

# IndustryApps AppStore Terms of Use

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## 1. General

- 1.1 The following terms of use ("**TOU**" or "**Agreement**") are a legal agreement between IndustryApps Pte. Ltd., 3 Harbourfront Place, #11-01 Harbourfront Tower Two, Singapore 099254, Singapore ("**IA**") and the customer entity ("**You**", "**Your**", or "**Customer**") which registered to use the Industry Apps AppStore available inter alia via <https://store.industryapps.net> and further described under <https://docs.industryapps.net> ("**IA AppStore**"). These TOU describe the terms and conditions that apply to Customer's access and use of the IA AppStore including its content and the provision of business services that may be offered by IA in connection with the IA AppStore such as the Factory Instance (collectively the "**Services**"). The IA AppStore is operated by IA and allows Customer and its authorized end users ("**User(s)**") to browse and subscribe to specific marketplace offerings of industrial standard software applications and in-app services including content (each an "**App**") by either (i) IA, (ii) one of IA's affiliated companies (each an "**IA Affiliate**"), or (iii) an authorized third-party solution partner (each a "**Solution Partner**"). Each of Customer's free or paid subscription to an App ("**Subscription**") requires a subscription agreement (each a "**Subscription Order**") with IA, an IA Affiliate, or a Solution Partner (as the case may be) with regard to Customer's access and use of the specific App, which is further governed by separate license and use terms ("**License Terms**").
- 1.2 **By using the IA AppStore and any Services or Apps, You accept the TOU in their latest version. You may not access or use the IA AppStore and any Services or Apps unless you agree to abide by all of the terms and conditions in these TOU.**
- 1.3 These TOU shall not govern the relationship between IA and its Solution Partners, which is exclusively governed by a separate vendor/developer agreement.
- 1.4 The configuration and setup of Apps and the configuration of the Customer-specific factory instance hosted by IA ("**Factory Instance**"), i.e. a web user interface running on IA's industrial operating system ("**IA OS**"), which is necessary to operate Apps as further described under <https://docs.industryapps.net>, are in the responsibility of the Customer. As far as the Customer is supported in this, this is governed solely by a separate agreement between the Customer and an IA Affiliate or a third-party consulting partner ("**Consulting Partner**").
- 1.5 The IA AppStore, the Services as well as specific Apps rely on third-party products or services including Open Source Components ("**Third-Party Services**") by third parties or third-party service providers (each a "**Third-Party Service Provider**") subject to applicable license and use terms of the Third-Party Service Provider and/or open source license terms. Customer's use of the IA AppStore, the Services, Apps and/or Third-Party-Services may be subject to disclaimers, legal notices, click-through agreements, or other legal agreements, which may be posted on the IA AppStore where applicable (such as License Terms) or otherwise made available or referenced to, either between (i) Customer and IA, (ii) Customer and an IA Affiliate, (iii) Customer and a Solution Partner, or (iv) Customer and a Third-Party Service Provider.
- 1.6 If you as a User are accessing and/or using the IA AppStore on behalf of your employer or as a consultant or agent or other representative of the Customer ("**Representative**"), you represent and warrant that you have the authority to act on behalf of and bind Customer to the terms of these TOU. Everywhere these TOU refer to You or Your or Customer, shall apply *mutatis mutandis* also to you as Representative. However, in no case shall you as a Representative be entitled to any rights or claims on your own, but only on behalf of the Customer you represent. Your use of the IA AppStore, Services, and Apps reaches only as far as permitted for Users in the relevant Subscription Order and/or License Terms between Customer and IA, an IA Affiliate, or a Solution Partner, respectively. Furthermore, where you use any IA AppStore functionality to subscribe to Apps from either IA, any IA Affiliate, or a Solution Partner, you represent and warrant that you as a Representative have the authority to act on behalf of and bind Customer to the terms of any Subscription Order, License Terms or other agreement concluded with either of the aforementioned entities.
- 1.7 Any conflict between the terms and conditions set forth in this Agreement and any Subscription Order

or License Terms with IA (including exhibits and schedules) shall be resolved in accordance with the following descending order of precedence (from high priority to low priority): (a) the provisions of the particular Subscription Order, License Terms, and its annexes or other exhibits or schedules; (b) the clauses of this Agreement; and (c) the provisions of other exhibits or schedules to this Agreement.

## 2. Marketplace Functionality of the IA AppStore, Scope of Services by IA

- 2.1 IA provides the IA AppStore as an industrial app marketplace for interested parties of diverse branches (such as Customer) and as a marketing and distribution platform for IA Affiliates as well as Solution Partners. The Customer can use and access the IA Store to obtain information on Apps and subscribe to them by way of individual Subscription Orders. An App licensed by IA or an IA Affiliate is an "**IA App**", an App licensed by a Solution Partner is a "**Solution Partner App**," which is generally also indicated under "**Developer**" on the respective product page.
- 2.2 IA's Services include inter alia:
- operation of IA AppStore;
  - provision of a Factory Instance;
  - enabling the conclusion of Subscription Orders on the IA AppStore pursuant to Section 3;
  - granting permission to use the IA AppStore following admission of the Customer pursuant to Section 4;
  - offering of Apps (unless the App is provided by an IA Affiliate or a Solution Partner);
  - provision of underlying or additional cloud and infrastructure services ("**Cloud Connect (Services)**") enabling or supporting Customer's use of Apps, which are primarily governed by the Supplemental Cloud Connect Terms;
  - provision of functionalities permitting management of active Subscriptions;
  - basic support services or, as the case may be, further support services, if and to the extent agreed in the service level agreement in Schedule 1 ("**SLA**") between IA and Customer.
- 2.3 IA owes an annual average availability for the IA AppStore and the agreed Services at the router exit of the data center (not taking into account factors outside IA's sphere of responsibility, such as the Customer's configuration, infrastructure, or internet connection) as further specified in the SLA.
- 2.4 The IA AppStore and the Services are only available in the following countries: EU ("**Contract Region**"). For certain Apps the Contract Region may be further restricted as specified on the Subscription Order.
- 2.5 The IA AppStore, the Services, and any App may only be used in its current version. IA reserves the right to change and adapt the IA AppStore, Services, and Apps in particular in the case of technological developments, provided that this does not lead to a restriction of the contractually agreed Services, that the achievement of the purpose of the Agreement is not jeopardized by this and that the adaptation is reasonably acceptable for the Customer. IA shall inform the Customer accordingly of any changes. IA may also modify the TOU to reflect changes in IA's business, applicable law, or for other reasons deemed necessary by IA. If the terms of the TOU change, IA will provide notice, which may include, but is not limited to notice provided through the IA AppStore or an IA Account. Except where prohibited by law, updates to the TOU will apply once the changes have been posted or notice has otherwise been given. Changes to the TOU will, however, not apply retroactively. If You do not agree to changes made to the TOU, You will have to discontinue your use of the IA AppStore, Services and affected Apps. Except as provided in this Section 2.5 above, all other changes to the TOU must be in writing accepted by both Parties.

## 3. Conclusion of Subscription Orders via the IA AppStore

- 3.1 Your access and use of any App (including related documentation) made available through the IA AppStore shall be subject to a Subscription Order and a separate license and use agreement (such as the License Terms) which You conclude via electronic contracting with either IA, an IA Affiliate, or a

Solution Partner (as the case may be, according to the designation on the Subscription Order) at the time You order, access or download such App. IA is not a party to any agreement between You and a Solution Partner or an IA Affiliate, respectively.

- 3.2 IA only acts as an agent for Solution Partners or IA Affiliates in providing the IA AppStore as a service/infrastructure provider. IA is not a party to any Subscription Order, License Terms, or any other agreement between Customer and a Solution Partner or an IA Affiliate, respectively. IA only becomes party to a Subscription Order where IA itself is designated as Developer or contracting party regarding the respective App.
- 3.3 The respective contracting party/merchant of record (typically the respective Developer) is identified during the check-out in the IA AppStore on the Subscription Order and on the invoice provided to You subsequently. In particular for Subscriptions of Solution Partner Apps further information is also provided on the respective product page including information on how to contact the Solution Partner.
- 3.4 Unless IA, the IA Affiliate or the Solution Partner provide specific License Terms, the access to any App that You subscribe to is governed by the terms set forth below under Section 5.
- 3.5 IA does not interfere with the contractual relationship between Customer and a Solution Partner or an IA Affiliate, respectively, in case of conflicts. You agree to solve any conflicts or issues with a Solution Partner or an IA Affiliate, respectively, only with such entity.
- 3.6 The presentation of Apps in the IA AppStore is not a binding offer to conclude a contract on the part of IA, an IA Affiliate, or a Solution Partner (as the case may be), but only a non-binding invitation to submit an order ("*invitation ad offerendum*")
- 3.7 The Customer is able to select Apps within the IA AppStore through selecting the button "Subscribe" (or similar). Input errors can be corrected via the back-buttons and the usual device functions. The Customer makes a binding offer to order the chosen App, by selecting the button "Subscribe (Against Payment) Now" (or similar).
- 3.8 After having placed the order, Customer receives an automatic confirmation of receipt to the e-mail-address given in its IA Account (confirmation of receipt). This automatic confirmation is not an acceptance of the Subscription Order, but only documents that Customer's order has been received. The Subscription Order with Customer is only concluded, once IA, the IA Affiliate, or the Solution Partner, respectively, confirm the acceptance of the order to the Customer by a separate e-mail (order confirmation). If the ordered App is not available, no order confirmation will be sent. In this case, a contract is not concluded. The Customer will timely be informed about this.
- 3.9 All invoicing/billing for any App offered by a Solution Partner or an IA Affiliate will be performed by such entity. You explicitly agree that IA may use Customer's master data to facilitate the Subscription of Apps by Solution Partners and IA Affiliates. Such data will be used in the electronic contracting process offered by the IA AppStore.
- 3.10 Unless IA offers an App itself, the performance of Subscription Orders is a matter lying within the sole responsibility of a Solution Partner or IA Affiliate, respectively, and the Customer. To the fullest extent permitted by applicable law, Your use of any App, Third-Party Service, or Third-Party Content shall be at Your own risk. With respect to Subscription Orders, IA neither assumes any warranty for performance of contracts made between a Solution Partner or IA Affiliate, respectively, and the Customer on the IA AppStore nor any liability for substantive defects or defects of title of the Apps provided thereon. IA shall bear no duty whatsoever to ensure performance of the contracts which have been formed between a Solution Partner and the Customer. Any App or Third-Party Content, whether publicly posted or privately transmitted, is the sole responsibility of the person or entity providing the App or Third-Party Content.
- 3.11 IA does not represent or endorse the accuracy, reliability, completeness, usefulness, non-infringement of intellectual property rights, or quality of any App provided by third parties on the IA AppStore. IA may remove any App or Third-Party Content posted on the IA AppStore at IA's sole discretion. Apart from its basic review procedure regarding Apps, IA does not control and/or review any App or Third-

Party Content.

- 3.12 At its own discretion, IA may on a case-by-case basis offer alternative procedures deviating from the provision in this Section 3, e.g. execute Subscription Orders in writing.

#### **4. Admission to the IA AppStore**

- 4.1 The IA AppStore and any of the Services and Apps are NOT available for consumers, but solely for merchants/corporations and to legal entities under public law and require an existing company account to the IA AppStore ("**IA Account**"). The prerequisite to an IA Account is admission by IA. No party has any claim of right to admission or use of the IA AppStore.
- 4.2 To register for an IA Account, You or Your Representative must provide IA with Your business or trade name, physical address, e-mail, phone number, business and/or tax identification number, URL, the nature of Your business or activities, and certain other information about You that IA requires. IA may also collect personal information (including name, birthdate, and government-issued identification number) about Your beneficial owners, principals, and Your IA Account administrator. Until You have submitted, and IA has reviewed and approved all required information, Your IA Account will be available to You on a preliminary basis only, and IA may suspend or terminate it at any time and for any reason. At any time during the term of this Agreement and Your use of the Services, IA may require additional information from You.
- 4.3 You and Your Representative individually affirm to IA that Your Representative is authorized to provide the information described in this Section 4 on Your behalf and to bind You to this Agreement. IA may require You or Your Representative to provide additional information or documentation demonstrating Your Representative's authority. Without the express written consent of IA, neither You nor Your Representative may register or attempt to register for an IA Account on behalf of a user IA previously terminated from use of the Services.
- 4.4 You authorize IA to retrieve information about You from IA's service providers and other third parties, including credit reporting agencies and information bureaus and You authorize and direct such third parties to compile and provide such information to us. You acknowledge that this may include Your name, addresses, credit history, and other data about You or Your Representative. You acknowledge that IA may use Your information to verify any other information You provide to us, and that any information IA collects may affect IA's assessment of Your overall risk to IA's business. You acknowledge that in some cases, such information may lead to suspension or termination of Your IA Account. IA may periodically update this information as part of IA's underwriting criteria and risk analysis procedures.
- 4.5 Only persons with a minimum age of 18 years may be Customers or Users on the IA AppStore. For minors, the relevant consent of the legal representatives has to be provided.
- 4.6 Via the IA Account the Customer has the ability to grant its end users their own access authority and to configure such access.
- 4.7 The Customer warrants that the details furnished by it to IA and to other customers, in particular in connection with its application for admission under sub-para. 2 hereof, are true and complete. The Customer undertakes that it shall notify IA promptly of all future changes to the details given. The same shall apply with respect to all details the Customer furnishes when setting up employee logins.
- 4.8 IA is authorized to cancel a Customer's admission or to block its access to the IA AppStore where there are grounds to suspect that the Customer has breached these TOU. The Customer may avert such measures if the Customer submits appropriate proof at its own expense.
- 4.9 All logins are individualized and may only be used by the Customer and its Users. The Customer and its User must keep any login and password secret and protect them against unauthorized access by third parties. The Customer is also responsible for keeping staff logins confidential and shall instruct its staff accordingly. In the event of any suspicion of misuse by a third party, the Customer shall promptly notify IA thereof. As soon as IA learns of such unauthorized use, IA shall block access by the

unauthorized Customer. IA reserves the right to change the login and password of any Customer and/or User; in such case, IA shall promptly inform the Customer thereof.

## **5. Access Grant, Intellectual Property**

- 5.1 Subject to the terms of this Agreement, IA grants to Customer a non-exclusive, non-transferable, non-sublicensable right to allow Users to access and use the Services (including the IA AppStore) for the designated purposes during the term of this Agreement.
- 5.2 The Customer agrees that IA owns and does not convey to the Customer any right, title or interest in IA's methods, ideas and concepts contained in the programs, data, plans, systems, software, or materials utilized by IA in IA's performance of the Services, save as provided in this Section 5.
- 5.3 The Parties agree that IA will retain all ownership rights in and to all Services created/licensed by or for IA (either alone or jointly with the Customer or others) and provided to the Customer under these TOU or any Subscription Order, and any derivative works thereof, excluding any incorporated Confidential Information belonging to the Customer (collectively, "**IA Materials**").
- 5.4 Apps made available through the IA AppStore are licensed for the term of the Subscription, not sold, to You. Your license to each App is subject to either this Section 5 or specific License Terms, if provided. Your license to any IA App under this Section 5 or specific License Terms is granted by IA or an IA Affiliate, and Your license to any Solution Partner App under this Section 5 or specific License Terms is granted by the Solution Partner of that Solution Partner App. The Solution Partner, IA Affiliate, or IA as applicable ("**Licensors**") reserves all rights in and to the respective App not expressly granted to You under this Section 5 or the applicable License Terms. Licensors grants to You, during the term of the Subscription, a non-exclusive, non-transferable, non-sublicensable to use the App on any system that You own or control and as further detailed in the License Terms or, in absence, this Section 5.
- 5.5 Customer acknowledges that it is prohibited from engaging in, causing, assisting or permitting, the reverse engineering, disassembly, translation, adaption or recompilation of the IA AppStore, any Service, App, or other software/service (including Third Party Services) and that it shall not attempt to obtain or create the source code from the object code of any such software/service provided to it pursuant to the Agreement, unless explicitly permitted by applicable and mandatory law.

## **6. Subcontractors and Third-Party Services**

- 6.1 IA may use independent contractors or subcontractors to assist in the delivery of Services; provided, however, that IA shall remain liable for the actions or omissions of such independent contractors or subcontractors and for the payment of their compensation. The Customer may only object to the use of subcontractors for good cause.
- 6.2 The Services and Apps may contain or rely upon or enable access to Third-Party Services including Open Source Components, as described on the product page, the Subscription Order, or corresponding documentation, which are provided with the Services or Apps. The Services and Apps may also require Third-Party Services that are not provided with the Services or Apps. Accordingly, Customer shall separately license such Third-Party Services not provided with the Services. Customer acknowledges that Customer is solely responsible for licensing and using any Third-Party Services not provided with the Services or Apps. For Third-Party Services (including Open Source Components) that IA (co-)provides to the Customer, the license terms of the respective Third-Party Service Provider or the applicable open source license terms shall apply primarily, unless otherwise agreed; alternatively and in addition, the terms of Section 5 shall apply.
- 6.3 You agree to use Third-Party Services at Your sole risk. IA is not responsible for examining or evaluating the content or accuracy of any Third-Party Services and shall not be liable for any such Third-Party Services. Data displayed by any App or Third-Party Services is for general informational purposes only

and is not guaranteed by IA or its agents. You will not use the Third-Party Services in any manner that is inconsistent with the terms of any applicable third-party terms or Section 5 or that infringes the intellectual property rights of IA or any third party.

## **7. IA Content and Third-Party Content**

IA shall not be deemed to adopt any Third-Party Content as its own under any circumstances. The Solution Partner of any Solution Partner App is solely responsible for its content, information, or other data ("**Solution Partner Content**"), warranties, and claims that You may have related to the Solution Partner App. You acknowledge and agree that IA is a third-party beneficiary of the License Terms applicable to each Solution Partner App and may therefore enforce such agreement. IA or one of its IA Affiliates (as indicated in the IA AppStore) is responsible for the respective IA App's content, information, or other data ("**IA Content**"), warranties, and claims that You may have related to the IA App. Any content, information, or other data by Third-Party Service Providers (including Solution Partner Content) is hereinafter referred to as "**Third-Party Content**".

## **8. Acceptable Use by Customer**

- 8.1 You are permitted to use the IA AppStore, the Services, and Apps only in strict compliance with the terms of this TOU to (i) obtain information, so long as that information is not being gathered for a use in any manner which is or could be detrimental to IA (unless such use is otherwise protected by law), and/or (ii) to provide feedback or other constructive comments to IA (both positive and negative) and/or (iii) subscribe to Apps through the IA AppStore.
- 8.2 You agree not to access the IA AppStore or access or utilize any Services or Apps for purposes that are inconsistent with these TOU and IA's legitimate business interests. When using the IA AppStore, the Services, and Apps, Customer shall not: (a) copy, translate, disassemble, decompile, reverse engineer, or otherwise modify, in full or in part, or make any derivative works of the IA AppStore, the Services, or any App (except to the extent permitted by mandatory law); (b) use the IA AppStore, the Services, or any App in breach of applicable law, in particular Customer will not transmit any content or data that is unlawful or infringes any intellectual property rights of third parties; (c) circumvent or endanger the operation or security of the IA AppStore, the Services, or any App.
- 8.3 The Customer has a duty:
  - a) to set up and maintain the necessary data security measures throughout the entire term of the Agreement;
  - b) to immediately notify IA of any technical changes occurring within its sphere where such changes are apt to adversely impact IA's provision of its Services or the security of the IA AppStore;
  - c) to assist in investigating attacks by third parties on the IA AppStore, to the extent such assistance by the Customer is required;
  - d) only to use the IA AppStore and subscribe to Apps in connection with its business operations for the commercial purposes intended by IA.
- 8.4 The Customer hereby undertakes that it shall refrain from any acts which would put the functionality of the IA AppStore at risk or disrupt its functionality, and that it shall not access any data it is not authorized to access. In addition, the Customer must ensure that the information it communicates via the IA AppStore and the data it uploads to the IA AppStore do not contain any viruses, worms or trojan horses. The Customer hereby undertakes to compensate IA for all losses arising out of any non-compliance with these duties, insofar it is responsible for and, in addition, to hold IA harmless against all claims of third parties, including the costs of legal counsel and court costs, incurred by IA due to the Customer's failure to comply with these duties.



## **9. Fees and Payment**

- 9.1 Currently, the IA AppStore as such is provided free of charge. Only paid Services or Apps will be charged. IA reserves the right in accordance with these TOU (i) to remove certain functions – in particular those which are free of charge – from the IA AppStore, any Services, or Apps (ii) discontinue and withdraw the IA AppStore, any Services, or Apps in parts or its entirety, or (iii) provide the IA AppStore, any Services, and/or Apps on a chargeable basis.
- 9.2 Unless expressly specified as a free-of-charge Subscription in the respective Subscription Order, Apps are provided (as paid Subscriptions) on a chargeable basis requiring recurring payments during the Subscription Term. The fees and other payment details are set forth in the respective Subscription Order. Unless otherwise set forth in the Subscription Order, payment shall be due monthly in advance and shall be made in euro (EUR) or any other currency offered by IA. Customer agrees to pay a late charge of no less than nine (9) percentage points p.a. for all undisputed amounts not paid when due; a separate reminder is not required. The assertion of statutory rights or demonstrably higher damages shall remain unaffected. The obligation to pay for Services is independent of the fulfillment of Customer's obligations.
- 9.3 The Customer may only offset claims against undisputed claims, claims ready for adjudication, or claims finally adjudicated by a court. The Customer may exercise a withholding right and invoke the defense of non-performance only with regard to business transactions under this Agreement and only in the event that the Customer's counterclaim is undisputed or has been finally adjudicated.
- 9.4 All fees are net and exclude, and Customer will be responsible for, all sales (including VAT), use, excise, withholding and any other similar taxes, duties and charges of any kind imposed by any governmental entity in connection with the Services (excluding taxes based solely on IA's income).
- 9.5 IA will charge Your selected payment method (currently only wire transfer or direct debit) for any paid Subscription, including any applicable taxes. If IA cannot charge Your selected payment method for any reason (such as expiration or insufficient funds), You remain responsible for any uncollected amounts, and IA will attempt to charge the payment method again as You may update Your payment method information. In accordance with local law, IA may update information regarding Your selected payment method if provided such information by Your financial institution. App prices may change at any time. If technical problems prevent or unreasonably delay delivery of the App, Your exclusive and sole remedy is either replacement of the App or refund of the price paid, as determined by IA. IA may refuse a refund request if IA finds evidence of fraud, refund abuse, or other manipulative behavior that entitles IA to a corresponding counterclaim.
- 9.6 All transactions are final. You acknowledge and agree that once You place an order it may not be cancelled, and that there will be no refunds issued. For Subscription Orders made on the IA AppStore, You agree to receive invoices in electronic format, e.g. via e-mail, if electronic delivery is compliant with local law of the country the Subscription Order is made in.

## **10. Further Customer Obligations**

- 10.1 The Customer is responsible for the setup of its IA Account and the configuration of its Factory Instance (including any data import and coordination with any services of third-party providers) once activated by IA. The Customer bears the overall responsibility for its access and use of the IA AppStore and any Apps.
- 10.2 The Customer shall provide free of charge as an essential contractual obligation in particular the cooperation services described in this Section 10 of this Agreement and in the particular Subscription Order with IA as well as any further cooperation services required for the fulfillment of the Agreement in a timely, proper and complete manner; the Customer shall in particular ensure all the conditions

necessary for the proper provision of the Services in its sphere of responsibility.

- 10.3 The acquisition, deployment, installation, configuration, and commissioning of the systems and infrastructure required for using the IA AppStore, any Services and Apps, i.e. hardware including device operating system and other software (in particular a current internet browser recommended by IA), is in the responsibility of the Customer.
- 10.4 The Customer shall thoroughly test the Services and any App for any defects before starting their productive use. In particular, the Customer shall perform the necessary tests required by IA, an IA Affiliate, or the Solution Partner (as the case may be).
- 10.5 If You find information, data, or other material in the IA AppStore, the Services, or any App that do not comply with these TOU, e.g. if You believe that material that You hold the copyright or other intellectual property right on is being infringed upon on the IA AppStore, please report your concern via: [contacts@industryapps.net](mailto:contacts@industryapps.net).

## **11. Customer Data**

- 11.1 “**Customer Data**” means any data, information, or material that Customer or one of its Users enter into productive IA Apps or derive from their use of and store in an IA App or the IA AppStore. Customer Data and its derivatives will not include IA’s Confidential Information.
- 11.2 As between the Parties, unless agreed otherwise, all Customer Data shall remain the property of the Party supplying Customer Data. Subject to Section 13, Customer grants to IA, IA Affiliates and, if applicable, Solution Partners and their respective subcontractors a nonexclusive right to process Customer Data (i) to use such Customer Data as may be required to perform its obligations under this Agreement (including without limitation preparing backup copies or performing penetration tests); (ii) to verify Customer’s compliance with the provisions set forth in Section 8. Insofar as Customer Data constitutes or contains Personal Data (as defined by EU Data Protection Law) Section 12 of this Agreement shall apply.
- 11.3 You agree that IA may access, preserve, and disclose Your account information and/or Customer Data if required to do so by law or to: (i) comply with a legal process; (ii) respond to claims that any Customer Data violates the rights of third parties; (iii) protect the rights, property or personal safety of IA, Customers, and the public; (iv) enable the IA AppStore to process Subscription Orders between You and a Solution Partner. Especially with regards to (iv) You explicitly agree that such information is provided to the respective Solution Partner or IA Affiliate for the purposes of performance of a Subscription Order.
- 11.4 For Services or IA Apps with self-managed features, Customer can remove Customer Data at any time. Otherwise, IA will return or remove content from IA storage or other computing resources upon the expiration or cancellation of the Services or IA Apps, or earlier upon Customer’s request. IA may charge for certain activities performed at Customer’s request (such as delivering Customer Data in a specific format). IA does not archive Customer Data; however, some Customer Data may remain in IA’s backup storage as governed by IA’s backup retention practices.
- 11.5 The Customer is responsible for ensuring that the Customer Data made available to IA for the performance of the Services has been reviewed with regard to any copyrights, trademarks, identification marks or other IP Rights of third parties and that the Customer, IA as well as third parties commissioned by IA to perform the Services are entitled to use them to this extent. If claims are asserted against IA due to the infringement of such third-party rights, the Customer undertakes to indemnify IA comprehensively against all damages, expenses and other costs arising from this. The indemnification also includes the costs of necessary legal defense.
- 11.6 The Customer shall indemnify and hold IA harmless against all claims made by third parties against IA based on infringements of their rights or based on violations of law arising due to Customer Data. The Customer shall also assume the costs of IA’s legal defense in this respect, including all court fees and

lawyers' fees.

## **12. Data Protection**

- 12.1 Customer Assurance. To the extent these TOU or any Subscription Order contemplate the collection, use, storage or other processing of Personal Data by IA or that the Customer itself, for example as part of the Customer Data (cf. Section 11) transmits to IA or has third parties transmit Personal Data to IA it assures (i) that such Personal Data is collected and processed in compliance with all applicable privacy laws, in particular EU Data Protection Law, (ii) that appropriate and valid consents from Data Subjects were obtained or other legal bases are given, (iii) that the use of data (including any Customer Data) by IA in the course of performance of this Agreement does not violate applicable privacy laws, nor exceeds the scope of consents granted or legal bases given, and (iv) as may be required by applicable law, including (but without limitation) notifying the data subject of the transfer of Customer Data outside of the European Economic Area (EEA) and/or Singapore.
- 12.2 Where IA through the IA AppStore, the Services, or an IA App processes Personal Data by You or one of Your Users such Personal Data will be treated in compliance with IAs then current Privacy Notice and applicable privacy law.
- 12.3 If required by applicable law, the Parties will conclude a data processing agreement (DPA) that meets the applicable legal requirements.
- 12.4 Unless expressly provided otherwise, IA is not responsible for the data processing of IA Affiliates, Solution Partners or other third parties. They generally act as data controllers or processors of their own with data collected and otherwise processed through their respective Apps or Third-Party Services.
- 12.5 IA analyzes the use of the IA AppStore, the Services, and any IA Apps in order to measure their performance, remedy defects, provide support and improve and optimize IA's products and services. Such evaluations are anonymous/pseudonymous or aggregated for IA, which means that IA does not establish a personal link to natural persons (such as Users) or individual customers. The Customer agrees to those analyses and shall, insofar as required by law, obtain appropriate legal bases (e.g. consent of the Data Subjects) and shall ensure that any information obligations are met.

## **13. Confidential Information**

- 13.1 Confidential Information. The receiving Party shall hold in confidence and shall not disclose (or permit or suffer its personnel to disclose) any Confidential Information to any person or entity except to a Representative who have a need to know such Confidential Information in the course of the performance of their duties for the receiving Party and who are bound by a duty of confidentiality no less protective of the disclosing Party's Confidential Information than this Agreement. The receiving Party and its Representatives shall use such Confidential Information only for the purpose for which it was disclosed and shall not use or exploit such Confidential Information for its own benefit or the benefit of another without the prior written consent of the disclosing Party. Each Party accepts responsibility for the actions of its Representatives and shall protect the other Party's Confidential Information in the same manner as it protects its own valuable confidential information, but in no event shall less than reasonable care be used. The Parties expressly agree that the terms and pricing of this Agreement are Confidential Information. "Reverse engineering" (including disassembly, decompilation or any other circumvention) with regard to Confidential Information is expressly prohibited; statutory rights remain unaffected. The confidentiality obligation shall continue to apply for a period of two (2) years after termination of the Agreement.
- 13.2 Exclusions. Information will not be deemed Confidential Information hereunder if such information: (i) is known prior to receipt from the disclosing Party, without any obligation of confidentiality; (ii) becomes known to the receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing Party; (iii) becomes publicly known or otherwise publicly

available, except through a breach of this Agreement; or (iv) is independently developed by the receiving Party without use of the disclosing Party's Confidential Information. The receiving Party may disclose Confidential Information pursuant to the requirements of applicable law, legal process, or government regulation, provided that it gives the disclosing Party prompt prior written notice to permit the disclosing Party to contest such disclosure, and such disclosure is otherwise limited to the required disclosure, unless applicable law prohibits such notice. The confidentiality obligation does not apply to the use of information which is retained as "residual information" (or "residual knowledge") in the memories of employees and subcontractors and other persons who come into contact with the Confidential Information, provided that such information is not documented and fixed in any way and only to the extent that it is not covered by Intellectual Property Rights.

- 13.3 Feedback. IA in its sole discretion, may utilize, all comments and suggestions, whether written or oral, furnished by Customer to IA in connection with the Services (all reports, comments and suggestions provided by Customer hereunder constitute, collectively, the "**Feedback**"). Customer hereby grants IA a worldwide, non-exclusive, irrevocable, perpetual, royalty-free right and license to incorporate the Feedback into any of IA's products and services. For avoidance of doubt and for the sake of clarity it is understood that Feedback does not consist of Customer Data.
- 13.4 Public Forums. Parts of the IA AppStore are intended to be public forums, and You agree insofar not to provide IA or other customers with any confidential or proprietary information that You or the owner of the information do not intend to become public information. Except for Customer Data clearly labeled as confidential that You upload into a Non-Public Forum, any Customer Data that You send or upload to public forums in the IA AppStore will be deemed NOT to be confidential or proprietary, and You expressly agree that You waive any trade secret or other confidentiality rights with respect to such Customer Data.

#### **14. Term and Termination, Suspension, Return of Customer Data**

- 14.1 Term of the Agreement. The term of this Agreement shall commence with its acceptance by Customer, at the latest with creation of its IA Account, and shall continue in effect until termination.
- 14.2 Any Subscription shall begin on the start date specified in the respective Subscription Order. Unless otherwise agreed, the respective App is also made available on this date.
- 14.3 The minimum term of the respective Subscription Order shall be twelve (12) months, unless otherwise agreed in the Subscription Order ("Minimum Term").
- 14.4 The respective Subscription Order may be terminated (in writing) by either Party at the earliest to the end of the Minimum Term with a notice period of three (3) months before the end of the Subscription Term. Unless otherwise agreed in the Subscription Order, the Subscription Term shall always be extended by a further twelve (12) months ("Renewal Term") if not terminated with a notice period of three (3) months to the end of the respective Minimum Term or Renewal Term. The Minimum Term and, if applicable, any Renewal Term(s) together constitute the term of the respective Subscription Order ("**Subscription Term**"). Any other ordinary termination is excluded.
- 14.5 Termination. IA may terminate this Agreement for convenience without giving reasons in text form (e.g. by e-mail) by giving ten (10) days written notice. Customer may terminate this Agreement with the termination or expiration of the last Subscription.
- 14.6 Suspension of Services. At any time during the Term, IA may suspend access to any Service or App for the following reasons: (a) immediately in the event of a threat to the security or technical integrity of the Services or App; or (b) upon fifteen (15) days' prior written notice in the event that any amount due under this Agreement is not received by IA within the due date (c) breach or violation by Customer of any statutes, laws, or regulations.
- 14.7 Return of Customer Data. Upon termination of this Agreement for any reason, IA will provide access to Customer to download the Customer Data, free of charge, under an exploitable format. Whether or not

Customer has retrieved or requested the Customer Data, IA shall permanently and definitively delete the Customer Data thirty days (30) following termination of the Agreement (unless, Customer has requested the Customer Data within the timeframes specified above, and IA has not yet complied with the Customer request to return the Customer Data). IA may request, and Customer agrees to comply with any such request, that Customer acknowledge receipt of Customer Data as a condition for its return. Upon Customer's request, IA shall promptly provide Client with a destruction certificate. For the avoidance of doubt, during the 30-day period following termination of this Agreement Customer will not have access to the Recurring Services save for the purposes of retrieving Customer Data as provided above.

- 14.8 Effects of Termination. Upon termination or expiration of this Agreement for any reason, (a) any amounts owed to IA before such termination or expiration will be immediately due and payable and (b) all licenses and access rights granted to Customer will immediately cease to exist. All rights and obligations of the Parties which by nature are reasonably intended to survive any termination or expiration will survive termination or expiration of this Agreement and each Subscription Order. The expiry or termination of this Agreement shall not ipso facto result in the termination of any Subscription Order which is in force. For the avoidance of doubt, termination of any Subscription Order shall not have the effect of terminating this Agreement.
- 14.9 Termination for Cause. Notwithstanding the foregoing, either Party may terminate this Agreement or the particular Subscription Order for cause (i) immediately in the event of a material breach of this Agreement or any such Subscription Order by the other Party that is not cured within thirty (30) days of written notice from the other Party, or (ii) immediately if the other Party suffers from a significant financial deterioration, if insolvency proceedings are initiated in respect of the other Party or if the other Party ceases its business operations, or otherwise liquidates its business, or (iii) immediately by IA if Customer is (a) in default for more than one (1) month of payment for two (2) consecutive months of payment of a substantial portion of the agreed fees, or (b) in default for more than two (2) months of payment of an amount equal to the fees for two (2) months, despite reminder.
- 14.10 Written Form. Any notice of termination must be in writing to be effective.

## **15. Disclaimer of Warranties**

- 15.1 General. In general, Services under this Agreement as services are not subject to any warranty. You expressly agree that Your use of, or inability to use, the Services is at Your sole risk. The Services and all content delivered to You through the Services are (except as expressly stated by IA) provided "as is" and "as available" for Your use, without warranties of any kind, either express or implied, including all implied warranties of merchantability, fitness for a particular purpose, title, and noninfringement. IA will, however, maintain a product-trained and knowledgeable staff capable of rendering the Services and intends to perform its Services in such a manner that they (i) substantially conform with the service descriptions provided by IA, and (ii) are consistent with the standards and the general customs and practices of the industry. Insofar as any of the following provisions of this Section 15 refers to "defects" or "warranty" such provisions shall only apply in the exceptional event that Services are subject to statutory warranty.
- 15.2 No Fitness for Purpose. IA does not warrant for the work results which the Customer achieves with the help of the Services of IA which are the subject matter of the Agreement (no "fitness for purpose"), if and to the extent that this is not expressly part of a performance specification as an annex to the Subscription Order.
- 15.3 Restrictions. If any, Claims can only be made for defects that are reproducible or can be described by the Customer in a comprehensible way. Functional impairments of the Services under this Agreement resulting from the Customer's hardware or software environment, incorrect data, improper use, or other circumstances arising from the Customer's sphere of responsibility shall not constitute a defect. Any warranty for defects further requires that the Customer has not changed the Services itself or through

third parties without authorization or has used them contrary to the contractual specifications (e.g. on another system environment) or contrary to any instructions, unless the Customer proves that the respective defect is independent of this and that the analysis or elimination of the defect by IA is not affected by this.

- 15.4 Claims for Damages. For claims for damages or reimbursement of futile expenses due to defects, Section 16 of this Agreement shall apply.
- 15.5 It is the Customer's own responsibility to check the results of his work for accuracy and operational capability for the desired activities and objectives before an operation.
- 15.6 The Customer is aware of the fact, that the Services are not designed for the use in danger zones or critical areas, especially not for safety-relevant or other applications where the failure of the Services could lead directly to death, physical injury or personal or material damage ("**High-Risk Activities**").
- 15.7 Functional impairments resulting from the Customer's hardware or software environment, incorrect data, improper use or use contrary to the contract (contrary to the App Description or documentation), changes/adaptations of the Services by the Customer, exceeding the rights of use or other circumstances within the Customer's sphere of responsibility do not constitute a defect, unless the Customer proves that the defect is independent thereof.
- 15.8 IA does not guarantee, represent, or warrant that Your use of the Services will be uninterrupted or error-free, and You agree that from time to time IA may remove the Services for indefinite periods of time, cancel the Services at any time, or otherwise limit or disable Your access to the Services without notice to You.

## **16. Limitation of Liability and Remedy**

- 16.1 To the extent allowable by applicable law and with the exception of personal injury caused by the negligence of IA, under no circumstance will IA be liable to the Customer:
  - a) for any remedy or claim of damage beyond 10% of the contract value (in total for each individual damage event and for the entirety of all damages) of the specific Subscription Order with IA under which the specific claim of damage or request for remedy is made;
  - b) for any lost profits, interruption of business or any other form of economic or pecuniary loss;
  - c) for any incidental, special or consequential damages;in connection with any claim(s) arising under this Agreement or under any Subscription Order or arising from or in connection with the Services provided by IA and/or IA's personnel, regardless whether such liability arises out of delayed, defective or non-performance, breach of contract or warranty, tort (including negligence), product liability, indemnity, contribution, strict liability or any other legal theory whatsoever. Notwithstanding anything to the contrary herein, these limitations shall not apply in case of intent or gross negligence by IA and in case of IA's statutory liability for personal injury or defective products.
- 16.2 Insofar as IA provides services to the Customer for which no remuneration is due (such as the IA AppStore as such), IA shall only be liable for intentional and grossly negligent breaches of duty. IA makes no claims or promises with respect to any third party (including IA Affiliates and Solution Partners) and/or their products and services. Accordingly, IA is not liable to you for any loss or damage that might arise from any third party's actions or omissions. In particular, IA is not liable for any App by a Solution Partner or an IA Affiliate or any other Third-Party Service.
- 16.3 The limitations of liability of this Section 16 shall also apply (i) to the benefit of any IA Affiliate and Solution Partner, (ii) the governing bodies, legal representatives, employees, and vicarious agents of IA, any IA Affiliate, or Solution Partner as well as (iii) to claims for reimbursement of futile expenses.

## 17. Statute of Limitations

The statute of limitations for any and all claims of Customer due to defects of the Services as well as for all claims for damages and reimbursement of futile expenses is one (1) year. This shall not apply if a defect exists in a right in rem of a third party on the basis of which the third party may demand surrender of the contractual objects concerned. The limitation period shall commence in accordance with the applicable statutory provisions and, in the case of a maximum statutory period, shall commence no later than five (5) years after the claim has arisen. The statutory limitation periods with regard to claims due to intentional or grossly negligent breaches of duty, in case of fraudulent concealment of a defect as well as in case of damages resulting from injury to life, body or health or according to the statutory liability for defective products shall remain unaffected.

## 18. Indemnification

- 18.1 General. Insofar that it is adjudicated that the Services or an IA App infringe the rights of third parties, IA shall, at its own expense and at its own discretion, either (a) procure for the Customer the necessary right of use, or (b) exchange or modify the Services or the IA App in such a way that they no longer infringe the rights, but still comply with the contractual provisions. If remedy according to variants (a) and (b) of the aforementioned provision is not achievable for IA at reasonable expense, IA may (c) take back the affected Services or the IA App against (partial) reimbursement of the remuneration paid for this part by the Customer minus a reasonable compensation for use.
- 18.2 IA Indemnification. Provided that (i) IA has acted culpably with regard to the infringement, (ii) the Customer promptly notifies IA of the assertion of claims by third parties due to alleged infringement of third party rights by the Services or the IA App and adheres to the other requirements of Section 18.5, (iii) the Customer authorizes IA to defend itself against such claims, and (iv) the Customer supports IA to a reasonable extent in defending itself against such claims, IA shall indemnify the Customer against such claims of third parties and the associated reasonable costs for the legal defense of third parties. The limitations of liability according to Section 16 shall apply.
- 18.3 Exclusions. Section 18.2 shall not apply if the alleged claim arises, in whole or in part, from (a) a use or modification of the Services or the IA App by Customer in a manner outside the scope of any right granted or in breach of this Agreement, (b) a combination, operation or use of the Services or the IA App with other software, hardware or technology not provided by IA if the claim would not have arisen but for the combination, operation or use, or (c) the Customer Data (any of the foregoing circumstances under clauses (a), (b) or (c) will be collectively referred to as a "**Customer Indemnity Responsibility**").
- 18.4 Customer Indemnification. Customer hereby indemnifies and holds harmless IA, its directors, officers, employees, agents, and IA Affiliates against any and all losses (including reasonable attorney fees) arising from, related to, or on account of any Customer Indemnity Responsibility.
- 18.5 Indemnification Procedure. Upon the assertion of any claim or the commencement of any suit or proceeding against an indemnitee by any third party that may give rise to liability of an indemnitor hereunder, the indemnitee shall promptly notify the indemnitor of the existence of such claim (unless failure to give such promptly notice shall not materially prejudice the indemnitor's rights) and shall give the indemnitor reasonable opportunity to defend and/or settle the claim at its own expense and with counsel of its own selection. The indemnitee shall cooperate the indemnitor, and at all times have the right fully to participate in such defense at its own expense and shall not be obligated, against its consent, to participate in any settlement which it reasonably believes would have an adverse effect on its business. An indemnitee shall not make any acknowledgment or settlement of any claims which might give rise to liability of an indemnitor hereunder without the prior written consent of the indemnitor.

## 19. Force Majeure

If either Party is prevented from performing, or is unable to perform, any of its obligations under this Agreement and/or any Subscription Order due to any cause beyond its reasonable control, e.g. war, riots, labor unrest, fire, earthquake, flood, hurricane, other natural disasters and acts of God, diseases, epidemics, adverse governmental conditions, Internet service failures or delays, and denial of service attacks (collectively, "**Force Majeure**"), the affected Party's performance will be excused for the resulting period of delay or inability to perform. The COVID19 pandemic shall be deemed a possible cause for Force Majeure. The affected Party must, however, (a) give the other Party prompt written notice of the nature and expected duration of such Force Majeure, (b) use commercially reasonable efforts to mitigate the delay and other effects, (c) periodically notify the other Party of significant changes in the status of the Force Majeure, and (d) notify the other Party promptly when the Force Majeure ends. The delayed Party's time for performance shall be extended for a period of time equivalent to the time lost because of the excusable delay. Insofar as IA's performance of the Services is significantly impeded not only for a temporary period of time due to one of the aforementioned force majeure or similar events, IA may extraordinarily terminate this Agreement.

## 20. Non-Solicitation

20.1 The Customer undertakes not to employ nor solicit for employment any employee of IA or any person who was an employee of IA during the last 12 months prior to such employment or solicitation.

20.2 The Customer agrees that in the event of any breach of Section 20.1, the Customer shall be liable to pay to IA, an amount equivalent to half a year of the said employee's annual salary and pro-rated bonus.

## 21. Notices

Unless otherwise provide in this Agreement, all notices required by this Agreement shall be in writing addressed to the Party to be notified. Telecommunicative transmission of such written instrument, in particular by e-mail, shall suffice.

## 22. Non-Waiver of Rights

The failure by either Party to require performance under any particular provision of this Agreement or any Subscription Order at any particular time shall not be deemed to constitute a permanent waiver of such provision, and such waiver shall have no effect on the said Party's right to demand performance of such provision at a later date.

## 23. Applicable Law

This Agreement and each Subscription Order with IA shall be interpreted and governed by the laws of the Republic of Singapore.

## 24. Arbitration

In the event that a dispute or difference arises between the Parties, such dispute or difference shall be referred to arbitration in accordance with the arbitration rules of the Singapore International Arbitration Centre ("**SIAC**"). The arbitral tribunal shall consist of a sole arbitrator, to be appointed by the Chairman of the SIAC. The place of arbitration shall be Singapore. Any award by the arbitration tribunal shall be final and binding upon the Parties.



## **25. Advertising**

The Parties agree that IA may make references to the Customer on its website and in printed advertising media (flyers, company prospectuses) as a reference – including the Customer’s company logo and the Customer accepts and agrees that such reference shall not be construed as a breach any intellectual property rights of the Customer. For the avoidance of doubt, any such mention or reference to the Customer in public relations releases and other press publications other than the IA website shall be subject to the consent of the Customer.

## **26. Export Control/Compliance, Independent Contractors**

- 26.1 The Customer alone is responsible for the legally compliant use of the IA AppStore, the Services, and any App. The Customer assures to comply with the relevant legal or regulatory provisions and requirements applicable to its business and data (e.g. regarding data protection or export control). IA is inter alia subject to the export control laws and regulations of Singapore, Germany, and the European Union. Customer confirms that it will not, directly or indirectly, send, transmit or export the IA AppStore, the Services, or any App to any third country and that it will not use the IA AppStore, the Services, or any Apps in any way in violation of any applicable laws, regulations or agreements, including without limitation import and export control restrictions and economic sanction laws and regulations, including the defense trade control regime of any jurisdiction such as the International Traffic in Arms Regulations and those of Singapore, Germany, and the European Union.
- 26.2 IA is an independent contractor, not Customer’s agent, joint venturer, partner, or fiduciary. IA does not undertake to perform any of Customer’s regulatory obligations or assume any responsibility for Customer’s business or operations, and Customer is responsible for its use of the Services. IA is acting as an information technology provider only. IA’s direction, suggested usage, or guidance or use of the Services do not constitute technical, legal, accounting, or other licensed professional advice. Customer and its Users are responsible for the use of the Services within any professional practice and should obtain their own expert advice.

## **27. Assignment**

This Agreement shall be binding upon and for the benefit of IA, the Customer and their permitted successors and assigns. IA may assign this Agreement and all Subscription Orders to an IA Affiliate or as a part of a corporate reorganization, consolidation, merger, or sale of all or substantially all of its assets. Except as expressly stated in this Agreement, neither Party may otherwise assign its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of the other Party, and any attempted assignment or delegation without such consent will be void. The assignment of monetary claims remains hereby unaffected.

## **28. Severability and Allowable Changes**

- 28.1 The Parties agree that if any particular provision of this Agreement or of any Subscription Order with IA shall be determined or declared to be illegal or unenforceable, such determination or declaration shall not affect the legality or validity of the remaining provisions of this Agreement or of any affected Subscription Order.
- 28.2 No waiver, modification, amendment, or alteration to this Agreement or to any Subscription Order will be binding unless made in writing and signed by both Parties.

## 29. Entire Agreement

- 29.1 This Agreement and each Subscription Order with IA cumulatively constitute the entire agreement of the Parties and supersede any and all prior written and verbal communications, documents, drafts, representations and discussions concerning the subject matter of this Agreement and any Subscription Order with IA. No Party shall be bound by any promise, condition, inducement, discussion, representation, discussion, or statement unless made in writing and signed by the Party sought to be bound. You also may be subject to additional terms and conditions that may apply when You use Services, Apps, Third-Party Services/Content, or other additional services.
- 29.2 Any supplementary, inconsistent or conflicting terms and conditions contained in any purchase order or any other document issued by the Customer shall be of no force or effect and are for Customer's internal administrative purposes only, even if IA accepts the order or provides the Services without expressly objecting to them.

## 30. Further Definitions

**"Affiliated Companies"** means entities that control, are controlled by and/or are under common control with the respective Party. **"Control"** means an entity owns at least 50% of the outstanding voting or equity securities of the entity in question.

**"App"** see Section 1.1.

**"App Description"** means a document specifying the App (as referred to in the Subscription Order and/or provided on the respective product page in the IA AppStore).

**"Business Days"** means Monday to Friday (9:00 a.m. to 5:00 p.m. Singapore time) excluding public holidays and days of rest in Singapore, Rose Monday as well as December 24 and 31, unless otherwise agreed in the Subscription Order.

**"Cloud Connect (Services)"** see Section 2.2.

**"Confidential Information"** means information of the disclosing Party that is subject to appropriate protective measures given the circumstances and that is not generally known to the public, such as software, product plans, pricing, marketing and sales information, customer lists, know-how, business or trade secrets or other business matters that are marked as confidential or disclosed or learned under circumstances that would lead a reasonable person to conclude that the information was confidential or proprietary; the IA AppStore, IA Apps, the Services and other proprietary subject matters of this Agreement shall be deemed Confidential Information of IA.

**"Consulting Partner"** see Section 1.4.

**"Contract Region"** see Section 2.4.

**"Customer Data"** see Section 11.1.

**"Customer Indemnity Responsibility"** see Section 18.3.

**"Developer"** see Section 2.1.

**"EU Data Protection Law"** means the EU General Data Protection Regulation 2016/679 (**"GDPR"**) and applicable member state laws implementing or supplementing the GDPR, in particular the German Federal Data Protection Act (*BDSG – Bundesdatenschutzgesetz*), as amended, replaced or superseded from time to time.

**"Factory Instance"** see Section 1.2.

**"Feedback"** see Section 13.3.

**"Force Majeure"** see Section 19.

**"High-Risk Activities"** see Section 15.6.

**"IA Account"** see Section 4.1.

"**IA Affiliate**" see Section 1.1.

"**IA App**" see Section 2.1.

"**IA AppStore**" see Section 1.1.

"**IA Content**" see Section 7.

"**IA Materials**" see Section 5.3.

"**IP Rights**" (or "**Intellectual Property Rights**") means all (i) patents, patent applications, patent disclosures, utility models and inventions (whether patentable or not), (ii) trademarks, service marks, designs, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, (iii) copyrights and copyrightable works (including computer programs), mask works, and rights in data and databases, (iv) trade secrets, know-how and other Confidential Information, and (v) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

"**License Terms**" see Section 1.1.

"**Licensor**" see Section 5.4.

"**Open Source Components**" means free and open source software components.

"**Party**" means IA und Customer individually, and both shall be referred to collectively as the "**Parties**".

"**Personal Data**" see Section 11.2.

"**Representative**" see Section 1.6.

"**Service(s)**" see Section 1.1.

"**SIAC**" see Section 24.

"**SLA**" see Section 2.2.

"**Solution Partner**" see Section 1.1.

"**Solution Partner App**" see Section 2.1.

"**Solution Partner Content**" see Section 7.

"**Subscription**" see Section 1.1.

"**Subscription Order**" see Section 1.1.

"**Subscription Term**" see Section 14.4.

"**Third-Party Content**" Section 7.

"**Third-Party Services**" see Section 1.5.

"**Third-Party Service Provider**" see Section 1.5.

"**TOU**" or "**Agreement**" see Section 1.1.

"**User(s)**" see Section 1.1.

"**You**", "**Your**", or "**Customer**" see Section 1.1.

The following exhibits and schedules are attached to and incorporated in these TOU:

**Schedule 1: IA AppStore SLA**

## Schedule 1: Service Level Agreement (SLA) for the IA AppStore

### Further Definitions

**"Availability"** or **"Available"**: Technical availability of the IA AppStore and the agreed Services, and possibility of use of core functionalities at the point of demarcation to the internet (router port of the data center).

**"Business Days"**: Monday through Friday under exclusion of public holidays in Singapore as well as December 24 and 31, unless agreed otherwise between the Parties.

**"Downtime"**: Number of total minutes, in which the IA AppStore and the agreed Services are not accessible within a calendar year, under exclusion of Agreed Downtime.

**"Planned Maintenance"**: Number of total minutes of planned system maintenance or other scheduled activities within a calendar year, as described in Section 5.1 (a) below.

**"Total Time"**: Number of total minutes within a calendar year.

### 1. General

- 1.1 This Service Level Agreement ("**SLA**") is an integral part of the Terms of Use (TOU) agreed between the Parties and describes and governs in detail the provision of the IA AppStore and the agreed Services.
- 1.2 Unless otherwise agreed between the Parties in the Subscription Order, this SLA also applies *mutatis mutandis* to the respective App. In this regard, the responsible and liable party is solely the respective Developer (i.e., IA itself or the respective IA Affiliate or Solution Partner).

### 2. Helpdesk (Third-Level Support)

- 2.1 For reports initiated by the Customer concerning technical errors, malfunctions, or defects ("**Error(s)**"), IA provides a helpdesk for Third-Level Support (as further specified in Section 2.3 below), which can be reached via a special email address. During the Support Time (Section 3 below) contact persons are available to the Customer to handle incoming reports within the Reaction Times specified below.
- 2.2 The handling of Error reports and troubleshooting are charged with a service flat rate, unless it is an Error caused by or under control of IA or if IA has already informed about this Error before. Handling of Errors requiring adaptations in the program logic or on a database level is generally performed on a time & material basis.
- 2.3 The helpdesk handles reports in connection with Errors (Third-Level Support). First-Level and Second-Level Support (in the sense of a contact point for incoming Error reports of User and the organization as well as documentation of solutions and internal know-how) will be rendered by the Customer itself. Customer shall, in particular, narrow down possible problems and provide Users with first response and initial solutions.
- 2.4 Error reports are only accepted by defined contact persons of the Customer, but not by other employees of the Customer or Users directly.
- 2.5 Further helpdesk services (e.g. different support times, 24/7 services, or on-site support) may be available under a separate agreement.

### 3. Support Time

IA's service and support time ("**Support Time**") is between 9am and 5pm (Singapore time) on Business Days.

#### 4. Calculation of Availability

4.1 IA ensures an Availability of 98.8%. The Availability is calculated per calendar year as follows:

$$\frac{(Total\ Time - Downtime) \times 100}{Total\ Time}$$

4.2 The Availability can only be ensured, if the Customer adheres to the agreed usage metrics and other contractual requirements. In case of usage beyond the scope of the TOU or any applicable individual agreements (such as Subscription Orders), a lower availability or even non-availability is to be expected.

#### 5. Downtime

5.1 The following periods are not considered as Downtime ("**Agreed Downtime**"):

- a) periods, which are necessary for **Planned Maintenance** and for regular updates and upgrades as well as for security patches. All these activities together constitute Planned Maintenance, which will be performed at IA's reasonable discretion; if such activities affect the Availability, IA will make a reasonable effort to inform the Customer before their initiation (a notification in text form is sufficient);
- b) periods, which are due to Errors of the internet that cannot be influenced by IA, the services of Third-Party Service Providers or other circumstances **beyond the reasonable control of IA**, in particular Force Majeure;
- c) periods of non-availability, which are due to the fact that the **Customer or Users do not fulfill the necessary technical requirements**, e.g. due to the hardware on the part of the Customer or Users.

5.2 In the case of imminent danger (e.g. in case of security threats), IA is entitled to install a new version of the IA AppStore, notwithstanding the provisions in Section 5.1 (a). In such cases IA is not obliged to inform the Customer in advance. IA will usually inform the Customer afterwards about the security threat and the implemented fixes.

#### 6. Reaction Times

IA reacts to Errors of the IA AppStore in accordance with the following provisions. The following service levels cannot be applied to Errors, which the Customer has already reported to IA or which are not reproduceable. Furthermore: If the Customer reports various Errors separately, which relate to the same cause, they are considered as one single Error.

The Reaction Time describes the time frame in which error analysis and troubleshooting must be initiated according to the respective Error Class.

| Error Class  | Reaction Time   |
|--|---|
| <p><b>Class 1 (High)</b><br/>Severe/Blocking Error: the contractual use of the core functions of the IA AppStore is unreasonably restricted or impossible.</p>       | <p>IA will initiate troubleshooting of Class 1 Errors without undue delay, at the latest within 48 hours of notification. IA will inform the Customer regularly about the progress.</p> |
| <p><b>Class 2 (Medium)</b><br/>Material/Impairing Error: the contractual use of the IA AppStore is significantly impaired, without constituting a Class 1 Error.</p> | <p>Class 2 Errors will be analyzed and described within 96 hours and the Customer will receive a reaction from IA. At</p>   |

|  |   |
|--|---|
|  | minimum, IA will use reasonable efforts to resolve such Errors with the next patch version.   |
| <p><b>Class 3 (Low)</b></p> <p>Minor Error: the contractual use of the IA AppStore is not or only insignificantly restricted by the Error. The Error has no major impact on the functionality or the accessibility of the IA AppStore.</p> | <p>Class 3 Errors will be taken into account by IA – if considered appropriate by IA and requested by the Customer – with one of the next release versions.</p> |

If an Error is reported outside the Support Time, the Reaction Time begins with the Support Time of the following Business Day. If the Error is reported within the Support Time, any Reaction Time not yet expired at the end of the Support Time of this Business Day will continue with the beginning of the Support Time of the following Business Day.

IA will provide measures to circumvent or eliminate the Error in good time. The Customer will adopt these measures to circumvent or eliminate the Error without undue delay and notify IA of any remaining Errors.

If the Error reported by the Customer does not turn out to be an error of the contractual services after first analysis, IA will notify the Customer without undue delay.

If the Error of the IA AppStore can be traced back to errors on the part of Third-Party Services used by IA, IA will forward the results of its first analysis to the respective Third-Party Service Provider with a request for rectification.