



## General terms and conditions

of products and services offered by Efficacy and any of its subsidiaries (see Appendix 5 for an exhaustive list)  
(hereinafter referred to as the “**Service Provider**”),

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## PROVISIONS APPLICABLE TO ALL PRODUCTS AND SERVICES

## 1 PURPOSE

The Service Provider publishes software dedicated to the providing of "Customer Relationship Management" and "Marketing Platform" (hereafter independently called as the "Product" and together as the "Products") that are further described in Annex 2 and Annex 3.

The present General terms and conditions (referred to as the "General Terms and Conditions") are entered into between the Service Provider on the one hand, and any customer on the other (hereafter the "Customer") where the Service Provider and the Customer are together referred to as the "Parties".

The purpose of these General Terms and Conditions is to define the rights and obligations of the Parties as well as the conditions of supply of the Products and services by the Service Provider. All orders placed by the Customer are governed by these General Terms and Conditions.

This section contains the provisions applicable to all Products and services offered ANNEX 1: Professional Services contains provisions specific to Professional Services. ANNEX 2 : Customer relationship management services contains provisions specific to Customer Relationship Management. ANNEX 3: Marketing platform contains provisions specific to Marketing Platform.

In the event that the Customer has ordered third-party software in addition to the Product, only the articles of this section (with the exception of article 7) shall govern the marketing of said third-party Products between the Parties.

## 2 DEFINITIONS

Each of the following defined terms shall have the meaning as set out below:

**Adaptations:** refers to specific settings adjustments and/or developments of the Product. The implementation of the Adaptations may be carried out by the Service Provider or by any Integrator certified by the latter.

**Cloud:** means the hosting of the Solution on the Service Provider's infrastructure, the provision of access to the Solution, as opposed to "On Premise" mode.

**Code:** means JavaScript code or other code provided by the Service Provider to Customer for use in connection with the Services.

**Commercial Proposal:** means the final offer of the Service Provider as accepted by the Customer. This does not include commercial brochures or any other generic presentation documents, nor offers which are not finalized.

**Confidential Information** means all information disclosed by a party (the "Disclosing Party") to the other party (the "Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonable should be understood to be confidential given the nature of the information and the circumstances of disclosure, such as Customer Data, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes. Confidential Information shall 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 before receipt from the Disclosing Party; or, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party.

**Content:** means digital data, text, images, audio, video, software or similar content.

**Corrective Maintenance:** means the service which consists of correcting anomalies and is described in the article 26. It covers at least the Standard anomalies and, optionally, the Specific anomalies. The scope is defined in the Commercial Proposal or the Purchase Order.

**Customer Data:** means all Content that Customer (a) submit, collect, process, use or store via/in the Product; or, (b) cause to interoperate with the Product. Customer Data does not include any Content that the Service Provider makes available to Customer as part of the Service, such as Content that Efficacy obtains from public and third party sources and Code.

**Essential function:** designates a function whose use is material (at least 20% of the time), whereby its absence significantly disrupts the overall operation of the application (induced work overload for the Users concerned of more than 50%) and that it affects a significant number of Users (at least 50%).

**Definition of the Customer's needs :** means any written document provided by the Customer in which the Customer may express its needs regarding the provision of the Services.

**Integrator:** means a third-party company to whom the Customer has entrusted the creation of the Product Adaptations and the correction of any resulting Anomalies.

**Marketing Platform:** means all of Service Provider's web based marketing applications, tools and platforms that Customer has subscribed to by an Order Form or the Service Provider otherwise makes available to Customer, and developed, operated, and maintained by the Service Provider, as accessible via <http://apsis.com> or another designated URL, and any ancillary product and services that the Service Provider provides to the Customer (including but not limited to Code).

**On Premise:** refers to the case in which the Customer hosts and operates the Solution, as opposed to Cloud mode.

**Order forms :** means the Service Provider-approved form or online subscription process by which the Customer agrees to subscribe to the Services in accordance with these General Terms and Conditions.

**Product(s):** refers to all software Products as marketed by the Service Provider.

**Project:** refers to all Services aimed at adapting the Product to the needs expressed by the Customer by carrying out specific settings adjustments and developments.

**Purchase:** refers to the case where the Customer purchases licences to use the Product.

**Purchase Order:** means the quotes issued by the Service Provider or the Customer and signed or explicitly accepted by the Customer, or in the absence thereof, the financial terms and conditions contained in the Commercial Proposal signed by the Customer.

**Professional Services:** help businesses overcome specific challenges through a dedicated project based on the Product, which may include training, implementation, integration or other related consulting services.

**Service(s):** means the services as further described in detail under Annex 1 to 3.

**Solution:** means the Product(s) and its Adaptations (if any).

**Standard anomaly:** refers to a functioning of the Solution that does not comply with the Standard Documentation.

**Specifications:** means the functional and technical documents produced and validated during the Projects and which describe the

Specific Settings and Developments to be carried out in order to provide the Solution.

**Specific anomaly:** refers to a functioning of the Solution that does not comply with the Specifications of the Adaptations (anomaly originating from the Specific Settings or Developments).

**Specific Terms and Conditions:** refers to the terms agreed in writing by the Parties that are added and superseding the provisions under the present General Terms and Conditions.

**Standard Documentation:** means the documentation for the installation, use, administration and interfacing of the Product as well as the technical documentation.

**Subscription(s):** Relate to (the abonnement to) all products or services sold by subscription by the Service Provider, like, and without being exhaustive: Cloud, Maintenance services and to the right to use the Product(s) for a period limited to the duration of the Subscription and in On Premise mode.

**Technical reference environment:** refers to all the hardware and software components of the Customer's information system interacting with the Solution, such as the server components (except if hosted in the Cloud) (hardware, database server, application server, web server, messaging, etc.) and the tools on the user workstation (hardware, OS, browser, office automation, etc.).

**Third Party Products:** means non-embedded products and professional services that are provided by third parties which interoperate with or are used in connection with the Services.

**Third Party Sites:** means third party websites linked from within the Services.

**User:** any individual identified to the Customer who has the right to use the Service Provider's Products and Services on behalf of the Customer and who have unique user identifications and passwords for the Product.

**Version :** release of the software. A new version represents the changes within a software offering that do not change the essential product, but rather increase functionality and fix problems. Each version of a piece of software that is released receives a software version number.

### 3 CONTRACTUAL DOCUMENTS

These General Terms and Conditions constitute the common legal basis applicable to all products and services offered by the Service Provider. Any deviation from these General Terms and Conditions shall be set out in Specific Terms and Conditions.

The latest accepted Terms and Conditions supersede any previous contracts or agreements which the Parties have entered into.

The contractual documents governing the relationship between the Parties are, in the following priority:

1. The Project documents (if any) formally validated by the Parties.
2. The Special Conditions (if any); and
3. The Order Form(s) or the Service Provider's Commercial Proposal(s);
4. The present General Terms and Conditions and their annexes;
5. Definition of the Customer's needs where applicable;

The contractual documents express the entire agreement of Parties (hereinafter the "Agreement").

### 4 FINANCIAL CONDITIONS

Customer shall pay all fees specified in an Order Form or as otherwise agreed. The amounts stated in the Commercial Proposals or Purchase Orders are exclusive of tax and will be increased by applicable taxes.

Invoices are payable net and without discount within 30 calendar days of the invoice date.

Any complaint relating to an invoice must be received by the Service Provider within 30 calendar days after invoice date. This right will lapse failing to do so on a timely manner.

By express agreement and unless a deferral in time is requested and granted by the Service Provider in a specific manner, failure to pay on the due date of the invoices and a reminder will automatically and without prior notice (notwithstanding the termination clause) result in the immediate payment of all sums remaining due, regardless of the method of payment set out, and in the invoicing of late payment interest calculated at a monthly rate of 1% or the maximum amount according to the applicable law. Interest on arrears shall be calculated from the day following the due date of the invoice until the day on which the Provider's account is credited.

In addition, in the event of late payment, the costs incurred for collection shall give rise to a fixed indemnity of 40 euros. If the collection costs incurred are higher than the amount of this fixed indemnity, additional compensation may be requested upon presentation of supporting documents. The Customer shall automatically and without prior notice be liable for all collection, judicial and extra-judicial costs.

The rates are indexed on the basis of the reference index (see Annex 5bis), at each invoicing period, with the base index published at the signature of the contract. If the change in the index is negative, no adjustment will apply.

If the index is discontinued, it will be replaced by any new index measuring the evolution of prices of software or computer services in the territory concerned.

Unless otherwise stated in the Commercial Proposal or Order Form, travel and subsistence expenses are chargeable to the Customer on the basis of receipts.

### 5 SUBSCRIPTIONS

#### 5.1 Financial and billing conditions

Subscriptions are subject to the fees as specified in the Commercial Proposal or Order form.

This fee is invoiced in advance for a period of one year unless otherwise specified in the commercial offer.

#### 5.2 Term and termination

Each Subscription takes effect on the date indicated in the Commercial Proposal or Order Form for a duration specified in the Commercial Proposal or Order Form. It will be tacitly renewed for successive periods of equivalent duration.

By default, the term of each Subscription is one year.

Any Party wishing to terminate a Subscription must notify the other Party by any means. Nevertheless, any subscription by signed offer will be subject to termination by a registered letter with acknowledgment of receipt. Unless otherwise stated in the Order Form or Service Provider's Commercial Proposal, any termination must take place with a notice of at least 2 months before the end of the period in question.

### 5.3 DESCRIPTION OF THE SUBSCRIPTIONS

In the case of Cloud Subscriptions and Subscription, the Customer subscribes to the right to use the Products for the duration of the Subscription.

A description of the services provided under the Subscriptions is set out in Annex 2 and 3.

## 6 PURCHASE

The purchase of licences grants the Customer a right to use the Product for the entire duration of the copyright.

### 6.1 Delivery

The Service Provider shall deliver to the Customer a copy of the object code software programs and the Standard Documentation within 5 days of the order. The source programs are not communicated to the Customer.

### 6.2 Additional services

The Customer is advised that it must have subscribed to a Maintenance (or Cloud) Subscription if it wishes to use the Service Provider's services. The latter reserves the right to refuse any intervention if the Customer does not hold one of these Subscriptions at the time of the request for intervention.

## 7 INTELLECTUAL PROPERTY

### 7.1 Scope of the right of use

The Customer retains all right to the Customer Data and Efficacy shall only use the Customer Data in accordance with this Agreement and otherwise in order to fulfil its obligations to Customer and/or to exercise its rights under this Agreement.

With Customer's prior written consent, Efficacy shall be entitled to disclose the fact that Customer is a paying customer of Efficacy and to use Customer's name and logo (in accordance with Customer's guidelines) to identify Customer as a customer of Efficacy on Efficacy's websites and in other promotional and marketing material.

All property rights, intellectual property rights and other proprietary rights relating to the Products & Services performed by the Service Provider (including, but not limited to, Products, Cloud Services, Adaptations, Standard Documentation, source codes, systems, programs, databases, reports, methods, interventions, discoveries, know-how, etc.), including amendments, innovations, improvements, modifications, additions, extensions, derivatives thereof, are and shall remain the exclusive property of the Service Provider.

These General Terms and Conditions do not imply the transfer of any intellectual property rights to the Customer, subject to the granting of certain rights by the Service Provider to the Customer which shall be subject to an explicit written agreement between the Parties. Any deviating provisions in this respect shall be governed by the terms of the contract entered into between the Service Provider and the Customer.

The Service Provider shall own all suggestions, recommendations, improvement or enhancement request or other feedback provided by Customer or User(s) regarding the Services, Product and Solution, and where applicable the Customer hereby makes and/or undertakes to make all assignments and take all reasonable acts necessary to accomplish the foregoing assignment to and ownership by the Service Provider.

For the periods defined herein, the Service Provider grants the Customer the personal, non-exclusive and non-transferable right to use the Products identified in the Order Form, under the object code.

The Customer may only use the Product for its own business.

The Customer shall not, directly or indirectly, (i) modify, decompile, disassemble or reverse engineer the Subscription Service or attempt to discover the code and/or underlying structure, ideas or algorithms of the Subscription Service or any software, data or documentation related to or provided with the Subscription Service; (ii) modify, translate or create derivative works based on the Subscription Service; (iii) access or use the Subscription Service to build (or support or assist a third party in building) any product or service competing with the Subscription Service; (iv) in any way transfer or encumber rights to the Subscription Service; or (v) sublicense, sell, transfer, assign, distribute or commercially operate the Product.

The right of use shall mean the right:

- to execute the functionality of the Product as described in the Specifications;
- to carry out interface the Product with third party applications via our API; and
- to authorise third parties to access the Products with a designated User on an ad hoc basis.

### 7.2 Infringement and guarantee of peaceful enjoyment

The Service Provider warrants that it owns the intellectual property rights or has the necessary authorisations to market the Product. The Service Provider guarantees to the Customer the peaceful enjoyment of the rights granted to it on the Products it publishes.

Each Party shall indemnify and hold the other Party harmless against any action or claim based on infringement of (any third party) intellectual property right, unfair competition or commercial freeriding, aimed at restricting or prohibiting the use of the Product covered by the Agreement, provided that: 1) the affected Party has notified the other Party within a reasonable time of the action or claim; 2) the other Party has been able to defend its own interests as well as those of the affected Party freely and at its own expense, and the affected Party has cooperated loyally in such defence by providing, in a timely manner, all the elements necessary to carry out such defence; 3) the affected Party accepts that the other Party may negotiate the withdrawal of the claimant at its own discretion except that the affected Party may not settle any claim unless it unconditionally releases the other Party of all liability; and 4) the dispute relates to an element of the Product.

In the event of a ban on the use of all or part of the elements for which the rights have been assigned, the Service Provider shall endeavour (at its option): either to obtain the right for the Customer to continue to use the element concerned at no additional cost to the Customer; or to modify the Product in order to avoid infringement; or to provide a replacement solution; or (only in the case of Purchase) to reimburse the Customer a part of the sums already paid for the Product, taking into account the time during which the Customer was able to use the Product.

The Customer acknowledges that all these actions taken separately constitute sufficient compensation.

## 8 SUSPENSION OF SERVICES

In the event of non-payment of undisputed invoices, the Service Provider may suspend the services after a period of 15 calendar days without effect.

If the Customer has not paid in full the amounts due within 15 calendar days, the Service Provider may suspend all services until the amounts due have been paid in full, including interest on arrears. This suspension shall not result in any change in the price set or in the application of any penalties by the Customer.

If Customer's Customer Site or use of the Services (i) is being subjected to denial of service attacks or other disruptive activity; (ii) is being used



to engage in denial of service attacks or other disruptive activity; (iii) is creating a security vulnerability for the Services or others; (iv) is consuming excessive bandwidth; or, (v) is causing harm to the Service Provider or others, then the Service Provider may, with electronic notice to Customer, suspend all or any access to the Subscription.

In addition, the Service Provider may suspend the services at any time if their use proves to be illegal, and/or likely to jeopardise the overall quality of its services (for example and in a non-exhaustive manner: sending spam, defamatory remarks or documents, violation of personal rights, attempted hacking, attempted interception of voice messages, or messages of a promotional nature commonly known as "junk mail", breach of public order or morality, etc.).

#### 9 TERMINATION FOR FAULT

Each Party may terminate the Services (Subscriptions and Projects) by registered letter with acknowledgement of receipt in the event of failure by the other Party to fulfil its obligations hereunder and without this failure being remedied within 30 calendar days after formal notice, subject to any damages to which it may be entitled. All services rendered will remain due.

The Service Provider is authorized, without any demand or notice of default being required, to terminate the Agreement with immediate effect, without judicial or arbitral intervention, if:

- a) by or with regard to the Client, (provisional) suspension of payments or bankruptcy is applied for or granted;
- (b) a considerable part of the assets of the Customer or goods made available by or on behalf of the Customer are seized and this seizure is not lifted within a short term;
- (c) the business of the Customer is wound up or the Customer ceases its present business, or if that Customer is a legal entity, the ownership relations in that legal entity change substantially, or it is dissolved;
- (d) use of the Product in violation of the intellectual property rights granted by the Service Provider.
- (e) the Customer otherwise fails to meet any other obligation under the Agreement, in full and/or on time;
- f) in all cases sub a) to d), always without prejudice to the Service Provider's right to compensation

The Customer shall be entitled to terminate the contract if the Service Provider repeatedly and seriously breaches it or is guilty of wilful misconduct in the performance of its obligations under the contract.

If the contract between the Service Provider and the Customer is terminated, with or without the application of the right of termination described in these General Terms and Conditions, the Customer loses the right to demand that the Service Provider fulfil its obligations under the terminated contract.

#### 10 LIABILITY

The following stipulations allocate liabilities between the Service Provider and the Customer; the agreed prices reflect this allocation of responsibilities and the resulting limitation of liability.

The Customer declares that it is fully aware that the Product may have technical malfunctions or may not function fully and continuously.

The Customer shall have no recourse against the Service Provider for minor changes to the services and/or products if these are technically necessary or result from technical, technological, production and aesthetic developments. This applies on the condition that these

changes do not affect the specific and essential functional and external characteristics for the Customer. The Service Provider undertakes to inform the Customer thereof in writing.

The Service Provider shall not be liable for loss of profits, loss of revenue whether or not resulting from interruption of the Customer's business, loss of customers, operational damage, loss of information or any direct or indirect damage suffered by the Customer arising from the services or products on a contractual or tortious basis, except to the extent that such damage results from gross negligence, fraud, wilful misconduct or wilful breach of duty by the Service Provider. The Service Provider shall not be liable for any damage resulting from the quality of the Customer's internet connection or any malfunction of the Customer's workstation, including but not limited to hardware and/or software not complying with applicable specifications (including updates). The Service Provider shall also not be liable for defects caused directly or indirectly by the Customer or a third party, whether by error or negligence, nor for services performed by a third party without the Service Provider's express consent.

In On Premise mode, the Customer undertakes to make regular backups of its data (at least daily) to minimise any damage which might be caused by data loss.

In all circumstance, the Service Provider's liability shall be limited to 60% of the amounts invoiced by the Provider and paid by the Customer in the 12 months preceding the incident excluding any fees paid for SMS/MMS credits

The Service Provider certifies that it is insured with a reputable insurance company for all liabilities it may incur under the Agreement and upon request undertakes to provide the Customer with a certificate.

The Customer agrees to indemnify and defend the Service Provider against all actions, expenses, damages, losses, liabilities or costs arising out of or in connection with the Customer's breach of its obligations.

Failure by the Customer to comply with a material obligation (including failure to comply with the Service Provider's instructions [including manuals] and any legal or other requirements) shall relieve the Service Provider of its liability.

The Customer acknowledges and agrees that Third Party Sites and Third Party Products are not under the Service Provider control and that, if provided, Third Party Sites and Third Party Products are provided only as a convenience. The availability of any Third Party Site or Third Party Product does not mean the Service Provider endorse, support or warrant the Third Party Site or Third Party Product and the Service Provider disclaims all liability (on behalf of itself and its licensors) with respect to Third Party Products that the Customer may use in connection with the Subscription Service.

The Customer is liable for any acts and omissions taken by the User.

#### 11 FORCE MAJEURE

Neither party shall be liable for any default or delay in the performance of its obligations under this Agreement if such default or delay results from unforeseeable causes beyond its reasonable control. The party claiming to be affected by such force majeure event shall immediately notify the other party in writing and each party shall use reasonable efforts to mitigate the effect of the force majeure event.

Insofar as such cases continue for a period exceeding one (1) month, the Parties agree to enter into discussions with a view to finding an agreement. If no agreement or alternative is possible, the contract may be terminated by the Party whose obligations are not affected by the force majeure event.



The following are considered to be cases of force majeure, without this being restrictive: strikes, uncertainties specific to the Internet, acts of computer hacking which could not be avoided by the security measures agreed between the Parties, act of war, hostility or sabotage, or electrical, internet or telecommunication outage that is not caused by the obligated party and that cannot reasonably be overcome.

## 12 SEVERABILITY

The possible invalidity of one of the provisions of these General Terms and Conditions or part of a provision does not affect the applicability of the other provisions and/or the rest of the provision. In the event that any provision is invalid, the Service Provider and the Customer shall, to the extent possible and to the best of their knowledge and belief, negotiate in good faith to replace the invalid provision with an equivalent provision that corresponds to the general spirit of these Terms and Conditions.

## 13 LACK OF WAIVER

The fact that one of the Parties does not insist on the performance by the other Party of any of the provisions of these General Terms and Conditions shall not be construed as a waiver by that Party of its right to assert that provision, right or remedy.

## 14 BALANCE CLAUSE

These General Terms and Conditions are considered by the Parties to be balanced. These General Terms and Conditions shall therefore always be interpreted taking into account the concrete circumstances of the collaboration.

## 15 PROTECTION OF PERSONAL DATA

### 15.1 General information

The Parties will comply with all applicable personal data protection laws, including, but not limited to, the European Regulation (EU) 2016/679 of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ("GDPR"). This includes the obligation to inform data subjects in accordance with Articles 12 to 14 of the GDPR and to have a legal basis for processing personal data.

The role of the Service Provider (controller or processor) with respect to personal data processed in the context of the execution of the General Terms and Conditions is specified either below or in its privacy policy.

### 15.2 The Service Provider as sub-contractor

Where the Customer provides personal data to the Service Provider in the context of its use of the Subscribed Service, Subscriptions, the Solution and/or any add-ons, and requests the Service Provider to process personal data on its own behalf for the sole purpose of providing the Customer with the Subscribed Service, Subscriptions, the Solution and/or any add-ons, the Customer shall act as a data controller in the processing of such personal data and the Service Provider shall act as a data processor (as defined by the GDPR).

In this respect, the Service Provider undertakes to guarantee the confidentiality of the personal data that may be processed in the context of the services and to ensure that the persons authorised to process such personal data are bound by an appropriate obligation of confidentiality of legal or, failing that, contractual origin, and receive the necessary training in the protection of personal data.

The conditions under which the various processing operations are carried out by the Service Provider as a subcontractor (within the

meaning of the GDPR) are described in Annex 4 of these General Terms and Conditions in accordance with Article 28 of the GDPR.

### 15.3 The Service Provider as data controller

In the context of these General Terms and Conditions, the Service Provider may also process the Customer's personal data as a data controller. This personal data may be processed for the following purposes:

- Administration and management of the relationship with the Customer;
- In the context of and during the contractual and pre-contractual relationship with the Customer ;
- When the Customer contacts us by email, post, telephone or any other communication channel, e.g. in order to answer any questions/requests;
- Management of complaints, after-sales service and guarantees;
- Carrying out sales and marketing activities;
- The development of business statistics; and
- Where the processing is necessary for the establishment, exercise or defence of legal claims.

In the event of subcontracting within the meaning of the GDPR, the Service Provider is obliged to appoint a subcontractor who complies with the GDPR and takes adequate technical and organisational measures to ensure the proper processing of personal data.

The Customer can find further information on the processing of their personal data, as well as the exercise of their rights (e.g. the right of access, rectification, deletion, opposition, etc.), in the "[privacy policy](#)" accessible on the Service Provider's website. The Customer can always contact the DPO by email at: [privacy@efficy.com](mailto:privacy@efficy.com).

## 16 CONFIDENTIALITY

The Receiving Party shall (i) protect the confidentiality of the Confidential Information using the same degree of care that it uses with its own confidential information of similar nature (but not less than reasonable care); (ii) not use any Confidential Information for any purpose outside the scope of this Agreement; (iii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information to those of its 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 no less stringent than those herein. Upon notice to the Disclosing Party (to the extent notice is legally permitted), the Receiving Party may disclose Confidential Information if required by mandatory law, regulation or legal process.

Upon a written request from the Disclosing Party, the Receiving Party shall promptly return or destroy any Confidential Information (excluding Customer Data, which will be deleted in accordance with the annex 4).

Notwithstanding anything to the contrary, the Service Provider shall have the right to collect and analyse data and other information relating to the provision, use and performance of various aspects of the Product and related systems and technologies (including information aggregated from Customer Data and data derived therefrom), and the Service Provider shall (during and after the term of the Agreement) be entitled to (i) use such information and data to improve and enhance the Product and for other development, diagnostic and corrective purposes in connection with the Services; and, (ii) disclose such data solely in

aggregate or other de-identified form in connection with its business. No rights or licenses are granted except as expressly set forth herein.

#### 17 NON-SOLICITATION

During the term of the Agreement as well as one (1) year after its termination, the Customer is not permitted, either directly or indirectly, to employ or otherwise, directly or indirectly, without the Service Provider's prior written permission, to have employees of the Service Provider who have been involved in the execution of the Agreement work for them, or to approach them in any way, on pain of an immediately payable penalty of EUR 50,000 (in words: fifty thousand Euros) per violation of this prohibition.

#### 18 ASSIGNMENT

All or part of the rights and obligations between the Parties may not be transferred or assigned by a Party to a third party unless the Parties agree otherwise in writing.

However, each Party remains free to assign or transfer all or part of its rights and obligations hereunder to a company in its group without the prior consent of the other Party, subject to informing the latter.

#### 19 SETTLING OF DISPUTES

Except in cases of urgency, the Parties acknowledge that they will make their best efforts to favour amicable solutions in any deadlock situation.

In the event of deadlock, the Party with an interest in the matter shall refer the matter to the other Party by registered letter with acknowledgement of receipt for the purpose of attempting to reach an amicable settlement.

If no amicable settlement is reached within (1) month, the Party with an interest in the matter may bring the matter before the competent court.

#### 20 LAW - MEDIATION AND JURISDICTION

##### 20.1 General provisions

**20.1.1 Except in the cases provided for under articles 20.2 and following, the Agreement is governed by Belgian law, and in any case only the English language version of the present contract shall be deemed authentic for the purpose of its interpretation, as well as for the proceedings. This article 20 in its entirety will remain in force notwithstanding all instances of expiry or termination of the Agreement.**

**20.1.2 In the event of a disagreement arising out of or in connection with the performance or interpretation of the Agreement, and in every case provided for under articles 20.2 and following, the parties agree to enter into discussions and to try to reach an out-of-court settlement of their dispute, firstly by conventional means, and subsequently via mediation, referring in such case the dispute to the ICC International Centre for ADR and the ICC Mediation Rules, or to any other mediation center provided for under articles 20.2 and following, regardless of the financial stakes of the dispute.**

**20.1.3 If the mediation process fails and provided that the financial stake of the dispute exceeds an amount of 10.000€ excluding taxes, the dispute will be settled via arbitration by the International Chamber of Commerce (ICC) International Centre for ADR, referring in such case the dispute to the ICC Arbitration Rules, by one or more arbiters appointed in accordance with those rules, or by any other arbitration center provided for under articles 20.2 and following.**

**20.1.4 If the mediation process fails and if the financial stake of the dispute is less than an amount of 10.000€ excluding taxes, the dispute may be brought only before the competent court of BRUSSELS, BELGIUM, or any other court provided for under articles**

**20.2 and following, notwithstanding multiple defendants or appeal in warranty.**

##### 20.2 When the Customer's registered office is in France or in Monaco:

**This Agreement shall be governed by French law, the mediation and arbitration center (cf. articles 20.1.2 and 20.1.3) shall be the Centre Interprofessionnel de Médiation et d'Arbitrage (CIMA) - 32 Quai Perrache 69002 Lyon, referring in such case the CIMA Mediation and Arbitration Rules. The language used in the proceedings shall be French. The competent Court (cf. article 20.1.4) shall be the one of PARIS, FRANCE.**

##### 20.3 When the Customer's registered office is in Sweden, Denmark, Norway or Finland

**This Agreement shall be governed by Swedish law. The competent Court (cf. article 20.1.4) shall be the one of MALMO, SWEDEN. The language used in the proceedings shall be English. Termination under article 5.2 shall be made by email to the following address [sales@efficy.com](mailto:sales@efficy.com).**

##### 20.4 When the Customer's registered office is in the Netherlands:

**This Agreement shall be governed by the law of the Netherlands. The competent Court (cf. article 20.1.4) shall be the one of HERTOGENBOSCH, NETHERLANDS. The language used in the proceedings shall be English.**

##### 20.5 When the Customer's registered office is Asia:

**This Agreement shall be governed by the law of Hong Kong. The competent Court (cf. article 20.1.4) shall be the one of HONG-KONG. The language used in the proceedings shall be English.**

**ANNEX 1: PROFESSIONAL SERVICES**

This annex and all that is stated herein only applies for the Professional Services as specified in the Commercial Proposal.

**21 PRODUCT IMPLEMENTATION PROJECTS**

**21.1 Definition**

The Service Provider generally procure the Project on the basis of a specification provided by the Customer for a provisional budget and a defined provisional schedule. The precise description of the Project may change during the course of the Project, subject to the written agreement of the Parties. The Service Provider is the project manager.

**21.2 Implementation methodology**

Projects generally comprise four stages: scoping (definition of needs by the Customer, study of the adequacy between these needs and the possibilities of the standard Product), development (realisation of Adaptations), acceptance and production launch. The start of a stage can only take place after formal validation of the previous stage. The details of the stages are defined in the project methodology or the QAP.

**21.3 Obligations of the parties**

**21.3.1 Obligations of the Customer**

The Customer undertakes to:

- Express its needs precisely and comprehensively through a number of reference documents, emails and working meetings;
- Providing a precise description of its IT environment and organisation, which is of substantial importance;
- Provide the Service Provider with the means (office, documentation, means of communication, etc.) necessary for the proper performance of the mission when the services take place on the Customer's premises;
- Respect deadlines, in particular for the validation of documentary and application deliverables;
- Consult with the Service Provider without delay in order to deal with any unforeseen situations or situations requiring arbitration;
- Participate in the work by allocating the necessary quality and quantity of internal resources;
- Systematically consult with the Service Provider and thoroughly examine its recommendations so that the choices and trade-offs can be optimal, both in terms of the number of charging days and the price and duration;
- Systematically favour standard solutions offered by the Products over adaptations;
- Process the data to be loaded onto the Product in accordance with the instructions given by the Service Provider and to keep them available to the Service Provider in accordance with the Project schedule. These data preparation and formatting operations are critical to the achievement of the acceptance and the completion of the Project and are of substantial importance; and
- Provide general management of the Project, in its capacity as project manager.

**21.3.2 Obligations of the Service Provider**

The Service Provider undertakes to:

- Guide the Customer throughout the project and providing it with recommendations adapted to the needs expressed;
- Implement the technical means and adequate personnel to ensure the execution of the work entrusted to it. The Service Provider alone shall determine the means of achieving this;

- Notify the Customer of any absence, in particular due to holidays or training, of its personnel assigned to the execution of the work as soon as it becomes aware of such absence; and
- Implement the means to meet the milestones of the provisional schedule agreed in the Provider's Commercial Proposal.

**21.3.3 Common obligations**

Each Party undertakes to:

- cooperate in good faith and to provide the other Party with all useful information, documents and data necessary for the proper performance of the services;
- designate a single contact person who is the only one entitled to represent it in relation to the other Party and to take any decision concerning the Project; and
- attend the Project monitoring meetings.

**21.4 Adaptation Guarantee**

The Service Provider guarantees that the Adaptations it has made comply with the Specifications. Unless otherwise stated in the Commercial Proposal or Purchase Order, the Service Provider undertakes to correct any Specific Anomaly free of charge during a warranty period of 2 weeks as from the date of going into production. For an Adaptation workload of 20 days or more, the warranty period is extended to 2 months

**21.5 Invoicing**

Unless otherwise stated in the Commercial Proposal or Purchase Order, the invoicing terms are as follows:

- 40% upon signature of the Purchase Order;
- balance on completion: on the last day of each month, the Service Provider invoices the Customer on the basis of the time spent by the members of its staff, once the amount invoiced on the order is reached.

**22 DIRECT LABOUR PROJECTS – DELEGATION OF STAFF OR TECHNICAL ASSISTANCE**

**22.1 Definition**

The Service Provider provides resources to the Customer. The Customer is the project manager for the services provided and for the project management methodology as further described under this article 22.

**22.2 Obligations of the parties**

**22.2.1 Obligations of the Customer**

The Customer undertakes to:

- Manage the resources at its disposal;
- Alert the Service Provider in the event of a problem (attitude, lack of competence, commitment, etc.)

**22.2.2 Obligations of the Service Provider**

The Service Provider undertakes to provide the resources defined according to the agreed availability in order to ensure the execution of the services entrusted to it.

Wherever possible, the Service Provider shall avoid changing the personnel assigned to the performance of the services. In the event that a replacement is nevertheless deemed necessary, it shall ensure that the worker is replaced by a new worker with at least equivalent competence and experience and with the Customer's approval.

As the Service Provider is not the project manager for the services, it is bound by an obligation of means. In its capacity as a professional, it undertakes to provide the Customer throughout the duration of the services, with all the advice and warnings necessary to achieve the objective sought by the Customer.

The Service Provider shall send the Customer monthly invoices in arrears together with a detailed description of the work performed.

#### 22.3 Financial and billing conditions

The Service Provider shall invoice the Customer on the basis of the time spent by the members of its staff made available to the Customer, the hourly rate of which shall vary according to the qualification in accordance with the Purchase Order and/or the Commercial Proposal.

#### 22.4 Change or termination of benefits

The Service Provider must be notified of any changes to the schedule or cessation of the services ordered with one week's notice per month of the total duration of the service, without this exceeding six weeks. Any service not cancelled in time will remain due.

### 23 PREPAID SERVICES

The Customer may purchase professional services time credits to be used for interventions not covered by the subscriptions subscribed to, by purchasing a:

**Service Card:** credit that the Customer can use to request the provision of Adaptations and assistance, advice, etc. The Customer can pre-purchase pre-paid services.

**Support Service Card:** credit of hours that the Customer can use to request minor Adaptations.

Unless otherwise specified in the Order Form, Service Cards are valid for one year from the date of purchase.

If Customer decides to purchase Recurring Professional Services, such services will be considered part of Customer's subscription and will be renewed in a yearly basis, unless differently agreed by the Parties in the Sales Proposal.

Unless otherwise agreed, all Professional Services will be performed remotely and on an hourly basis only.

The Customer will be invoiced at the order. When these time credits are exhausted, the Service Provider will inform the Customer and the Customer may place a new order.

### 24 TRAINING

The Provider delivers three types of training.

**Inter-company training:** the training takes place at the Provider's premises or online, via a platform administered by the Provider. Training dates are regularly scheduled. The Service Provider will provide the training catalogue upon request of the Customer. The cancellation or postponement of a training registration by the Customer must be notified to the Provider at least 7 calendar days prior to the training date. After this period, the Customer shall owe the Service Provider the full amount of the training.

**In-company training:** the training generally takes place at the Customer's premises, and potentially at any other physical or virtual location. The cancellation or postponement of a registration for a training course by the Customer must be notified to the Provider at least 48 hours in advance. After this period, the Customer shall owe the Service Provider the full amount of the training course.

**E-learning training:** the Internet platform is made available to the Customer in the form of a subscription, allowing access to self-service educational content, under the supervision of a platform administrator trainer.

Additional provisions between the Parties concerning this article are included in the commercial proposal or the order form

The Customer shall carry the cost for booked meeting(s) and/or session(s) regarding Professional Services, if such booked meeting(s) and/or session(s) has not been rescheduled or cancelled with seven (7) days prior notice. Notwithstanding such notice, the Customer shall carry non-refundable costs relating to accommodation and travel expenses in connection with such booked meeting and/or session. The Service Provider will share training's requirements with the Customer as part of the training program. Customer is responsible for communicating contact information of training participants to the Service Provider. The Service Provider reserves the right to refuse training participants if they do not fulfil the training's requirements.

**ANNEX 2 : CUSTOMER RELATIONSHIP MANAGEMENT SERVICES**

This part describes the services provided by the Service Provider in relation to the Subscriptions taken out.

**25 CLOUD SUBSCRIPTION**

The Cloud Subscription includes:

- A right to use the Products;
- Hosting of the Solution on the Provider's infrastructure and provision of access to the Solution;
- The performance of backups;
- Corrective maintenance services; and
- The availability of new versions of the Product.

**25.1 Hosting and access to the solution**

**25.1.1 Availability**

The Service Provider undertakes to provide any User with an Internet connection with remote access to the Solution installed on the Service Provider's servers.

The Customer is fully aware that access to the Solution does not depend solely on the Service Provider, who remains dependent on its suppliers or those of the Customer, including but not limited to external Internet network managers, publishers of third-party software integrated into the Solution or associated with them, or manufacturers of servers on which the Solution is installed, etc.

The Service Provider undertakes to ensure an availability of 99.9% per year, excluding the planned updates necessary for the proper functioning of the Solution. The Service Provider will inform the Customer (by any means) of planned updates, including a message on the homepage of the Product.

The 99.9% annual service level is calculated for a given year using the following formula:

$$\frac{M - I}{M}$$

M: total minutes in a given year

I: total minutes of downtime in a given year

In case of total or partial inaccessibility of the Solution, the Service Provider undertakes to deploy its best technical and human efforts to restore the service as soon as possible, if necessary, by proposing to the Customer an alternative and temporary solution if the inaccessibility cannot be restored in its initial form within 4 working hours after its declaration.

**25.1.2 Storage space**

There is no limit to the amount of storage space available to each Customer, provided that the Customer makes reasonable use of the service and only stores data and documents directly related to its business.

**25.2 Backups**

**25.2.1 Characteristics of backups**

The Service Provider makes backup copies of the Customer's data according to a schedule defined with its Host and in compliance with the rules of the art.

**25.2.2 Return of data**

When the Customer has a dedicated database and where technically feasible, these backups can be sent to the Customer on request and in a

standard format (Oracle: Dump; SQL server: BKP; PostgreSQL: Dump). This sending will be invoiced at €200 excl. VAT per dispatch.

**25.2.3 Reversibility**

The Service Provider may provide Customer with,

- A standard extract of the Customer Data
- A specific extract of Customer data

Additional training and documentations can be part of a reversibility plan defined by the Parties.

The Customer has a period of 30 days from the date of termination of the service to request the return of the data. The Service Provider shall delete the hosted data within three months of the end of the contractual relationship.

**25.2.4 End of Cloud subscription contract**

The Customer acknowledges and agrees that at the end of the contract, the Service Provider shall delete the Customer's data, access to the services, and environment.

**26 CORRECTIVE MAINTENANCE**

**26.1 Reporting an Anomaly to Support**

An Anomaly is:

1. blocking if it completely prevents the use of an essential Function of the Solution;
2. disturbing if it requires the use of a workaround to perform the function or if it blocks the use of a non-essential function; and
3. minor if no functionality is affected.

For blocking anomalies, the Customer shall provide the mobile number of the declarant and of the person in charge and shall undertake to be available 24/7 while the anomaly is being resolved.

**Procedure if the Customer does not have an Integrator**

The Customer shall contact Support on the email address support@efficy.com and categorise the Anomaly (blocking, disturbing or minor), without prejudice to the possibility for the Service Provider to modify this categorisation.

Access to the support is open 5/7 from 8.30 am to 6 pm.

By exception, the support for the products marketed under Perfect View CRM and Tribe references, is accessible during week days (5/7) from 8.30 am to 5.30 pm.

Unless otherwise specified in the Commercial Proposal or Order Form, access to support for a version of the Product is reserved for personnel certified at least for the "Administration" part of the version in question.

Before contacting support, the Customer undertakes to check that the point requiring support is covered by its Subscription, that it is not dependent on a setting made by himself and that the answer to its questions is not contained in the documentation made available to it.

For each support request, the Customer shall describe precisely to the Service Provider the characteristics of the Anomaly found and the way to reproduce it.



The Customer undertakes to react as soon as possible to any request for information made by the support. The deadlines specified at 26.2 shall be suspended until the Service Provider has obtained all the information requested.

**Procedure if the Customer has an Integrator**

The Customer will contact its Integrator who will act as a "one-stop shop" and will transfer the request to the Provider's support if the Anomaly is due to the Product.

**26.2 Service Level Agreement**

The Service Provider undertakes to take care of the declarations of Anomalies to the support within the following deadlines.

	Blocking anomalies	Disturbing anomalies	Minor anomalies
Processing deadline	1 h	4 h	8 h
Recovery time	2 d	5 d	NA

Processing deadline: The time within which the Service Provider undertakes to mobilise staff to deal with the Anomaly.

Recovery time: The period of time within which the Service Provider undertakes to correct the Anomaly or provide a workaround. The period ends when the Service Provider delivers to the Customer or its Integrator the elements to be put into production or the information allowing to restore the service.

These deadlines run from the moment the Anomaly has been declared by the Customer or by its Integrator in the conditions defined above and from the moment the Service Provider can access the environment reproducing the problem. The deadlines are also interrupted when the Service Provider is waiting for a response from the Customer. The deadlines are expressed in working days / working hours over the support opening period defined in the Commercial Proposal or the Purchase Order.

**26.3 Intervention terms**

Interventions are carried out remotely. If the Customer does not authorise remote access or if remote access does not allow the incident to be reproduced or analysed, the Service Provider will propose an on-site intervention. Transport time and any travel and accommodation costs are to be borne by the Customer and are not included in the calculation of the time taken to take over and restore the service.

**26.4 Important: safety of the intervention**

The Customer shall ensure that it provides the Service Provider with only those accesses to its systems that allow the Service Provider to operate and no others. It will also ensure that such access is revoked once the intervention is completed.

**26.5 Correction of Anomalies on old versions**

The Service Provider undertakes to provide corrective maintenance on previous versions for 36 months from the release of the version and provided that the reported Anomaly has not been corrected on a more recent version. After this period, or if the Anomaly has been corrected in a more recent version, the correction of the reported Anomaly will be invoiced at the rates in force on the day of the intervention and without any time commitment.

**26.6 Exclusions**

The corrective maintenance service does not include any training, adaptation, integration, assistance in using the Product, assistance in

making Adaptations, advice, or telephone assistance other than those described herein. In addition, Anomalies are not covered if they result from:

use of the Solution that does not comply with the Documentation or the Specifications or with the instructions given during the training provided by the Service Provider;

adaptations or interfacing with another program or Product made by the Customer or a third party;

the modification by the Customer of an element of its Technical Reference Environment, if the Service Provider has not formally indicated beforehand that the Product would be compatible with the new element ; and

And more generally from a cause external to the Solution: method of making queries; method of making reports; reinstallation of the server; configuration of software external to the Applications (Microsoft Office, Acrobat, etc.); configuration of the network on the user workstations; configuration of anti-virus software on the user workstations.

The services generated by such requests will be invoiced separately at the rates in force on the day of the request.

**27 SUBSCRIPTION (WITHOUT HOSTING)**

This Subscription includes:

A right to use the Products ;

The corrective maintenance service described in article 26; and

The provision of new versions of the Product.

**28 SUBSCRIPTION TO THE CORRECTIVE MAINTENANCE SERVICE**

This Subscription only includes the corrective maintenance service described in article 26.

It is offered to Customers who have acquired Products and who are in On Premise mode.

It includes the provision of new versions of the Product.

**29 AVAILABILITY OF NEW VERSIONS OF THE PRODUCT**

The Subscription or Cloud subscription, as well as the subscription to the corrective maintenance service, include the possibility of benefiting from new versions of the Product free of charge without buying new licences.

These new versions are offered at least once a year and include improvements in functionality and technical developments. The Service Provider will take into account the regulatory developments in the field of Customer relationship management and personal data.

The implementation of a new version is subject to specific pricing, established on request by the Customer.

**30 SUBSCRIPTION TO THE SETTINGS ADJUSTMENT MAINTENANCE SERVICE**

The Subscription to the settings adjustment maintenance service includes the possibility of benefiting from an anomaly correction service extended to the settings adjustments performed by the Service Provider. This subscription is subject to specific pricing, established on request by the Customer.

The subscription to the settings adjustment maintenance service only applies to settings adjustments performed by the Service Provider.

### 31 SUBSCRIPTION TO THE "UPDATES INCLUDED" SERVICE

The Subscription to the "updates included" service, also known as 'Serenity', includes the possibility of benefiting from an update service for the Product. This service includes the existing Adaptations; it excludes any verification tests of the updated software as well as any training on new proposed functionalities.

In addition, and in all cases, any new adaptations or modifications to existing adaptations desired by the Customer in the course of an update will be subject to an estimate of additional services to be paid for by the Customer.

This subscription is subject to specific pricing, established on request by the Customer.

The subscription to the "updates included" service only applies to integrations and settings made by the Service Provider.

### 32 CHANGE OF PERIMETER

If the Customer wishes to reduce the number of Users for a given Subscription, it may proceed through the Product Functionality when available, or shall inform the Service Provider 2 months before the Subscription renewal date. The Service Provider's approval is required for Customers receiving commercial discounts on the Product.

The use of the Product for archiving purposes through a user back-up upon the Cloud is not permitted.

In the event of an increase in the applicable scope during the Subscription period (orders for licences for new products, increase in the number of Users for the existing product), an invoice will be issued by the Service Provider, pro rata to the time remaining until the end of the Subscription period. The change will be applied to the period following the request.

### 33 INTELLECTUAL PROPERTY

In addition to the article 7 the right of use shall mean also the right:

- For On Premise infrastructure, to install and use the Products on the Technical Reference Environment;
- to carry out Adaptations



**ANNEX 3: MARKETING PLATFORM**

This annex and all that is stated herein only applies for the Marketing Platform as specified in the Commercial Proposal or Order Form.

**34 MARKETING PLATFORM****34.1 Limitations**

The Marketing Platform is provided as a SaaS and it is not possible to order any Adaptations. It's only available as a Subscription.

**34.2 Limited Warranty**

The Service Provider warrants that the Marketing Platform will under normal use and circumstances perform substantially and materially in conformance with the applicable Order Form and the description on [www.apsis.com](http://www.apsis.com).

The Customer acknowledges and accepts that the Service Provider may at any time implement new versions and upgrades of the Marketing Platform (including adding or deleting features or functions), but the Service Provider will not make changes that materially reduce the functionality of the Marketing Platform provided to the Customer during the term of this Agreement.

Except for the express warranties set forth in this section the Services are provided on an "AS IS" basis and with all faults. To the furthest extent permitted under applicable law, the Service Provider expressly disclaims and excludes from this all other conditions, terms and/or warranties of any kind with respect to the Services, whether express or implied, including without limitation any conditions, terms and/or warranties for merchantability of the Services and/or for the fitness of the Services for a particular purpose and/or the correspondence of the Services to any description and/or that the Marketing Platform and API will be uninterrupted and/or error free and/or completely secure. The Customer acknowledges that there are risks inherent in Internet connectivity that could result in the loss of privacy, confidential information and property.

**34.3 SMS/MMS**

SMS/MMS credits shall be valid for use during a period of twelve (12) months from the date of purchase. Service Provider reserves the right to adjust prices and SMS/MMS credits required for each recipient country with seven (7) days prior notice, due to changes in the cost for SMS/MMS.

If the Customer has activated inbound SMS functionality, any payment for inbound SMS related to the Customer's account and transferred from the relevant SMS-operator, and after deduction of such operator's applicable fees, will be transferred further to the Customer on a monthly basis when Service Provider has received the transaction amount from the SMS-operator.

**34.4 Customer's obligations**

The Customer shall only use the Marketing Platform in accordance with, this Agreement, applicable laws and regulations, including those related to spamming, direct marketing, privacy, data protection, intellectual property, consumer and child protection, pornography, obscenity and defamation, the Standard Documentation. The Customer shall be responsible for the Users' acts and omissions and it is Customer's responsibility to ensure the security of Users' passwords and equipment used to access the Marketing Platform.

The Customer shall not (i) use the Marketing Platform in any manner that damages, disables, overburdens, or impairs any of Efficacy's websites or interferes with any other party's use of the Marketing Platform; (ii) attempt to gain unauthorized access to the Marketing Platform; (iii) access the Marketing Platform other than through Efficacy's interfaces; (iv) use the Marketing Platform to submit, collect, process, use or store credit or debit numbers, personal financial account information or similar identifiers, physical or mental health condition or other sensitive

information subject to regulations, laws or industry standards designed to protect data privacy and security; or, (v) use the Marketing Platform for any purpose or in any manner that is unlawful or prohibited by this Agreement.

All emails sent via Efficacy's email send service shall (i) have clear information about the sender, such as contact information, in the form of phone numbers and addresses, within the email or available via link; (ii) have a subject line that is not intended to mislead the recipient with respect to the content of the emailing; (iii) upon three (3) hard bounces automatically move the relevant email addresses to the Opt-out-all list; (iv) contain an unsubscribe link to give the recipient the opportunity to unsubscribe (without passwords and similar functions); and, (v) in all other respects comply with applicable laws, regulations and industry standards and this Agreement. The Customer shall ensure that all recipients have explicitly agreed to receive email/SMS/MMS direct marketing (including the subject matter thereof) correspondence from it and that subscribers who unsubscribe from a mailing list will not receive any further messages.

**34.5 Upgrades**

Subscriptions with volume restrictions (including but not limited to maximum subscribers, email send limit, website visits, API or other applicable limits, which are generally specified in the Order Form) will be automatically upgraded and charged according to the then current price when the maximum level for the current account is exceeded. Once the upgrade is done, the volume levels cannot be decreased during the current term. The Customer may decrease the volume levels prior to the next renewal of the term by giving the Service Provider written notice of such decrease no later than two (2) months before the end of the current term.

**34.6 Customer Data**

The Customer retains all right to the Customer Data and Efficacy shall only use the Customer Data in accordance with this Agreement and otherwise in order to fulfil its obligations to Customer and/or to exercise its rights under this Agreement.

Upon termination of the term, the Customer will not have access to the Marketing Platform and the Service Provider will permanently delete and destroy the Customer Data in accordance with the Service Provider's standard procedures for deletion of data, which inter alia includes (i) that the Service Provider reserves the right to permanently delete and destroy all copies of the Customer Data the day following the last day of the term; and, (ii) that the Service Provider will, unless otherwise required by mandatory applicable law, permanently delete and destroy all copies of the Customer Data within a reasonable timeframe, taking into account the back-up and administrative procedures applied by the Service Provider from time to time. It is the sole obligation of the Customer to ensure that it possesses all necessary back-up of the Customer Data that it desires to retain when this Agreement is terminated.

During the term of the Agreement, the Customer may import, export, download and delete all Customer Data from the Marketing Platform as put forth in the Standard Documentation. If the Customer requires assistance in managing Customer Data, the Customer shall provide a written request to the Service Provider no later than (fifteen) 15 days prior to the end of the term. Assistance will be provided against an administrative fee.

Unless otherwise agreed, the Service Provider reserves the right to delete behavioural data (e.g. clicks/opens) stored in the Marketing Platform that is older than three (3) years and links inserted into Email or SMS that are older than two (2) years.

**34.7 Support**

the Service Provider will, as part of the Marketing Platform, provide the Customer with standard user support at no additional cost. Support for the Marketing Platform shall be available during normal business hours 08:15-17:00 (CET) and, for Customer's having its registered address in Asia-Pacific, 09:00-18:00 (HKT). Support will be available on days when commercial banks are open to the general public (in Sweden and Hong Kong, respectively).

If the Service Provider, on Customer's request and on behalf of the Customer, manage the Customer's account, make changes to the information in Customer's account or manage the Customer's sending, the Service Provider shall solely do so based on the Customer's instructions and under the Customer's responsibility. The Service Provider shall always rely on the Customer that the information and instructions provided by the Customer are correct and in compliance with this Agreement.

**34.8 Availability for APSIS ONE**

The Service Provider undertakes to provide any User with remote access to APSIS ONE installed on the Service Provider's servers.

The Customer is fully aware that access to APSIS ONE does not depend solely on the Service Provider, who remains dependent on its suppliers or those of the Customer, including but not limited to external Internet network managers, publishers of third-party software integrated into APSIS ONE or associated with them, or manufacturers of servers on which the Solution is installed, etc.

The Service Provider undertakes to ensure an availability of 99.9% per year, excluding the planned updates necessary for the proper functioning of APSIS ONE and any permitted downtime. The Service Provider will inform the Customer (by any means) of planned updates, including a message on the homepage of the Product.

The 99.9% annual service level is calculated for a given year using the following formula:

$$\frac{M - I}{M}$$

M: total minutes in a given year

I: total minutes of downtime in a given year, excluding any permitted downtime

Permitted downtime means any of the following:

- a) Inoperability due to any scheduled or emergency maintenance (occurring during a Scheduled Maintenance Period or Emergency Maintenance Period);
- b) Problems caused by the Customer;
- c) Problems caused by software or hardware not provided or controlled by the Service Provider;
- d) Problems due to force majeure events as described in the Agreement;
- e) Problems due to acts of omissions of Customer, its agents, employees or contractors;
- f) Problems due to defects in software provided by the Customer that Efficy could not have discovered through the exercise of reasonable diligence prior to the failure;
- g) Problems due to the Customer's failure to implement changes in equipment or software reasonably recommended by Efficy as essential to maintaining service levels following a Customer directed change in the operating environment;

- h) Inoperability due to a Customer driven increase in demand for system resources that has not allowed Efficy a reasonable time to accommodate, and;
- i) Problems due to operation under a disaster recovery plan.

If during any full calendar month of the term of the Agreement, the Actual Uptime Percentage is lower than 99.9%, the Service Provider shall provide the Customer with a service credit equal to any charged amount for such period. The service credit shall be paid against future fees.

Any credits provided pursuant to this Agreement will constitute the Service Provider' sole liability and Customers sole and exclusive remedy for any failure to achieve an Actual Uptime Percentage of greater than 99.9%. To receive a Service Credit, the Customer must submit a claim by contacting Account Manager. The credit request must be received by Efficy within 3 calendar months after which the incident occurred, and must include the words "SLA Credit Request" in the subject line.

In case of total or partial inaccessibility of the Solution, the Service Provider undertakes to deploy its best technical and human efforts to restore the service as soon as possible, if necessary, by proposing to the Customer an alternative and temporary solution if the inaccessibility cannot be restored in its initial form within 4 working hours after its declaration.

**34.9 Suspension**

In addition to what is otherwise agreed under this Agreement, the Service Provider reserves the right to immediately suspend Customer's access to the Marketing Platform (i) if the Customer uses or has declared its intent to use any Service in violation of this Agreement, any laws or regulations or if the Services are used for activities regarding racism, nazism, fascism, pornography, spam and purchased email addresses/mobile telephone numbers, pyramid schemes or similar activities; (ii) for use of the Service Provider's email send service that results in more than ten (10) per cent hard bounce per mailing event, SPAM complaints in excess of five (5) per thousand per domain and mailing event, have less than five (5) per cent in open rate per mailing event or cause blacklisting due to unsolicited sendings; or, (iii) for Customer Data that infringes or is alleged to infringe on the intellectual property rights of any third party.

**34.10 Professional Services**

Customer shall carry the cost for booked meeting(s) and/or session(s) regarding Professional Services related to the Marketing Platform, if such booked meeting(s) and/or session(s) has not been rescheduled or cancelled with seven (7) days prior notice. Notwithstanding such notice, Customer shall carry non-refundable costs relating to accommodation and travel expenses in connection with such booked meeting and/or session.

Customer shall also carry the cost for any travel time that is necessary. The cost for such travel time is the consultant's normal rate.

**ANNEX 4: PROCESSING OF PERSONAL DATA BY THE PROVIDER AS A PROCESSOR**

This Annex 4 applies where the Service Provider acts as a Processor within the meaning of the GDPR in the processing of personal data (hereinafter: "PD") on behalf of the Customer. Capitalized terms shall have the meaning given herein or in the GDPR. In order to comply with Article 28 of the GDPR, the Parties expressly agree that the following conditions shall apply:

**1 GENERAL INFORMATION**

When processing PD on behalf of the Customer, the Service Provider undertakes to:

- Process the PD only to the extent necessary for the performance of the Services subscribed to by the Customer;
- Process the PD in accordance with the Customer's documented instructions. If the Service Provider considers that an instruction constitutes a breach of the GDPR or any other provision of EU or Member State law relating to the protection of PD, it shall immediately inform the Customer thereof;
- Keep a written record of the processing activities carried out on behalf of the Customer; and
- Each Party will communicate to the other the name and contact details of its DPO if it has appointed one in accordance with Article 37 of the GDPR.

**2 TRANSFER OUTSIDE THE EUROPEAN UNION**

The services should be carried out in the EU/EEA. The personal data shall not be transferred outside of the EU/EEA or a country subject to an adequacy decision from the European Commission without implementing the appropriate safeguards, including the signature of Standard Contractual Clauses coupled with supplementary security measures. If the Service Provider is required to transfer PD to a third country (i.e. outside the European Economic Area) or to an international organisation under EU law or the law of the Member State to which it is subject, the Service Provider shall inform the Customer of this legal obligation prior to processing, unless the law concerned prohibits such information on important public interest grounds and with the exception of countries which ensure an adequate level of protection of PD in accordance with an adequacy decision of the European Commission.

**3 NOTIFICATIONS OF BREACHES OF PERSONAL DATA**

The Service Provider shall notify the Customer in writing of any breach of PD as soon as possible. This notification shall be accompanied by any useful documentation to enable the Customer to notify the supervisory authority and, if necessary, the data subject of the breach.

**4 ASSISTANCE FROM THE SERVICE PROVIDER TO THE CUSTOMER**

Wherever possible, the Service Provider shall assist the Customer in fulfilling its obligation to comply with requests to exercise the rights of data subjects (rights listed in Chapter III of the RGPD). In the event that the Service Provider receives requests from data subjects, it shall inform the data subject to contact directly the Customer. The Service Provider will assist the Customer.

The Customer may request the Service Provider to assist in carrying out impact analyses and the subsequent consultation of the supervisory authority.

The time spent by the Service Provider's staff (including the implementation of specific developments) will be invoiced at the rates in force at the time of the intervention or on estimate.

**5 SECURITY**

The Service Provider shall implement all appropriate technical and organisational measures to protect the Customer's PD, taking into account the state of knowledge, the costs of implementation, the nature,

scope, context and purposes of the processing, as well as the risks to the rights and freedoms of any individuals, in order to guarantee a level of security adapted to the degree of probability and seriousness of the risk.

The means implemented by the Service Provider to ensure the security and confidentiality of PD include the following measures:

- Generic measures: Security of flows (encryption of exchanges): HTTPS, FTPS protocols; Password policy; IP filtering by firewall; Security audits of the information system; Management of access to the information system; Raising staff awareness of security and IT hygiene issues;
- Cloud-specific measures: Hosting in the European Union; ISO 27001 certified data centres; Regular application of security updates to system components; Daily backups for disaster recovery purposes

The Service Provider shall take into account the principles of (i) data protection by design and (ii) data protection by default for its tools, products, applications or services.

**6 SUBCONTRACTING**

The Service Provider may use subsequent subcontractors. The updates [list of subcontractors](#) per Products is available at any time

The Service provider will provide prior written notice to the Customer of any envisaged change concerning the addition or the replacement of other subcontractors.

This information should clearly indicate the processing activities outsourced, the identity and contact details of the processor. The Customer may object to these changes within fifteen (15) days of the information given by the Service Provider provided that such objections are based on a proven risk with regard to the protection of personal data. After an additional period of fifteen (15) days, if no agreement is reached between the Parties the matter may be referred to the competent court - see clause 19.

The Service Provider shall ensure that its subcontractors comply with the obligations set out herein and that they present sufficient guarantees as to the implementation of appropriate technical and organisational measures to comply with the rules of confidentiality and respect for privacy concerning the PD. The Service Provider shall remain fully responsible to the Customer for the performance of its obligations by its subcontractors.

**7 FATE OF PERSONAL DATA AT THE END OF THE SERVICES**

Cloud: see annex 3 article 34.6

Other: The Service Provider will destroy all PD that are processed at the end of the Services.

**8 INSPECTION BY THE CUSTOMER**

The Service Provider shall make available to the Customer the documentation necessary to demonstrate compliance with the obligations set out herein and to enable audits to be carried out.

The available documentation must first be checked by the customer's auditor before any audit can take place. If and only if such documentation is not deemed satisfying by the auditor can an audit take place. The audit will be carried out by an independent auditor, at most once (1) per year. It shall not disrupt the Service Provider's business and shall not last for more than two (2) consecutive days. The Customer shall notify the Service Provider at least fifteen (15) days prior to the audit.

The Customer shall bear the full cost of the audit as well as the time spent by the Service Provider's staff and machine time for the purpose of the audit.

**9 OBLIGATIONS OF THE CUSTOMER**

The Customer undertakes to process PD only on the basis of one of the grounds listed in Article 6 of the GDPR, to provide data subjects with the information required by the regulations in force and to respond to requests from data subjects when they exercise any of the rights granted to them by the regulations.

The Customer shall document in writing any instructions regarding the processing of PD by the Service Provider.

**10 LIABILITY**

Violation of the GDPR by the Service Provider shall only be deemed to be the Service Provider's fault if the Service Provider has acted outside of or contrary to the legal instructions of the Customer. For the rest, the provisions of Article 10 of the General Terms and Conditions shall apply in the context of the allocation of liabilities.

If the Service Provider as a processor does not comply or does not comply on time with the obligation set out in article 3 of Annex 4 and a supervisory authority imposes an administrative penalty on the Customer as a result, the Service Provider shall be liable and the Customer may impose a contractual penalty on the Service Provider in the same amount. This penalty shall not be subject to set-off and suspension and shall not affect the rights of the respondent to performance and compensation.

If the Service Provider is imposed a sanction by a supervisory authority or has to compensate a data subject for damages, as a result of acts or omissions of the Client, the Client shall indemnify the Service Provider and compensate the Service Provider for such sanction or damages, including (legal) costs, on demand.

**11 CHARACTERISTICS OF THE PROCESSING FOR PRODUCTS AND SERVICES**

Duration of processing: PD is processed for the duration of the Services (Subscriptions and Projects). PD will be deleted at the latest 3 months after the termination of the Agreement

Categories of data subjects: these categories can be multiple such as customers, partners, employees, suppliers.. the Category are managed by the Customer.

Operations carried out on PD: The nature of the operations carried out depends on the Subscriptions and services subscribed to, the mode of use of the Solution and any additional modules offered by the Service Provider. The following table lists the main operations that may be carried out on Customers' PD.

Services	Operations performed on the data
Projects	Imports
Cloud subscription	Hosting, backups

Data protection officer: The Service Provider has appointed a Data Protection Officer, whose contact details are available on the platform. <https://www.efficy.com/privacy-policy>

**11.1 Type of personal data processed per product**

**11.1.1 Customer Relationship Management**

Due to the fact that the Product is customizable for the Customer's needs and that the Customer is free to define the data it stores in it, the PD processed may be multiple. They generally include: surname, first name, contact details (email address, telephone, address, etc.).

**11.1.2 Marketing Platform : Apsis One**

- Default data fields: Attributes

- First name: The first name or names of the person associated with the profile.

- Last name: The last name or names of the person associated with the Profile.

- Email: The email address the person associated with the Profile provided with their explicit consent.

- Mobile: The phone number the person associated with the profile provided with their explicit consent.

- Birth date: The date of birth of the person associated with the profile.

- CRM-ID: The customer ID associated with the profile. It is exclusively created and managed internally.

- Cookie ID: The unique identifier for the website visitor, associated with the cookie banner and created by the APSIS One tracking script.

- Default Data Fields: Events

APSYS One only collects default event data (events or event data) automatically in relation to the APSIS One activities created and activated by the Customer and in relation to the APSIS One tracking script.

- Additional Data Fields

Additionally, the Customer may import and/or collect Additional Data to populate custom attributes and events. These are specific to the Customer and considered as "Additional Data". The Service Provider has limited insights into the Customer's Additional Data.

Purposes: Enabling Customer to (self-served) digital marketing activities via the Service.

**11.1.3 Marketing Platform : Apsis Pro**

- Default data fields: Attributes

- Email

- Name

- Telephone number

- Unique Identifiers (Profile and Cookie)

- IP address

- Behavioral data

- Geo-location (only APSIS Profile Cloud)

- Additional Data Fields

In addition to data in the above default data fields ("Default Data"), Customer may upload and/or collect additional data in customizable data fields that are specific to Customer (by manual and/or automated setup) via the Service ("Additional Data"). By default, the Service Provider has limited insight into Customer's Additional Data.

Purposes: Enabling Customer to (self-served) digital marketing activities via the Subscription Service.

**ANNEX 5: LIST OF EFFICY GROUP COMPANIES**

Efficy, VAT 0875.895.449, Rue Colonel Bourg 122, 1140 Brussels, Belgium

Efficy France (E-deal), VAT 55 420 688 400, 19 rue des Plantes, 75014 Paris, France

Efficy Luxembourg, VAT 26931602, Rue d'Arlon 4, 8399 Windhof, Luxembourg

Efficy Suisse, VAT CHE-109.466.411, Rue de Lausanne 37, CH-1201 Geneva, Switzerland

Efficy Deutschland, VAT DE312539535, Schumannstrasse 27, 60325 Frankfurt, Germany

Efficy Nederland, VAT 809374912B01, De Waterman 2, 5215 MX's-Hertogenbosch, The Netherlands

Tasker CRM VAT ESB87010260, Calle Ángel Muñoz, 22, 28043 Madrid, Spain

webCRM A/S, Business-ID 25189558, Vibenshuset, Lyngbyvej 2 2100 - Copenhagen Ø, Denmark

APSIS International AB, VATSE556615543701, Kungsgatan 6, 21149 Malmö, Sweden

APSIS Finland Oy, Kampinkuja 2, 00100 Helsinki, Finland

APSIS Norge AS, Schweigaards gate 16, 0191 Oslo, Norway

APSIS ASIA Ltd, 15 Queen Victoria Road, 999077 Central Hong Kong

**ANNEX 5 BIS: SPECIFIC ADDITIONAL CONDITIONS**

This appendix supplements the General Terms and Conditions with specific provisions depending on the location of the Customer.

**12 WHEN THE CUSTOMER'S REGISTERED OFFICE IS LOCATED IN ASIA****12.1 Benchmark index**

The tariffs are indexed on the basis of the HK PPI (Hong Kong SAR (China) - Producer Price Index) according to the formula: Revised price =  $P0 \times I1 / I0$

- P0 = original contract price or last revised price
- I1 = last published index at the revision date
- I0 = reference index used at the original contractual date or at the last revision"

**13 IN ALL OTHER CASES****13.1 Benchmark index**

(Article 4 of the GTC)

The tariffs are indexed on the basis of the HICP index (European Index) according to the formula: Revised price =  $P0 \times I1 / I0$

- P0 = original contract price or last revised price
- I1 = last published index at the revision date
- I0 = reference index used at the original contractual date or at the last revision"