



## MASTER SUBSCRIPTION AGREEMENT

THIS AGREEMENT GOVERNS THE ACCESS AND THE USE BY CUSTOMER OF THE SUPPLIER'S SERVICES.

BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, CUSTOMER ACCEPTS THIS AGREEMENT AND AGREES TO THE TERMS OF THIS AGREEMENT AS OF THE EXECUTION DATE OF THE ORDER FORM.

THIS AGREEMENT SHALL BE INTERPRETED SOLELY IN THE CONTEXT OF SUCH ORDER FORM AND SHALL NOT BIND EITHER PARTY UNLESS AND UNTIL AN ORDER FORM IS EXECUTED.

IF YOU AS INDIVIDUAL ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR ANY OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THIS AGREEMENT.

This Agreement was last updated on May 12th, 2018.

### BACKGROUND INFORMATION

Supplier provides hosted products and services utilizing proprietary internal technologies and systems, which are useful to third party companies, with a view to improve such third party companies' internal and external efficiency. Together, these hosted products and services form a Software-as-a-Service for building excellence capabilities.

Supplier is a digital subsidiary of EFESO, a leading management consultancy firm whose worldwide activities include providing clients with knowledge management and services aimed at continuous improvement.

EFESO has created and developed an original, proprietary, knowledge management system aimed at producing useful and practical know how which generates value, developed over more than 20 years of work and investment by a knowledge center based in Milan, Italy, staffed by a team of dedicated specialists who collect, select, organize, update and systematize the creativity and experience of the hundreds of consultants who work for EFESO's many clients throughout the world.



EFESO's standardized and/or personalized knowledge is contained in a 'Toolkit' that is protected under copyright, database and other intellectual property rights. The toolkit systematizes a significant number of standardized modules, resulting from experiences coming from thousands of projects from all over the world (hereinafter referred to as "Toolkit").

EFESO has granted a license to Supplier to make available, apply and/or commercialize its Toolkit through Supplier's proprietary systems.

Supplier and Customer desire to establish a business relationship, whereby Supplier will provide Services to Customer, including access to certain of its proprietary systems.

## 1. DEFINITIONS AND RECITALS AND ANNEXES

**"Affiliate"** means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control" means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

**"Assessment Online Software"** is an original, proprietary, online assessment system running on a digital platform, aimed at assessing the level of implementation of the Customer's improvement program in order to make relevant analysis, and all updates, derivations and new releases thereof. The Assessment Online Software is made available through the Services.

**"BAS"** is a web-based auditing and behaviour analysis system for the support and securing of Performance Behaviour Programs, and all updates, derivations and new releases thereof. BAS is made available through the Services.

**"Customer"** means the company or other legal entity accepting this Agreement, and Affiliates of that company or entity which have executed Order Forms.

**"Customer Data"** means all electronic data or information submitted by Customer to the Supplier.

**"EFESO"** means EFESO Consulting Group S.A. and its Affiliates. EFESO Consulting Group S.A. is a limited liability company (*société anonyme*) incorporated, organized and currently existing under the laws of France, having its registered office at 117, Avenue des Champs Elysees, 75008 Paris, France, and registered with Trade and Companies Register (*Registre du Commerce et des Sociétés*) under number 522 945 005 (RCS Paris).

**"EFESO Toolkit Materials"** means the confidential, copyrighted, proprietary materials of EFESO or of any EFESO subsidiary or Affiliate (including, without limitation, any versions that may be customized for clients), and all updates, derivations and new releases from time to time that are made available through the Services.

**"EFESO Toolkit Profile"** means a selection of the EFESO Toolkit Materials that is about a specific subject.



“**Order Forms**” means an ordering document or online order specifying the Services to be provided hereunder that is entered into between Customer and Supplier, including any addenda and supplements thereto and to which the terms of this Agreement apply

“**Personal Data**” means Customer Data relating to an identified or identifiable natural person.

“**Services**” means the products and services that are ordered by Customer under any Order Form and made available online by Supplier.

“**Sites**” means a geographical location where Customer conducts part of its business activities, for whom subscriptions to the Services have been ordered by Customer.

“**Supplier**” means Solvace NV, a digital Affiliate of EFESO. Solvace NV is a limited liability company (*naamloze vennootschap/société anonyme*) incorporated, organized and currently existing under the laws of Belgium, with registered office at Sint-Antoniusskaai 9G, 9000 Ghent, Belgium, registered with the Central Enterprise Register (*Kruispuntbank van Ondernemingen/Banque-Carrefour des Entreprises*) under number 0837,975,278 (RLE Ghent, district Ghent). Solvace NV also operates under the trade name ‘EFESO Digital’.

“**User Guide**” means the online user guide for the Services, as updated from time to time.

“**Users**” means individuals who are authorized by Customer to use the Services, for whom subscriptions to the Services have been ordered, and who have been supplied user identifications and passwords by Customer (or by Supplier at Customer’s request). Users may include employees, contractors and agents of Customer, and third parties with which Customer transacts in its business, under the condition that these users need to have access to the Services within the frame of the execution of their contractual relationship with Customer, and access the Services using an email address with a domain name controlled by Customer. A User belongs to the Site where he spends the majority of his professional time.

The Definitions and Recitals and Annexes constitute an integral, essential and fundamental part of this Agreement.

## 2. USE OF SERVICES

### 2.1. Subscriptions

Services are purchased as subscriptions for the initial number of Users and Sites specified on an Order Form (the “Minimum Commitment”). Additional subscriptions for Users and Sites may be purchased at any point in time through the execution of additional Order Forms. Customer shall maintain the Minimum Commitment unless the parties otherwise agree to adjust the Minimum Commitment. The purchased Subscriptions imply a non-exclusive, non-assignable, non-transferrable, non-revocable license granted by Supplier to Customer, strictly limited to the Services as specified in an Order Form.

### 2.2. Usage limits



Services are subject to usage limits, including, for example, the quantities of Users and Sites specified in an Order Form. Unless otherwise specified, a) Services may not be accessed by more than that number of Users for each Site; b) Services may not be accessed by Users of more than that number of Sites; c) a User's identification and password may not be shared with any other individual; d) a User's identification may only be reassigned to a new individual replacing one who will no longer use the Services; e) a Site may not be reassigned to another Site without the written prior approval of Supplier.

### 2.3. Usage restrictions

Customer will not (a) sell, resell, license, sublicense, distribute, make available, rent or lease the Services, (b) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (c) use the Services to store or transmit Malicious Code, (d) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, (e) attempt to gain unauthorized access to the Services or its related systems or networks, (f) permit direct or indirect access to or use of the Services that circumvents a contractual usage limit, or use any of the Services to access or use any of Supplier or EFESO intellectual property except as permitted under this Agreement or an Order Form, (g) copy the Services or any part, feature, function or user interface thereof, (h) frame or mirror any part of the Services, (i) access the Services in order to build a competitive product or service or to benchmark with another product, or (j) modify, decompile, or reverse engineer the Services (to the extent such restriction is permitted by law).

Any such unauthorized use of the Services may result in the immediate suspension of the Services, without limiting Supplier's other rights and remedies. Supplier will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy within a given timeframe such violation or threat prior to such suspension.

In any event of such unauthorized use, the Customer will safeguard and indemnify the interest of Supplier against any claims of third parties.

### 2.4. Storage limits

Services shall include the allocation of base data storage described in an Order Form. Supplier shall immediately notify Customer when Customer has reached eighty percent (80%) of Customer's then-current data storage maximum. Within five (5) calendar days of Customer's request, Supplier shall make additional data storage available to Customer at the rates specified on the Order Form.

### 2.5. EFESO Toolkit Materials limits

Users and Sites will be granted access to the EFESO Toolkit Materials for the languages and for the EFESO Toolkit Profiles specified in the applicable Order Form. The EFESO Toolkit Materials made available to certain Users and Sites may vary following the specifications of the Order Form.



## 2.6. Subcontractors

Supplier may use subcontractors to perform part of the Services (e.g. a cloud infrastructure supplier). Supplier's use of subcontractors shall not relieve Supplier of any of its duties or obligations under this Agreement.

## 3. CUSTOMER DATA

### 3.1. Supplier use of Customer Data

Supplier is provided a limited license to Customer Data for the sole and exclusive purpose of providing the Services, including a license to collect, process, store, generate, and display Customer Data only to the extent necessary in the providing of the Services.

### 3.2. Security of Customer Data

Supplier will use commercially reasonable efforts to maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data and other Customer Confidential Information, as described in Supplier's security documentation located at <https://www.solvace.com/legal/security.pdf>, which is incorporated into this Agreement by this reference. Those safeguards will include measures for preventing access, use, modification or disclosure of Customer Data by Supplier personnel except (a) to provide the Services and prevent or address service or technical problems, (b) as compelled by law in accordance with section 4.3 below, or (c) as Customer expressly permits in writing. Where Customer's use of the Services includes the processing of personal data (as described in the EU Data Protection Directive 95/46/EC until 25 May 2018 and the General Data Protection Regulation (EU) 2016/679 on and from 25 May 2018), the terms of the Data Processing Annex located at <https://www.solvace.com/legal/dpa.pdf> shall apply to such processing, and are hereby incorporated into this Agreement by reference. For the purposes of the Standard Contractual Clauses in Schedule 1 to the Data Processing Annex, Customer is the data exporter, and Customer's acceptance of this Agreement shall be treated as Customer's signature of the Standard Contractual Clauses and appendices. Except as otherwise provided in the Data Processing Annex, all personal data that Supplier collects from Customer will be processed in accordance with Supplier's Privacy Policy located at <https://www.solvace.com/legal/privacy.pdf>, which is incorporated into this Agreement by this reference. Customer consents to personal data being used and processed in accordance with Supplier's Privacy Policy. Supplier shall remove the data of a specified individual upon the request of Customer (or that individual, to the extent required under applicable law).

### 3.3. Backup and Recovery of Customer Data



As a part of the Services, Supplier is responsible for maintaining a backup of Customer Data and for an orderly and timely recovery of such data in the event that the Services may be interrupted. Supplier shall maintain a contemporaneous backup (real-time mirror) of Customer Data that can be recovered. Additionally, Supplier shall store a backup of Customer Data no less than daily (at least a daily backup performed at 0h UTC). Daily backups will be stored for a rolling period of 30 days. Any backups of Customer Data shall not be considered in calculating storage size used by Customer.

#### 3.4. Loss of Customer Data

In the event of any act, error or omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of Customer Data or the physical, technical, administrative, or organizational safeguards put in place by Supplier that relate to the protection of the security, confidentiality, or integrity of Customer Data, and for which Supplier is to be held accountable, Supplier shall, as applicable: (a) notify Customer as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with Customer in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law; (c) perform or take any other actions required to comply with applicable law as a result of the occurrence; (d) use commercially reasonable efforts for recreating lost Customer Data in the manner set by Customer without charge to Customer; and, (e) provide to Customer a detailed plan within ten (10) calendar days of the occurrence describing the measures Supplier will undertake to prevent a future occurrence. This section shall survive the termination of this Agreement but only to the extent of the Supplier's obligation to preserve the Consumer Data.

#### 3.5. Return of Customer Data after termination

Upon request by Customer made within 30 days after the effective date of termination of this Agreement, Supplier will make available to Customer for download a file of Customer Data in a structured format, along with attachments in their native format. After such 30-day period, Supplier shall have no obligation to maintain or provide any Customer Data and shall thereafter, unless legally prohibited, delete all Customer Data in its systems or otherwise in its possession or under its control.

#### 3.6. Customers' responsibilities regarding Customer Data

Customer shall (a) have sole responsibility for the accuracy, quality, integrity, legality and reliability of Customer Data and of the means by which it acquired Customer Data, and (b) ensure that data processing instructions given to Supplier comply with applicable Data Protection Laws and Regulations.

## 4. CONFIDENTIALITY

#### 4.1. Definition of Confidential Information



“Confidential Information” means all information disclosed by a party (“Disclosing Party”) to the other party (“Receiving Party”) in any form, whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. In the event of doubt of the confidentiality of information, such information shall be treated as Confidential Information, save for the written consent of the Disclosing Party to its divulgation. Customer Confidential Information includes Customer Data; Supplier Confidential Information includes amongst others the Services; and Confidential Information of each party includes the terms and conditions of this Agreement and all Order Forms (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

The Confidential Information is and will be exclusively owned by the Disclosing Party.

#### 4.2. Use of Confidential Information

The parties undertake to hold in strict confidence all Confidential Information and the Receiving Party shall keep confidential and secret and not disseminate or disclose the Confidential Information to any third party. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates’ employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates, legal counsel and accountants without the other party’s prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate’s, legal counsel’s or accountant’s compliance with this “Confidentiality” section.

#### 4.3. Compelled Disclosure

The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party’s cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose



the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

4.4. The obligations set out in this article 4 shall remain in force for a period of 24 months after the expiration or termination of this Agreement.

## **5. PROPRIETARY RIGHTS AND LICENSES**

### **5.1. Services**

Customer acknowledges and agrees that all the Services provided by Supplier, individually and collectively, are protected by intellectual property rights, including but not limited to copyrights, software rights and database rights.

Customer acknowledges and agrees that the Services together with any and all intellectual property rights therein and/or related thereto, with the exception of the EFESO Toolkit Materials, whose intellectual property rights belong to EFESO, are and shall remain the sole and exclusive property of Supplier and that Customer obtains only a non-exclusive, non-assignable, non-transferrable, non-revocable license strictly limited to the Services as specified in an Order Form and solely in accordance with the terms of this Agreement.

Any intellectual or industrial property right created in newly created materials during the term of this Agreement, including any modifications, enhancements and/or derivatives in relation to the Services, excluding the EFESO Toolkit Materials and excluding Customer Data, shall automatically vest in Supplier.

To the extent permitted by applicable law, Customer hereby waives all moral rights in relation to any intellectual or industrial property rights that are (meant to be) vested in Supplier by virtue of this clause, to which it would otherwise be entitled under the laws of any relevant jurisdiction.

Supplier shall have a royalty-free, worldwide, irrevocable license, for the duration of the applicable intellectual property rights, to use and incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by Customer, relating to the operation of the Services.

The provisions of this section shall survive the expiration or termination of this Agreement.

### **5.2. EFESO Toolkit Materials intellectual property rights**

Customer acknowledges and agrees that:





a) the EFESO Toolkit Materials comprise know how and confidential information of EFESO and further agrees to the restrictions below and to treat the confidential information in accordance with this Agreement;

b) all copyright and intellectual property rights in the EFESO Toolkit Materials belong to EFESO and are protected by applicable copyright and other intellectual property laws and by international conventions;

Customer acknowledges that the EFESO Toolkit Materials bear the EFESO trade mark and undertakes and agrees not to remove any of EFESO's registered or unregistered trade marks, logos, brand names or templates from any of the EFESO Toolkit Materials without the prior approval in writing of EFESO.

The parties acknowledge that EFESO is and will continue to be the exclusive owner of all exclusive rights (such as, by way of example and without limitation, patents, trademarks, know-how, designs, models) in the EFESO Toolkit Materials and in any subsequent versions, derivative works or updates and Customer shall not claim any title, right or interest in any of the EFESO Toolkit Materials.

Customer confirms and acknowledges that neither Supplier nor EFESO shall be liable for any intellectual property claims arising from the alteration, modification or adjustment of the EFESO Toolkit Materials performed by or on behalf of Customer.

The provisions of this section shall survive the expiration or termination of this Agreement.

### 5.3. EFESO Toolkit Materials restrictions on use

Customer expressly agrees and undertakes to comply with the following limitations and obligations regarding its right to access and use the EFESO Toolkit Materials:

a) To use the EFESO Toolkit Materials in compliance with the law.

b) Not to sell, license, assign, rent, lease, transfer the EFESO Toolkit Materials in any way.

c) Not to retain any kind of copies of the whole or any part of the EFESO Toolkit Materials.

d) Not to reproduce, alter, adapt, vary, modify, translate, decode, reverse engineer or create derivative works of the EFESO Toolkit Materials nor to remove, change or obscure any logos, notices of proprietary rights and restrictions in the EFESO Toolkit Materials, or permit any Users to do any of the foregoing.

e) Not to communicate, divulge, disclose, show or publish the EFESO Toolkit Materials to an unauthorized third party (including, without limitation, any third-party consultants or professional advisers engaged from time to time by Customer).

f) To inform Supplier immediately upon becoming aware that the EFESO Toolkit Materials have been disclosed to an unauthorized third party and of any circumstances that may reasonably lead to suspicion



that an unauthorized person is using, or intends to use, know-how and/or materials that are based on or derived from any EFESO Toolkit Materials.

g) To exercise, and to procure all Users to exercise, a high level of care in handling and protecting the EFESO Toolkit Materials.

h) To use and share the EFESO Toolkit Materials only among Users and Sites, in accordance with this Agreement and only for the purposes described herein. For the avoidance of doubt, the EFESO Toolkit Materials can be used only in the Sites. The material can't be copied, disclosed or made available in unauthorized sites without an executed Order Form for that Site.

j) To take all reasonable care to safeguard and secure the personal computers and user names/passwords and access keys (as the case may be) that process the EFESO Toolkit Materials against unauthorized access and against accidental loss or theft, and to inform Supplier in writing immediately in the event Customer becomes aware of any accidental loss or theft, or of any attempt (or suspected attempt) by any unauthorized person or work colleague to access the relevant PC or to copy, view, download or use the EFESO Toolkit Materials in any way.

k) To ensure that all relevant User's identifications and passwords are always kept separately from the single personal computer.

## **6. TERM AND TERMINATION**

### 6.1. Term of Agreement

This Agreement is legally binding as from the undersigning by the Customer of an Order Form and shall continue until all Order Forms undersigned by the Customer are either terminated or no longer in effect.

### 6.2. Term of Order Form

The term of each purchased subscription shall be as specified in the applicable Order Form ('Initial term'). Except as otherwise specified in an Order Form, purchased subscriptions will automatically renew for additional periods of 1 year (each a 'Renewal Term'), unless either party gives notice of non-renewal at least 90 days before the end of the then-current Term.

### 6.3. Termination for cause

A party may terminate this Agreement and any Order Form then in effect for cause (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.



#### 6.4. Payments upon termination

Upon the termination of this Agreement or an Order Form according to Clause 6.1. or 6.2., Customer shall pay to Supplier all undisputed amounts due and payable hereunder, if any, and Supplier shall pay to Customer all amounts due and payable hereunder, if any. Upon any termination for cause by Customer according to Clause 6.3., Supplier shall refund Customer any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination.

#### 6.5. Consequences of termination

Upon termination of this Agreement for any reason whatsoever, the right to use the Services granted pursuant to this Agreement shall immediately terminate and Customer shall immediately:

- a) discontinue the use of the Services by all Users and Sites;
- b) cease to use each and all of the Efeso Toolkit Materials; and
- c) return or irretrievably destroy all copies of the Efeso Toolkit Material including any information, analyses, compilations, notes, studies, memoranda or other documents derived from, containing or reflecting such information.
- d) return all Confidential Information to Supplier.

The provisions of this section shall survive the termination of this Agreement.

#### 6.6. Renewals

Should the Services continue beyond the Initial Term of the Order Form, the Services fees for the Renewal Term may be increased by no more than ten percent (10%) on an annualized per-user basis, unless the pricing in such prior term was designated in the relevant Order Form as promotional or one-time.

## 7. FEES AND BILLING

### 7.1. Fees

Customer shall pay all fees specified in all Order Forms. Except as otherwise specified in an Order Form, (i) fees are based on Services purchased and not actual usage, (ii) payment obligations are non-cancellable and fees paid are non-refundable, and (iii) subscriptions purchased cannot be decreased during the relevant subscription term stated on the Order Form.

### 7.2. Invoicing and payment



Fees will be invoiced in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the relevant Order Form, fees are due and payable within 30 days from the invoice date. Customer is responsible for providing complete and accurate billing and contact information to Supplier and notifying Supplier of any changes to such information.

For practical reasons, Customer may be invoiced by EFESO on behalf of Supplier.

### 7.3. Overdue charges

If any amounts invoiced hereunder are not received by Supplier by the due date, then any and all amounts invoiced shall become due immediately. Moreover, the invoiced amount will be increased, as of right and without previous notice of default, (a) a late interest at the rate of 1% of the outstanding balance per month, from the date such payment was due until the date of effective payment, and (b) by way of a conventional penalty clause by 12%. Supplier may also condition future subscription renewals and Order Forms on payment terms shorter than those specified in clause 7.2 above.

### 7.4. Suspension of Service

If any charge owed by Customer is 30 days or more overdue, Supplier may, without limiting its other rights and remedies, suspend Services until such amounts are paid in full, provided that Supplier has given Customer at least 10 calendar days' prior notice that its account is overdue.

### 7.5. Taxes

Unless otherwise stated, Supplier's fees are exclusive of all applicable taxes, levies or duties imposed by taxing authorities, including without limitation value-added and withholding taxes, and Customer shall be responsible for payment of all such taxes, levies or duties, excluding only taxes based on Supplier's income.

## **8. REPRESENTATIONS AND WARRANTIES AND DISCLAIMERS**

Each party represents that it has validly entered into this Agreement and has the legal power to do so.

Supplier warrants:

- a) it is in the business of providing the Services;
- b) the Services shall perform materially in accordance with the User Guide;
- c) it has the expertise to perform the Services in a competent, workmanlike, and professional manner and in accordance with the highest professional standards, and,



d) it will use its best efforts to ensure that no computer viruses, malware, or similar items (collectively, a “Virus”) are introduced into Customer’s computing and network environment by the Services.

For any breach of a warranty above, Customer’s exclusive remedy shall be as provided in the clauses 6.3. and 6.4. above.

Except as expressly provided herein, Supplier makes no other warranty of any kind than provided above, whether express, implied, statutory or otherwise, and Supplier specifically disclaims all implied warranties, including any implied warranty of merchantability, fitness for a particular purpose or non-infringement, to the maximum extent permitted by applicable law. Supplier disclaims all liability and indemnification obligations for any harm or damages caused by any third-party hosting providers.

## **9. MUTUAL INDEMNIFICATION**

### **9.1. Indemnification by Supplier**

Supplier agrees to defend Customer from and against any, claim, demand, suit, or proceeding (each, a “Claim,” and collectively, the “Claims“), which may be made or brought against the Customer, by reason of any Claim arising out of the alleged infringement by the Services of any patent, copyright, trade secret, trademark, or other proprietary right of a third party, provided that the Customer (a) gives written notice to Supplier of the Claim within 24 hours, (b) gives sole control to Supplier for the defense and settlement of the Claim, and (c) provides to Supplier all reasonable assistance in defending against or settling the Claim. In the event that Supplier is enjoined from providing the Services and such injunction is not dissolved within thirty (30) calendar days, or in the event that Customer is adjudged, in any final order of a court of competent jurisdiction to which no appeal can be taken, to have infringed upon any patent, copyright, trade secret, trademark, or other proprietary right of a third party in the access or use of the Services, then Supplier shall, at its expense: (a) obtain for Customer the right to continue using such Services; (b) replace or modify such Services so that they do not infringe upon such proprietary right and is free to be used by Customer; or, (c) in the event that Supplier is unable or determines, in its reasonable judgment, that it is commercially unreasonable to do either of the aforementioned, Supplier shall reimburse to Customer any prepaid fees covering the remainder of the term. .

### **9.2. Indemnification by Customer**

Customer shall defend Supplier against any claim, demand, suit or proceeding made or brought against Supplier by a third party alleging that the Customer Data, or Customer’s use of the Services in breach of this Agreement, infringes or misappropriates the intellectual property rights of a third party or breaches applicable law (a “Claim Against Supplier”), and shall indemnify Supplier for any damages, legal and/or technical advisor’s fees and costs finally awarded against Supplier as a result of, or for any amounts paid



by Supplier under a court-approved settlement of, a Claim Against Supplier; provided that Supplier (i) promptly gives Customer written notice of the Claim Against Supplier, (ii) gives Customer sole control of the defense and settlement of the Claim Against Supplier (provided that Customer may not settle or defend any Claim Against Supplier unless it unconditionally releases Supplier of all liability), and (iii) provides to Customer all reasonable assistance, at Customer's expense.

## **10. LIMITATION OF LIABILITY**

### **10.1. Limitation of Liability**

Subject to the "Exclusion of Indirect Damages" and "Limitation of Restrictions" sections below, in no event shall the aggregate liability of Supplier arising out or related to this Agreement exceed the lesser of EUR 50.000,- or the amount paid by Customer with respect to the Services in the 12 months preceding the first Claim out of which the liability rose. The foregoing shall not limit Customer's payment obligations under the "Fees and Payment" section above.

### **10.2. Exclusion of Indirect Damages**

Subject to section the "Limitation of Restrictions" section below, in no event shall either party have any liability to the other party under or in relation to this Agreement whether in contract, tort or under any other theory of liability for:

- a. any financial damages as a result of loss or damage to property, economic loss, cost of replacement services, loss of profits, loss of revenue, loss of orders, loss of goodwill, and/or loss resulting from damage to image or reputation in each case whether direct or indirect, or
- b. any indirect or consequential loss or damage arising from or related to this Agreement, howsoever caused and whether or not such losses or damages are foreseeable, even if that party has been advised (or is otherwise aware) of the possibility of such losses or damages in advance.

### **10.3. Limitation of Restrictions**

Nothing in this "Limitation of Liability" section shall exclude or limit the liability of either party for fraud or fraudulent misrepresentation or for any other liability to the extent that the same may not be excluded or limited as a matter of applicable law.

## **11. SUPPORT**

### **11.1. Help Content**



A Support portal containing Getting Started articles and Frequently Asked Questions is accessible from within the Services.

#### 11.2. Technical Support

The Standard Support Plan will be provided to Customer's Users at no additional charge. Support is reachable on weekdays, excluding Belgian bank holidays, between 9:00 and 18:00 Central European Time (GMT+1) ("Supplier Business Hours"). Users can submit cases via a ticketing system on the Application's Support portal. Customer Application Administrators may also submit cases by telephone during Supplier Business Hours. Supplier may use any measure it deems appropriate to verify the identity of the Application Administrator.

Upon case submission, Users will be asked to provide their contact information and case details, and each case will be assigned a unique case number. A Supplier Support Representative will use commercially reasonable efforts to call or e-mail the User within two (2) business days and will use commercially reasonable efforts to promptly resolve each case. Actual resolution time will depend on the nature of the case and the resolution. A resolution may consist of a fix, workaround or other solution in Supplier's reasonable determination.

#### 11.3. Telephone Support Hours

Live Telephone support is available to Customer Application Administrators during Supplier Business Hours. Telephone support is available in English, French and Dutch.

#### 11.4. Reproducing Errors

Supplier must be able to reproduce errors in order to resolve them. Customer agrees to cooperate and work closely with Supplier to reproduce errors, including conducting diagnostic or troubleshooting activities as reasonably requested and appropriate. Also, subject to Customer's approval on a case-by-case basis, Users may be asked to provide remote access to their Application account and/or desktop system for troubleshooting purposes.

#### 11.5. Excluded items

The Standard Support Plan does not include any of the following: assistance with installation or configuration of hardware, including computers, hard drives, networks or printers.

## 12. PROFESSIONAL SERVICES

Subject to the terms and conditions of this Agreement, Customer may request that Supplier provide certain Professional Services related to Customer's use of the Services. The terms of the Professional Services Annex located at <https://www.solvace.com/legal/psa.pdf> shall apply to such Professional Services, and are hereby incorporated into this Agreement by reference.



## 13. GENERAL PROVISIONS

### 13.1. Relationship between Customer and Supplier

The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

### 13.2. Updates and upgrades

The provisions of this Agreement do not confer any right or title to the Customer with respect to any updates or future versions of the Services that are provided by Supplier and do not give rise to any obligation of Supplier to provide Customer with updates or future revisions.

### 13.3. Governing Law and jurisdiction

The validity and interpretation of this Agreement and the rights and obligations of the parties hereunder shall be exclusively governed by Belgian law. All disputes arising out of this Agreement and/or in connection with this Agreement shall be subject to the exclusive jurisdiction of the courts of Brussels. The parties hereby waive any claim or defense that such forum is not convenient or proper.

### 13.4. Cooperation

Where agreement, approval, acceptance, consent or similar action by either party hereto is required by any provision of this Agreement, such action shall not be unreasonably delayed or withheld. Each party will cooperate with the other by, among other things, making available, as reasonably requested by the other, management decisions, information, approvals, and acceptances in order that each party may properly accomplish its obligations and responsibilities hereunder.

### 13.5. Force Majeure; Excused Performance

Neither party shall be liable for delays or any failure to perform the Services or this Agreement due to causes beyond its reasonable control. Such delays include, but are not limited to, fire, explosion, flood or other natural catastrophe, governmental legislation, acts, orders, or regulation, strikes or labor difficulties, to the extent not occasioned by the fault or negligence of the delayed party. Any such excuse for delay shall last only as long as the event remains beyond the reasonable control of the delayed party. However, the delayed party shall use its best efforts to minimize the delays caused by any such event beyond its reasonable control.

### 13.6. No Waiver

The failure of either party at any time to require performance by the other party of any provision of this Agreement shall in no way affect that party's right to enforce such provisions, nor shall the waiver by either party of any breach of any provision of this Agreement be taken or held to be a waiver of any further breach of the same provision.





### 13.7. Notices

Any notice given to Supplier pursuant to this Agreement shall be in writing and shall be given by personal service or by mail, return receipt requested, postage prepaid to following address, or as changed through written notice to the other party: SOLVACE NV, Sint-Antoniusskaai 9G, 9000 Gent, Belgium, attn: Managing Director

Notice given by personal service shall be deemed effective on the date it is delivered to the addressee, and notice mailed shall be deemed effective on the third day following its placement in the mail addressed to the addressee.

### 13.8. Assignment and sub-licensing

Customer shall not without the prior written consent of Supplier assign or otherwise transfer this Agreement.

Customer shall not without the prior written consent of Supplier: grant sub-licenses under this Agreement to any of its Affiliates; or, sub-contract any of its obligations under this Agreement. Customer shall send a copy of any permitted sub-license or sub-contract to Supplier after signature of the same. Customer shall be liable under this Agreement for any acts and omissions of any sub-licensee, or sub-contractor, as if they were the acts or omissions of Customer.

In the event of change of control of Customer, Supplier shall be notified in writing by the Customer and Supplier shall have the right to terminate the Agreement.

### 13.9. Entire Agreement

This Agreement, including all recitals and annexes hereto and all order forms, constitute the entire agreement between the Supplier and Customer and supersede any and all previous representations, understandings, or agreements between Customer and Supplier as to the subject matter hereof. This Agreement may only be amended by an instrument in writing signed by both Supplier and Customer. This Agreement shall be construed without regard to the party that drafted it. Any ambiguity shall not be interpreted against either party and shall, instead, be resolved in accordance with other applicable rules concerning the interpretation of contracts.

### 13.10. Severability

If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to applicable law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by applicable law, and the remaining provisions of this Agreement shall remain in effect.