

## FAKTION General Terms and Conditions (the “Terms and Conditions”)

### 1. Definitions

In these Terms and Conditions, unless otherwise specified, the following definitions will apply:

“**Acceptance Criteria**” means the criteria for acceptance of the Solution or the Customizations (as the case may be) by the Client as set forth in the Commercial Offer.

“**Acceptance Date**” means the date on which the Solution or Customization (as the case may be) is accepted by Client.

“**Acceptance Report**” means a document duly signed on behalf of Client and Faktion, stating that the Solution or Customization (as the case may be) have passed the Acceptance Test, and containing any additional remark or findings resulting from the tests.

“**Acceptance Test**” means a set of tests to be carried out to verify the usage of the Solution or the Customizations (as the case may be) according to the Acceptance Criteria.

“**Affiliate**” means, in relation to the relevant Party, any person or entity controlling, controlled by, or under common control with such Party, whereby “control” means the power, direct or indirect, to direct or cause the direction of the management and policies of such entity whether by contract, ownership of shares, membership on the board of directors, by agreement or otherwise and, in any event and without limitation of the foregoing, any entity owning more than 50% of the voting securities of a second entity shall be deemed to control that second entity (and “controlling” and “controlled” shall have a corresponding meaning);

“**Authorized User**” means (i) each physical person in Client’s organisation (ii) each physical person of Client’s clients and Client’s business partners who is granted access by Client and will or must be able to use the Solution and Customizations (as the case may be) as an end user.

“**Authorized Equipment**” means the computer configuration platform (including operating system) in respect of which the applicable License is granted as specified in the relevant Documentation or the Commercial Offer.

“**Business Day**” means a normal working day of Faktion from 8.30 a.m. to 5.30 p.m. from Monday to Friday, excluding Belgian public holidays.

“**Client’s Authorized Staff**” means the client’s authorized staff, as named in the Commercial Offer.

“**Client-induced Incident**” means an Incident (i) caused by abuse or misuse of the Solution or the Customizations (as the case may be) by the Client; (ii) caused by any modification or addition to the Solution or the Customizations (as the case may be) or the configuration that is performed without prior written consent of Faktion, or (iii) due to the use of incorrect data for integration or (iv) the failure of any supporting (third party or Client’s) hardware and/or software;

“**Client’s Authorized Maintenance Staff**” shall mean employees or contractors assigned by Client and for which Faktion has granted access to Faktion’s web-based incident management system.

“**Commercial Offer**” means the offer as agreed upon between the Client and Faktion, as set out on the cover page, titled “Commercial Offer”.

“**Confidential Information**” of a Party means the information of such Party, whether in written, oral, electronic or other form, and which (i) is explicitly marked as confidential or proprietary, or (ii) should reasonably be considered confidential or is traditionally recognized to be of a confidential nature, regardless of whether or not it is expressly marked as confidential, including but not limited to, information and facts concerning business plans, customers, prospects, personnel, suppliers, partners, investors, affiliates or others, training methods and materials, financial information, marketing plans, sales prospects, client lists, inventions, program devices, discoveries, ideas, concepts, know-how, techniques, formulas, blueprints, software (in object and source code form), documentation, designs, prototypes, methods, processes, procedures, codes, and any technical or trade secrets, including all copies of any of the foregoing or any analyses, studies or reports that contain, are based on, or reflect any of the foregoing. The Confidential Information of Faktion shall include, without limitation, the Licensed Materials.

“**Customizations**” mean Client specific adaptations, additions or enhancements of the standard Solution specifically developed by Faktion as per the terms agreed in the Commercial Offer and/or a Statement of Work, which is not considered as part of the standard Solution.

“**Documentation**” means the technical and functional Solution information that Faktion generally makes available from time to time to its customers.

“**Effective Date**” means the effective date as set forth in the Commercial Offer.

“**Hosting Fee**” means the periodic hosting fee specified in the Commercial Offer for the Hosting Services.

“**Hosting Services**” means the hosting services as defined in Article 23.

“**Hotfix**” is a patch to fix one or more particular malfunctions within a specific Version of the Solution.

“**Incident**” means a malfunctioning of the Solution.

“**Initial Term**” means the initial period for which these Terms and Conditions are concluded as set out in the Commercial Offer. The Initial Term starts on the Effective date.

“**Intellectual Property Rights**” means any and all now known or hereafter existing (a) rights associated with works of authorship, including copyrights, copyrightable or mask work rights, neighbouring rights and moral rights; (b) trademark or service mark rights; (c) trade secret rights; (d) patents, patent rights, rights to know-how and trade secrets, and industrial property rights; (e) layout design rights, design rights, , topographic right (f) Internet domain names, (g) rights to software and computer software programs (including but not limited to source code and object code), rights to data, database sui generis right and documentation thereof; and other proprietary rights of every kind and nature other than trademarks, service marks, trade dress, and similar rights; whether registered or not and (h) all registrations, applications, renewals, extensions, or reissues of the foregoing, in each case in any jurisdiction throughout the world;

“**License Fee**” means the periodic license fee specified in the Commercial Offer for the license of the Solution;

“**Licensed Materials**” means the applicable Solution, (if applicable) Customizations and Documentation.

“**Licensor**” or “Faktion” means Faktion NV, a company incorporated under Belgian law and registered with the Crossroads bank for Enterprises under nbr 0841.205.774 whose registered office is located at Oude Leeuwenrui, 39, V1, 2000 Antwerp, Belgium.

“**Location**” means Client’s location where the Maintenance Services can be performed, set out in the Commercial Offer.

“**Maintenance Fee**” means the periodic maintenance fee specified in the Commercial Offer for the provision of the Maintenance Services

“**Maintenance Services**” are the maintenance and support services related to the Solution provided by Faktion to the Client as described in Article 24 of the Terms and Conditions.

“**Major Intervention**” means an intervention by Faktion for which Faktion estimates that the effort shall be equal to or exceed 5 (five) man days of 8 working hours.

“**Minor Intervention**” means an intervention by Faktion for which Faktion estimates that the effort shall be less than 5 (five) man days of 8 working hours.

“**New Module**” means an addition to the Solution which provides one or more significant new functions or architectures which none of the existing modules of the Solution already contained before, or only contained in a limited form before, and therefore cannot be considered as a new Version.

“**Object Code**” means software as assembled or compiled on magnetic or electronic binary form on software media that is readable and usable by machines but not generally readable by humans without reverse assembly, reverse compiling or reverse engineering.

“**Personnel**” means the employees, contractors, representatives or agents of Faktion.

“**Party**” means a party to these Terms and Conditions.

“**Professional Services**” mean development, implementation and integration services (including, but not limited to Customisations) or such other services in relation to the Solution as may be agreed between the Parties from time to time and set out in the Commercial Offer and/or a Statement of Work.

“**Professional Services Fee**” means the periodic professional services fee specified in the Commercial Offer for the professional services

“**Release**” means any improved, modified, revised, corrected, upgraded, enhanced or updated version of the Solution from time to time issued by Faktion pursuant to these Terms and Conditions.

“**Scope**” shall mean the scope or business operation for which the Client is entitled to use the Solution and (as the case may be) the Customisations as set out in the Commercial Offer.

“**Solution**” means the software, computer programs, platforms, applications, including but not limited to all algorithms, (source or object) code and methodology pertaining thereto as described in the Commercial Offer.

For the avoidance of doubt, the Solution is exclusive of Customizations.

“**Solution Delivery Date**” means the date whereupon the Licensed Materials are delivered to the Client.

“**Specifications**” shall mean the unambiguous functional, technical and performance features as agreed between Parties in writing (in a Statement of Work).

“**Statement of Work**” shall mean a statement of work, concluded between the Parties pursuant to these Terms and Conditions for the delivery of Professional Services by Faktion. A Statement of Work will at least contain following information: order date, consultant profiles, location where the Professional Services will be performed, description of the assignment, specifications (if applicable), estimated workload (if known), applicable fee (if applicable), applicable payment terms (if applicable), acceptance criteria (if applicable). The Statement of Work shall at all times be attached to the Commercial Offer and form an integral part thereof.

“**Supported Releases**” means the most recent New Release and the previous Release for a period of three (3) months after the most recent New Release was issued by Faktion.

“**Terms and Conditions**” means the present terms and conditions regarding the Solution license (License), Maintenance Services, Professional Services and Hosting Services, applicable to all Commercial Offers and Statement of Works (unless expressly stipulated otherwise in writing) issued by Faktion

“**Test Period**” means the period specified in the applicable Commercial Offer or such other period as the Parties may agree in writing.

“**Version**” means a set of the software package in which noted shortcomings are repaired.

### 2. License

2.1 Subject to these Terms and Conditions and timely payment of the License Fee, Faktion grants to Client (and its Affiliates, only if indicated in the Commercial Offer) a personal, restricted, non-exclusive, non-transferable and non-assignable license to use the Licensed Materials in Object Code on the Authorized Equipment in accordance with the applicable Documentation for the Scope as set out in the Commercial Offer. The right to use the Solution on a different environment requires prior written consent of the Licensor. This license shall commence on the Effective Date and shall remain in effect for the term of these Terms and Conditions.

2.2 Client acknowledges and agrees that in order to use the Licensed Materials, Client may need to obtain, at Client’s expense, the right to use any software owned by third parties by either (i) purchasing from Faktion the right to use such third-party software, provided and to the extent Faktion has the right to license such third-party software to Client and offers such opportunity to Client, or (ii) licensing or otherwise obtaining from the vendors of such third-party software the right to use such third-party software. If Client elects to license such third-party software from Faktion, such license shall be executed and attached to the Commercial Offer. Any third-party software licensed thereunder or otherwise included in the Licensed Materials shall be exclusively governed by the terms of the applicable third-party license, and (without limitation) any warranties, indemnification and maintenance and support provided hereunder by Faktion in respect of the Licensed Materials shall not apply in respect of such third-party software (except as expressly otherwise agreed to in writing by Faktion).

2.3 The extent of the licenses granted under these Terms and Conditions is restricted to the scope expressly set forth herein, and there are no implied licenses under these Terms and Conditions. Faktion reserves any right not expressly granted to the Client hereunder.

2.4 The Client shall comply with all applicable laws relating to the use of the Solution, Customizations and Documentation. The Client acknowledges that the Solution, Customizations and Documentation may include encryption and may, accordingly, be subject to export or other restrictions.

2.5 Client shall not:

- make back-up copies of the Licensed Materials without Faktion’s authorization;
- arrange or create derivative works based on the Licensed Materials without Faktion’s express written consent;
- assign, distribute, sub-license, hire, transfer, sell, lease, rent, charge or otherwise deal in or encumber the Licensed Materials, or use the Licensed Materials on behalf of any third party or make them available to any third party, nor allow or permit a third party to do any of the same;
- copy, duplicate, reverse engineer, reverse compile, disassemble, record or otherwise reproduce the Licensed Materials or any part of them except as expressly provided in these Terms and Conditions;
- remove or alter any copyright or other proprietary notice on any of the Licensed Materials.

2.6 If the Solution is hosted on Client’s premises, Client is permitted to make as many copies of the Licensed Materials as are reasonably necessary for operational security, disaster recovery or back-up purposes. Such copies shall in all respects be subject to these Terms and Conditions and shall be deemed to form part of the Licensed Materials and shall be the property of Faktion. In respect of this article, only internal copies are permitted. This article is not relevant in case the Solution is hosted by Faktion as per the terms of article 23 of these Terms and Conditions.

If the Solution is hosted in Faktion’s cloud, Client is permitted to make as many copies of the Documentation as are reasonably necessary for operational security, disaster recovery or back-up purposes. Such copies shall in all respects be subject to these Terms and Conditions and shall be deemed to form part of the Licensed Materials and shall be the property of Faktion. In respect of this article, only internal copies are permitted.

2.7 The usage rights of the Licensed Materials and any usage restriction are set out in the Commercial Offer. Client is obliged to report to Faktion in writing any infringement on these usage rights within ten (10) days after the infringement takes place. For a period of thirty (30) days after the occurrence of the infringement, Client has the right to regularize the situation, without incurring any penalty. Faktion shall always have the right to set up an audit to investigate the number of users/instances. Client shall effect and maintain adequate security measures to safeguard the Licensed Materials from unauthorized access, use or copying by any person.

### 3. Delivery, Installation and Acceptance

3.1 In case of on premise solution, Faktion shall deliver the Licensed Materials to the Client on the Solution Delivery Date. From the Solution Delivery Date, all risk related to the loss or damage to the Licensed Materials shall be assumed by the Client.

In case of a hosting solution, Faktion shall provide one copy on electronic media of the Documentation, as specified in the Commercial Offer.

3.2 In case of on premise solution, the Client is responsible for installation of the Licensed Materials in accordance with the installation guide issued by Faktion as part of the Documentation. In case of a hosting solution, Faktion is responsible for installation of the Licensed Materials.

If Client requests Faktion to perform Professional Services and Faktion agrees in writing to provide such Professional Services, Faktion shall provide such Professional Services in accordance with a Statement of Work. The provisions of this article shall apply in respect of the testing, integration, configuration, installation and acceptance of the Licensed Materials, unless otherwise specified. Faktion shall be entitled to attend and witness such acceptance testing, but if and only if agreed in writing between the Parties pursuant to a Statement of Work, Faktion shall provide additional Professional Services to assist license in acceptance testing.

**3.3** Acceptance of the Licensed Materials against the Acceptance Criteria, has to take place within a pre-defined Test Period (to be mutually agreed in writing between the Parties) following the Solution Delivery Date. The Client has the responsibility to conduct business compatible Acceptance Tests within the Test Period. Unless Client can demonstrate within the Test Period that the Licensed Materials do not operate as described in the Acceptance Criteria, the Acceptance Test will be deemed passed. Any serious malfunctioning, which is preventing the Licensed Materials passing acceptance testing, has to be reported to Faktion in writing, at the latest five (5) Business Days after it was detected. The Client shall be deemed to have accepted the Licensed Materials without reservation if (i) the Client uses such Licensed Materials in a production environment, (ii) the Licensed Material performs and functions in accordance with the Acceptance Criteria during the acceptance testing, (iii) the Client notifies Faktion that it accepts the Licensed Materials, (iv) the Client has not completed acceptance testing of the Licensed Material within the Test Period, or (v) the Client has failed to issue a notice of acceptance or non-acceptance within five (5) Business Days from the end of the acceptance testing.

**3.4** If the Licensed Material fails to perform or function in accordance with the Acceptance Criteria during the acceptance testing, the Client shall promptly (and in any event within five (5) Business Days as of the end of such acceptance testing) deliver to Faktion a written notice listing all deficiencies in reasonable detail. Within two (2) weeks after delivery of the resolution, Client will conduct new tests. The deemed acceptance situations set out above shall apply to such additional acceptance round.

Should these tests not be conclusive meaning that the resolution provided does not solve the reported problem, the acceptance procedure as set out here above shall be applicable until acceptance has taken place. The Licensed Material shall not be deemed to have failed to perform or function in accordance with the Acceptance Criteria as a result of any deficiency which (i) was not attributable to Faktion, or (ii) was or reasonably should have been discovered by the Client in a prior acceptance testing but which has not been notified to Faktion, or (iii) which is minor in nature as defined by the Acceptance Criteria.

**3.5** Upon passing the acceptance tests, both Parties will formalize this by signing an acceptance form. Signatures of the acceptance form shall not be unreasonably withheld by the Parties. It is being understood that in the event of deemed acceptance, the Licensed Materials shall be deemed accepted regardless of such acceptance form being signed.

#### **4. Intellectual Property Rights**

**4.1** Faktion exclusively owns and retains all right, title, interest in and to all Intellectual Property Rights in or pertaining to the Licensed Materials, the Maintenance Services, the Professional Services, its website and all the documentation (including Documentation) and materials pertaining or relating thereto (including any copies and portions thereof), whether in machine readable or printed form, including, without limitation, (i) all software and materials which are related to the Licensed Materials, the Maintenance Services, the Professional Services, its website, (ii) all modifications and customizations (including the Customizations) to, and derivative works, compilations or collective works of, the Licensed Materials, and (iii) all related technical know-how. The Client agrees to be bound by and observe the proprietary nature of the Licensed Materials. The Client agrees not to remove, suppress or modify in any way any proprietary marking, including any trade mark or copyright notice, on or in the Licensed Materials, or visible during its operation, or on media or on any Documentation. Client shall incorporate or reproduce such proprietary markings in any permitted back-up or other copies.

#### **5. Infringements Claims by Third Parties**

**5.1** Faktion will be given prompt written notice of any third party claim on an alleged or actual infringement by the Licensed Materials or other material made available by Faktion, and will be granted the right to control and direct the defense and settlement of such a claim. Client shall be entitled to participate in such proceedings at its own cost. Faktion must keep the Client regularly informed of the status of the proceedings and/or settlement negotiations. Client agrees to reasonably cooperate with Faktion in the defense and settlement of such a claim. In the event the Licensed Material or such other material as referenced above, in Faktion's reasonable opinion, are likely to become or actually become the subject of a claim of infringement as set out above, Faktion shall have the right, at its sole option and expense, to (i) modify, replace the (alleged) infringing material so that it becomes non-infringing while preserving substantially equivalent functionality or create a workaround; or (ii) obtain for the Client the right to continue to use, market and distribute such material as per the terms of these Terms and Conditions.

**5.2** Client shall indemnify, defend and hold Faktion and its Affiliates harmless from and against any damages, losses, costs and expenses (including reasonable attorneys' fees) suffered or incurred by Faktion arising out of Client's infringement of any third party's intellectual property rights.

**5.3** In case any alleged or actual Intellectual Property Rights infringement relating to the Licensed Material is arising, the Client shall immediately cease the use of these Solutions. In case the Client neglects this obligation, Faktion may at its sole discretion terminate the Terms and Conditions with immediate effect and without any compensation or indemnification due by Faktion whatsoever.

**5.4** Faktion shall have no liability for any claim which is based upon (i) Client's unauthorized use of the Licensed Materials, (ii) Client's or any third party's modification of any of the Licensed Materials, (iii) Client's failure to integrate or install any corrections to such Licensed Materials issued by Faktion, if Faktion indicated that such update or correction was required to prevent a potential infringement, (iv) Client's use of the Licensed Materials in unauthorized or incompatible combination with any non-Faktion's solutions or services.

#### **6. Confidential Information**

**6.1** Each Party shall treat as confidential and keep secret all Confidential Information relating to the other and shall not disclose to any third party, other than its agents or consultants where such disclosure is necessary, any Confidential Information learned during the negotiation and performance of these Terms and Conditions. Confidential Information disclosed under this Commercial Offer shall not be used by the recipient thereof for any purpose other than as required for the performance of its obligations under these Terms and Conditions and/or Commercial Offer.

**6.2** Client shall take precautions to maintain the confidentiality of the Confidential Information and in particular the Client covenants that it:

- a. shall not copy or otherwise exploit any component of the Confidential Information other than as herein provided, nor make any disclosures with reference thereto to any third party.
- b. shall ensure that all copies of the Confidential Information (made in accordance with the provisions of these Terms and Conditions) contain a permanently legible reproduction of Faktion's copyright notice and a confidentiality notice.
- c. shall promptly notify Faktion if it becomes aware of any breach of confidence and give Faktion all reasonable assistance in connection with the same.

**6.3** The provisions of this article shall not apply to any secret or information which:

- a. is published or comes into the public domain other than by a breach of the Terms and Conditions or,
- b. can be shown to have been known by the receiving Party before disclosure by the disclosing Party or,
- c. is lawfully obtained from a third party or,
- d. can be shown to have been created by the receiving Party independently of the disclosure and other than as part of the project.

#### **7. Payment Terms**

**7.1** The License Fee, Maintenance Fee, Hosting Fee and Professional Services Fee (whichever is applicable) will become payable as set out in the Commercial Offer. All payments of invoices correctly issued by Faktion to the Client under these Terms and Conditions shall be final and non-refundable. Invoices are sent by email in PDF-format to the Client's contact person(s), named in the Commercial Offer. The Client may explicitly request Faktion in written to send a copy of the invoices to a physical address, without prejudice to relevant legal requirements.

**7.2** Client agrees to make all payments due to Faktion under the provisions of these Terms and Conditions or any Statement of Work within thirty (30) days of the date of invoice, unless Parties have agreed otherwise in writing. Client agrees to make every payment due to Faktion under the provisions of these Terms and Conditions in EUR. In event of late payment, all Client payment obligations to Faktion will immediately become due and payable. The License Fee, Maintenance Fee, Hosting Fee and the Professional Services Fee shall be subject to an annual adaptation on January 1st of every year, whereby the new index will be the index of September of the previous year. The License Fee, Maintenance Fee, Hosting Fee and the Professional Services Fee shall automatically be increased by a percentage equivalent to the aggregate percentage increase in the Agoria "referentielonen landsgemiddelde" index or if the Agoria index is no longer published, the index replacing it or failing such index by another index reflecting the increases of labour cost. A negative index shall have no impact on the fees. Faktion has no obligation to inform the Client in advance of this indexation. The base index taken is the index applicable three (3) months before the signing of these Terms and Conditions. Every invoice made by Faktion shall be deemed to have been definitively accepted by the Client if it is not disputed by registered letter sent to Faktion wherein the reason for the dispute is explained, and this within ten (10) days after the invoice date of that specific invoice.

**7.3** All fees payable to Faktion under these Terms and Conditions shall be paid without the right to set off or counterclaim and free and clear of all deductions or withholdings whatsoever, unless the same are required by law, in which case the Client undertakes to pay Faktion such additional amounts as are necessary in order that the net amounts received by Faktion after all deductions and withholdings shall not be less than such payments would have been in the absence of such deductions or withholding. Sums stated to be payable under these Terms and Conditions do not include any applicable value added tax or other taxes, which shall be additionally charged to the Client. The Client is responsible for payment of all general, state or local import, usage, value added, withholding or other taxes associated with the supply or use of the Licensed Materials, the Maintenance Services, the Hosting Services and the Professional Services. The Client shall promptly reimburse Faktion for any such taxes or duties paid by Faktion.

**7.4** The amount of any invoice which has not been paid within thirty (30) days from the invoice date shall automatically be subject to a late payment interest equal to the legal interest rate of the Act of 2 August 2002 on late payment interests in commercial transactions, which interest shall be compounded daily as of the due date until receipt of full payment by Faktion. In addition, Client shall pay all costs incurred by Faktion as a result of the (extra)judicial enforcement of the Client's payment obligation under this article. If Faktion fails to pay any outstanding amounts within thirty (30) days from receipt of a written default notice, Faktion shall be entitled to suspend its obligations and the Client's rights hereunder until receipt of payment of such outstanding amounts.

#### **8. Limitation of Liability of the Parties**

**8.1** Subject to the maximum extent permitted by applicable law, Faktion's liability under these Terms and Conditions in respect of each event (or series of connected events) shall not exceed all fees paid by Client to Faktion under the present Terms and Conditions for a period of twelve (12) months applicable at the date of the event (or last of the series of connected events) giving rise to any claims of Client's customers or business relationships and this per cause of damage. Faktion shall not be held liable in any way, neither contractually nor extra-contractually, for discontinuing an older Release of the Solution. Client shall at all times during and after the term of these Terms and Conditions indemnify, keep indemnified and hold Faktion harmless against all claims, demands, actions, proceedings and all losses in relation to any breach of these Terms and Conditions by Client, Authorized Users or end users, any negligent or wrongful acts or omissions of Client, Authorized Users or end users under these Terms and Conditions, any failure to act or misrepresentation by the Client, Authorized Users or end users and/or any faults and omissions in the performance of its obligations pursuant to these Terms and Conditions, resulting into claims of third parties.

**8.2** Under no circumstances shall Faktion be liable to the Client for any indirect, punitive, special consequential or similar damages (including damages for loss of profit, lost revenue, loss of business, loss or corruption of data, loss of customers and contracts, loss of goodwill, the cost of procuring replacement goods or services, and reputational damage) whether arising from negligence, breach of contract or of statutory duty or otherwise howsoever. Each Party shall have the duty to mitigate damages. The exclusions and limitations of liability under this article shall operate to the benefit of Faktion's Affiliates and subcontractors under these Terms and Conditions to the same extent such provisions operate to the benefit of Faktion.

#### **9. Force Majeure**

Neither Party will be liable for any delay in performing, or failure to perform, any of its obligations under these Terms and Conditions due to Force majeure. Force majeure is understood to mean a temporary or permanent inability of a Party to fulfil his obligations, resulting from facts and circumstances reasonably beyond the control of that Party. Force majeure shall in any case apply to: war or war risk, insurrection or public revolt, fire caused by an outside calamity, an import or export embargo imposed by the government, floods, internet failure, third party negligence or contractual default, strike or social action and otherwise all circumstances qualified by both Parties as Force Majeure. If a Party refers to Force Majeure, he must immediately (at least within five (5) Business Days) inform the other Party of the nature of the Force Majeure, stating the date when the Force Majeure comes or has come into effect, and also when it will have ceased to exist. In this case, the Party must use its best efforts to keep the consequences to a minimum.

#### **10. Privacy and Data Protection**

**10.1** The Client shall (i) comply with all applicable legal requirements regarding privacy and data protection, more in particular with the General Data Protection Regulation of 16 April 2016 ("GDPR"); and (ii) provide sufficient notice to, and obtain sufficient consent and authorization from, Authorized Users, end users and any other party providing personal data to the Client and Faktion, to permit the processing of the data by the Client and Faktion and the Licensor's hosting partner (if applicable), and their respective affiliates, subsidiaries, and licensors. If and to the extent required by law, Client shall notify the individual Authorized Users (and where applicable or appropriate end users) of the Solution and (as the case may be) the Customisations that their data may be processed for the purpose of disclosing it to law enforcement or other governmental authorities as directed by the Licensor, and shall obtain the Authorized User's consent to the same.

**10.2** The Licensor shall use Client's data only in light of the execution of these Terms and Conditions and in accordance with the data processing agreement as annexed to the present Agreement. Additionally, the Licensor shall only access and disclose to law enforcement or other government authorities to the extent required by law data from, about or related to Client, including the content of communications (or to provide law enforcement or other government entities access to such data). The Licensor does not and will not assume any obligations with respect to Client's data or to the Client's use of the Solution and (as the case may be) the customisations other than as required by applicable law.

#### **11. Non-Assignment**

Client shall not assign or otherwise transfer any of its rights or obligations under these Terms and Conditions without Faktion's prior written consent. Faktion's consent should be requested by registered letter, disclosing the identity of the prospective transferee. Subject to any restrictions on assignment herein contained, the provisions of these Terms and Conditions shall inure to the benefit of and shall be binding upon the Parties hereto and their respective heirs, legal representatives, successors and assignees.

## 12. Non-Recruitment

For the term of the Terms and Conditions and for a period of two (2) years thereafter the Client shall not recruit nor employ any personnel (directly or indirectly) employed or contracted by Faktion and introduced in connection with the performance of these Terms and Conditions. This restriction applies to any recruitment in a country of the continent where the Faktion personnel was mainly employed by Faktion. In case of breach of this Article by the Client, the Client shall pay to Faktion damages of 135,000 Euro per infringement, without prejudice to Faktion's right to initiate any legal proceedings and/or to claim additional damages, if Faktion can establish that Faktion has incurred losses exceeding this amount.

## 13. Term & Termination

**13.1** These Terms and Conditions shall commence on the Effective Date and continue in effect for the Initial Term and shall thereafter automatically and tacitly renew for successive one-year periods (each a "Renewal Term") unless written notice of non-renewal is given by either Party at least six (6) months prior to the expiration of the Initial Term or any (subsequent) Renewal Term.

**13.2** Faktion may terminate these Terms and Conditions or suspend the Professional Services and/or user rights granted hereunder by written notice to the Client if the Client fails to pay to Faktion any amount due hereunder and the Client fails to cure such failure to pay within thirty (30) days from the date of such notice. The Client acknowledges and agrees that any use of the Licensed Materials outside the scope of the license as set forth in these Terms and Conditions, unless such use has been expressly approved in writing by a duly authorized representative of Faktion, shall entitle Faktion to immediately terminate (or alternatively, at Faktion's option, suspend) one or more of the licenses granted hereunder and/or the Terms and Conditions for material breach by the Client, without any formalities being required and without prejudice to any other right or remedy available to Faktion pursuant to these Terms and Conditions or under applicable law.

**13.3** Either Party may terminate these Terms and Conditions by written notice to the other Party if the other Party materially breaches these Terms and Conditions and fails to cure such breach within 30 days from the date of receipt of such notice by the breaching Party, provided that Faktion shall be entitled to terminate these Terms and Conditions (or alternatively suspend the Professional Services and/or user rights granted hereunder) on giving written notice in the event the Client breaches the license terms hereunder or infringes Faktion's intellectual property rights. Either Party may terminate these Terms and Conditions by written notice to the other Party, effective as of the date of delivery of such notice, if the other Party becomes the subject of a voluntary or involuntary bankruptcy, insolvency or similar proceeding or otherwise liquidates or ceases to do business.

**13.4** Upon termination of these Terms and Conditions for whatever reason (i) the Client shall promptly pay Faktion all fees and other amounts earned by or due to Faktion in respect of the Licensed Material and/or any outstanding Statement of Work, up to and including the date of termination, including (non-exhaustive list) the full License and Maintenance Fee, any Professional Services fees and expenses payable under an outstanding Statement of Work; and (iii) all licenses granted to the Client pursuant to these Terms and Conditions shall automatically terminate and the Client shall return to Faktion all copies (in whatever form or medium) of the Licensed Material and the Confidential Information of Faktion that are in the possession or control of the Client. The Client shall be entitled to keep one copy for sole regulatory purposes.

**13.5** Upon termination of these Terms and Conditions for whatever reason (except in case of a material breach by Faktion, in accordance and without prejudice with Article 13.3) during the Initial Term, all License and Maintenance Fees for the full Initial Term shall become due and payable by the Client to Faktion. In this event, Client shall promptly pay all License, Maintenance, Hosting and Professional Services Fees and any other outstanding amounts to Faktion. The provisions of these Terms and Conditions that are expressly or implicitly intended to survive termination, including articles 4 until 22 of these Terms and Conditions, shall survive any expiration or termination of these Terms and Conditions.

## 14. Severability

If any provision of these Terms and Conditions is held to be unenforceable, the other provisions shall nevertheless continue in full force and effect. Each Party shall use its best efforts to immediately negotiate in good faith a valid replacement provision with an equal or similar economic effect.

## 15. Waiver and entire agreement

**15.1** The terms and conditions of these Terms and Conditions may be modified or amended only by written agreement executed by a duly authorized representative of both Parties hereto. These Terms and Conditions may be waived only by a written document signed by the Party entitled to the benefits of such Terms or Conditions. No such waiver or consent shall be deemed to be or shall constitute a waiver or consent with respect to any other terms or conditions, whether or not similar. Each such waiver or consent shall be effective only in the specific instance and for the purpose for which it was given, and shall not constitute a continuing waiver or consent.

**15.2** These Terms and Conditions constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes all prior oral or written agreements, representations or understandings between the Parties relating to the subject matter hereof. No statement, representation, warranty, covenant or agreement of any kind not expressly set forth in these Terms and Conditions shall affect, or be used to interpret, change or restrict, the express terms and provisions of these Terms and Conditions.

## 16. Notices

Any notice required to be served by these Terms and Conditions shall in first instance be given by electronic mail to the email addresses set out in the Commercial Offer. All notices given by electronic mail, shall only be valid in case confirmation of receipt was expressly given by electronic mail from Faktion to the Client within five (5) Business Days. In case no confirmation of receipt was given by Faktion within five (5) Business Days, all notices can be done in writing and served by personal delivery, registered letter, addressed to either Party at its address given in the Commercial Offer or to such other address as a Party may designate by notice hereunder. All Notices shall be deemed to have been given either (1) if by hand, at the time of actual delivery thereof to the receiving Party at such Party's address, as provided above, (2) if sent by overnight courier, on the next Business Day following the day such notice is delivered to the courier service, or (3) if sent by registered or certified mail, on the 5th Business Day following the day such mailing is made.

## 17. Interpretation

In these Terms and Conditions (unless the context shall otherwise require or permit):

- Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted;
- Words importing the singular include the plural, words importing any gender include every gender and words importing persons include bodies corporate and incorporate; and each case vice versa;
- The headings or captions to the articles are for ease of reference only and shall not affect the interpretation or construction of these Terms and Conditions.

## 18. Relationship of the Parties

The relationship between Faktion and Client is that of independent contractors. Neither Party is agent for the other and neither Party has any authority to make any contracts, whether expressly or by implication, in the name of the other Party, without that Party's prior written consent for express purposes connected with the performance of these Terms and Conditions. As of the Effective Date, Faktion shall be entitled to reference the Client as a Faktion customer in all its commercial/marketing documentation and client listings, as a sales reference, as well as on Faktion's websites. The Parties agree to issue a joint press release within a reasonable period from the Effective Date and the Acceptance Date, the content of which shall be subject to both Parties' agreement (such agreement not to be unreasonably withheld or delayed), announcing the signature of the Terms and Conditions and the implementation of the Solution at the Client.

## 19. Dispute resolution

**19.1** Faktion and the Client shall exercise reasonable good faith efforts to resolve any dispute, controversy or claim arising in connection with these Terms and Conditions by means of the escalation procedure specified in this Section ("Escalation Procedure"). For the avoidance of doubt, the Escalation Procedure shall have no impact on the Parties' termination rights and the Parties' other rights under the Terms and Conditions.

### 19.2 General Principles:

While the Escalation Procedure is being followed, Client and Faktion shall abide by the following general principles:

- Client and Faktion shall, in response to the other Party's reasonable request, meet as often as reasonably necessary and provide the other with non-confidential information reasonably related to the disputed matter;
- Client and Faktion shall aim to resolve the dispute matter at the lowest level in the escalation hierarchy;
- any resolution agreed upon by means of the Escalation Procedure shall be recorded in writing;
- with respect to each disputed matter, the Parties will keep an electronic log-file consisting of all communications exchanged between Client and Faktion, as well as all relevant related information, including any minutes of any meetings;
- Client and Faktion shall be free to seek the assistance of experts (including technical and legal experts) to resolve the disputed matter. Third parties, invited by either Party, are allowed to attend any sessions held between the Parties as the inviting Party may require upon written consent of the Parties. The inviting Party shall procure that such third party shall sign a written confidentiality statement (using a template agreed between the Parties).

### Escalation Procedure

The Escalation Procedure shall be conducted per the contact persons indicated in the Commercial Offer as follows:

Escalation Level	Client's contact person	Faktion's contact person
Level 1 Escalation:	Client's solution manager	Faktion's services manager
Level 2 Escalation:	Client's contract manager	Faktion's account manager
Level 3 Escalation:	Client's contract Executive	Faktion's contract executive

- The primary operational contact of the Party that identifies a disputed matter shall inform that Party's contact person at Escalation Level 1 thereof. This contact person shall subsequently send the other Party's contact person at Escalation Level 1 a notification of the disputed matter by electronic means (the "Notification") to be confirmed in writing;
- Level 1 shall attempt to resolve the disputed matter within five (5) Business Days after the Notification. If a resolution has not been agreed upon within five (5) Business days from the date of Notification, or at a date earlier in time if they agree thereon, either may refer the disputed matter to Level 2 by electronic means, while simultaneously transferring the log-file referred to above (Reference Date 1);
- Level 2 shall attempt to resolve the disputed matter within five (5) Business Days after the Reference Date 1. If a resolution has not been agreed upon within five (5) Business days from Reference Date 1, or at a date earlier in time if they agree thereon, either may refer the disputed matter to Level 3 by electronic means, while simultaneously transferring the log-file referred to above (Reference Date 2);
- Level 3 shall attempt to resolve the disputed matter within ten (10) Business Days from Reference Date 2. If a resolution has not been agreed upon within ten (10) Business days from Reference Date 2, or at a date earlier in time if they agree thereon, the Escalation Procedure shall be deemed exhausted.

### 19.3 Licensor shall be entitled to accelerate the procedure by

- skipping one or more Escalation Levels; and/or
- escalating the disputed matter to a higher escalation level prior to the lapse of the periods specified above.

**19.4** Upon exhaustion of the Escalation Procedure, either Party may initiate proceedings against the other Party in accordance with Section 'Applicable Law' of these Terms and Conditions. On completion of the Escalation Procedure, the decision shall be documented and returned to both Parties for future reference and record. Nothing contained in this article shall restrict either Party's freedom to commence legal proceedings to preserve any legal right or remedy or protect any proprietary or trade secret right or other injunctive relief.

## 20. Applicable law and jurisdiction

These Terms and Conditions and/or Commercial Offer shall be governed by and construed in accordance with the laws of Belgium and the Parties hereto submit to the exclusive jurisdiction of the Courts of Antwerp. The United Nations Convention for the International Sale of Goods shall not apply to these Terms and Conditions and/or the Commercial Offer.

## 21. Special terms and conditions

Faktion undertakes to comply to the additional special terms and conditions, if applicable, as set out in the Commercial Offer if and to the extent required by regulatory requirements.

## 22. Professional Services

Upon request of the Client, and for the duration of these Terms and Conditions and Commercial Offer, Faktion can provide Professional Services to Client. Professional Services will be upfront agreed (unless otherwise agreed in these Terms and Conditions) in a Statement of Work. Unless stated differently in the particular Statement of Work, all Professional Services are charged on Time and Material basis, for an 8 hour Business Day.

## 23. Hosting

**23.1** In case the Solution is hosted, the hosting solution is hosted by Faktion in the datacenters of the Hosting Partner and Faktion is entitled to provide those services ("Hosting Services") to the Client. The Client represents and warrants that it accepts the terms and conditions of the last version of the terms of use in respect of the Hosting Services as available on link defined in the Commercial Offer (the "Hosting Terms") and acknowledges and agrees that the Hosting Partner shall retain the right to unilaterally change these terms.

**23.2** The Client acknowledges that the Hosting Services will be performed in dedicated datacenters of the Hosting Partner. The Licensor shall use its best efforts to ensure an availability of the environment of 99.00 %, 24x7 as per the Service Level Terms and Conditions set out in the Hosting Terms. These warranties set out in the Hosting Terms are not applicable in case the non-conformity with the Service Level Terms and Conditions is due to accident, misuse or use in any other way which is not compatible with the Hosting Terms or the present Terms and Conditions. Hosting Partner does not give any other warranties and rejects all other explicit, implicit or legal warranties, including warranties in respect of merchantability, fitness for a particular purpose, adequate quality, title or non-infringement. Faktion shall in no event provide any warranty in respect of the Hosting Services.

**23.3** Faktion shall use its best efforts to provide interrupted Hosting Services, except for:

- » **Planned maintenance:** in some cases, the services, or part of it, will not be available during the performance of maintenance. In case the Hosting Services might be interrupted as a result of such Maintenance, this maintenance should be performed outside office hours, if reasonably feasible. The Client will as soon as possible be notified if the period of planned maintenance is known.

» **Unplanned maintenance:** Faktion has the right to conduct unplanned maintenance if necessary (eg. for security reasons). The Client will be as soon as feasible, and practical possible, been informed of such an event.

23.4 The Client and its Authorized Users give Hosting Partner the permission to process all personal data as contemplated by these Terms and Conditions. The Client shall (i) comply with all applicable legal requirements regarding privacy and data protection and (ii) provide sufficient notice to and obtain sufficient consent and authorization from end users and any other party providing personal data to the Client, Faktion and Hosting Partner in order to permit the processing of the data by the Client, Faktion, Hosting Partner and their respective Affiliates, subsidiaries and service providers.

23.5 The maximum liability of Faktion and Hosting Partner for all claims in respect of the Hosting Services, is limited to only direct damages and will in no event exceed the amount of hosting fees paid by the Client to Faktion during the past twelve (12) months prior to the event which gave rise to the claim and this based upon cause of damage. These limitations are applicable regardless to the determined liability based on breach of contract, risk liability, breach of terms of warranty or any other legal ground.

23.6 If Client wishes to change the hosting partner providing Hosting Services, Client shall pay a relocation fee which will cover Faktion's manhours, costs and expenses for such change.

**24. Maintenance**

24.1 Article 24 is only applicable if in the Commercial Offer Maintenance Services are offered. In case of an on premises solution, Parties expressly agree that the Maintenance Services and the Parties rights and obligations thereof as set forth in this Article 24, shall only apply if Faktion is given direct access to the production environment during the term of the License, which Faktion will only access for the provision of such Maintenance Services.

24.2 As of the Acceptance Date and in consideration of the timely payment by the Client of the License Fees and Maintenance Fees, Faktion shall provide Maintenance Services in relation to the Solution in the Client's production environment subject to the terms and conditions herein contained in order to allow the Solution to substantially meet the functionalities as set out in the Solution Documentation. Faktion shall provide Maintenance Services on the current New Release of the Solution and on the previous Release for three (3) months after the current New Release was made available to the Client. Faktion can provide Professional Services on Client-Induced Incidents or any other out of scope Incidents including but not limited to regulatory maintenance. All Professional Services are not included in the License Fee, Maintenance Fee and Hosting Fee and shall be separately paid for by the Client to Faktion according to the rate card set out in the Commercial Offer.

24.3 Client shall initiate a first review of any Incident encountered by Client and its Authorized Users in using the Solutions and notify to Faktion by one of the Client's Authorized Staff to assess whether such Incident constitutes an Incident related to the Solution or not. Client shall notify Faktion by using the web based ticketing system provided therefore by Faktion. Upon the receipt of a ticket initiated by the Client, Faktion shall further investigate the origin of the malfunction and determine at its sole discretion whether the Incident is caused by the Solution or is qualified as a Client-Induced Incident. Faktion's classification shall be binding and definite to both Parties. In the event that Faktion is unable to replicate the Incident (remotely or at Client's Location) then the Incident shall be considered as a Client-Induced Incident.

24.4 Faktion shall offer Professional Services in respect of Client-Induced Incidents or any out of scope incidents. For Professional Services that constitute a Minor Intervention, the Client may order the Professional Services by email or by using a Statement of Work. Moreover, the Client shall reimburse Faktion for the costs made relating to the investigation of such Incident on a time and materials basis as stipulated in the rate card in the Commercial Offer. For Professional Services that constitute a Major Intervention, the Client shall only apply for Professional Services by using a Statement of Work. All reported Incidents on the Solution, which are not out of scope and therefore are included in the recurring License and Maintenance Fee, shall be dealt with in accordance with the following process and service levels. Client shall promptly submit all Incident Reports via a web based ticketing system provided by Faktion and in the format to be agreed between the Parties (the "Incident Report").

24.5 For each Incident Report, Client shall accurately inform Faktion on the perceived business impact of the Incident and shall assign in its sole discretion a priority level (as defined below). The levels of priority and the associated target Response Times following such Incident and update frequencies are as follows:

Faktion Priority	Impact	Target Response Times	Resolution Time Objectives	Update Frequency
1	The Solution is not available for the total of Authorized Users; or The Solution produces errors with a direct severe impact on all Authorized Users. Authorized Users include both Users of Client and Client's clients.	4 hours during a Business Day	8 hours during a Business Day Permanent fix targeted within 4 weeks	Every 2 hours during a Business Day
2	The Solution is operational for the majority of Authorized Users, however it functions solely by: a. material efforts performed by the Client; b. material additional costs incurred by the Client or; c. having serious restrictions on the functionalities of the Solution.	8 hours during a Business Day	16 hours during a Business Day Permanent fix targeted within 4 weeks	Every 4 hours during a Business Day
3	The Solution is operational but has certain limitations in functionality for the Authorized Users.	3 Business Day	10 Business Days Permanent fix targeted within 2 months	Every last working day of the week before close of business
4	The Solution is operational but anomalies are identified with regards to the functional documentation provided by Faktion. The anomaly has a minor impact for the Authorized Users.	20 Business Days	20 Business Days Permanent fix targeted within 6 months	During the semi-annual service review meetings

24.6 For priority 1 and priority 2 Incidents (a "Severe Incident"), Faktion shall, immediately after the Incident has been verified and validated, appoint a SPOC (single point of contact) and inform Client about the different means how the SPOC can be reached, and this until the Incident has been resolved. The SPOC will update Client of the status in accordance with the agreed upon frequency.

24.7 For avoidance of doubt:

When Client reports a Severe Incident, the Incident Report form must state the name and title of Client's Authorized Staff within Client's organization who will be available at all times during the resolution of this Severe Incident. This person must have a working knowledge of the problem.

"Response Times" are defined as the time between the Incident being reported by means of a duly filled in Incident Report to Faktion by one of Client's Authorized Staff and a written acknowledgement from Faktion that the Incident Report has been received, and the information herein has been understood. Actual Response Times are dependent on the level of access and assistance provided by Client. In case Faktion requires additional information from Client to be able to understand the Incident, Faktion will immediately notify Client. The time between requesting such information and its receipt, shall not qualify as response time.

"Resolution time" starts when the information contained in the Incident Report has been understood and is defined as the time during which the Incident was assigned to Faktion. This includes:

- » Time for analysis, replication, investigation.
- » Time for providing a resolution and testing by Faktion.
- » Time for packaging and delivering the resolution to Client.

For the calculation of the Resolution Time, following periods are not considered:

- » Time between request by Faktion to Client of information needed to progress the investigation or replicate the Incident and the receipt thereof.
- » Time between the delivery of the resolution to Client and time of Client completing application / installation of the resolution and testing.
- » Time between the request for remote access to the production environment of the Client and the actual access grant to the Licensor.

Resolution Time shall be an obligation of means.

"Permanent fix" is defined as a fix solving the root cause of the problem causing the Incident.

An Incident is considered to be resolved if one (or more) of the following cases apply:

- » A Permanent fix has been provided to Client.
- » A workaround has been provided to Client.
- » An emergency Hot Fix has been provided to Client.
- » A temporary workaround which reduces the business impact and which results in a new priority problem, has been delivered to Client.
- » The Solution is running as prior to that problem.

24.8 In case an Incident has been resolved, while the root cause persists, a new Incident addressing the investigation and correction of the root cause will be created by Faktion. The Resolution Time objectives are the target resolution times. For Severe Incidents, Faktion will use all possible and reasonable effort to adhere to the Target resolution time objectives. Every question for additional information required to progress the investigation and resolution, and every information being provided, will be communicated via the Incident handling system, followed by a call between the SPOCs of both parties. Should Faktion not be able to resolve the Incident within these timeframes, Faktion warrants that it will uninterruptedly continue to work on the Incident during business hours until the Severe Incident is considered to be resolved.

24.9 For the avoidance of doubt, the Maintenance Services are not provided for Incidents or malfunctioning of the Solution caused by (or occurring in):

- » abuse or misuse of the Solution,
- » modification or addition to the Solution not performed by or with the consent of Faktion,
- » failure of or change to the Authorized Equipment,
- » incorrect installation of the fix by a party different than Faktion,
- » incorrect configuration not performed by or with the consent of Faktion
- » the use of incorrect data or data structures,
- » any installation other than a Supported Release,
- » any faults on the Authorized Equipment or in any programs in conjunction with the Authorized Equipment or the Supported Release,
- » any other environment than the Client's production environment.

24.10 In case of an on premise solution, Client shall be responsible for the installation of all New Releases, Versions and Hotfixes of the Solution. Faktion shall provide to Client details of the New Modules developed by or for Faktion as and when such becomes generally available. Upon request of the Client, New Modules shall be provided to Client, subject to the signing of an addendum to Commercial Offer and/or these Terms and Conditions and if applicable, the payment of any additional License Fee and Maintenance Fee. Faktion shall not be held liable in any way, neither contractually nor extra-contractually, for discontinuing the maintenance of an older Release of the Solution after the period of three (3) months following the release of a New Release

**24.11 Maintenance Services – Customizations and Professional Services**

Faktion does not ensure that any Customizations or Professional Services on the currently licensed Solution, shall remain compatible with any New Release, Version or Hotfix of the Solution, which is used or will be used by Client. To the extent that one or more Customizations (or Professional Services) are not fully compatible with any New Release or Version of the Solution, Faktion can agree to make changes as may be required to make them compatible with such new release or version. Such changes will be subject to a separate Statement of Work duly signed by both Parties. Client shall be obliged to follow the life cycle of the Solution and implement any New Releases, Versions or Hotfixes in order to be able to receive Maintenance Services. If Client neglects to do so, Client shall still be obliged to pay the Maintenance Fees as agreed in the Commercial Offer and/or Statement of Work.

24.12 Maintenance in respect of Customizations (or Professional Services) is not included in the standard Maintenance Services of these Terms and Conditions. The Client can however request Faktion to provide Professional Services, in respect of maintenance on the Customizations or Professional Services. In such case, a dedicated Statement of Work will be concluded and approved in writing by both Parties which details the exact scope of the Professional Services relating to the maintenance of these Customizations or Professional Services.

24.13 Unless otherwise agreed in writing in a Statement of Work, such Professional Services will be provided at a yearly maintenance fee of 30% on the Professional Services Fees as provided under these Terms and Conditions that are associated with these Customizations (or Professional Services).