

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 proposal forms (the **Proposal 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 Proposal Form, based on its needs.
- 1.3. By returning to BPA an executed Proposal Form or a Purchase Order listing licensed products, opting for a SaaS deployment, the Licensee expressly agrees to be bound by the terms hereof.
- 1.4. If 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 with 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. Both BPA and the Licensee shall be fully responsible for the confidentiality of any user credentials issued by BPA and immediately inform the other of any loss or unauthorized disclosure of such user credentials, which shall then be deactivated and replaced by BPA. 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 materially 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 after prior written notice to Licensee and 10 days right to cure, 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, available on the BPA Community site (Section 12).
- 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 of any threat of 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 threat. BPA shall have the exclusive power to decide on any action to be taken with respect to such infringement or threat. Licensee shall provide BPA with all reasonable assistance required by BPA to protect its intellectual property rights, in accordance with its instructions. The Parties will decide on a case-by-case basis regarding the appointment of the actual costs and expenses incurred by any such action.

6. Financial Terms

- 6.1. The Licensee shall pay all the fees indicated by BPA on the Proposal 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 after advance written notice to Licensee and a 10 day opportunity to cure.
- 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. BPA warrants to Licensee, for thirty (30) days from the Effective Date, that the Licensed Product shall be in operable condition as described in the documentation provided by BPA, provided that the Licensed Product has

not been materially modified or altered by Licensee and provided that Licensee materially complies with any and all written specifications and/or instructions provided by BPA regarding the handling or installation of the Licensed Product, in particular as it pertains to recommended processors, operating systems and compilers.

BPA does not warrant that the Licensed Product will function without errors or interruptions. In the event that the Licensed Product fails to conform to this warranty, BPA's sole liability and Licensee's exclusive remedy shall be, at BPA's option, either

- (a) return of the price paid by Licensee, or
- (b) repair or replacement of the Licensed Product

- 7.2. Except for the limited warranty set forth under clause 7.1 above, the Licensed Products are provided AS IS and AS AVAILABLE.

- 7.3. BPA disclaims, to the maximum extent permitted by applicable law, 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.

- 7.4. 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.

- 7.5. 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.

- 7.6. BPA furthermore expressly disclaims any warranties (i) in respect to Licensed Product which has been modified, personalised or altered in any way by the Licensee, and (ii) in respect to any unpermitted use of the Licensed Product.

8. Limitation of Liability

- 8.1. Both Parties' 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, both Parties disclaim any liability for simple negligence as well as for any indirect damages or losses, whether foreseen or foreseeable, or whether either Party 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. Except for any damages suffered by one Party in connection with this Agreement arising out of any act of fraud, gross negligence, breach of confidentiality, claims pursuant to Section 9, intentional or wilful misconduct of the other Party, neither Party's total liability during any period of 12 (twelve) months shall exceed the amount of the Fees actually paid by the Licensee during the 6 (six) months preceding the events giving rise to the Licensee's claims.
- 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 the Indemnified Party, its directors, officers, employees or auxiliaries in relation to the Licensee's use of the Licensed Products, the Indemnified Party shall (i) inform the Indemnified Party without undue delay; and (ii) allow the Indemnified Party to assist the Indemnified Party 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. In such cases, BPA confirms and warrants to have implemented sufficient safeguards, notably Standard Contractual Clauses with its sub processors.
- 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.
 - (iv) All transfers of Customer Data, Professional Services Data, and Personal Data out of the European Union, European Economic Area, United Kingdom, and Switzerland to provide the Products and Services shall be governed by the Standard Clauses implemented by Microsoft in force, in particular the Microsoft Privacy Statement and the Microsoft Products and Services Data Protection Addendum and the Relevant Product Terms.
 - (v) for dedicated deployments: upon Licensee's request, BPA will access the Licensee's Azure Cloud platform only for installing BPA software updates. During the term of this SaaS Agreement, BPA shall employ its best efforts to ensure that Licensee's data and the platform are not adversely affected. Unless any particular data loss, security breach, malware or virus ("Adverse Event") can be proven to have been caused or introduced by BPA, BPA is not responsible for such Adverse Effect.
- 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, privacy or enforcement 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 a Proposal 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 Proposal 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 of termination in accordance with this Section 11. BPA shall issue a renewal notice (including by e-mail) at least 30 days before begin of each new Renewal Term.
- 11.4. Any annual contract reduction also requires same 60 days written notification.
- 11.5. 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.
- 11.6. 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.
- 11.7. 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.
- 11.8. Licensee may terminate this agreement in the case of any material breach by BPA, provided that Licensee shall first give BPA 30 days' prior written notice to the following address: Avenue des Découvertes 18, 1400 Yverdon-les-Bains, Switzerland with time to cure such breach at Licensee's entire satisfaction. For termination by Licensee pursuant to this Section 11.7, in the case breach has not been cured at Licensee's entire satisfaction, Licensee will be entitled to:
- a) a pro-rata refund in the amount of the unused portion of prepaid fees for the terminated subscription calculated as of the effective date of termination, and
 - b) a release from the obligation to pay fees due for periods after the effective date of termination.
- 11.9. 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. Support and Maintenance**
- 12.1. BPA warrants to Licensee further support and maintenance services for its use of the Licensed Product. The scope of support and maintenance services is the following:
- 1. New Software Releases - including software patches, bug fixes, modifications and updates (collectively, "Software Updates").
 - 2. Access to the BPA Community site 24/7 where authorized users can download BPA's software, find technical documentations, FAQ's and access the BPA Support Center ("Help Desk"). A maximum of 3 registered contacts per entity can access the BPA Community site (usually trained administrators).
 - 3. Web-based submission of incidents and requests to the BPA Support Center: Initial response time during the normal business hours of BPA Support Center (Online, Email only): Best effort. BPA will use commercially reasonable efforts to provide a 4 hour initial response, subject to normal business hours of operation, to high-level severity (severe loss of service) incident reports. Additionally, BPA will respond to general support inquiries within 24 hours, subject to normal business hours of operation.
- The BPA Support Center ("Help desk") operates from Monday to Friday from 8.00am to 5.00pm CET (business hours). The BPA Support Center is closed during the Swiss Public Holidays. Limited support services may be given during those days.
- 12.2. BPA shall provide support and maintenance solely for the current version and the immediately preceding major version (N-1) of all BPA products. Corrections for Software Bugs will be released exclusively in upcoming next versions. The Licensee is obligated to upgrade the software at least once per year and whenever an upgrade is mandated by Microsoft for compatibility purposes or for the Licensee to access Bug fixes and new features.
- 12.3. Services provided by BPA under this SaaS Agreement are limited to the Licensed Products and are contingent upon the Licensee's installation of the most current

Software release and updates, and proper use of the Software in the application for which it was designed. BPA will not be obligated to provide any service or to correct any malfunction, damage or other problem if the Software: (a) has been altered, except by BPA or a BPA-designated representative or in accordance with BPA instructions, (b) has not been installed, operated, or maintained in accordance with BPA instructions, or (c) has been subjected to abuse or improper use, hardware malfunction, negligence or accident. BPA Support Services do not include any of the following: (d) information and advice pertaining to the use, design, and configuration of the Software; (e) troubleshooting of Microsoft, third party, or open standards based technologies.

12.4. The licensee's obligations:

- a) Submitting Incidents to BPA Support Center in BPA Community site. In order to expedite the resolution of any reported incident, to the extent available, Licensee will provide to BPA (i) a full description of the problem, including any actions that initiate the problem state; (ii) the business impact of the problem; the version, edition and build numbers of all software components affected or involved in the affected system (for example, BPA products, Microsoft 365 products, Browser); (iii) any applicable log files that help with diagnosis; (iv) any applicable screen capture images that help illustrate the problem
- b) Give BPA reasonable access to the installed Licensed Products as necessary for BPA to determine the cause of the problem and find a resolution. Licensee is solely responsible for its data, information and software, including making back-up copies and security. BPA recommends Licensee create backup copies of configuration files before any work is performed.
- c) The Licensee acknowledge that any failure to timely implement Software Updates may render the Software unusable or non-conforming and Licensee assume all risks arising from failure to install such Software Updates. Even if all the applicable fees of current term are paid, BPA will not be required to provide support and maintenance services until a current Software Update has been implemented.

13. **Miscellaneous**

- 13.1. *Amendment.* BPA may amend this SaaS Agreement by written notice (including by e-mail) to the Licensee. Any amendment shall be notified at least 30 days prior the entry into force 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 **Erreur ! Source du renvoi introuvable.**
- 13.2. *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 Proposal Form.

- 13.3. *Hierarchy.* In the event of a conflict or contradiction between the terms of this SaaS Agreement and anything contained in the Proposal Form, the terms of this SaaS Agreement will take precedence, subject to express derogating provisions acknowledged and approved by both parties in writing.
- 13.4. *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.
- 13.5. *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.
- 13.6. *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. BPA remains responsible for its subcontractors' compliance with this agreement.
- 13.7. *Assignment.* Neither party may assign, transfer or sublicense its rights or obligations under this SaaS Agreement to any third party, without the other party's prior written consent. Any such purported assignment, transfer or sublicense shall be null and void.

Notwithstanding the foregoing, Licensee may transfer its rights and obligations hereunder to its Affiliates, provided Licensee provides BPA with a prior written notice (including by email) of such transfer. Affiliates are herewith defined as entities controlled by, controlling or under common control with Licensee by ownership, directly or indirectly, of fifty percent (50%) or more of the stock entitled to vote in the election of directors, or if there is no such stock, fifty percent (50%) or more of the ownership interest in such entity.

- 13.8. *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.
- 13.9. *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.

14. **Governing Law and Jurisdiction**

- 14.1. *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.
- 14.2. *Jurisdiction.* In the event of a dispute, controversy or claim (the “**Dispute**”) arising under, out of or relating to this SaaS Agreement and any subsequent amendments of this SaaS Agreement, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, the Parties shall use their best endeavours to immediately solve such Dispute amicably within a period of two (2) months.
- In case the Parties cannot reach agreement within said two (2) months period, the Dispute shall be subject to the exclusive jurisdiction of the competent courts of Lausanne, Canton de Vaud, Switzerland.
- 14.3. 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.