

BPA – SOFTWARE-AS-A-SERVICE AGREEMENT

This Software-as-a-Service agreement (**SaaS Agreement**) forms a legal agreement between BPA Solutions SA (CHE-113.842.351), Avenue des Découvertes 18, 1400 Yverdon-les-Bains, Switzerland (**BPA**) and any user of its software products as Software-as-a-Service (**SaaS**), whether an individual or a legal entity (the **Licensee**, and together with BPA, the **Parties**).

1. Scope and Acceptance

- 1.1. This SaaS Agreement governs the Licensee's rights and obligations with respect to the use of the Licensed Products (as defined in Section 1.2) and BPA's provision of the same to the Licensee, as SaaS.
- 1.2. BPA provides different software products, as listed in its order form (the **Order Form**), as local on-premise solutions and/or as SaaS. The Licensee may select such software products as it requires (the **Licensed Products**) and the type of deployment (on-premise or SaaS) from the options available pursuant to the Order Form, based on its needs.
- 1.3. By returning to BPA an executed Order Form, opting for a SaaS deployment, the Licensee expressly agrees to be bound by the terms hereof.
- 1.4. This SaaS Agreement does not govern any services BPA may provide with respect to the Licensed Products under one or more separate agreements, such as integration and/or maintenance and support services. If, within the frame of such services, BPA provides patches, bug-fixes, updates or upgrades to the License, subject to express agreement to the contrary, such elements shall, however, automatically become part of the Licensed Products.
- 1.5. For the avoidance of doubt, if the Licensee is a legal entity, any order of the Licensed Products by any of its employees, agents or representatives, on behalf of the Licensee, is deemed as acceptance of the terms of by the Licensee. If you are ordering the Licensed Products on behalf of a legal entity, you represent and warrant that you are duly authorized to do so.

2. Grant of License

- 2.1. Subject to the Licensee's compliance with all terms and conditions of this SaaS Agreement, in particular, subject to its payment of the applicable Fees in accordance with Section 6, BPA grants to the Licensee a revocable, non-exclusive and non-transferable license to use the Licensed Products strictly in accordance its documentation provided by BPA, on its own behalf and for its own benefit (the **License**).
- 2.2. If the Licensee is a legal entity, it shall use the Licensed Products through its employees, agents and/or duly authorized representatives only, and take appropriate measures and precautions to ensure compliance with the SaaS Agreement by such users.
- 2.3. The Licensee is expressly prohibited from using the Licensed Products on behalf or for the benefit of any third-parties, or to sublicense the Licensed Products to any third parties, without BPA's express prior written consent.
- 2.4. If BPA issues user credentials on a named user basis, such user credentials shall be used exclusively by the individuals for which they have been issued, on behalf and for the benefit of the Licensee. User credentials issued to the Licensee without specifying the individual users may be used by any employees, agents and/or duly authorized representatives of the Licensee, strictly on behalf and for the benefit of the Licensee.
- 2.5. The Licensee shall be fully responsible for the confidentiality of any user credentials issued by BPA and

immediately inform the Licensee of any loss or unauthorized disclosure of such user credentials, which shall then be deactivated and replaced by BPA. BPA may charge an appropriate fee for the replacement of any user credentials. The Licensee shall further immediately notify BPA if any named user for whom BPA has issued user credentials quits the Licensee's organization, if and as applicable.

3. Compliance

- 3.1. The Licensee shall at all times comply with the conditions and limitations of any License, as set out in Section 2. The Licensed Products may contain tools allowing BPA to verify the Licensee's compliance with this SaaS Agreement and temporarily suspend or permanently deactivate the use of the Licensed Products and/or any user credentials issued for the use thereof.
- 3.2. The Licensee shall at all times comply with all laws and regulations applicable to its use of the Licensed Products and not abuse the Licensed Products for any illegal purposes.

4. Third-Party Software

- 4.1. The Licensed Products may contain software components incorporated into the Licensed Products or provided therewith, developed, distributed and/or licensed by third parties (**Third-Party Software**). Such Third-Party Software shall be licensed, and the Licensee shall use such Third-Party Software under, and strictly in accordance with, the applicable terms and conditions by the respective third-party. BPA shall use its best efforts to identify any Third-Party Software in the documentation of the Licensed Products.
- 4.2. Nothing in this SaaS Agreement shall restrict, limit or otherwise affect any rights or obligations that the Licensee may have, or conditions to which Licensee may be subject, under any applicable open source licenses to any open source software which may be incorporated in and/or provided together with the Licensed Products.

5. Intellectual Property

- 5.1. As between BPA and the Licensee, BPA shall remain the sole owner of all rights, title and interest, in particular, all intellectual property rights, in and to the Licensed Products, subject to any Third-Party Software. Nothing in this SaaS Agreement shall operate any assignment or transfer of any intellectual property rights to the Licensee.
- 5.2. The Licensee expressly acknowledges that any infringement of BPA's intellectual property rights will cause irreparable harm to BPA, for which monetary damages alone would be inadequate, and that BPA may thus seek injunctive relief or any other remedy available at law in any jurisdiction, in case of such infringement.
- 5.3. Should the Licensee become aware of any infringement or imminent risk of any infringement of any intellectual property rights pertaining to the Licensed Products, the Licensee shall immediately inform BPA and provide all useful information on such infringement or risk of infringement. BPA shall have the exclusive power to decide on any action to be taken with respect to such infringement or risk of infringement. Licensee shall, at its own costs, provide BPA with all reasonable assistance

required by BPA to protect its intellectual property rights, in accordance with its instructions.

6. Financial Terms

- 6.1. The Licensee shall pay all the fees indicated by BPA on the Order Form or by any other appropriate means (e.g. pricing schedules provided to the Licensee by BPA), as applicable (the **Fees**).
- 6.2. Subscription Fees shall be due and payable in advance and non-refundable in case of termination. Additional Fees as incurred through the Licensee's use of the Licensed Platform, if any, are invoiced in arrears, on a monthly or quarterly basis.
- 6.3. The continued use of the Licensed Products by the Licensee shall be subject to the timely payment of all the Fees.
- 6.4. BPA may temporarily suspend any License and/or any user credentials issued to the Licensee, if applicable, if the Licensee is in default for payment of any Fees due.
- 6.5. Changes of the Fees and/or the subscription models shall become effective as indicated by BPA to the Licensee or otherwise: (i) immediately upon notice to the Licensee for any additional Licenses; and (ii) as of the next renewal for any current License, if and as applicable, subject to Section 11.4. If the Licensee's subscription model is no longer available, the subscription shall automatically be transformed into a subscription under the next closest subscription model existing as of its renewal, as advised by BPA in its notice to the Licensee.
- 6.6. All payments under this SaaS Agreement shall be exclusive of any taxes, duties and similar charges, which shall be borne and paid to the relevant authorities by the Licensee.

7. Limited Warranty

- 7.1. The Licensed Products are provided AS IS and AS AVAILABLE.
- 7.2. To the maximum extent permitted by applicable law, BPA disclaims all warranties with respect to the Licensed Products and their availability, subject to the terms of any service level agreement (**SLA**) expressly agreed upon among the Parties, whether express, implied or statutory, including any warranties of merchantability, fitness for a particular purpose, quiet enjoyment and non-infringement of third-party rights.
- 7.3. In particular, BPA does neither represent nor warrant that the Licensed Products will meet the Licensee's requirements, that the operation of the Licensed Products will be uninterrupted or error-free, that any errors in the Licensed Products will be corrected, that it will ensure continued compatibility of the Licensed Products with any third-party products, even if they are compatible with such third-party products upon the granting of the License or at any given moment before or thereafter, that the Licensed Products will always be available and remain available unchanged or that certain subscription models for the Licensed Products available at any given moment, will remain available for renewal at the end of the applicable subscription period. Notwithstanding the foregoing, if the Parties have expressly upon an SLA, BPA's warranties in respect of the availability of the Licensed Products contained therein, shall be exclusive and in lieu of any other warranties of availability.
- 7.4. BPA further expressly disclaims any warranties with respect to the Licensed Products in conjunction with third-party products not provided by BPA. In particular, if the Licensee opts for the integration of the Licensed

Products with Microsoft Office 365, BPA disclaims any warranty with respect to the integration and use of the Licensed Products via such platform, including any third-party tools integrated therein.

- 7.5. The use of the Licensed Products is entirely at the Licensee's own risk, and BPA expressly disclaims any warranties regarding the Licensee's use thereof.

8. Limitation of Liability

- 8.1. BPA's liability under this SaaS Agreement, whether in contract, tort or any other theory of liability, shall be excluded to the maximum extent permitted under applicable law.
- 8.2. In particular, without prejudice to the generality of the foregoing, to the extent permitted under applicable law, BPA disclaims any liability for simple negligence as well as for any damages or losses, whether foreseen or foreseeable, or whether BPA has been advised of the risk thereof, related to the loss of use, interruption of business, loss of actual or anticipated profit, loss of revenue, loss of anticipated savings, loss of opportunity, loss of goodwill, loss of reputation, loss of, damage to or corruption of data, or any other indirect, special, incidental, exemplary, or consequential damages or losses of any kind, regardless of the form of action, whether in contract, tort, strict liability or otherwise.
- 8.3. BPA further expressly disclaims any liability for the acts and omissions of any third-parties involved in the provision of the Licensed Products. In particular, if the Licensee opts for the integration of the Licensed Products with Microsoft Office 365, BPA disclaims any liability for the acts and omissions of Microsoft as well as with respect to the integration of any third-party tools with such platform.
- 8.4. In no event, BPA's total liability during any period of 12 months shall exceed the amount of the Fees actually paid by the Licensee during the 6 months preceding the events giving rise to the Licensee's claims. Notwithstanding the foregoing, if the Parties have expressly upon an SLA providing for service credits or other financial consequences in case any breach by BPA of such SLA, BPA's liability for such breach shall be limited to the amounts of such service credits or other financial consequences, which shall be exclusive and in lieu of any other liability resulting from such breach.
- 8.5. The exclusions and limitations under this Section 8 shall extend to BPA's directors, officers, employees, agents, representatives and auxiliaries.

9. Indemnification

- 9.1. The Licensee shall defend, hold harmless from, and indemnify BPA, its directors, officers, employees and auxiliaries, from and against all liability, loss, cost, damage or expense, including reasonable attorney's fees, resulting from the Licensee's use of the Licensed Products other than as permitted under this SaaS Agreement and strictly in accordance with any documentation provided for the Licensed Products, including any claims made by any third parties.
- 9.2. In case of any claims or proceedings made against BPA, its directors, officers, employees or auxiliaries in relation to the Licensee's use of the Licensed Products, BPA shall (i) inform the Licensee without undue delay; and (ii) allow the Licensee to assist BPA in the defence and settlement of such claims or proceedings with a counsel of its choosing and at its own expense, if and as permitted under applicable procedural rules.

10. Data Protection

- 10.1. BPA and the Licensee shall always comply with their

respective obligations under applicable data protection or data privacy laws and regulations.

- 10.2. By accepting this SaaS Agreement, the Licensee expressly acknowledges and agrees that the data processed with the Licensed Products may be transferred to and processed, by BPA and/or its subcontractors, on servers located outside of its jurisdiction, including in jurisdictions which may not have data protection and privacy laws and regulations equivalent to those in the Licensee's jurisdiction.
- 10.3. If the Licensee opts for an integration of the Licensed Products with Microsoft Office 365, the Licensee acknowledges and accepts that:
- (i) the Licensed Products will be hosted on the Microsoft Azure Cloud platform, including on servers outside of Switzerland and the European Union;
 - (ii) personal data relating to the Licensee may be transferred by BPA to Microsoft and/or received by BPA from Microsoft, if and as necessary for the integration of the Licensed Products with Microsoft Office 365 and/or the provision of the Licensed Products to the Licensee together with Microsoft Office 365; and
 - (iii) Microsoft may process personal data related to the Licensee received from BPA and/or generated through its use of the Licensed Products, in accordance with its own policies on the processing of personal data.
- 10.4. The Licensee shall ensure, with respect to any personal data processed with or in relation to the Licensed Products, has been collected and is being processed in strict compliance with applicable data protection and privacy laws and regulations. In particular, the Licensee shall (i) have obtained the data subjects' valid consent for the processing of their personal data, (ii) adopted and implemented appropriate technical and organisational measures to protect such personal data and (iii) complied with all registration and/or notification requirements, if and as required under applicable data protection or data privacy laws and regulations, prior to processing any personal data with or in relation to the Licensed Products.
- 10.5. BPA shall be allowed to forward to the Licensee any requests and/or orders by any third parties, in particular any data subjects, and/or any data protection and privacy authorities, related to the processing of personal data by the Licensee with or in relation to the Licensed Products, subject to any legal prohibition to do so. The Licensee shall fully indemnify BPA for any costs incurred in relation to such requests and/or orders.

11. Term and Termination

- 11.1. The agreement governed by this SaaS Agreement shall enter into force upon BPA's receipt of an Order Form completed and executed in accordance with Section 1.3.
- 11.2. This SaaS Agreement shall remain in effect for the initial term indicated in the Order Form (the **Initial Term**), subject to termination in accordance with this Section 11.
- 11.3. Upon expiry of the Initial Term, the agreement governed by this SaaS Agreement shall be automatically renewed for consecutive renewal terms (each a **Renewal Term**) of the same duration, subject to prior written notice of non-renewal (including by e-mail) by the Licensee received by BPA no later than 60 days prior the last day of the Initial Term or the then current Renewal Term or termination in accordance with this Section 11.
- 11.4. The Licensee may terminate the agreement governed by this SaaS Agreement at any time during the Initial Term or any Renewal Term, by written notice of termination

(including by e-mail) to BPA. Prepaid Fees shall not be refunded in case of termination. Receipt of written notice of termination later than 60 days prior the last day of Initial Term or the then current Renewal Term will bind the Licensee to pay the full fees for the renewed period.

- 11.5. BPA may terminate the agreement governed by this SaaS Agreement with immediate effect, in case of any material breach by the Licensee, provided that, if the Licensee's breach may be cured, at BPA's sole judgement, BPA shall first give the Licensee 30 days' prior written notice (including by e-mail) to cure such breach at BPA's entire satisfaction.
- 11.6. BPA may further terminate the agreement formed under this SaaS Agreement, in case of any infringement of third party rights or risk of infringement of such rights, through the Licensee's use of the Licensed Products.
- 11.7. Upon non-renewal or termination of the agreement governed by this SaaS Agreement, any Licenses granted hereunder shall become void, BPA shall deactivate the Licensee's access to the Licensed Products and any user credentials issued for their use and the Licensee shall permanently delete any part of the Licensed Products stored or installed on its IT systems, if any, and cease any use thereof.

12. Miscellaneous

- 12.1. *Amendment.* BPA may amend this SaaS Agreement at any time by written notice (including by e-mail) to the Licensee. Any amendment shall become effective immediately or as otherwise indicated by BPA to the Licensee in its notice to the Licensee. If the Licensee does not accept any amendment notified by BPA, its sole remedy shall be to terminate this SaaS Agreement in accordance with Section 11.4.
- 12.2. *Entire Agreement.* This SaaS Agreement contain all terms and conditions agreed upon by the Parties relating to its subject matter and supersede all prior agreements, negotiations, correspondence, undertakings and communications of the Parties, whether oral or written, with respect to such subject matter, subject to any documents expressly referred to in this SaaS Agreement and/or the Order Form.
- 12.3. *Hierarchy.* In the event of a conflict or contradiction between the terms of this SaaS Agreement and anything contained in the Order Form, the terms of this SaaS Agreement will take precedence, subject to express derogating provisions acknowledged and approved by BPA in writing.
- 12.4. *Severability.* If any provision of this SaaS Agreement is held to be invalid or unenforceable for any reason, the Parties hereby agree to replace such provision with a valid and fully enforceable provision reflecting the original intent of the Parties to the fullest extent possible. In any event, all other provisions of this Agreement shall remain valid and enforceable to the fullest extent possible.
- 12.5. *No Waiver.* The failure of either Party to enforce any of the provision of this SaaS Agreement or any rights thereunder shall in no way be considered as a waiver of such provisions or rights.
- 12.6. *Subcontracting.* BPA may sub-contract any part of the provision of the Licensed Products hereunder to any third-party, without the Licensee's consent. Upon the Licensee's request, BPA shall provide reasonable information about its sub-contractors and the tasks being sub-contracted.
- 12.7. *Assignment.* Neither this SaaS Agreement nor any of Licensee's rights or obligations hereunder, in particular the Licenses, may be assigned, transferred or

sublicensed by Licensee to any third party, without BPA's prior written consent. Any such purported assignment, transfer or sublicense shall be null and void. BPA may assign and transfer this SaaS Agreement to any third party, in which case BPA shall provide the Licensee with written notice (including by e-mail) of such assignment or transfer. If the Licensee does not agree to such assignment or transfer, its sole remedy shall be to terminate this SaaS Agreement in accordance with Section 11.4.

- 12.8. *No Third Party Beneficiaries.* This SaaS Agreement shall be binding and inure solely to the benefit of the Parties (and their lawful successors and assigns). Nothing in this Agreement is intended to or shall confer upon any third party any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement.
- 12.9. *Reference.* BPA shall be authorized to use the Licensee as a reference customer, for the purpose of promoting and advertising the Licensed Products to third parties.

13. Governing Law and Jurisdiction

- 13.1. *Governing Law.* Subject to mandatory applicable law, this SaaS Agreement shall be governed by and construed in accordance with Swiss substantive law, at the exclusion of its conflict of laws provisions.
- 13.2. *Jurisdiction.* Subject to mandatory applicable law, any dispute or controversy arising out of or in relation to this SaaS Agreement and/or the Licensee's use of the Licensed Products shall be subject to the exclusive jurisdiction of the competent courts at Yverdon-les-Bains, Switzerland. Notwithstanding the preceding, nothing in this SaaS Agreement shall prevent BPA from seeking injunctive relieve or any other remedy available at law in any jurisdiction in case of any infringement of its intellectual property rights.