

Master Services Agreement / general terms and conditions

THIS MASTER SERVICES AGREEMENT ("Agreement") is entered into and effective as of the ____ day of _____, 2018 ("**Effective Date**") by and between Parantion Groep BV, located in Deventer, Netherlands and registered at the Chamber of Commerce registered number 08106883 ("**Parantion**"), and _____ a _____ corporation, having its principal offices at _____ ("**Client**"). Company or Partner may individually be referred to as a "Party" or collectively as the "Parties."

The parties, considering that:

- Parantion is a professional supplier in the area of e-business process and software support,
- Client wishes to acquire certain e-business software from Parantion, as well as associated additional services, including but not limited to support on such software,
- Parantion is willing to do so, subject to the terms and conditions below,
- Parantion in the course of execution of certain services may operate as a processor of personal data as that term is defined in the EU's General Data Protection Regulation ("**GDPR**"),

Have agreed as follows:

Article 1. Nature of this Agreement

- 1.1 Subject to payment of the stated fees and the conditions laid down in this agreement, Parantion will provide to Client the services described and all Services are provided under the Service Level Agreement of Annex A ("**SLA**") number Client XXXX Project XXXX Licence XXXX
- 1.2 Where in the course of a Service Parantion processes personal data as part of such Service, Parantion operates as processor as that term is defined in the GDPR. Such processing shall be subject to the requirements of the GDPR as set out in the Data Processing Agreement of Annex B. This Data Processing Agreement shall apply, and Parantion shall comply with the GDPR, regardless of whether Client is subject to the GDPR.
- 1.3 The following documents form an integral part of this agreement. The following ranking will apply in the event of inconsistencies between the provisions of this agreement or any Annexes thereto, from high to low:
 - i) the Service Level Agreement for the Services dated [DATE] (Annex A);
 - ii) the present document;
 - iii) the Data Processing Agreement dated [DATE] (Annex B);
 - iv) any other Annex.
- 1.4 An agreement on a Service is formed by the written acceptance of the proposal or the offer by the Client. The accepted agreement shall be incorporated into Annex A.
- 1.5 Proposals or offers of Parantion are non-binding and are valid for the term stated in the proposal. If no term is stated, the proposal shall be valid until thirty (30) days after the date on which the proposal is issued.
- 1.6 If information provided by the Client on which Parantion relied for a proposal turns out to be incorrect and/or incomplete, Parantion has the right to adjust the prices accordingly.

Article 2. Service provision

- 2.1 After agreement of the Client, Parantion will provide the Services as soon as possible as agreed in the applicable part of Annex A, taking into consideration reasonable wishes of the Client. Unless specified differently in writing, Parantion guarantees that the Services will be performed to the best of its ability with due care and skill.
- 2.2 When the proper execution of the Services so requires, Parantion has the right to have work carried out by third parties. Any additional costs related to this will be covered by Parantion, unless agreed otherwise.
- 2.3 Any delivery periods stated by Parantion shall always be indicative unless expressly stated in writing that a deadline applies. Parantion shall be in default only after an agreed deadline, after the Client has given notice of this default in writing, except in cases where mandatory law provides otherwise.

- 2.4 Parantion is never in default when the cause of the delay lies with the Client. In such a case, all deadlines are extended according to the time the Client needs to remove the cause.

Article 3. Software license

- 3.1 Access to the software is granted by means of software-as-a-service, Parantion shall use reasonable commercial efforts to have the software available at all times, but makes no specific guarantees except as agreed specifically in the Service Level Agreement.
- 3.2 Parantion shall use its best efforts to secure the software against unauthorized access by third parties and against theft or misuse of data, in accordance with commercial best practices. Parantion shall monitor the software for abuse (e.g. overload or attempts of sabotage) and may intervene to end or limit its impact.
- 3.3 Parantion will create an account to allow for software management by Client. Client can use this account to create additional accounts intended for end users, subject to Client supervision and responsibility. All actions that take place after logging onto an account of Client are assumed to take place under supervision and responsibility of Client. In case of (actual and/or suspected) misuse of the software, Client shall inform Parantion as soon as possible.
- 3.4 Where end users are required to log in to use the software, Parantion shall present those end users with End-User License Terms aimed at sanctioning misuse and unauthorized or excessive usage of the software. Notwithstanding any such terms, Client shall be ultimately responsible for any actions by its end users and shall indemnify and hold harmless Parantion from any claims from end users arising in connection with their usage of the software.

Article 4. Software availability and maintenance

- 4.1 Parantion will maximize its effort to provide Client with unlimited access to the software and to realize access the Clients' saved data but cannot guarantee access. Parantion will maximize its efforts, in the case of systems or network connections being unavailable, to inform the Client about the nature of, and the expected span of the disruption. The provisions of the Service Level Agreement shall prevail.
- 4.2 Parantion will maximize its efforts to secure the software and associated environment and hardware as can reasonably be expected with the current state of technology.
- 4.3 Parantion regularly carries out maintenance of the software which could lead to unavailability of the software. Should maintenance require a reduced or total unavailability of the software, then Parantion will consult in advance with Client on suitable moments for such maintenance.
- 4.4 From time to time Parantion may introduce new features or improvements to the software. If these are likely to have significant impact on the Integration, they will be discussed and tested with Client first.
- 4.5 Client may at any time request new features or improvements to the software. Parantion will provide an estimate of work, delivery time and cost for the Client's approval prior to starting the work. Work will be charged at its customary hourly rates unless agreed otherwise in an estimate.
- 4.6 Parantion has the right to directly contact end users if reasonably required to address quality issues, software bugs and other problems. No personal data of such end users will be retained beyond as immediately necessary for the contact itself.

Article 5. Support services

- 5.1 Parantion will offer a reasonable level of support to the Client by providing access to online documentation. Any other kinds of support are only available when agreed to as part of a Service, or as a separate Service. Support Services are subject to the terms of the present article.
- 5.2 Support Services can be ordered only by an authorized representative of the Client who has been certified by Parantion as a qualified administrator.
- 5.3 Support is only available for the current and previous version of the browsers Microsoft Edge, Google Chrome and Mozilla Firefox.

Article 6. Pricing and payment

- 6.1 Prices of Services are as set in the applicable part of Annex A. Client shall pay all amounts due within fifteen (15) days of receipt of a valid and undisputed electronic invoice from Parantion.
- 6.2 Client may dispute invoices within the payment term. Payment of the disputed amount shall be suspended until the dispute has been settled. Payment may not be suspended until notice of dispute has been received by Parantion, stating reasons for the dispute.
- 6.3 Unless a fixed amount has been agreed for a Service, the additional expenses of changes to the Services, either at the request of the Client or because, due to whatever circumstances, a different implementation is necessary, will be invoiced to the Client. In all cases, the Client must agree to the cost of any additional costs beforehand.
- 6.4 If employees perform work on location of the Client, all travel costs will always be charged.
- 6.5 Parantion has the right to disable access to software provided as part of a Service in case invoices are not paid in time (valid disputes under article 6.2 excluded). Parantion must provide written notice of its intention to do so, setting a final term for late payment in which Client must pay to avoid such disablement.
- 6.6 Parantion may index its prices annually to match inflation. For determining the amount of indexation, the “producer price index for services” (DPI: *diensprijsindex*) of the Statistics Netherlands (CBS: *Centraal Bureau voor de Statistiek*), section J (Information and communication) will be used. The Client shall have no right to terminate the Agreement over such increase.
- 6.7 Parantion may adjust its prices annually. Such adjustments shall be announced at least six months in advance. Client shall have the right to terminate the Agreement with effect at the moment such adjustments would enter into force.

Article 7. Intellectual Property and Personal Data

- 7.1 Except as expressly provided otherwise, nothing in this Agreement shall be interpreted or construed so as to transfer any right, title, or interest in any Intellectual Property of a Party to the other Party.
- 7.2 The software, any updates or extensions thereto and any documentation provided by Parantion is the Intellectual Property of Parantion.
- 7.3 Neither the Client, nor any end user or other party has any right to obtain a copy of the software source code or object code.
- 7.4 All rights pertaining to data uploaded by, stored by or processed by the Client or its end users using the software shall remain with that entity.

Article 8. Limitation of liability

- 8.1 Except in cases of intentional misconduct or gross negligence the entire liability of Parantion for any damage suffered by the Client in connection with this Agreement or the software is limited to the amount paid out by the professional liability insurance provider of Parantion.
- 8.2 Parantion will maintain commercially reasonable insurance for the duration of the Agreement and provide a copy of the current policy upon request. Parantion will use its best efforts to make the insurance provider pay out.
- 8.3 When no pay-out is made by the professional liability insurance provider, regardless of reason, the liability is limited to the amount of direct damages suffered, up to the lower of (a) the amount of fees (excluding VAT) paid or payable in total by the Client in the six months prior to the moment the cause of the damage first became apparent and (b) fifteen thousand (15,000) Euros.
- 8.4 Direct damages are understood to mean exclusively
 - i) The reasonable costs that the Client would have to incur to have Parantion's performance comply with the agreement. However, this damage will not be compensated when the Client has terminated the agreement. No such costs include upgrading of Client's hardware or software.
 - ii) The costs made by the Client for the longer-term maintenance of its old system or systems and associated facilities because Parantion has not delivered on a delivery date that is binding to Parantion, reduced by any savings which are the result of the delayed delivery.

- iii) Reasonable costs made to determine the cause and extent of the damage, when the determination relates to direct damage within the nature of these conditions.
 - iv) Reasonable costs made to prevent or limit damage, when the Client proves that these costs have led to the diminishing direct damage within these conditions.
- 8.5 Unless performance by Parantion is permanently impossible, Parantion shall only be liable due to an attributable failure in the performance of a contract if the Client declares Parantion to be in default in writing without delay and grants Parantion a reasonable term to remedy the breach, and Parantion culpably fails to fulfil its obligations also after this term has passed. The notice of default must describe the breach as comprehensively and in as much detail as possible in order to give Parantion the opportunity to respond adequately.
- 8.6 Liability of Parantion for indirect damage is fully excluded. Indirect damages are all damages not listed as direct damages under article 8.4.
- 8.7 Any limitations of liability will not be applicable in the event that the damages or loss is the result of recklessness or deliberate intent on the side of Parantion or its supervising personnel.
- 8.8 Client shall indemnify and hold harmless Parantion from all claims of third parties (including its end users) in connection with or arising as a result of Clients' non-fulfilled obligations related to the Agreement.

Article 9. Force Majeure

- 9.1 Neither Party will be bound to comply with any obligation if the Party is prevented from doing so through force majeure. Force majeure will be deemed to include, among other things, i) communications or power failure, (distributed) denial of service or other network attacks, riot, insurrection, labour disputes, accident, action of government, restrictions on import and/or export or any inability to perform which is caused by the Party's suppliers.
- 9.2 In case of force majeure the affected Party will use its best efforts to find a suitable remedy or alternative source to overcome said force majeure.
- 9.3 Force majeure includes in particular (but without limitation): domestic disturbances, mobilisation, war, transportation blocks, strikes, network attacks such as SYN (synchronous) floods or (distributed) denial of service attacks, business interruptions, supply stagnation, fires, floods, import and export obstructions, internet failures and in the event Parantion's suppliers for any reason prevent it from being able to comply with this agreement, which means that Parantion cannot be expected to comply with this agreement within reason.
- 9.4 Each Party has the right to suspend compliance with its obligations under this agreement during the period of force majeure. If this period exceeds ninety (90) days, each Party will have the right to terminate this agreement without being obliged to pay compensation to the other Party.

Article 10. Confidentiality

- 10.1 A Party receiving confidential information from the other Party shall treat this as strictly confidential and use this solely in connection with its rights and obligations under the Agreement.
- 10.2 Confidential information includes all information of which it can be assumed from the context that the issuing Party would deem this to be confidential or of which the receiving Party should reasonably have recognized its confidential nature from the content of the information. Confidential information also includes all information and data concerning or pertaining to the Agreement, the software, pricing, service levels, the Client's data, and more generally data concerning business operations, marketing, research, development, inventions, know-how, samples, product and service specifications, software, business relations, the Client's or suppliers of a Party, irrespective of the form in which this has been recorded or is provided.
- 10.3 The obligation to treat certain information as confidential no longer applies if the receiving Party can prove that this information:
- i) is or becomes publicly available through no act or omission of the receiving Party;
 - ii) was already in possession of the receiving Party prior to the date on which it was issued by the issuing Party;
 - iii) is available from a third party without this party being in default towards the issuing Party arising from a confidentiality clause by distributing the information to the receiving Party; or

- iv) was developed by the receiving party independently and without the use of the information of the issuing Party.
- 10.4 Should a competent court or other government authority demand access to confidential information, the receiving Party is entitled to grant such access. However, to the extent permitted by applicable law the receiving Party shall contact the disclosing Party prior to doing so to enable the disclosing Party to take legal action against such access (e.g. an interim measure with a competent court). However, the receiving Party shall never be liable for granting access if legally obligated.
- 10.5 The provisions of this article shall continue to be effective after the expiration or termination of the Agreement.

Article 11. Term & Termination

- 11.1 The Parties enter into the Agreement on the last date of signature below (“Effective Date”). This Agreement is entered into for an indefinite period of time (“the Term”). Services are entered into for periods of one year with automatic renewal, unless either party informs the other party in writing of its desire to cancel a Service at least one month prior to the end of the then-current period.
- 11.2 Either Party may terminate the Agreement by providing at least six months’ prior written notice to the other Party, provided at the intended time of termination no Services remain in force.
- 11.3 In case a Party wilfully or negligently fails to comply with the material obligations under the Agreement, and the failure is significant, the other Party may terminate the Agreement directly, but only after the Party that failed to comply has not remedied the failure within a reasonable time period (at least 30 days) after having received a Written notice of default that is adequate and as detailed as possible.
- 11.4 A Party may immediately terminate the Agreement by written notice to the other Party, without the requirement for notice of default or intervention of the Court, in the event of the following:
 - i) if the other Party has been granted suspension of payments, whether provisionally or not; or
 - ii) if a petition for bankruptcy has been filed with respect to the other Party and the petition has not been revoked within in seven days, if the other Party files for bankruptcy itself; or
 - iii) if the other Party’s enterprise is dissolved or terminated, except for the purpose of a merger with or absorption by another company.
- 11.5 Upon termination Parantion will disable access to the software for the Client. All data will be stored for 60 days following contract termination. After this period Parantion has no obligation to retain such data.

Article 12. Amendments

- 12.1 No general terms and conditions of either party shall be part of this Agreement.
- 12.2 If any provision, or part of a provision, of this Agreement is found by any court or authority of competent jurisdiction to be illegal, invalid or unenforceable, that provision or part-provision shall be deemed not to form part of this Agreement, and the legality, validity or enforceability of the remainder of the provisions of this Agreement shall not be affected, unless otherwise required by operation of applicable law.
- 12.3 The Parties shall use all reasonable endeavours to agree within a reasonable time upon any lawful and reasonable variations to the Agreement which may be necessary in order to achieve, to the greatest extent possible, the same commercial effect as would have been achieved by the provision, or part-provision, in question.

Article 13. Miscellaneous terms

- 13.1 This Agreement is governed exclusively by Dutch law.
- 13.2 Any disputes between the Parties that cannot be settled amicably will be submitted to the competent Dutch court for the district where Parantion has its registered office.
- 13.3 Without prior consent, the Parties will not provide any information and/or make any statements to third parties regarding the contents of the Agreement, the partnership between the Parties or the results of the cooperation.
- 13.4 Client will not be authorized to transfer this Agreement and all its rights and obligations arising therefrom to a third party (including but not limited to its affiliates) without the express consent of Parantion. Parantion will be authorized to transfer this Agreement and all its rights and obligations

arising therefrom to a third party that acquires the business operations to which this Agreement is subject.

Annex A: Service Level Agreement

Annex B: Data Processing Agreement

Annex c: EULA