is known by the receiving Party prior to disclosure by the other Party,
- d. is rightfully received from a third party that is not bound by an obligation of confidentiality, or
- e. is to be disclosed by court order or as otherwise required by law (in which case the information must only be disclosed to the extent required and after giving written notice to the disclosing Party).

9.3 Duration. The Parties' obligations relating to confidential information shall remain in force throughout the term of the Contract and after it ends, for as long as the information concerned remains confidential for the disclosing party and, in any event, for a period of 3 years after the Contract ends.

9.4 Return of documentation. Each Party shall return all copies of the other Party's confidential documents and materials when the Contract ends, for whatever reason, as soon as possible, but no later than ten (10) days after a Party requests this.

9.5 Third Parties The Parties undertake moreover to ensure that their staff, and any third party that might be involved in this Contract in any way, shall comply with these provisions.

10. Data protection

10.1 Roles of the Parties. The Client is responsible for all data processing related to the Services (*data controller*). Any data processing by the Service Provider or its subcontractors is done by order of the Customer and is limited by the implementation of the Service Provider's obligations under this Contract (*data processor*).

10.2 Data processing. The processing of personal data by the Service Provider is governed by appendix 2 which is an integral part of the Contract. This is available on-line at the following address [<http://www.groupe-t2i.com/fr-ch/conditions-generales-de-vente>].

11. Term and Termination

11.1 Effective date The Contract comes into force on the signature of the Order Form by Parties, or when the Services are ordered by the Customer, whichever of these events is first.

11.2 Initial term. The Contract is entered into for the term set in the Order Form as from its effective date as per art. 11.1 above or, if such term is not indicated, for a period of one year.

11.3 Renewal and ordinary termination. At the end of the initial Contract period, or any subsequent renewal period, the Contract will be automatically renewed for successive one-year terms, unless terminated by either Party by written notice sent 6 months before its expiry. Unless agreed otherwise, the terms applicable to renewal periods, including the financial terms, are those applicable at the time of said renewal.

11.4 Special termination If one of the Parties seriously defaults on its obligations under this Contract and fails to remedy this within 30 days from receiving a formal notice sent by registered letter, the other Party can automatically terminate this Contract with no additional time period, without assuming any liability to the other Party.

11.5 Continuance After the expiry of the Contract, the provisions relating to limitation of liability, confidentiality, data protection, payments and any other provisions which, by their nature, are intended to remain in force, shall continue to do so.

12. Subcontracting

12.1 Subcontracting conditions Unless stipulated otherwise in the Order Form, the Customer specifically authorises the Service Provider to subcontract the performance of all or some of its obligations under this Contract to entities belonging to the same group of companies as the Service Provider, or to any other third party, under the conditions set out in this article 12. The subcontractors listed in chapter 6 of the Order Form are presumed accepted by the Customer. The Service Provider undertakes to inform the Customer in advance and in writing of any planned change concerning the addition or substitution of other subcontractors so it can voice any objections in this regard.

12.2 Objections. The Customer has a period of 30 days after being informed of the planned addition or substitution of a subcontractor to submit its objections. If the Service Provider confirms the appointment of the subcontractor, the Customer is entitled to terminate the applicable Contract with immediate effect by written notification sent within a period of 2 weeks from receipt of the Service Provider's confirmation. This right of termination is the Customer's sole means of recourse in the event of objection to a new subcontractor. If the Customer fails to respond within either

of the deadlines mentioned in this article 13.2, this will be interpreted as acceptance of the new subcontractor.

12.3 Subcontractor responsibility In any event, if the Service Provider entrusts the performance of all or part of its obligations under this Contract to subcontractors, it remains solely responsible for the proper performance of the obligations owed to the Customer, according to the terms and conditions agreed upon in this Contract.

13. Non-solicitation

13.1 Unless agreed otherwise by the Parties, each Party undertakes not to employ or engage the services of any of the other Party's employees (whether directly or through an intermediary), unless it has said Party's prior written consent. This undertaking is valid throughout the term of the Contract and for 12 months after its expiry.

13.2 If one of the Parties fails to fulfil this obligation, it undertakes to compensate the other party by the immediate payment on request of a lump sum equal to 12 times the employee's gross monthly salary at the time of leaving.

14. Final Provisions

14.1 Assignment The Customer shall not assign all or part of its rights and obligations under the Contract, either by means of a permanent or temporary assignment, sub-licensing agreement or any other contract providing for the transfer of said rights and obligations.

14.2 Interpretation The headings of the sections and articles of this Contract are included for the purposes of convenience only and shall not affect its interpretation.

14.3 Force majeure. Neither Party shall be considered in breach of this Contract if the fulfilment of all or part of its obligations (with the exception of its payment obligations) is delayed or prevented owing to a force majeure event, such as particularly catastrophic natural disasters, wars, riots, strike or electrical/Internet failures, etc.

14.4 Severability. If any provision of this Contract is found to be invalid, non-binding or unenforceable, this shall not affect the other provisions which shall remain in full force and effect. However, the Parties may agree to replace the invalid provision(s).

14.5 Entire agreement This Contract constitutes the entire agreement between the Parties in relation to its subject matter and supersedes any prior or contemporaneous written or oral agreements relating to such subject matter.

14.6 Hierarchy In the event of inconsistency or conflict between the Services Terms and Conditions and the Order Form, the Services Terms and Conditions (including any appendices) prevail, subject to any exceptions expressly stipulated as such in the Order Form.

14.7 Waiver The failure or delay by either Party to enforce any of the undertakings set out in this Contract, however frequently and for however long, will not be deemed an amendment of this Contract or result in the creation of any rights.

14.8 Amendments. No amendment of this Contract shall be effective unless executed in writing and signed by both Parties.

14.9 Jurisdiction The ordinary courts of the Service Provider's registered office have exclusive jurisdiction in respect of any dispute between the Parties relating to the Contract.

14.10 Governing law. The Contract is governed by Swiss law, excluding its conflict of law principles and the Vienna Convention on Contracts for the International Sale of Goods.

II. SPECIAL PROVISIONS

15. Services relating to a deliverable

15.1 Principe. The special provisions of this second section of the Terms and Conditions apply only if the Order Form relates to a Deliverable.

15.2 Specifications. The Specifications of a Deliverable are not binding, and the Service Provider only has an absolute obligation if they have been validated in a document signed by both Parties.

15.3 Availability of Deliverables. The Service Provider informs the Customer when the Deliverables stipulated in the Order Form are ready to be delivered, after they have been tested by the Service Provider. In the event of multiple Deliverables, and unless stipulated otherwise in the Order Form, partial deliveries are permitted.

15.4 Installation by the Service Provider. As soon as the availability of a Deliverable is notified, and if installation by the Service Provider is stipulated in the Order Form concerned, the Parties will agree on a date for the Installation of the Deliverables. In this case, delivery is considered to be made on completion of installation by the Service Provider.

15.5 Installation by the Customer. Unless the Order Form stipulates that the Service Provider will perform the installation of Deliverables, the Customer is solely liable for their installation.

15.6 Acceptance tests. Within 10 days after delivery, the Customer will perform acceptance tests on the Deliverables and inform the Service Provider of the results in writing.

15.7 Formal acceptance. At the end of the acceptance tests, and no later than within the next 10 days, the Parties will record the results of these tests in a formal acceptance report. The report will record one of the following:

- a. **Acceptance:** the Deliverables are free of Major Defects. The Customer accepts the Deliverables, without prejudice to the correction of any other Defects identified and described in the report, according to art. 15.9 of these Services Terms and Conditions.
- b. **Rejection:** the Deliverables present Major Defects. The Customer rejects the Deliverables concerned. The Major Defects are recorded and described in the report. The Service Provider undertakes to correct the Major Defects recorded and described in the report within a reasonable period and at its own cost. Once they are corrected, the process of delivery and final acceptance is re-initiated.

15.8 In all cases, the Deliverables are deemed accepted unreservedly :

- a. once they are put into production by the Customer, or
- b. if the Customer does not inform the Service Provider in writing of the results of the acceptance tests within the period mentioned in art. 15.6 above, at the end of this period (whichever is the first of these events to occur).

15.9 Limited warranty. For a period of six months from the acceptance of a Deliverable, the Service Provider warrants that :

- a. it shall be free from Major Defects and
- b. the Service Provider will make its best efforts to try and correct all Defects identified in the acceptance report and/or notified to it in writing during the warranty period within 10 days after their occurrence, with a reasonably detailed description, within a reasonable period of time and at its own cost, subject to the Customer's full and active cooperation, without compensation. If the Customer notifies the Service Provider of a Major Defect during the warranty period, and if the Service Provider does not manage to correct it due to its own fault, the Customer can terminate the Contract only insofar as it concerns the Deliverable in question as per art. 11.4 Of these Services Terms and Conditions, after setting a reasonable period of time for its correction in writing. Any warranty is excluded if the defect is related to the Customer's failure to use the Deliverable in compliance with the Contract or the Service Provider's instructions.

15.10 Exclusive warranty. To the extent of applicable legislation, the warranty according to art. 15.9 above is exclusive and replaces any other warranty relating to the Deliverables. In particular, the Service Provider does not make any warranty to the Customer as to the result of the use of the Deliverables or whether they are adequate for the objectives sought by the Customer. Furthermore, the Service Provider does not warrant that :

- a. the Deliverables will be free from Defects and/or Errors and/or available continuously or that it will correct all Defects and/or Errors that might occur on them;
- b. the Deliverables will function in combination with any hardware, third party software, system or data, supplied by the Service Provider or not; or that
- c. the Specifications meet the Customer's needs, and/or
- d. the Deliverables will meet the Customer's requirements and expectations or can be adapted or configured in accordance with them.