

GENERAL TERMS AND CONDITIONS FOR SUBSCRIPTION SERVICES

These General Terms and Conditions for Subscription and Services ("General Conditions") are effective from the Effective Date by and between **SBS Software** having its registered address at PAE Les Glaisins 74940 Annecy –le-Vieux listed in the Annecy Trade Register under number 450 792 999 ("**SBS**") and your company ("**Customer**"). Unless otherwise agreed by the Parties in writing, these General Terms and Conditions and any Order Form executed hereunder shall govern SBS' provision of the Products and Services to Customer (collectively, the "**Agreement**"). The parties hereto may be referred to individually as a "Party" or collectively as the "Parties". IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THE TERMS AND CONDITIONS OF THIS AGREEMENT.

In consideration of the mutual promises herein made, and for other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS.

When used in the Agreement, the following capitalized terms shall have the following meanings:

- 1.1. "**Affiliate**" means in relation to a Party, any entity which directly or indirectly controls, is controlled by, or is under common control with that Party. For purposes of this definition, the term "control" (including the terms "controlled by" and "under common control with") means the power to direct or cause the direction of the management and policies of a Party (whether through the ownership of voting securities, by contract or otherwise), or ownership of more than 50% of the voting securities of that Party. Notwithstanding the foregoing, all entities listed on 74Software SA's yearly registration document available at <https://www.74software.com/investor-relations> shall be deemed to be "Affiliates" of SBS.
- 1.2. "**SBS Content**" means all software, data, text, images, audio, video, photographs and other content and material, in any format, that are obtained or derived from SBS that Customer may access through, within, or in conjunction with the use of the Subscription Services. Examples of SBS Content include, but are not limited to, Product, Documentation SBS and connectors.
- 1.3. "**Deliverable**" means tangible result of Professional Services provided to Customer pursuant to an Order Form.
- 1.4. "**Documentation**" means all specifications published in the Product documentation, user guides and Service Level Agreement Description document delivered by SBS to Customer with regard to the applicable Product or Subscription Services.
- 1.5. "**Evaluation**" or "**Free trial**" means a restricted temporary right to access to the Subscription Services for evaluation and non-commercial purpose use of the Product and/or the Subscription Services.
- 1.6. "**Managed Environment**" means either (i) the combination of hardware and software components owned, licensed or managed by Customer and necessary to receive access to the Subscription Services ("Customer Managed Environment").
- 1.7. "**Order Form**" means the Customer specific terms, the Statement of Work (SOW), or SBS' standard order form (or other similar document duly executed by the Parties) entered into pursuant to this Agreement which specifies the Subscription Services, Products and/or Professional Services to be ordered by Customer hereunder, and the fees therefor.
- 1.8. "**Order Form Effective Date**" or "**Effective Date**" means, with respect to each Order Form, (i) the effective date specified on the Order Form or, if none, the date of the last signature, (ii) if Customer purchased Services through a channel partner, upon SBS' express acceptance of the Order Form following its submission by the channel partner.
- 1.9. "**Products**" means the software products to which SBS permits access to Users as part of the Subscription Services, as specified in an Order Form. Product may include any software agent, application or tool that SBS

makes available to Customer for download specifically for purposes of facilitating Customer access to, operation of, and/or use the Subscription Services.

- 1.10. **"Professional Services"** mean installation services, implementation services, consulting services, managed services, and/or training, delivered by SBS to Customer as set forth in an Order Form (and specifically excluding Subscription Services).
- 1.11. **"Customer Content"** means the data and other materials provided by the Customer to SBS for the purpose of delivering the Services.
- 1.12. **"Initial Subscription Term"** and **"Renewal Term"** shall have the meanings ascribed to those terms in Section 9.2 of this Agreement.
- 1.13. **"Services"** means, collectively, the Subscription Services and Professional Services.
- 1.14. **"Statement of Work"** or **"SOW"** means SBS' standard statement of work (or other similar document duly executed by the Parties) entered into pursuant to this Agreement that describes the Professional Services to be provided by SBS to Customer.
- 1.15. **"Subscription Term"** means the period identified in the applicable Order Form during which SBS is required to provide Customer with Subscription Services. Subscription Term includes Initial Subscription Term together with any Renewal Terms, as defined herein.
- 1.16. **"Subscription Services"** means with respect to the Order Form, the Product(s) provided by SBS, installed and used within the Customer Managed Environment, together with the associated maintenance and support services, as specified in the applicable Order Form and this Agreement (and specifically excluding Professional Services).
- 1.17. **"Third Party Content"** means all software, data, text, images, audio, video, photographs and other content and material, in any format, that are obtained or derived from third party sources outside of SBS that Customer may access through, within, or in conjunction with the use of the Subscription Services. Third Party Content includes third-party sourced materials accessed or obtained by using the Subscription Services.
- 1.18. **"Usage Metrics"** means the quantitative limitations and units of measure, along with any other grants of or restrictions on use, applicable to the Subscription Services delivered to Customer, as set forth in an Order Form.
- 1.19. **"Users"** means any Affiliate of the Customer listed as a beneficiary in the Order Form, as well as employees, contractors of the Customer or such Affiliate, authorized by Customer or acting on its behalf, to use the Subscription Services in accordance with this Agreement and the applicable Order Form. For Subscription Services specifically designed to allow Customer's clients, agents, suppliers or other third parties to access the Subscription Services to interact with Customer, such third parties will be considered "Users" subject to the terms of this Agreement and the applicable Order Form.

2. ACCESS; USE; OWNERSHIP; RESTRICTIONS

- 2.1. **Rights granted.** SBS hereby grants Customer, for the applicable Subscription Term and subject to the terms and conditions of this Agreement and the applicable Order Form(s), a limited, non-exclusive, non-transferable, non-sublicensable, irrevocable (except as otherwise set forth herein) right to access and use the Subscription Services, up to the applicable Usage Metric(s), solely for the Customer's internal business purposes (excluding any bureau services or equivalent activities). SBS' Subscription Services are provided in accordance with applicable Documentation and relevant Order Form. SBS may from time to time modify the Subscription Services and their Documentation provided, however, such modification shall not result in any material degradation of the Subscription Services provided to Customer during the then-current Subscription Term. The Subscription Services and any Products may contain or rely on Third Party Content licensed to SBS under commercial or open source agreements. Customer's right to use such Third-Party Content are governed by the terms of any specific license agreement and not under this Agreement.
- 2.2. **User Limitations.** The following limitations apply to Customer's use of, or access to, the Subscription Service in addition to the Usage Metric(s) and limitations set forth in the relevant Order Form: (a) each User may access the Subscription Service only using his or her issued user ID and password; (b) the access rights granted herein are personal and specific to Users, and no person or entity other than a User will access or use the Subscription

Services without the prior written consent of SBS; (c) Customer may change Users by replacing Users who are no longer employed by Customer or who are no longer using the Subscription Services.

- 2.3. **Ownership.** SBS shall retain all right, title and interest (including, without limitation, all patent, copyright, trademark, trade secret and other intellectual property rights) in and to the Products, Subscription Services, SBS Content and Documentation and all copies thereof. Customer is granted no rights in the Products, Subscription Services, SBS Content and Documentation other than those limited rights expressly set forth herein and in the relevant Order Form(s). All right, title, and interest to the Retained Works shall remain with SBS. As used herein, “**Retained Works**” shall mean: (i) any pre-existing materials, intellectual property, methodology, or know-how, including any of SBS Content, SBS’ pre-existing software code, proprietary software tools, or training materials incorporated into the Deliverables; (ii) any modifications or enhancements or additions to any pre-existing materials discovered or reduced to practice in performance under the applicable SOW not specifically created for Customer; and (iii) any Third-Party Content which are integrated with or incorporated into the Deliverables. Except for “Retained Works”, all right and title to Deliverables exclusively and explicitly created by SBS for Customer pursuant to the Professional Services shall vest in the Customer upon full payment for such Deliverables. SBS grants Customer a perpetual, royalty-free and non-exclusive license to use and modify the Deliverables (and any Retained Works incorporated therein) for its internal use only, subject to any other express supplemental license terms otherwise applicable to the Deliverable, and to make a reasonable number of copies of the Deliverables for internal use.
- 2.4. **Prohibited Uses and Customer Restrictions.** The Products and Subscription Services, including any portions thereof, may not be used for any purpose that would be a violation of this Agreement or any Order Form. Customer shall not (and shall not permit any third party to): (a) copy or otherwise reproduce the Products or Subscription Services (or any portion thereof, including any graphics, functions, or features), except Customer may make a number of copies of the Products for archival purposes only; (b) modify, adapt, alter, or otherwise create derivative works from the Products or Subscription Services, except as expressly approved by SBS in writing; (c) use (or permit to be used) the Products or Subscription Services for timesharing, service bureau, hosting, service provider or like purposes; (d) distribute, sublicense, repackage, lease, assign, rent, sell, loan, or otherwise transfer the Products or Subscription Services (however, as applicable, the Customer is permitted to license an Application to an App User via an App Store); (e) decrypt, disassemble, extract, reverse engineer, decompile, or attempt to derive the source code of the Products or Subscription Services, except to the extent such activities are permitted under applicable mandatory laws that may not be limited by contract, including, without limitation, laws implementing EU Directive 91/250/EEC provided, however, that Customer shall not exercise any such rights without giving SBS thirty (30) days prior written notice and an opportunity to provide interoperability information or other items to Customer to alleviate the need to engage in the activities that are prohibited under this Agreement; (f) remove, alter or obscure in any way any copyright or other proprietary rights on or within the Products and/or the Documentation; or (g) build a product or service or otherwise commercially exploit directly or indirectly in competition to SBS’ Products and/or Subscription Services utilizing or from reference to the trade secrets, Products, Subscription Services, Confidential Information, or other items made available by SBS hereunder.
- 2.5. **Other Restrictions.** Customer’s Users shall not use the Products or Subscription Services to: (a) violate any laws or regulations; (b) transmit any material that is obscene or objectionable or that contains viruses or other harmful computer code or files, or (c) infringe the intellectual property or other rights of third parties, or upload, store, share, display, post, e-mail, transmit or otherwise make available any material that infringes any copyright, patent, trademark, trade secret or other proprietary rights of any person or entity. SBS reserves the right to terminate the accounts of any User that commit any such violations. Customer is solely responsible for the conduct of Users, protecting its own data, and the results obtained by Customer using the Products and Services, and any direct or indirect consequences thereof.
- 2.6. **Customer’s responsibilities.** The Customer shall be responsible for the following: (a) choosing its network accessibility provider, notably in terms of security options, (b) compliance with SBS’ recommended minimum technical specifications required to use the Subscription Services, (c) protecting the personal laptops accessing the Subscription Services, (d) the results obtained by using the Subscription Services and any direct or indirect consequences thereof, and (e) appointing one of its employees to serve as the primary point of contact with SBS

for any technical issues, (f) maintaining the confidentiality and safeguarding the login credentials provided by SBS. The Customer agrees and warrants that (i) the Customer shall not authorize the use of one (1) user account by more than one (1) authorized User, unless the account has been fully reassigned to another one (1) authorized User, in which case the previous authorized User shall no longer have the right to access or use SBS Products, Services, or Documentation; (ii) each authorized User shall maintain the confidentiality and security of their login credentials. The Customer is responsible for implementing its own security measures to protect login credentials and prevent their disclosure to third parties.

- 2.7. **Documentation and Electronic Access.** Access to the Subscription Services and the Documentation shall be provided by electronic means. Subscription Services shall be deemed delivered when access is made available for download to Customer.

3. FEES, PAYMENT, TAXES.

- 3.1. **Fees.** The fees for the Services shall be set forth in the applicable Order Form. In addition to any fees set forth in the Order Form, Customer shall reimburse SBS for all mutually agreed expenses actually incurred by SBS in providing any on-site portion of the Services. Except as otherwise specified herein or in an Order Form, (i) Subscription Services fees are based on Usage Metrics purchased and not actual usage, (ii), purchased Usage Metrics cannot be decreased during the relevant Subscription Term, and (iii) once an Order Form is placed, payment obligations are non-cancelable and fees paid are non-refundable, subject to Section 9.4 of this Agreement. If Customer exceeds the ordered Usage Metrics, then Customer must, as soon as he becomes aware of it, order and pay fees for the excess quantity. Customer agrees that the ordering of Subscription Services are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by SBS regarding future functionality or features; however, the preceding does not relieve SBS from fulfilling its obligation to deliver Services the Customer ordered under this Agreement.
- 3.2. **Payment Terms.** Unless otherwise agreed in the applicable Order Form, all fees hereunder shall be paid by Customer within thirty (30) days from the date of the invoice. Unless otherwise specified in the Order Form, Subscription Services fees shall be invoiced annually, in advance; Professional Services fees shall be invoiced monthly in arrears. The fees for the Subscription Services will be adjusted annually on January 1st, based on the index and according to the indexation formula specified in the Order Form.
- 3.3. **Late Payment; Suspension of Services.** Failure to pay any invoiced amounts on time shall, to the fullest extent permitted by applicable law, result in (i) the Customer being liable for late payment fees (as specified on the invoice) on all overdue amounts from the invoice due date, as well as reimbursement of all collection costs incurred by SBS in recovering overdue payments, duly justified by SBS; (ii) if the Customer remains in default for thirty (30) days following written notice to make such payment, SBS shall have the right to suspend the provision of Services until full payment is received, without prejudice to any other rights and/or remedies available to SBS.
- 3.4. **Payment Disputes.** SBS will not exercise its rights under Section 3.3 above if Customer disputes the applicable fees reasonably and in good faith and cooperates diligently to resolve the dispute.
- 3.5. **Taxes.** Customer shall pay any taxes, duties, or charges (including any sales, withholding or value added taxes) imposed by any federal, state or local governmental entity for Products or Services provided under this Agreement, except for taxes based solely on SBS' net income, property and employees.
- 3.6. **Purchase Orders of Customer.** Customer may submit purchase orders for Customer's internal administrative purposes after execution of the Agreement. Notwithstanding anything to the contrary, no terms or conditions in any Customer purchase order or other similar Customer document will be binding with respect to the subject matter of this Agreement or any Order Form, and all such terms are hereby expressly rejected by SBS.
- 3.7. **Partners.** In the event Customer orders Subscription Services through an authorized SBS partner or reseller, this Agreement, excluding this Section 3, shall apply to Customer's use of the Subscription Services.

4. WARRANTY.

- 4.1. **Subscription Services Performance Warranty.** SBS warrants during the Subscription Term that the applicable Subscription Service will perform in accordance with the Documentation. In the event of a breach of this warranty,

SBS shall use all necessary and reasonable efforts to modify the Subscription Services to bring the non-conforming functionality into compliance. To benefit from this warranty and the remedies provided herein, the Customer must notify SBS of the alleged breach with as much detail as possible within thirty (30) days of its occurrence.

- 4.2. **Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THERE ARE NO OTHER WARRANTIES, LIABILITIES OR REMEDIES PROVIDED BY SBS, SBS' SUPPLIERS OR ANY OTHER THIRD PARTY WITH RESPECT TO THE SERVICES. OTHER THEN THE FOREGOING EXPRESS WARRANTIES, THE SERVICE AND THE CONTENT THEREIN ARE PROVIDED TO CUSTOMER STRICTLY ON AN "AS IS" BASIS. SBS MAKES NO WARRANTY THAT THE SERVICE WILL BE ERROR-FREE, OR FREE FROM INTERRUPTIONS OR OTHER FAILURES OR THAT THE SUBSCRIPTION SERVICE WILL SATISFY CUSTOMER'S SPECIFIC REQUIREMENTS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SBS DISCLAIMS ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE. SOME STATES AND JURISDICTIONS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES, SO THE ABOVE LIMITATION MAY NOT APPLY TO CUSTOMER.

5. CONFIDENTIALITY

- 5.1. **Confidential Information Definition.** As used herein, "**Confidential Information**" means information disclosed by one Party and/or its Affiliate (the "**Disclosing Party**") to the other Party and/or its Affiliate (the "**Receiving Party**") pursuant to or in connection with this Agreement that the Disclosing Party identifies as being proprietary or confidential or that, given the nature of the information or the circumstances surrounding disclosure the Receiving Party knows or should know the Disclosing Party considers such information as confidential or proprietary. SBS' Confidential Information includes information regarding products, pre-release products, software, services, pricing, marketing and business plans and financial information. SBS and Customer will treat the terms and conditions of this Agreement as confidential; however, either Party may disclose such information in confidence to its immediate legal and financial consultants as required in the ordinary course of that party's business.
- 5.2. **Confidential Information Exclusions.** Confidential Information shall not include any information that: (a) is already known to the Receiving Party at the time of disclosure, as shown by the Receiving Party's records; (b) is, through no act or failure to act of the Receiving Party, becomes publicly known; (c) is received by the Receiving Party from a third Party without restriction on disclosure or breach of an obligation of confidentiality; (d) is independently developed by the Receiving Party without use or reference to the Confidential Information of the Disclosing Party; or (e) is approved for release by written authorization of the Disclosing Party, but only for the limited purposes of and to the limited recipients of such authorized release.
- 5.3. **Non-Use; Non-Disclosure.**
- 5.3.1. The Receiving Party shall not use any Confidential Information of the Disclosing Party, except for the purposes of performance of this Agreement (the "Purpose") and shall take all reasonable measures (and at least those measures that the Receiving Party applies to protect its own Confidential Information, (but in no event less than reasonable care) to: (i) protect the secrecy of the Disclosing Party's Confidential Information, and (ii) avoid disclosure and unauthorized use of the Disclosing Party's Confidential Information. Except as expressly approved in writing by the Disclosing Party, the Receiving Party agrees not to disclose any Confidential Information to third parties and shall only forward or otherwise disseminate copies of Confidential Information, in whole or in part, to persons within the Receiving Party's organization (including Affiliates) who have a "need-to-know" for the Purpose and who are subject to a duty of confidentiality with respect to such information that is no less restrictive than the provisions of this Section. If the Receiving Party makes copies of Confidential Information, it shall not remove or obstruct any copyright or other proprietary notices include therein.
- 5.3.2. A disclosure of Confidential Information by the Receiving Party (i) in response to a valid order by a court or other governmental body, or (ii) otherwise required by law, shall not be considered a breach of this Agreement or a waiver of confidentiality for other purposes; provided, that the Party disclosing such information shall provide prompt written notice in advance thereof to the other Party to enable it to seek a protective order or otherwise prevent such disclosure.

5.4. **Ownership; No License.**

5.4.1. The Parties agree Confidential Information is the sole exclusive property (including all world-wide rights therein in under patent, copyright, trade secret, confidential information, or other proprietary rights) of the Disclosing Party.

5.4.2. The disclosure of the Confidential Information to the Receiving Party does not in itself confer upon the Receiving Party any license, interest or rights of any kind in or to the Confidential Information.

5.5. **Return or Destruction.** Except as otherwise set forth herein, upon termination of the Agreement for any reason, the Receiving Party shall promptly return to Disclosing Party (or destroy and certify to the destruction of) all Confidential Information, including all copies and materials related hereto. Receiving Party may retain a copy for evidentiary or compliance purposes, which copy shall remain subject to all confidentiality obligations under this Section so long as it is retained.

5.6. **Confidentiality Term.** The Parties' obligations with regard to the Confidential Information shall remain in effect during the term of this Agreement and for a period of five (5) years thereafter.

6. **CUSTOMER CONTENT; PRIVACY AND SECURITY**

6.1. **Customer Content.** As part of the Services provided under this Agreement, Customer Content shall be stored and processed by the Customer. SBS shall not access Customer Content without the Customer's prior written authorization for the purpose of performing in the Services. SBS is not responsible for unauthorized access, alteration, theft, or partial or total destruction of Customer Content arising from Customer's own or its authorized Users' actions or omissions.

6.2. **Privacy and Customer Content.** If Customer transfers any personal data to SBS in connection with the Services and/or provides SBS access to any data, then Customer warrants that (i) it is duly authorized to provide personal data to SBS and it does so lawfully in compliance with relevant legislation, (ii) SBS and its Affiliates or its subcontractors, acting on behalf of SBS, may use such data strictly for the purposes of performing its obligations under this Agreement, and (iii) SBS may disclose such data to its Affiliates and its subcontractors for this purpose and may transfer such data to countries outside of the country of origin. SBS and its Affiliates have committed to comply with relevant data protection/privacy legislation, and personal data will be transferred in accordance with the 74Software Privacy Statement, to which SBS adheres, available at <https://www.74software.com/privacy-statement>.

6.3. **Security.** The security measures implemented by SBS in connection with the provision of the Services with subscription are described in more detail in the Security Management Plan ("SMP") available on SBS' website. SBS has implemented its own Business Continuity Plan ("BCP") to ensure the availability of SBS Products, as specified in the SMP. This BCP is tested annually in accordance with industry best practices. Documentation and results of these tests may be provided to the Customer upon request.

7. **INDEMNIFICATION**

7.1. **Obligations of SBS.** SBS shall a) defend the Customer, any Affiliate listed as a beneficiary in the applicable Order Form, its Beneficiaries, their directors and employees, and hold them harmless from any claims, suits, or legal actions brought by unaffiliated third parties against the Customer or any such Affiliate, alleging that the use of the Subscription Services or Deliverables infringes or is alleged to infringe any patent, copyright, or trade secret of such third party ("**Infringement Claim**"); and b) indemnify and hold harmless the Customer, any Affiliate listed as a beneficiary in the applicable Order Form, their directors and employees, from (i) any costs or damages awarded against the Customer or such Affiliate by a court of competent jurisdiction in connection with an Infringement Claim, to the extent such claim arises from the use of an SBS Product in accordance with this Agreement (excluding any enhanced damages resulting from willful infringement by the Customer or such Affiliate); and (ii) any amounts payable under a settlement agreement entered into by SBS.

7.2. **Obligations of Customer.** Sections 7.1 and 7.2 are subject to the following conditions: (a) the Customer must promptly notify SBS in writing of any allegation preceding the Infringement Claim and reasonably cooperate with SBS to resolve the allegation and the Infringement Claim; (b) the Customer must assign SBS exclusive control over

the defense of the Infringement Claim, subject to the following: (i) the Customer may appoint its own legal counsel (without control over strategy), at its own expense; and (ii) any settlement requiring the Customer to admit liability, pay money, or take (or refrain from taking) any action shall require the Customer's prior written consent, which shall not be unreasonably withheld, conditioned, or delayed. A breach of this Section 7.2 shall not relieve SBS of its obligations under Sections 7.1 or 7.2 unless SBS has suffered material prejudice as a result.

- 7.3. **Exclusions.** SBS' indemnification obligations shall not apply to the extent such Infringement Claim directly arises from, or is in any manner attributable to: (i) the use of the Product, Service, or Deliverable other than in accordance with this Agreement, (ii) the combination of a Product, Subscription Service, or Deliverable with a non-SBS product not set forth in the Documentation; (iii) use of a non-current version of the Product, Subscription Service or Deliverable when use of a new SBS version made available to Customer would have avoided the infringement; or (iv) any modification of the Products, Subscription Services or Deliverables by Customer, unless such modification was provided for in the Documentation.
- 7.4. **Cures.** Should Customer's use of the Products, Subscription Services or Deliverables is determined, pursuant to an Infringement Claim, have infringed any third party intellectual property rights, or If SBS reasonably determines that any Products, Subscription Services, or Deliverables are likely to infringe the intellectual property rights of a third party, SBS may, at its sole discretion and at its own expense, (i) obtain the right for the Customer to continue using the Products, Subscription Services, or Deliverables; (ii) modify the Products, Subscription Services, or Deliverables to make them non-infringing without materially reducing their functionality; or (iii) replace the Products, Subscription Services, or Deliverables with a non-infringing and functionally equivalent alternative. If SBS determines that the remedies set forth in Section 7.5 are not commercially reasonable and provides justification to the Customer, SBS may decide to partially or fully terminate the orders related to the affected Products, Subscription Services, or Deliverables, in which case SBS shall refund the Customer for any unused prepaid fees paid to SBS for the use of the terminated Products, Subscription Services, or Deliverables.
- 7.5. WITHOUT PREJUDICE TO EITHER PARTY'S TERMINATION RIGHTS, THE FOREGOING STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES AND SBS' SOLE AND EXCLUSIVE LIABILITY WITH RESPECT TO INFRINGEMENT CLAIMS.

8. LIMITATION OF LIABILITY.

FOR THE PURPOSES OF THIS ARTICLE, "CUSTOMER" SHALL BE UNDERSTOOD TO MEAN BOTH THE CUSTOMER AND ITS AFFILIATES LISTED AS BENEFICIARIES IN THE APPLICABLE ORDER FORM, AND LIKEWISE, ANY REFERENCE TO "PARTY" DESIGNATING THE CUSTOMER SHALL INCLUDE SUCH AFFILIATES.

- 8.1. **Limitation of Liability.** EXCEPT FOR BREACHES OF SECTION 2 "ACCESS; USE; OWNERSHIP; RESTRICTIONS" BY CUSTOMER, SECTION 5 "CONFIDENTIALITY" BY EITHER PARTY OR SECTION 7 "INDEMNIFICATION" BY EITHER PARTY, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY, FROM ANY AND ALL CAUSES OF ACTION ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT ACTUALLY PAID BY CUSTOMER AND ALL OF ITS AFFILIATES HEREUNDER FOR THE SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST CLAIM. ANY DAMAGES AGAINST SBS SHALL BE REDUCED BY ANY REFUND OR CREDIT RECEIVED BY CUSTOMER UNDER THE AGREEMENT AND ANY SUCH REFUND AND CREDIT SHALL APPLY TOWARDS THE LIMITATION OF LIABILITY.
- 8.2. EACH OF THE PARTIES ACKNOWLEDGES THAT DAMAGES ALONE SHALL CONSTITUTE AN INSUFFICIENT REMEDY IN THE EVENT OF A BREACH OF THIS AGREEMENT WITH RESPECT TO THE PROTECTION OF A PARTY'S INTELLECTUAL PROPERTY RIGHTS OR CONFIDENTIAL INFORMATION. CONSEQUENTLY, EACH PARTY SHALL HAVE THE RIGHT TO INITIATE SUMMARY OR PROTECTIVE PROCEEDINGS, PROVISIONAL MEASURES, OR EX PARTE PROCEDURES TO PREVENT ANY BREACH OR RISK OF BREACH, OR TO SPECIFICALLY ENFORCE THE SAID OBLIGATIONS PROVIDED FOR IN THE AGREEMENT.
- 8.3. **Exclusion of Consequential Damages.** EXCEPT FOR BREACHES IN SECTION 2 "ACCESS; USE; OWNERSHIP; RESTRICTIONS" BY CUSTOMER, SECTION 5 "CONFIDENTIALITY" BY EITHER PARTY OR SECTION 7 "INDEMNIFICATION" BY EITHER PARTY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO ANYONE, WHETHER IN CONTRACT OR TORT, FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL

OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY RELATED THE SERVICES, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE EVEN IF A PARTY HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTHING IN THIS AGREEMENT LIMITS OR EXCLUDES ANY LIABILITY THAT CANNOT BE LIMITED OR EXCLUDED UNDER APPLICABLE LAW. THE ABOVE LIMITATIONS WILL NOT LIMIT CUSTOMER'S OBLIGATION TO PAY IN ANY WAY.

- 8.4. **Evaluation; Free Trial.** With respect to any Free Trial, SBS' aggregate liability will in no event exceed one hundred euros, regardless of any theory of liability, and notwithstanding any provision of this Agreement to the contrary, including Sections 8.1 and 8.3.

9. TERM AND TERMINATION.

- 9.1. **Agreement Term.** This Agreement shall commence from the Effective Date and shall remain in force until terminated pursuant to this Section.
- 9.2. **Order Form Term.** The term of each Service shall be specified in the applicable Order Form. Unless terminated earlier in accordance with this Section, the initial subscription period for a particular Subscription Service shall be the period beginning on the Order Form Effective Date and ending on the number of months or years specified in the Order Form thereafter ("Initial Subscription Term"). At the end of the Initial Subscription Term, the subscription under that applicable Order Form may be automatically renewed for a period equal to the Initial Subscription Term ("Renewal Term"), unless either Party gives the other Party a written notice of termination no later than ninety (90) days before expiration of the Initial Subscription Term or the then-current Renewal Term. The Initial Subscription Term and any Renewal Term may each be on a separate Order Form or otherwise specified in an Order Form.
- 9.3. **Free Trial Term.** With respect to a Free Trial, the term begins on the Order Form Effective and ends on the later of (a) the 30th day following the Order Form Effective Date, and (b) the Free Trial expiration date specified in the Order Form.
- 9.4. **Termination for Breach.** Except in the case of termination for breach as detailed below, neither Party may terminate the Agreement and/or any Order Form early during its term as described in the "Term and Termination" section. Each Party may terminate the Agreement and/or any Order Form if the other Party fails to comply with any of its obligations, provided that a formal notice specifying the alleged breaches is sent by registered letter and the breach is not remedied within thirty (30) days from the date of sending such notice. Any amounts due as of the effective termination date of the Agreement and/or any Order Form shall become immediately payable.
- 9.5. **Termination for Financial Incapability.** Unless otherwise required by applicable laws or regulations, either party may terminate this Agreement and/or any Order Form, immediately, upon written notice to the other Party if the other Party: (a) admit in writing its inability to pay its debts generally as they become due or the winding up of its business; (ii) makes a general assignment for the benefit of its creditors; (iii) institute proceedings to be adjudicated in a voluntary arrangement or consent to the filing of a petition of bankruptcy against it; (iv) be adjudicated by a court of competent jurisdiction as being bankrupt or insolvent; (v) seek reorganization under any bankruptcy legislation, or consent to the filing of a petition seeking such reorganization; or (vi) have a decree entered against it by a court of competent jurisdiction appointing a receiver, liquidator, trustee or assignee in bankruptcy or insolvency covering all or substantially all of such Party's property or providing for the liquidation of such Party's property or business affairs.
- 9.6. **Refund or Payment upon Termination.** If this Agreement is terminated by Customer in accordance with Section 9.4 ("Termination for Breach") or Section 9.5 ("Termination for Financial Incapability"), SBS will provide a pro-rata refund to Customer of any prepaid fees for the remainder of the prepaid term as of the date of termination. If this Agreement is terminated by SBS in accordance with Section 9.4 ("Termination for Breach") and Section 9.5 ("Termination for Financial Incapability"), Customer will pay any unpaid fees covering the remainder of the term of all Order Form. In no event the termination of this Agreement and/or any Order Form relieves Customer of its obligation to pay any fees payable to SBS for the period prior to the date of termination.

- 9.7. **Consequences of Termination.** Upon the termination of this Agreement and/or any Order Form for any reason set forth herein, Customer must cease use of the Subscription Services and the Products, remove it from all Customer systems, delete or destroy all copies of the Product in its possession, and certify to SBS in writing the foregoing have been completed thirty (30) days from date of termination. If the Agreement and all Order Form are terminated, each Party shall either return to the other Party or destroy (and certify to the destruction of) all Confidential Information of the other Party then in its possession or control. If only certain Order Form are terminated, then only such Confidential Information with respect to such Order Form shall be returned or destroyed (and the destruction certified to). The termination of this Agreement shall have no impact on the continuing validity and effect of any Order Form that may have been entered into between the parties prior to such termination, unless and to the extent such Order Form are terminated. Subject to Section "Refund or Payment upon Termination" of this Agreement or any Order Form does not relieve Customer of any of its payment obligations under any Order Form.
- 9.8. **Customer Content Portability and Deletion.** Upon written request by Customer at least thirty (30) days prior to the date of termination of the applicable Order Form or expiration of the Subscription Term, SBS will make the Customer Content available to Customer for a period of thirty (30) days after such termination or expiration. SBS will provide Customer with archival data in a format mutually determined, subject to a duly executed SOW. After such thirty (30) day period, SBS shall have no obligation to maintain or provide any Customer Content and shall thereafter, unless legally prohibited, delete all data in SBS' possession. Customer shall remain responsible for archiving data in accordance with legal requirements.
- 9.9. **Termination Assistance Services.** Following the termination of this Agreement and/or any Order Form, the Parties may agree for SBS to provide transition services pursuant to a duly executed SOW, during which time this Agreement will continue in full force and effect solely to the extent necessary to allow such transition services to be performed.
- 9.10. **Survival.** The following Sections will survive termination or expiration of the Agreement: "ACCESS; USE; OWNERSHIP; RESTRICTIONS", "FEES; PAYMENT; TAXES"; "TERM AND TERMINATION"; "WARRANTY"; "CONFIDENTIALITY"; "LIMITATION OF LIABILITY"; "MISCELLANEOUS"; and "DEFINITIONS".

10. MISCELLANEOUS

- 10.1. **Assignment.** This Agreement and any licenses granted hereunder may not be assigned or transferred in whole or in part by either Party without the other Party's prior written consent, which shall not be unreasonably withheld. Notwithstanding the foregoing, SBS may assign and transfer its rights and obligations under this Agreement, without the consent of Customer, to an Affiliate. The Parties benefiting from this Agreement have rights and obligations that bind them, as well as their successors and authorized assigns.
- 10.2. **Audit; Reporting.**
- 10.2.1. **By SBS.** During the Term of this Agreement, but not more than once (1) annually, SBS may, at its own expense and on dates and times mutually agreed by the Parties, conduct an audit of the other Party, with the scope determined by the Parties in advance of such audit, solely to verify compliance with the terms of this Agreement and any Order Form. In addition to any such audit rights, Customer agrees, upon written request by SBS, provide SBS with a written report certified by an officer, verifying its usage is in compliance with the applicable Usage Metric(s) and stating the physical site(s) and computer systems with respect to which Customer is using any Products or Subscription Services. In the event of any use in excess of the Usage Metrics, Customer shall pay the additional fees for such excess within fifteen (15) days from the date of invoice, in accordance with Section "Fees" above. Failing that, SBS may suspend Customer's use of the Product or Subscription Services, or terminate the Agreement for breach, without prejudice to any other rights and/or remedies available to SBS.
- 10.2.2. **By Customer.** During the Subscription Term, Customer or Customer's supervisory authority may, upon at least thirty (30) days' prior written notice (unless a shorter notice period is required by applicable law or by a supervisory authority), and at its own expense, conduct or appoint a third party (subject to confidentiality obligations and provided such third party is not a competitor of SBS) to conduct an audit of SBS' operations

relevant to the provision of the Subscription Service, for the purpose of (i) responding to any request from the supervisory authority, or (ii) enabling Customer to monitor the provision of the Subscription Services in accordance with the Agreement. Audits shall not disrupt SBS' business operations or result in additional costs for SBS. SBS shall facilitate the audit by providing reasonable access to necessary information and documents. Beyond two (2) man-days of assistance per year, including responses to questionnaires or information requests, Customer shall bear all additional costs incurred by SBS in connection with the audit, duly justified by SBS. Customer shall provide SBS with a copy of the audit report free of charge, and the Parties shall jointly review its findings.

- 10.3. **Non-Solicitation.** For the Term of this Agreement and for the period of twelve (12) months thereafter, neither Party shall, without the prior written consent of the other Party, actively endeavor to solicit or entice away any person employed or engaged by the other Party in the performance or administration of this Agreement. If a Party breaches the foregoing obligation, the breaching party shall pay to the non-breaching Party twelve times the most current monthly base salary of the relevant person, such sum deemed by both Parties to be fair compensation for the loss suffered as a result of the breach. This Section shall not apply to any individual who can be proven to have responded to a bona fide published recruitment advertisement where the recruited person is not recruited to work for or with a Party's personnel or department involved in this Agreement. Nothing in this Section is intended to restrict the right of any individual to seek employment with whomsoever they wish, but is intended to provide for due compensation where such a situation occurs as a result of entering into this Agreement recognizing that loss of experienced personnel can have a serious effect upon any employer.
- 10.4. **Ethics; Anti-Corruption.** Each Party is expected to conduct its business free from any unlawful or fraudulent activity and to acknowledge and apply the principles set forth in its own code of conduct. Customer agree that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of SBS employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If Customer learns of any violation of the above restriction, Customer shall use all necessary efforts to promptly notify the 74Software Ethics Office: <https://www.74software.com/ethics-and-anti-corruption>, which SBS benefits from as an Affiliate of 74Software
- 10.5. **Insurance.** Throughout the Subscription Term of this Agreement, each Party represents and warrants that it will maintain a valid insurance policy covering its civil liability and any damage to its property. Upon Customer's request, SBS shall provide the necessary documentation evidencing such insurance.
- 10.6. **Publicity; References.** The Customer must include SBS' name any time it refers to the Product and/or the Subscription Services. Provided that SBS complies with any trademark usage requirements notified by Customer, SBS may refer to Customer as one of SBS' customers and use Customer's logo as part of such reference. With Customer's prior written approval, which will not to be unreasonably withheld, SBS may issue a press release announcing the relationship between SBS and Customer.
- 10.7. **Entire Agreement; Order of Precedence.** This Agreement contains the entire agreement of the parties hereto relating to the Products, Services, and Documentation (including written reference to information contained in a URL or referenced policies), and supersedes any prior written or oral communications, representations, agreement between the Parties with respect to the Products, Services, and Documentation. It is expressly agreed that the terms of this Agreement and any Order Form shall supersede the terms in any Customer purchase order, procurement internet portal, or other similar non-SBS document and no terms included in any such purchase order, portal, or other non-SBS document shall apply to the Services ordered. Customer may submit purchase orders for Customer's internal administrative purposes after execution of the Agreement. In the event of any conflict between the terms of this Agreement and any Order Form, the applicable Order Form shall take precedence. This Agreement and any Order Form hereunder may be amended only in writing signed by the authorized representatives of the Parties hereto; however, SBS may update applicable Documentation, including by posting updated documents on SBS' websites.
- 10.8. **Severability; Waiver.** If any Section in this Agreement shall be determined to be partially void or unenforceable by any court or body of competent jurisdiction or by virtue of any relevant legislation, that section shall be void or unenforceable to that extent only and no further, and the validity and enforceability of the other Sections of this

Agreement shall remain in full force and effect. No waiver, neglect or forbearance of any right under this Agreement shall be deemed a waiver unless contained in writing and signed by a duly authorized representative of the Party purporting to make the waiver, and no waiver of any past or present right arising from any breach or failure to perform shall be deemed to be a waiver of any future right arising under this Agreement.

- 10.9. **Independent Contractors.** Customer and SBS shall perform their duties pursuant to this Agreement as independent contractors. Nothing in this Agreement shall create (or be construed as creating) a joint venture, partnership or other joint relationship between Customer and SBS. Neither Party shall have the authority or power to bind, to contract in the name of or have the ability to incur any obligation on behalf of the other Party.
- 10.10. **Export Controls.** Both Parties acknowledge that use of the Subscription Services, Products, SBS Content and Third Party Content may be subject to U.S. and European export and import laws. Both Parties agree to comply with all applicable export and import laws and regulations. Customer acknowledges that the Subscription Services, Products, SBS Content and Third Party Content may not be exported or re-exported to any U.S. or EU embargoed countries or to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Persons List or Entity List, or otherwise exported or re-exported without the appropriate license or authorization. Without limiting the foregoing, (i) each Party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, and (ii) Customer shall not access or use Subscription Services, Products, SBS Content and Third Party Content in violation of any U.S. export embargo, prohibition or restriction. Specifically, Customer covenants that it will not, directly or indirectly, sell, export, re-export, transfer, divert, or otherwise dispose of any products, software, or technology (including products derived from or based on such technology) received from SBS under this Agreement to any destination, entity, or person prohibited by the laws or regulations of the United States or EU, without obtaining prior authorization from the competent government authorities as required by those laws and regulations.
- 10.11. **Force Majeure.** A Party's performance under this Agreement is excused if that Party is unable to perform under this Agreement due to an event beyond its reasonable control, including without limitation, natural disasters, labor unrest, government restrictions (including the denial or cancellation of any export or other license), electrical, internet, or telecommunication outage that is not caused by the obligated party, acts of terrorism, and the like ("Force Majeure Event"). Both Parties will use reasonable efforts to mitigate the effect of a Force Majeure Event. If such event continues for more than thirty (30) days starting on the day the Force Majeure Event starts, either Party may cancel unperformed services upon written notice. This section doesn't excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or Customer's obligation to pay for the services.
- 10.12. **Enhancement Analysis.** Customer acknowledges and agrees that SBS may collect, access, use, and process:
- (a) Customer specifications, meaning configurations, functional requirements, settings, and other information provided or selected by Customer for the implementation, customization, or use of the Products or Services; and
 - (b) usage data, meaning technical and operational data generated from Customer's use of the Products or Services, including performance metrics, error logs, feature usage statistics, and similar data, provided that such data does not contain any of Customer's Confidential Information in an identifiable form. SBS may use the above data for the following purposes: (a) to operate, maintain, and support the Products and Services; (b) to improve the performance, functionality, and security of the Products and Services; and (c) to develop new features, products, or services. SBS shall process such data in accordance with applicable data protection laws, implement appropriate technical and organizational measures to protect it, and, where applicable, use only aggregated and/or anonymized data for product development and analysis.
- 10.13. **Artificial Intelligence.** SBS Software declares that it has adopted and implemented the measures described in its internal policy entitled "AI Governance & Standards," which includes mechanisms for traceability, control, and governance aligned with the ethical and environmental objectives of the 74Software Group. In the event that, under the Agreement, SBS Software provides the Client with an AI System, it undertakes to inform the Client in advance and to provide useful information regarding its operation, limitations, performance, and the supervision measures implemented. SBS Software commits to conducting a risk assessment in accordance with Regulation (EU)

2024/1689 (AI Act) and, where applicable, to carrying out a data protection impact assessment in accordance with Regulation (EU) 2016/679 of April 27, 2016 (GDPR).

- 10.14. **Third Party Beneficiaries.** Except as expressly set forth in this Agreement, none of its Sections are intended nor will be interpreted to provide or create any third-party beneficiary rights or any other rights of any kind in any other party.
- 10.15. **Applicable Law; Jurisdictional Matters; Escalation.** The validity, interpretation and enforcement of this Agreement shall be determined in accordance with the laws of France. In the event of any dispute relating to the Agreement and/or the Services ("Dispute"), and without prejudice to either Party's right to seek injunctive relief, interim or protective measures, and/or *ex parte* proceedings before a competent court, the initiating Party shall send a registered letter with acknowledgment of receipt requesting that, within fifteen (15) days from receipt of said letter, senior management representatives of both Parties (who may be assisted by legal counsel, subject to prior notice to the other Party) meet in an effort to resolve the Dispute. If the Parties fail to reach an amicable resolution, they shall be free to initiate legal proceedings. The Parties agree that the *Tribunal des Activités Économiques* de Paris shall have exclusive jurisdiction over the resolution of any Dispute, notwithstanding multiple defendants or third-party claims, including for summary or protective proceedings, interim measures, or *ex parte* procedures. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.
- 10.16. **Notices.** Any notice or other communication permitted under this Agreement shall be made in writing and shall be deemed received if sent by prepaid registered mail or delivered by an express courier service within twenty-four (24) hours to SBS at the address specified in the Order Form, and to Customer at the address specified in the Order Form, or to any other address that the relevant Party may have designated by similar notice to the other Party. If SBS' address is not specified in the Order Form, notices to SBS shall be sent to its principal office address as listed on SBS' website, addressed to the Legal Department. Notice periods shall begin on the day following delivery. Each Party shall notify the other of any change of address in accordance with the provisions of this Section.
- 10.17. **Electronic Signature.** This Agreement may be executed using an electronic signature tool. The Parties agree that electronic execution of the Agreement shall have the same legal force and effect as the exchange of original signatures, and each Party hereby waives any right to challenge the validity or authenticity of the Agreement based on the use of an electronic signature software tool.