



## GENERAL CONDITIONS SAAS

SEPTEMBER 2023

**UBIKA SAS** (hereinafter referred to as "UBIKA") is a French company registered in the Nanterre Trade Register (no. 529 108 615). Its registered office is located at Parc Tertiaire de Meudon, 9-11 Rue Jeanne Braconnier, 92366 Meudon. Its business is the publication and marketing of application and/or website protection software and the provision of related services.

The Customer acknowledges having had the opportunity to request from UBIKA or one of its partners a detailed presentation of the Software and all necessary information describing the functionalities of the Software. The Customer acknowledges that it has been informed of the possibility of being assisted by UBIKA or any professional of its choice, if it considers that it is unable to use the said Software in accordance with the conditions set out herein.

It is the Customer's responsibility to make an extremely accurate assessment of their own needs, to evaluate their suitability for the Software and to ensure that they have the specific skills required to use the Software. The Customer has thus chosen the Software on the basis of the documentation and information that it acknowledges having received.

In possession of the information required to make an informed decision in accordance with article 1112 et seq. of the French Civil Code, the Customer accepts the terms of this Contract.

This document constitutes the general terms and conditions applicable between "UBIKA" and the Customer. They are supplemented by the Special Conditions and/or the Proposal. These General Conditions, the Proposal, the Special Conditions and all the documents to which they refer constitute the agreement between the parties (hereinafter the "Contract").



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## 1. Definitions

For the purposes of this contract, capitalized terms have the meanings set out below:

1.1 "Contract": means these General Terms and Conditions, the Proposal, the Special Terms and Conditions, and all documents to which they refer. In the event of any contradiction between them, the Proposal and/or the Special Conditions shall prevail.

1.2 "Documentation": means, irrespective of the media and medium, any description, written, oral, record, data sheet, protocol, or report necessary for the use of the Product or supplied with the Product, insofar as it is available.

1.3 "Malfunction": This term refers to any interruption of service observed by UBIKA preventing the Customer from accessing the Software or its administration portal.

1.4 "Incident": this term refers to a reproducible anomaly in the Software that is not due to misuse or inappropriate modification of accesses or parameters. Incidents must be declared with a full description by the Customer when they are reported to UBIKA, to enable UBIKA to make any necessary corrections.

1.5 "Software": means the software and its Updates designated in the Proposal, owned, developed and distributed by UBIKA, according to an industrial logic with a view to being used by a group of clients and made available to the Client in SaaS mode in return for a fee.

1.6 "Update": means an update of the Software provided by UBIKA to the Customer at no additional cost, provided that the Customer has ordered the corresponding services for the Software concerned and for the period during which UBIKA makes the Update available. Updates do not include future versions, modules, options or products that UBIKA provides under separate complementary Licenses.

1.7 "Proposal": means the offer made by UBIKA describing the Software, the price and any additional conditions.

1.8 "SaaS": refers to the operating mode of the Software whereby the Customer will have secure access to all of the said Software, which is hosted on an external server, for all of the Software's users, and access to the associated services.

## 2. Object

The purpose of this Agreement is to define the terms and conditions under which UBIKA will grant the Customer a personal, non-transferable and non-exclusive right to use the Software in SaaS mode and the support and maintenance services associated with the Software.

## 3. Duration

This Contract takes effect on the date of signature of the Application/Specified Conditions. Unless otherwise stipulated in the Application, it is concluded for a period of twelve (12) months. It is then tacitly renewable for successive periods of twelve (12) months on each anniversary date, unless terminated by one of the Parties by registered letter with acknowledgement of receipt at least three (3) months before the expiry of the current period.

## 4. Right of use

### 4.1. Right of use

Subject to the payment of royalties, UBIKA grants the Customer, for the duration of this Agreement, a personal, non-exclusive, non-transferable right to use the Software, strictly in the form of object code.

This right of use is granted solely for its internal operating requirements and within the limits of acquired rights.



Any use of the Software that does not comply with its intended purpose as set out in this Agreement shall constitute an infringement of the Software's exploitation rights and therefore an offence of counterfeiting in accordance with the provisions of article L.335-3 of the French Intellectual Property Code.

#### 4.2. Infringement warranty

In the event of a claim that the Software infringes an intellectual property right in France, UBIKA may replace or modify all or part of the Software provided that the Customer has complied with the following conditions:

- the Customer has accepted and performed all of its obligations under this Contract,
- the Customer has notified UBIKA in writing within one week of the infringement action or the declaration that preceded this allegation,
- that UBIKA is in a position to defend its own interests and those of the Client, and to this end, that the Client cooperates loyally with UBIKA by providing all the elements, information and assistance necessary to carry out such defence.

In the event that none of these measures can reasonably be envisaged, UBIKA may unilaterally decide to terminate the use of the infringing Software and reimburse the Client the royalties paid over the last twelve (12) months of use of the Software.

UBIKA accepts no liability in the event that the allegations relate to :

- the use of a version of the Software other than the current, unmodified version, if the conviction could have been avoided by the use of the current, unmodified version,
- the combination and implementation or use of the Software with programs or data not supplied by UBIKA

The provisions of this article define all of UBIKA's obligations with regard to copyright or patent infringement.

#### 4.3. Limitations on use of the Software

The granting of the right to use the Software does not entail the transfer of ownership rights to the Customer. The Software remains the property of UBIKA or its author, regardless of the form, language, programme medium or language used.

The Customer undertakes not to infringe, directly or indirectly, in particular through the intermediary of third parties, UBIKA's intellectual property rights over the Software and in particular undertakes not to:

- any use for treatment not authorised by UBIKA,
- any reproduction of the Software on any medium whatsoever,
- any translation, adaptation, arrangement or other modification of the Software and the resulting reproduction of the Software,
- any representation, distribution or marketing of the Software,
- any intervention on the programs making up the Software of any nature whatsoever, including for the purposes of correcting errors that may affect the Software insofar as the right to correct said errors is reserved for the exclusive benefit of UBIKA
- any downloading or reproduction of the Software or its translation with a view to obtaining the information necessary for the interoperability of the Software with other applications, the information necessary for interoperability being, in accordance with the provisions of this Agreement, made available to the Customer,
- any decompilation of the Software outside the cases provided for by law, and in particular for the purposes of designing, producing, distributing or marketing similar, equivalent or substitute Software,
- any direct or indirect provision of the Software to a third party, whether free of charge or against payment, in particular by rental, transfer, loan or outsourcing to a service provider (except with the prior written agreement of UBIKA).



## 5. Obligations of UBIKA

### 5.1. Provision of the Software

UBIKA undertakes to deploy the Software as soon as possible after subscription and within the limits of availability of the Software expressed in **7. Service levels**.

UBIKA undertakes to act with due care and diligence to provide Software in accordance with industry practice and the state of the art and in compliance with applicable legal provisions.

### 5.2. Data localisation

UBIKA undertakes to ensure that the data provided by the Customer as part of the Software service is physically located in the European Union.

### 5.3. Hardware, operating systems and tools, network equipment

In order to use the Software, UBIKA gives the Customer access, on a secure site, to a set of hardware, operating systems, tools and network equipment for the duration of this Agreement.

It is expressly agreed that, on the one hand, the equipment that will enable UBIKA to ensure the operation of the Software remains the property of UBIKA and, on the other hand, that UBIKA does not guarantee the Customer exclusive use of this equipment for its own needs.

Under this Agreement, UBIKA freely defines all the buildings, equipment (including physical spaces, racks, hardware supports and security devices), software packages, operating systems, databases, environments, fluid management systems (electricity, air conditioning, incoming and outgoing Internet bandwidth, etc.) and operational maintenance management procedures supplied by UBIKA and installed at its premises or at those of a hosting subcontractor, on which the Software will be operated. Consequently, UBIKA may change all or part of these elements at its own discretion throughout the term of the Contract, which the Customer expressly accepts.

## 6. Customer obligations

The Customer undertakes to provide accurate, fair and lawful information, particularly with regard to the applications and/or traffic volume of the websites concerned by the Software.

The Customer undertakes to use the Software only in accordance with the terms and conditions set out in this contract.

The Customer will define strictly personal identifiers and passwords for which he/she has sole custody and responsibility and which he/she undertakes to keep confidential. The Customer guarantees that any user authorised by it will comply with the terms and conditions of this agreement.

The Customer has ensured, by any means at its convenience, that UBIKA's services are suited to its needs. In particular, it is the Customer's responsibility to ensure that the various sizes or volumes chosen or declared correspond to its foreseeable use of the Software. If the dimensions or volumes are exceeded, UBIKA may under no circumstances be held liable for any disturbances that may be caused.

The Customer ensures that the resources, software, networks or hardware intended to be connected to or used with the Software are stable and are not likely to disrupt the operation of all or part of its infrastructure, or of any of UBIKA's resources.

The Customer undertakes to carry out all declaratory formalities or requests for authorisations that are necessary for the performance of the Contract, for the operation and implementation of the Software, in particular with any data protection authority. As the Customer is responsible for the processing of any personal data that may be collected or processed by UBIKA, it shall exercise all rights of information, access and rectification.

The Customer is responsible for the use it makes of the Software, in accordance with its use and Documentation, and in compliance with applicable laws and regulations, and this use must not harm public



order or the rights of third parties. Consequently, the Customer agrees that UBIKA may disclose any information relating to the Customer, including authorised IP addresses, account history, account usage, etc. to any authorised French agent who so requests in writing, without the need for any consent or notification to the Customer.

The Customer undertakes to implement and carry out all backup procedures that are necessary to enable the recovery of lost data from its sites and web applications, within a timeframe that is appropriate to its activity, whatever the cause of the loss of data, and to take out any insurance that it deems necessary to benefit from complete protection against the consequences of the loss of data. Under no circumstances may UBIKA be held responsible for the loss of data from the Customer's websites and web applications.

The Customer offers guarantees to UBIKA, at its first request, against the damaging consequences of any dispute affecting UBIKA resulting from a breach of the obligations set out in this article.

## 7. Service levels

### 7.1. Software service availability

UBIKA strives to make Software operational 24 hours a day, every day of the year.

The commitment rate for service availability is 99.95% per year.

The Software architecture ensures continuity of service, even in the event of scheduled maintenance.

The availability calculation does not include interruptions due to the following causes:

- Interruptions due to factors for which UBIKA is not responsible,
- Scheduled interruptions for maintenance or technical improvements.

### 7.2. Availability of the administration portal

UBIKA strives to make the administration portal accessible and operational 24 hours a day, every day of the year.

The Software availability commitment rate is 99% per year. The availability rate is calculated on the basis of Malfunctions actually observed between 8.00 am and 7.00 pm, 5 days out of 7 (working days, excluding public holidays).

UBIKA reserves the right to suspend access to the Administration Portal in order to carry out maintenance work and/or technical improvements to ensure the smooth operation of the Administration Portal.

UBIKA will inform the Customer, as far as possible, of the existence and duration of the intervention. UBIKA will carry out maintenance operations at times when the Administration Portal is least used by the Client, except in the case of urgent corrective maintenance. These unavailabilities will not give rise to any compensation for the Client.

The availability calculation does not include interruptions due to the following causes:

- Interruptions due to factors for which UBIKA is not responsible,
- Scheduled interruptions for maintenance or technical improvements.

### 7.3. Blocking inappropriate traffic

UBIKA endeavours to define security policies as fine-grained as possible in order to systematically block illegitimate traffic and systematically transfer legitimate traffic.

In addition, UBIKA is constantly working on enhancing its Administration Portal to enable the Customer to fine-tune its parameters according to its needs (option accessible according to the Customer's choice).

However, under no circumstances will UBIKA be held responsible in the event of untimely blocking of legitimate requests (known as a "false positive"). Similarly, UBIKA cannot be held responsible in the event of the non-blocking of an illegitimate request (known as a "false negative") which allows an attack to get through.



#### 7.4. Complaints procedure

In order to be admissible, any action or claim by the Client relating to the performance or breach of this agreement must (i) be made in writing by registered letter with acknowledgement of receipt, within thirty (30) days of the event giving rise to the claim (ii) describe and document the allegations on which the action or claim is based, in order to enable UBIKA to determine it if necessary.

#### 7.5. Various

Failure by UBIKA to comply with a commitment relating to service levels does not release the Customer from its obligation to pay the price of the Software as agreed with UBIKA.

In order to improve its Software service, UBIKA reserves the right to modify the methods and tools used to measure the commitments as well as the methods and tools used to publish the indicators.

### 8. Technical support - Incident reports

#### 8.1. Incident reports

Incidents must be declared with a full description by the Customer when they are reported to UBIKA, to enable UBIKA to make any necessary corrections.

The Customer must describe and document the incident accurately, so that the support team is able to reproduce it. Incomplete requests are not considered to be Customer notifications. A Customer notification is a notification that meets the conditions set out in this paragraph.

The UBIKA support team can be contacted at <https://my.ubikasec.com/>.

#### 8.2. Description of technical support services

The brochure describing the technical support services and the associated terms and conditions can be consulted on the support portal.

### 9. Financial provisions

#### 9.1. Prices

The details of the prices are given in the Special Terms and Conditions or in the Proposal. It will vary in the event of an increase in one of the perimeters used to determine it (and in particular the number of users, volume of data, etc.). Prices are quoted in Euros excluding VAT, plus the VAT applicable on the date of invoicing.

#### 9.2. Price review

UBIKA will revise the amount of the annual fee for the Services annually and/or at each annual renewal, by applying the new rate in force.

#### 9.3. Terms of payment

Unless otherwise agreed between the Parties, the Contract fees are invoiced annually in arrears. The first invoice for the Contract will be issued when the Service, understood as the provision of the Software, is made available. Payment will be made by bank transfer or direct debit.



#### 9.4. Compensation for late payment

In the event of non-payment by the due date and in addition to the fixed penalty of 40 euros, a late payment penalty calculated on the basis of an interest rate equal to three times the legal interest rate shall be payable by UBIKA without the need for a reminder.

#### 9.5. Supplementary benefits

The Agreement only covers the right to use the Software and the support and maintenance services, and does not cover any additional services recommended by UBIKA or requested by the Client to meet its specific needs. Thus, in the event that the Customer orders consulting or training services, these services will be the subject of a separate contract between the Customer and UBIKA.

### 10. Warranty and liability

#### 10.1. Liability of UBIKA

It is expressly specified that UBIKA is bound by an obligation of means in the context of these terms and conditions.

The Client is informed that UBIKA is not responsible for the quality, availability or reliability of telecommunications networks, whatever their nature, in the event of data transport or Internet access. UBIKA may not be held liable for difficulties in accessing the Software due to network saturation.

UBIKA cannot be held responsible for any malfunctioning of the Customer's web application and/or website. Under no circumstances may UBIKA be held responsible for informing the Customer in the event of an attack detected and intercepted by the Software.

In particular, UBIKA may not be held liable for access speeds, or for external slowdowns, or for unavailability, when such unavailability is due to force majeure or to failures in the public telecommunications network, or to losses of Internet connectivity due to operators, or to temporary interruptions for maintenance purposes. In no event shall UBIKA be liable to the Client or to any third party for any indirect damage such as loss of business, loss of profit or image or any other financial loss resulting from the use or inability to use the Software by the Client as well as any loss or deterioration of information for which UBIKA cannot be held liable. Any damage suffered by a third party is indirect damage and does not give rise to compensation.

In any event and whatever the basis of UBIKA's liability, the damages and any compensation owed by UBIKA to the Client, for any reason whatsoever, may not exceed the amount of the fee received by UBIKA under the Contract for the twelve (12) month period in progress when the damage occurred.

It is expressly agreed between the Parties, and accepted by the Customer, that the stipulations of the present clause will continue to apply in the event of termination of the present contract by a final court decision.

#### 10.2. Customer liability

The Customer is responsible for its actions. The Customer undertakes not to interfere with, interrupt or disrupt the proper operation of the Software.

It is forbidden to carry out any type of piracy or other illegal activities using the Software.

In the event of damage caused to third parties by the Customer, the latter may have his services suspended or cancelled by UBIKA without notice or compensation.

The Customer must inform UBIKA of any breakdown or malfunction of the Software.

The Customer declares that he/she enters into this contract in the knowledge that UBIKA's liability is limited and that the price has been calculated accordingly.





## 11. Suspension and termination

### 11.1. Suspension

UBIKA reserves the right to suspend, without notice, the performance of its obligations under this agreement, in the event that the Customer fails to comply with the provisions of this agreement, including, in the event that :

- UBIKA is the subject of a complaint or claim from a third party relating to an infringement of public order, unlawful use of all or part of the Software, or use that is prejudicial to a third party,
- Non-payment of UBIKA invoices for a period of more than eight (8) days after the due date,
- When the use of the Software by the Customer disrupts the operation of UBIKA's infrastructure,
- In cases where UBIKA's services are manifestly diverted from their initial purpose, in a way that is prejudicial to UBIKA or to third parties.

No compensation can be claimed from UBIKA for a suspension of the Software due to one of the causes specified in this section. Any amount paid for the current period will not be refunded.

### 11.2. Cancellation

If a party fails to perform any of its material obligations under the Agreement and fails to remedy such failure within thirty (30) days of receipt of a registered letter informing it of such failure, the other party may terminate the Agreement by registered letter, without prejudice to its right of recourse and, as far as UBIKA is concerned, without prejudice to any payments due.

In the event of termination, the Customer undertakes to pay immediately all sums invoiced by UBIKA or chargeable by the latter corresponding to the Agreement.

In the event of termination of this contract, reversibility is achieved by modifying the DNS (*Domain Name System* is the service that translates a domain name into several types of information associated with it, in particular the IP addresses of the machine bearing this name), over which the Customer has full control.

## 12. Specific provisions for consumers

These provisions only apply to Customers who can be considered as "consumers" within the meaning of the law.

Offer and order

The agreement is provided in English and French. The French version is the legally binding version.

### 12.1. Right of withdrawal

In accordance with Article L. 121-21 of the French Consumer Code, the Customer is hereby informed that he/she has a period of fourteen (14) days after subscribing to the Software offer to exercise his/her right of withdrawal without penalty and without giving any reason. A withdrawal form is available at the following address: [adv@ubikasec.com](mailto:adv@ubikasec.com).

### 12.2. Archiving the agreement

UBIKA shall ensure the preservation of the Agreement establishing the consumer's order for an amount greater than or equal to 120 euros for a period of ten years from the date of delivery which was the subject of an order and guarantees access at any time during this same period.

## 13. Modification of the agreement

UBIKA reserves the right to modify the Agreement. Any proposed modification of the Agreement will be communicated to the Client by any means, at least one month before it comes into force, with the



information that the Client may notify UBIKA in writing of its refusal of these modifications. Any use of the Software after the modification of the Agreement as notified shall constitute acceptance by the Customer. In the event of contradiction between several versions of the Agreement, the provisions of the latest version shall prevail.

## 14. Collaboration

For the proper performance of this Agreement, the Customer undertakes to cooperate actively, regularly and loyally with UBIKA. In this respect, the Client undertakes to provide UBIKA with all the information and documents necessary for the proper performance of this Contract and to inform UBIKA of any difficulties of which it may be aware or which its knowledge of its field of activity enables it to foresee, as and when the Contract is being performed.

It is the Customer's responsibility to have, at the time the Software is put into operation, telecommunications networks and premises with the necessary infrastructure for the electrical, network and telephone connection of the equipment required to access the Software, in accordance with any technical recommendations provided by UBIKA. It must therefore install and administer its telecommunications networks, equipment and applications not supplied by UBIKA.

## 15. Proof

The Customer acknowledges that he/she may save and print this Agreement using the standard functions of his/her browser.

The Customer acknowledges that electronic acceptance of this agreement has the same evidential value as paper acceptance.

The parties agree that the recordings made by UBIKA's equipment and the connection logs constitute proof between the parties with regard to the performance of this contract.

## 16. Confidentiality

The Parties guarantee the confidentiality of all information obtained or data transmitted in the context of the performance of this contract.

The Party to whom confidential information is communicated shall preserve its confidential nature with no less care than it takes to preserve its own confidential information, and may not communicate or disclose it to third parties, except with the prior written consent of the other Party or to the extent that may be required by Law. The Parties agree to take all reasonable steps to ensure that Confidential Information is not disclosed to their employees or contractors in breach of this Agreement. The terms of this obligation shall apply throughout the term of this Agreement and for two (2) years following its termination.

However, each Party shall not be bound by confidentiality with regard to the following information:

- information that was regularly known to be of a non-confidential nature before it was communicated as Confidential Information.
- information developed independently by each of the Parties.
- information that was in the public domain or that falls into the public domain through no fault of the beneficiary of this information.

Each Party undertakes not to use the Confidential Information in a context other than that of the Contract, even for its own account, and undertakes to return, at the first request of the other Party, any documents or other media containing Confidential Information that the latter may have been led to hand over to it in the context of the performance of the Contract, as well as any reproductions thereof.

All documents, in whatever form, communicated by UBIKA under this contract will remain its exclusive property and will be returned to it on request.



## 17. Non-Solicitation

The Client undertakes not to solicit or employ, directly or indirectly, any UBIKA employee, even if the initial solicitation is made by the employee.

This waiver is valid for the entire duration of the contract and for a period of 2 years from the expiry of the contract.

Should the Client fail to comply with this obligation, it undertakes to compensate UBIKA by immediately paying it a lump sum equal to the gross salary received by the employee during the twelve months prior to his/her departure.

Any hidden remuneration is also prohibited.

## 18. Personal data

The conditions applicable to personal data are set out in Appendix 1 to this Agreement.

## 19. General provisions

19.1 Assignment: Neither party may assign or sell all or part of the Agreement without the prior written consent of the other party.

However, the assignment or transfer of the Contract to companies owned or held by UBIKA within the meaning of Article L233-3 of the French Commercial Code is authorised, and UBIKA may subcontract the supply of all or part of the Software. In this case, UBIKA remains responsible for the performance of all the provisions of the Contract by its subcontractors.

19.2 Partial invalidity: If any provision of this Agreement is held to be invalid under any applicable rule of law or statute, such provision shall be deemed to be unwritten but shall not invalidate this Agreement.

19.3 Waiver: It is expressly agreed that any acceptance or waiver by either party of the performance of all or part of the obligations under this agreement, however frequent and however long, shall not be deemed to be a modification of this agreement or to give rise to any right whatsoever.

19.4 Commitments of the Parties: The Parties agree that the validation of the Special Conditions or the Proposal, the conclusion and renewal of the Contract, as well as the payment of the fees and/or invoices issued, signify that the Customer has read and accepted the general conditions in force on the date of this validation, conclusion, renewal or payment. The Customer is hereby informed that these terms and conditions are accessible on the <https://my.ubikasec.com/> website in accordance with articles 1125 and 1127-1 of the French Civil Code.

Previous versions of the general terms and conditions from the <https://my.ubikasec.com/> website are also available on the <https://my.ubikasec.com/> website. The Parties agree that such availability is for information purposes only and does not imply the applicability of such earlier versions.

It is understood that these general terms and conditions cancel and replace the general terms and conditions previously accepted between the Parties with the same purpose and currently in force. They shall prevail over any unilateral document issued by one of the Parties, including the Customer's purchase order. Any specific conditions set out in the Special Terms and Conditions or in the Proposal duly signed by both Parties shall nevertheless apply.

19.5 : References: UBIKA may use the Customer's name to promote the Software.

19.6 : Notifications : All notifications required by the Contract shall be made by Registered Letter with acknowledgement of receipt and shall be deemed to have been validly made to the addresses indicated at the head of these Terms and Conditions, unless a notification of change of address has been made. Notwithstanding the notifications provided for by registered letter with acknowledgement of receipt, the Parties agree that information relating to the conclusion or performance of the Contract may be sent by electronic mail. In particular, in accordance with article 1126 of the Civil Code, the Client acknowledges that UBIKA may send it by e-mail any notification relating to the development and modification of the Contract.



The Client therefore expressly accepts the use of this method of communication. The Parties agree that electronic mail exchanged between them shall constitute valid proof of the content of their exchanges and commitments.

## 20. Court and applicable law

This Contract is governed by French law. All disputes relating to the interpretation or performance of this Contract shall be brought before the courts of Nanterre, even in the event of multiple defendants or third parties, and even in the event of emergency or conservatory proceedings, emergency proceedings or ex parte proceedings.

**\*\*\*FIN\*\*\***

**Appendix on next page**



## **Annex 1: Conditions relating to the processing of personal data applicable to software packages marketed in SaaS mode or hosted by the Service Provider**

The Parties acknowledge that the Service Provider, in order to perform its obligations under this Agreement, will have access to and process personal data provided by the Customer as a subcontractor within the meaning of the regulations. The Customer undertakes to inform the Service Provider without delay of any changes in the services requested by the Customer which result or are likely to result in a change in the Service Provider's status under the regulations.

The purpose of this appendix is to define the conditions under which the Service Provider, a data processing sub-contractor, undertakes to carry out the personal data processing operations defined below on behalf of the Customer, the data controller.

In the context of their contractual relationship, the Parties undertake to comply with the legal and regulatory provisions in force and in particular Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (hereinafter the GDPR), which will be fully applicable to the Parties from 25 May 2018.

This appendix also defines the conditions under which the Service Provider, outside the scope of any Service Provision, may process the Customer's internal Data, in its capacity as Data Controller, for the purposes of managing the commercial relationship and in strict compliance with the provisions of the RGPD.

### **Article 1. Definitions**

"Controller" means the natural or legal person who, alone or jointly with others, determines the purposes and means of the processing of personal data.

"Personal data" means any information relating to an identified or identifiable natural person (the Data Subject); an "identifiable natural person" is one who can be identified, directly or indirectly.

"Data Subject" means the person to whom the data subject to Processing relates.

"Processing of personal data" or "Processing" means any operation or set of operations which may or may not be performed using automated processes and which are applied to personal data or sets of personal data.

"Sub-processor" means the natural or legal person, public authority, department or other body that processes Personal Data on behalf of the Controller.

### **Article 2. Description of the processing subject to subcontracting**

The Service Provider is authorised to process on behalf of the Customer the personal data required to provide the Software Package hosting service(s) / Software Package SaaS service(s). All the services ordered are described in the Order Forms or Special Conditions approved by the Customer.

The nature of the operations carried out on the data is storage, consultation, modification, deletion or destruction as well as blocking.

The purpose(s) of the processing are necessary for the provision of the services ordered as described in the Contract and the provision of the associated maintenance services.

The personal data processed are those collected by the Customer and processed by the Software Package hosted or made available to the Customer in SaaS mode.

The categories of Personal Data concerned are those which are processed as part of the Software Package's functionalities and which are specified in the relevant Software Package Documentation.

If the Customer uses the services to process other personal data or categories of personal data or for processing or purposes other than those listed above, the Customer does so at its own risk and the Service Provider may not be held liable in the event of failure to comply with the regulations.



### **Article 3. Obligations of the Customer, Data Processor**

The Customer undertakes to :

- To provide Data Subjects with information relating to the Data Processing operations it carries out, as soon as the Data is collected;
- Where the Processing is based on the Data Subject's consent, be able to demonstrate that the Data Subject has given his or her consent to the Processing of Data relating to him or her and has been informed of his or her right to withdraw it at any time;
- Supervise the Processing, including carrying out audits and inspections of the Service Provider;
- Provide the Service Provider with all documented instructions in writing relating to the Processing of Personal Data. The Parties agree that any request from the Customer that exceeds or modifies the processing instructions will be the subject of a separate quotation. Any instructions that are not documented in writing or that do not comply with regulations will not be taken into account.

The Software Packages made available to the Customer in SaaS mode or in mode by the Service Provider may contain free fields which are not intended to contain personal data and in particular sensitive data. As a result, the Customer undertakes to put in place all organisational and/or technical measures to ensure that these fields are used in accordance with the RGPD. Under no circumstances may the Service Provider be held liable in the event of non-compliant use of these fields.

### **Article 4. Obligations of the Service Provider and Sub-Contractor in Data Processing**

The Service Provider undertakes to:

- Process personal data solely for the purposes and under the conditions agreed in this Contract in order to provide the services and fulfil its obligations under this Contract.
- Process data in accordance with the data controller's documented instructions. If the Service Provider considers that an instruction constitutes a breach of the regulations on the protection of personal data, it will immediately inform the controller. In addition, if the Service Provider is required to transfer data to a third country or to an international organisation under EU law or the law of the Member State to which it is subject, it will inform the Customer of this legal obligation prior to processing, unless the law concerned prohibits such information on important grounds of public interest.
- Guarantee the security and confidentiality of personal data processed under this Contract in accordance with the conditions described in the paragraph entitled "Implementation of technical and organisational security measures".
- Take account of the principles of data protection by design and data protection by default in its tools, products, applications and services

#### **4.1 Compliance with instructions from the Customer, Data Controller**

The Parties agree that the Customer, in its capacity as Data Controller, retains full responsibility for the Data collected in the databases containing its databases, of which it remains the full owner.

As part of the performance of the Contract, the Service Provider may be required to Process Personal Data on behalf of the Customer as part of the Software Package's maintenance operations, as part of its hosting or as part of its availability in SaaS mode.

#### **4.2 Supporting the Customer in complying with its own obligations**

In return for invoicing on the basis of time spent, the Service Provider will, as far as possible, :

- Helps the Customer to keep the Personal Data accurate and up to date by complying with the Customer's instructions;



- Assists the Customer in carrying out impact analyses relating to Data protection, where such analysis proves necessary;
- Also assists the Customer in carrying out prior consultation with the Data Protection Supervisory Authority;
- Provides the Customer with the documentation necessary to demonstrate compliance with all its obligations and to allow audits, including inspections, to be carried out by the Controller or another auditor appointed by the Controller, and to contribute to such audits;
- Assists the Customer in fulfilling its obligation to respond to requests to exercise the rights of Data Subjects by transferring to the Customer any such request from a Data Subject made directly to the Customer as soon as possible. If such requests are addressed directly to the Service Provider, the latter shall transfer them to the Customer as soon as possible after receipt and shall refrain from responding to them.

#### 4.3 Implementation of technical and organisational security measures

In particular, the Service Provider undertakes to:

- Guaranteeing data confidentiality:
  - By allowing access or disclosure only to those persons (including its employees, or, where applicable, subcontractors or other service providers, including its own advisers) who can justify that it is necessary in view of their duties to have access or disclosure for the purposes of performing the Contract;
  - By expressly including confidentiality clauses in the contracts between the Service Provider and those persons who are its employees or, where applicable, its subcontractors or other service providers, including its own advisers, which include the requirements of those set out for the Service Provider under the Contract;
- Guarantee security against physical intrusion into its premises and against logical intrusion, so as to prevent the destruction, loss, alteration, disclosure or access by unauthorised persons of the Data of which the Service Provider has been notified, which it stores or, more generally, which it processes in any way whatsoever, on behalf of the Customer;

#### Article 5. Subcontracting

At the date hereof, all the services to which this appendix applies are hosted on the servers of :

OVH, a Société par Actions Simplifiée (simplified joint stock company), registered in the Lille Trade and Companies Register under number 424 761 419, with its registered office at 2 rue Kellermann - 59100 Roubaix.

The Service Provider may call upon another sub-contractor to carry out specific Processing activities (such as hosting). In this case, the Service Provider shall inform the Customer in advance and in writing of any change envisaged concerning the addition or replacement of one or more sub-contractors. The Customer has a period of fifteen (15) days from the date of receipt of this information to present any objections. After this period, the Customer will be deemed to have accepted this modification.

The Service Provider shall ensure that subsequent subcontractors present the same sufficient guarantees regarding the implementation of appropriate technical and organisational measures and comply with all of its obligations under the RGPD.

The Service Provider remains fully liable to the Customer for any processing carried out by the subsequent subcontractor in breach of its obligations hereunder.

Any refusal to add or replace a subcontractor must be justified in good faith by the Customer.



If the Customer refuses to add or replace a subcontractor, the Contract may be terminated by the Customer. Such termination shall in no event be deemed to be a termination for default by the Service Provider.

#### **Article 6. Data subjects' right to information**

It is the Customer's responsibility to provide information to the Data Subjects at the time the data is collected. The Customer shall fully indemnify the Service Provider in the event that the latter is condemned for failure to comply with regulations resulting from the Data Subjects' right to information.

#### **Article 7. Notification of Personal Data breaches**

The Service Provider shall notify the Customer of any security breach and/or Data leakage resulting in a breach of Personal Data as soon as possible after becoming aware of it, by means of a written e-mail sent to three of the Customer's employees.

This notification shall be accompanied by any useful documentation to enable the Customer, if necessary, to notify this breach to the competent supervisory authority, at the latest within seventy-two (72) hours of becoming aware of it.

#### **Article 8 Register of categories of Processing activity**

In accordance with Article 30§2 of the RGPD, the Service Provider shall keep a written record of all categories of Processing activities carried out on behalf of the Data Controller.

#### **Article 9. Transfer of Data**

The Service Provider undertakes not to allow access to, nor to carry out any transmission, extraction, communication, copy or other transfer, in whatever form, of Personal Data to a recipient located in a State outside the European Union, unless :

- the Customer has given prior express written consent;
- the State in which the recipient is located, as well as any subsequent recipient, is recognised as ensuring an adequate level of protection within the meaning of the GDPR or, in the absence of such recognition, the transfer is governed by appropriate safeguards in the form of either standard contractual clauses for the protection of Personal Data duly validated by the European Commission or by a national protection authority of a Member State, or binding corporate rules duly approved by the competent national protection authority and ;

For the purposes set out above, the Customer agrees that the Personal Data processed as part of the services provided by the Service Provider may be transferred by the Service Provider to its subsidiaries, all of which are located in the European Union, for the purposes of performing the Contract.

#### **Article 10. Data Protection Officer**

The Customer is hereby informed that the Service Provider has appointed a Data Protection Officer whose name and contact details are available on the Service Provider's website: <https://www.salviadeveloppement.fr/>

Any questions or requests relating to the protection of Personal Data should be sent by e-mail to the following address: [dpo@ubikasec.com](mailto:dpo@ubikasec.com)

#### **Article 11. Fate of Data**

On expiry of the Agreement for any reason whatsoever, the Service Provider undertakes either to return the Personal Data to the Customer under the applicable reversibility conditions or to destroy all the Personal Data.

The return will be accompanied by the destruction of all existing copies in the Service Provider's information systems. Once destroyed, the Service Provider must provide written proof of destruction.





The Customer is hereby informed that, in the absence of a request for restitution, the Service Provider will delete all Data within three (3) months of the end of the Contract.

**Article 12. Customer's internal data**

Outside the scope of any Service Provision, the Customer is hereby informed that its own internal Data may be processed by the Service Provider as Data Controller, for the purposes of managing the relationship between the Customer and the Service Provider.

This Data consists of information such as the surname, first name, postal address, e-mail address and telephone numbers of the Customer's employees and is kept by the Service Provider for the entire duration of the Contract and for thirty-six (36) months following the end of the Contract.

Users' connection and identification Data are kept by the Service Provider for a maximum of twelve (12) months. Other Personal Data collected and processed by the Service Provider in order to comply with its legal obligations are retained in accordance with applicable law.

For the purposes set out above, the Customer accepts that the aforementioned Personal Data concerning him/her may be transferred by the Service Provider to its subsidiaries, all of which are located in the European Union, for the purposes of performing the Contract.