

## Agoston | General Terms & Conditions

These general terms and conditions (**GTC**) form together with the terms of any subscription plan (**Subscription Plan**) referencing these GTC, and any schedule thereto (**Schedule**) a legal agreement (**Agreement**) between Siodb Sàrl, Rue de la Jeunesse 2, 2800 Delémont, Switzerland (CHE-139.729.182) (**Provider**) and any customer subscribing for the use its **Agoston solution (the Solution)** whether an individual or a legal entity (**Customer**; and together with Provider, the **Parties**).

### 1. Scope

- 1.1. In General. These GTC govern Customer's rights and obligations with respect to the access and use of the Solution and the services available through it (the **Services**), with the functionalities, modules and limitations specified in the Subscription Plan purchased by Customer.

- 1.2. No Further Obligation. Provider shall have no obligation to provide any service or software which are not expressly specified in these GTC.

### 2. Acceptance

By subscribing for the use of, setting up an account or logging into the Solution, Customer expressly agrees to be bound by the terms hereof. For the avoidance of doubt, if Customer is a legal entity, any subscription for the use of the Solution by any of Customer's employees, agents or representatives, on behalf of Customer, is deemed as acceptance of the terms of these GTC by Customer. If you are subscribing for the use of the Solution or using any Licensed Products on behalf of a legal entity, you represent and warrant that you are duly authorized to do so.

### 3. Right to Access and Use

- 3.1. In General. Subject to Customer's compliance with all terms and conditions of these GTC, in particular, subject to its payment of the applicable Fees in accordance with Section 10, Provider, grants to Customer, during the Term, a revocable, non-exclusive and non-transferable right to access and use the Solution, including web interface and the content displayed on, or generated through, the Solution (the **Content** and together with the Solution, the **Licensed Products**), strictly in accordance with these GTC and the documentation provided by Provider, on its own behalf and for its own internal business purposes only. For the avoidance of doubt, Customer shall not have the right to modify, amend, or prepare derivative works based on the Licensed Products nor to copy or reproduce the Licensed Products.

- 3.2. Restrictions. Except as stipulated otherwise in these GTC, Customer is expressly prohibited from using the Licensed Products on behalf or for the benefit of any third parties, or to sublicense the Licensed Products to any third party, without Provider's express prior written consent. If Customer is a legal entity, its account shall be used by one of its employees only and Provider shall take appropriate steps to ensure compliance with the GTC by such individual. The Licensed Products shall be used exclusively as a test

environment and shall not be used for production systems.

- 3.3. Metrics. The Licensed Products are subject to storage limitations (which is set, unless otherwise described on the Subscription Plan, at 10 GB of data) and other restrictions, as specified in the Subscription Plan or the documentation provided by Provider. Customer must use the Licensed Product strictly in accordance with such restrictions.

- 3.4. No Delivery. The Licensed Products are provided as an online offering; therefore, Provider shall only grant to Customer a right to access and use the Licensed Products and shall not deliver any copy of the Licensed Products.

- 3.5. Changes. Customer acknowledges that Provider may implement modifications to the Licensed Products which may include modifications to the layout or functionalities of the Licensed Products as Provider determines, and Provider will have the unfettered right to remove any Content from the Solution or change its functionalities at its sole discretion.

### 4. Credentials

- 4.1. User Credentials. Credentials are issued on a named user basis and shall be used exclusively by the individuals for which they have been issued. Customer is fully responsible for the confidentiality of its user credentials and immediately inform Provider of any loss or unauthorized disclosure of such user credentials, which shall then be deactivated and replaced by Provider. Provider may charge an appropriate fee for the replacement of any user credentials.

### 5. Availability; Maintenance and Other Services

- 5.1. Availability of Licensed Products. Provider shall use reasonable endeavors to maintain the availability of the Licensed Products, but does not guarantee their full availability. Furthermore, Customer acknowledges that the Solution and its storage database are provided from a shared server common to all customers. Accordingly, activities of other customers may impact the performance and availability of the Solution.

- 5.2. Maintenance Services. As part of the providing of the Licensed Products, Provider shall continuously seek to identify and attempt to resolve problems which may negatively affect the proper functioning and availability of the Licensed Products (the **Maintenance Services**). Such Maintenance Services comprises repairs (rectification of bugs and errors to restore functionality) and servicing (maintenance to maintain functionality), as well as

support service (as specified in Section 5.4 below). Further development, adaptation or improvement of the Licensed Products (evolutive maintenance), as well as additional Services (as described in Section 5.5), do not form part of the Maintenance Services.

- 5.3. Maintenance Windows. As a rule, Maintenance Services may be deployed once a week during maintenance windows (i.e. on weekdays between 6pm and 9am CET or during the weekend) and no longer than 4 hours during which the Licensed Products may be fully or partly unavailable. Provider shall inform reasonably in advance Customer if Maintenance Services have to be performed outside of such timeframe and/or for a duration leading to foreseeable full or partial unavailability of Services during more than 1 hour.
- 5.4. Support. Provider offers support services to its Customers via email ([support@agoston.io](mailto:support@agoston.io)) in order to correct errors and defects affecting the Solution. Email may be sent by Customers 24/7 with a target response time by Provider of 24 business hours (from Monday to Friday 9 am to 5 pm, except official holidays at the registered office of Provider)].
- 5.5. Additional Services. Provider may agree to provide additional services to Customer, such as technical support, and/or consulting services, subject to the Parties entering into an ad hoc agreement (which shall, unless specified otherwise, be governed by these GTC) pertaining to such Services and payment by Customer of the applicable fees.
- 5.6. Obligation of means. By default, Provider is only bound by an obligation of means for the supply of Services. Provider will supply the Services in accordance with standard professional practice, with the care and diligence required from a supplier of similar services.

## 6. Customer's Obligations

- 6.1. Payment of Fees. Customer shall pay the Fees as indicated in the Subscription Plan or by any other appropriate means (e.g. pricing schedules provided to Customer by Provider) (the **Fees**), in accordance with the payment terms set forth in Section 10.
- 6.2. Proper Use. Customer shall at all times comply with all laws and regulations applicable to the use of the Licensed Products, as well as the conditions and limitation of any license or other right granted, as set out in the Agreement or as otherwise specified in writing by Provider. In particular, Customer shall not, without the prior consent of Provider, and either during or after the Term: (i) use the Licensed Products for production systems or applications, or for any illegal purposes (ii) republish or redistribute any Content or material from the Licensed Products; (iii) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the

Licensed Products or of its infrastructure; (iv) make any alteration to the Licensed Products, or insert any malicious software into the Solution or its infrastructure; (v) access the Solution's code, attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Solution or its infrastructure (vi) access or use the Solution for the purpose of building a competitive product or service or copying its features or user interface; (vii) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Licensed Products or any part of their infrastructure available to any third party.

- 6.3. Customer's infrastructure. Customer shall procure and maintain at its costs an infrastructure that complies with the minimum requirements for the use of the Solution, as specified from time to time by Provider in the Solution's documentation.
- 6.4. Licenses and Authorization. Customer shall maintain all permits and licenses that are required for the use of the Licensed Products.
- 6.5. Verifications. The Licensed Products may contain tools allowing Provider to verify Customer's compliance with these GTC and Provider shall have the right to temporarily or permanently suspend the access to the Licensed Products and/or the Solution and/or deactivate any user credentials issued for the use thereof in case of none compliance with these GTC.
- 6.6. Customer Default. In case of default by Customer to comply with its obligations set forth in these GTC, Provider shall be excused from the performance of its obligations under the Agreement and assume no liability in relation therewith (without prejudice to Provider's other rights under this Agreement).

## 7. Customer Materials

- 7.1. Customer Materials. Customer may provide data through its use of the Solution, in the formats specified in the Solution's documentation (**Customer Materials**).
- 7.2. Ownership. As between the Parties, Customer Materials is and shall remain the sole and exclusive property of Customer and nothing herein shall be construed or interpreted as a transfer of ownership in any Customer Materials to Provider.
- 7.3. Use of Customer Materials. Customer grants to Provider a global, royalty-free, irrevocable, non-exclusive license to use the Customer Materials for the sole and exclusive purpose of providing or improving the Licensed Products and/or the Services, including a license to collect, process, store, generate, anonymize, modify, sublicense and transfer the Customer Materials to third parties, as well as to train algorithms using Customer Materials, only to the extent necessary to provide or improve the Licensed Products. For

the avoidance of doubt, Provider will not sell or otherwise commercialize the Customer Data.

7.4. Warranty. Customer warrants that (i) it has valid grounds and, if required, it has obtained all authorizations and consents for the processing of any Customer Materials within the frame of these GTC and (ii) Customer Materials do not infringe on any law or regulation, these GTC, or any third party rights. Provider may remove any User Materials which it considers infringes this warranty.

7.5. Deletion and Return of Customer Materials. During the Term, Customer has access to Customer Materials and may delete it directly. Upon termination of the Agreement, Provider shall, within reasonable time following a written request by Customer, provide Customer with a final extract of the Customer Materials and permanently delete or anonymize any copies of such Customer Materials still under its control. In any case, Provider shall be allowed to permanently delete or anonymize Customer Materials: (i) [60 days after termination or non-renewal of the Agreement or (ii) if an account has been inactive for 12 months or more.

7.6. Backups. **Customer is responsible for backing-up, on its own infrastructure, all Customer Materials uploaded to the Platform.** Provider does not back up the Customer Materials and has no means to recover it in case it is deleted or corrupted.

## 8. Provider Intellectual Property

8.1. Licensed Products. As between Provider and Customer, Provider shall be and remain the sole owner of all rights, title and interest, registered or not, whether arising from Swiss or any other national or international legislation, in copyright, databases, trademark, domain names, designs and patents of invention, know-how, confidentiality and/or business secrets, and all other intellectual property or similar proprietary rights of whatever nature (**Intellectual Property Rights**) in and to the Licensed Products, the Solution and other Services provided in connection therewith (except only for Customer Materials). Nothing in these GTC shall operate any assignment or transfer of any Intellectual Property Rights to Customer.

8.2. Usage Data. Provider shall own all rights and titles in, and may freely use for any purpose (including without limitation for data mining, benchmarking and analytics purposes, or for developing and marketing new services), any data or information (i) collected, processed, developed, produced or obtained from cookies or other tracking and analytics technology present on the Solution (including any tracking data related to user traffic), and (ii) relating to Customer's access to and use of the Licensed Products, including *inter alia* the number and duration of visits to the Contents (**Usage Data**).

8.3. Notice of Infringement. Should Customer become aware of any infringement or imminent risk of any infringement of any Intellectual Property Rights pertaining to the Licensed Products or Services, Customer shall immediately inform Provider and provide all useful information on such infringement or risk of infringement. Provider shall have the exclusive power to decide on any action to be taken with respect to such infringement or risk of infringement. Customer shall, at its own costs, provide Provider with all reasonable assistance required by Provider to protect its Intellectual Property Rights, in accordance with its instructions.

8.4. Intellectual Property Rights Infringement. In the event that Provider is enjoined from providing the Licensed Products or Services due to any third-party Intellectual Property Rights claims and such injunction is not dissolved within thirty (30) calendar days, or in the event that Customer is adjudged, in any final order of a court of competent jurisdiction from which no appeal is taken, to have infringed upon or misappropriated any third-party Intellectual Property Rights due to the use of the Licensed Products or Services as permitted hereunder, then Provider shall, at its expense: (a) obtain for Customer the right to continue using such Licensed Products or Services; (b) replace or modify such Licensed Products or Services so that they do not infringe upon or misappropriate such Intellectual Property Rights and are free to be used by Customer; or, (c) in the event that Provider is unable or determines, in its reasonable judgment, that it is commercially unreasonable to do either of the aforementioned, Provider may terminate the Agreement, with immediate effect, reimbursing Customer any prepaid Fees for the period during which the latter is thus unable to use the Licensed Products or Services, as its sole and exclusive remedy.

8.5. Relief. Customer expressly acknowledges that any infringement of Provider's Intellectual Property Rights will cause irreparable harm to Provider, for which monetary damages alone would be inadequate, and that Provider may thus seek injunctive relief or any other remedy available at law in any jurisdiction, in case of such infringement.

## 9. Third-Party Content

9.1. In General. The Licensed Products and Services may contain Content and/or software components incorporated into the Licensed Products or provided therewith, developed, distributed and/or licensed by third parties (**Third-Party Content**). Such Third-Party Content shall be licensed, and Customer shall use such Third-Party Content under, and strictly in accordance with, the applicable terms and conditions by the respective third party. Provider assume no liability whatsoever for those Third Party Content.

9.2. FOSS. Nothing in these GTC shall restrict, limit or otherwise affect any rights or obligations that

Customer may have, or conditions to which Customer may be subject, under any applicable open source licenses (meaning any software licenses approved as open source licenses by the Open Source Initiative or any substantially similar licenses) to any open source software which may be incorporated in and/or provided together with the Licensed Products. In particular, the Solution is based on Siobd v0.9.0 or later, which is an open source software licensed under the terms and subject to the conditions of [AGPL v.3](#) and nothing in the Agreement restricts Customer's right to use Siobd v0.9.0 or later in accordance with [AGPL v.3](#).

## 10. Financial Terms

- 10.1. Payment. Subscription Fees shall be due and payable in advance of their respective terms, as indicated in the Subscription Plan (in the absence of any specifications, on a monthly basis) and non-refundable in case of termination (except pursuant to Section 10.2. Additional Fees as incurred pursuant to the Provider's provision of Services, or through Customer's use of the Licensed Products are invoiced in arrears, on a regular basis.
- 10.2. Refund. Customer may request reimbursement of the Fees paid to, and actually received by, Provider in case Customer cancels its Subscription Plan within **30 calendar days** of subscription in accordance with Section 17.4 on the ground that the Services and Licensed Products have not been provided to the reasonable satisfaction of Customer. For the avoidance of doubt, refund is only offered for new customers of the Solution and is not available to renewed or new subscriptions.
- 10.3. Taxes. Fees and rates indicated by Provider shall be exclusive of all taxes (in particular, VAT) if and as applicable.
- 10.4. Disbursement. Payment of the Fees shall be made by any means authorized on the Solution (such as PayPal or by credit card), as indicated from time to time on Provider's website. In case of payment by credit card, Customer authorizes the card issuer to pay all such amounts and authorizes Provider (or its billing agent) to charge the credit card account until the Agreement is terminated as set forth herein. Customer must provide current, complete and accurate billing and credit card information. Customer agrees to pay all costs of collection, including administrative and attorney's fees and costs, on any outstanding balance. In certain instances, the bank or the issuer of the credit card may charge a foreign transaction fee or related charges, which Customer shall be responsible for paying. Payment via PayPal or another payment provider is subject to this provider's terms and conditions.
- 10.5. Suspension of Services. The continued use of the Licensed Products and Services by Customer is subject to the timely payment of all the Fees. Provider may temporarily stop providing the Services or suspend any right to access or use any Licensed Product and/or any user credentials

issued to Customer, if applicable, if Customer is in default for payment of any Fees due.

- 10.6. Changes. Provider may modify the pricing of its services at any time, e.g. by adding new services for additional Fees, or amending current plans, at any time and in its sole discretion, provided that if the change concerns Customer's current Subscription Plan, Provider will notify Customer in advance and the increase in Fees shall only become effective upon the forthcoming term of the Subscription Plan.

## 11. Data Protection

- 11.1. Customer Personal Data. If the provision of the Licensed Products or Services implies the processing by Provider of (i) any personal data forwarded by Customer (**Customer Personal Data**), in particular as part of Customer Materials, or (ii) personal data relating to Usage Data (**Usage Personal Data**), Provider and Customer shall fully comply with their respective obligations under applicable data protection laws and regulations.
- 11.2. Roles of the Parties. In such cases, Provider shall process (i) Customer Personal Data, as data processor, exclusively for the purpose agreed in these GTC and only to the extent necessary to fulfill the obligations hereunder, in accordance with Customer's instructions, which shall act as data controller and (ii) Usage Personal Data as sole data controller thereof.
- 11.3. Customer's Obligations. Customer shall ensure, with respect to any Customer Personal Data processed by Provider within the frame of the Licensed Products, if any, that such Customer Personal Data has been collected and transferred to Provider in strict compliance with the applicable data protection or data privacy laws and regulations. In particular, Customer shall:
  - a) have, and maintain at all times, valid grounds for the processing of such personal data;
  - b) have adopted and implemented appropriate technical and organizational measures to protect such personal data; and have complied and comply with all registration and/or notification requirements, if and as required under applicable data protection or data privacy laws and regulations, prior to granting Provider access to such Customer Personal Data within the frame of the Licensed Products.
- 11.4. Responsibility. Customer shall bear sole responsibility for the processing of Customer Personal Data, if any, within the frame of the Licensed Products. Customer acknowledges and accepts that Provider shall deem any processing of any Customer Personal Data within the frame of the Licensed Products, as permitted under the Agreement, as well as any instructions by Customer with respect to such processing activities as compliant with applicable data protection or data privacy laws and regulations.

11.5. Transfer. By accepting these GTC, Customer expressly acknowledges and agrees that Customer Personal Data or Usage Personal Data may be transferred to and processed on servers located outside of its jurisdiction, including in jurisdictions which may not have data protection and privacy laws and regulations equivalent to those in the Customer's jurisdiction.

11.6. Compliance Actions. Unless expressly prohibited in writing or pursuant to applicable law, Provider may forward to Customer any request, investigation or other action by any supervisory authority and/or any third parties (including data subjects), directed at Provider with respect to the processing of any Customer Personal Data. If Provider is required to undertake any compliance action itself, e.g. responding to a request by any supervisory authority or third party and/or cooperating in investigations, and/or to provide assistance to Customer, Customer shall fully indemnify Provider for its effort and costs, including reasonable attorney's fees, incurred in such context. Requests, investigations, or actions relating to Usage Personal Data shall be addressed by Provider only.

## 12. Confidentiality

12.1. Definition. **Confidential Information** shall mean any information disclosed by either Party (as the context requires, the **Disclosing Party**) to the other (as the context requires, the **Receiving Party**), either directly or indirectly, in writing, orally, or by inspection of tangible objects that is designated as "confidential", "proprietary", or some similar designation or can reasonably be considered of confidential nature. Confidential Information includes the content of the Agreement, (but not the fact that the Parties are collaborating), all information about the Disclosing Party's business and operations, and more generally all information relating to or owned or controlled by the Disclosing Party of which the Receiving Party shall acquire knowledge in the performance of their agreement. The Licensed Products, Services, as well as any Usage Data, shall be deemed Confidential Information and the property of Provider only, Provider acting as Disclosing Party in relation to such data. Confidential Information shall not, however, include any information which: (i) was made public without restriction prior to the time of disclosure by the Disclosing Party; (ii) becomes publicly known without restriction after disclosure by the Disclosing Party through no action or inaction of the Receiving Party; (iii) is already in the possession of the Receiving Party at the time of disclosure by the Disclosing Party as shown by the Receiving Party's files, records, and/or other competent evidence immediately prior to the time of disclosure; (iv) is obtained by the Receiving Party from a third party without a breach of such third party's obligations of confidentiality; or (v) is independently developed by the Receiving Party without use of or reference to the Disclosing

Party's Confidential Information, as shown by the Receiving Party's records.

12.2. Obligation of Confidentiality. The Receiving Party shall not, and shall cause its employees, agents, subcontractors or representatives not to (a) disclose, sell, license, transfer, or otherwise make available to any person or entity any Confidential Information of the Disclosing Party, except to its employees, agents, subcontractors or representatives having a legitimate need to know such Confidential Information for the performance of the Receiving Party's obligations under the Agreement (and only to such extent), and/or (b) use, reproduce, or copy any Confidential Information of the Disclosing Party, except as necessary to perform its obligations hereunder.

12.3. Ownership. All Confidential Information shall remain the Disclosing Party's property and all documents, electronic media, and other tangible items or portions thereof, which contain Confidential Information of the Disclosing Party will be delivered to the Disclosing Party promptly upon the Disclosing Party's written request.

12.4. Cooperation and Assistance. Each Party shall use its best efforts to assist the other Party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each Party shall advise the other Party immediately in the event either Party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to breach confidentiality and each Party shall cooperate with the other Party in seeking injunctive or other equitable relief against any such person.

12.5. Compliance. Nothing contained in the Agreement shall prevent Provider or Customer from complying with applicable laws. The Receiving Party may disclose Confidential Information of the Disclosing Party in connection with subpoenas, court orders, other legal processes, or as otherwise required by law, provided that the Receiving Party gives the Disclosing Party prompt written notice of such requirement (unless expressly prohibited in writing in such subpoena, court order, or other legal process) prior to such disclosure and takes reasonable steps to protect the Confidential Information from public disclosure, and provided further that any such disclosure is limited to the minimum extent necessary to comply with the legal requirement.

12.6. Reliefs. Customer acknowledges that breach of its obligation of confidentiality may give rise to irreparable harm to Provider, which might not be adequately compensated in the form of monetary damages. Accordingly, Provider may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, in contract or at law.

- 12.7. Feedbacks. Provider has not agreed to and does not agree to treat as confidential any Feedback (as defined below) Customer provides to Provider, and nothing in the Agreement or in the Parties' dealings arising out of or related to the Agreement will restrict Provider's right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback, without compensating or crediting Customer. ("Feedback" refers to any suggestion or idea for improving or otherwise modifying any of Provider's Licensed Products or other products or services.)

### 13. Advertising and Publicity

Provider may refer to Customer as a customer of Provider for the Solution and Customer grants to Provider a limited license to use its name, logos and trademarks for the sole purpose of referring to it within the frame of its marketing activities.

### 14. Limited Warranty

- 14.1. As IS/AS AVAILABLE. The Licensed Products and Services are provided AS IS and AS AVAILABLE. To the maximum extent permitted by applicable law, Provider disclaims all warranties with respect to the Licensed Products or Services, whether express, implied or statutory, including any warranties of merchantability, fitness for a particular purpose, quiet enjoyment and non-infringement of third-party rights.
- 14.2. Exclusions. In particular, Provider does neither represent nor warrant that the Licensed Products or Services shall meet Customer's requirements, that the operation of the Licensed Products or Services will be uninterrupted or error-free, that the Content will be error-free, that any errors in the Licensed Products will be corrected, that it will ensure continued compatibility of the Licensed Products or Services with any third-party products, even if they were compatible at any given moment, that the Licensed Products or Services will always be available and remain available unchanged or that certain subscription models for the Licensed Products or Services available at any given moment will remain available for renewal at the end of the applicable subscription period. The use of the Licensed Products and Services is entirely at Customer's own risk, and Provider expressly disclaims any warranties regarding Customer's use thereof and/or any decisions taken by Customer based on the insights gained from its use of the Licensed Products or Services.
- 14.3. Internet. Although the Solution implement industry-standard protocols to secure interactions between Customers and the Solution, such as SSH and HTTPS, the use of the Internet always involves risks, in particular that the data transmitted may be intercepted, altered or deleted. By using the Solution, Customer accepts these risks. Provider declines all responsibility in this respect.

### 15. Limited Liability

- 15.1. Limited Liability. Provider's liability under the Agreement, whether in contract, tort or any other theory of liability, shall be excluded to the maximum extent permitted under applicable law.
- 15.2. Disclaimer. In particular, without prejudice to the generality of the foregoing, to the extent permitted under applicable law, Provider disclaims any liability for simple negligence as well as for any damages or losses, whether foreseen or foreseeable, or whether Provider has been advised of the risk thereof, related to the loss of use, interruption of business, loss of actual or anticipated profit, loss of revenue, loss of anticipated savings, loss of opportunity, loss of goodwill, loss of reputation, loss of, damage to or corruption of data, or any other indirect, special, incidental, exemplary, or consequential damages or losses of any kind, regardless of the form of action, whether in contract, tort, strict liability or otherwise.
- 15.3. Limited Amount. In no event, Provider's total liability during any period of 12 months shall exceed the amount of the Fees actually paid by Customer during the 12 months preceding the events giving rise to Customer's claims.
- 15.4. Auxiliaries. The exclusions and limitations under this Section 15 shall extend to Provider's directors, officers, employees, agents, representatives and auxiliaries.

### 16. Indemnification

- 16.1. Indemnification. Customer shall defend, hold harmless from, and indemnify Provider, its directors, officers, employees and auxiliaries, from and against all liability, loss, cost, damage or expense, including reasonable attorney's fees, resulting from (i) Customer's use of the Licensed Products other than as permitted under these GTC and strictly in accordance with any documentation provided for the Licensed Products; or (ii) Provider's use of any Customer Materials as permitted hereunder.
- 16.2. Indemnification Procedures. In case of any claims or proceedings made against Provider, its directors, officers, employees or auxiliaries in relation to Customer's use of the Licensed Products or Provider's use of Customer Material, Provider shall (i) inform Customer without undue delay; and (ii) allow Customer to assist Provider in the defense and settlement of such claims or proceedings with a counsel of its choosing and at its own expense, if and as permitted under applicable procedural rules.

### 17. Term and Termination

- 17.1. Term. The Agreement shall enter into force upon acceptance of the GTC by Customer pursuant to Section 2 above and shall continue for as long as Customer has a valid subscription for the Solution (the **Term**).



- 17.2. Subscriptions. The initial duration of each Subscription Plan shall be as specified therein, and in the absence of a term specified, for an initial duration of 30 days, subject to non-renewal or termination in accordance with this Section 17 (the **Initial Plan**).
- 17.3. Renewal. Subscriptions shall be automatically renewed upon expiry of the Initial Plan, or then current renewed term (each a **Renewed Plan**, and together with the Initial Duration, the **Plan Duration**), for consecutive Renewed Plans of the same duration as the Initial Plan, subject to cancellation pursuant to Section 17.4.
- 17.4. Cancellation. Customer may cancel its Subscription Plan at any time via the dedicated tool on the Solution web interface, or by sending an email to [support@agoston.io](mailto:support@agoston.io), in which case its Subscription Plan will terminate upon the end of the then current Initial Plan or Renewed Plan. Provider may cancel a Customer's Subscription Plan at any time with a 15 days prior notice (such cancellation being effective at the end of the current Initial Plan or Renewed Plan as of the end of the notice period).
- 17.5. Termination for Cause. Provider may terminate the Agreement with immediate effect, in case of any material breach by Customer, provided that, if Customer's breach may be cured, at Provider's sole judgment, Provider shall first give Customer 7 days' prior written notice to cure such breach at Provider's entire satisfaction. Provider may further terminate the Agreement, in case of any infringement of third party rights or risk of infringement of such rights, through Customer's use of the Licensed Products.
- 17.6. Effects of Termination. The Agreement shall automatically terminate upon cancellation of the Subscription Plan, unless Customer renew its subscription under a new Subscription Plan (in which case the Agreement shall continue under the terms of the new Subscription Plan). Upon termination of the Agreement, and in addition to the consequences described elsewhere in the GTC:
- Provider shall stop providing and Customer shall stop using the Licensed Products and Services;
  - all rights to use and access granted to Customer hereunder (*inter alia* under Section 3.1) shall cease. All access to the Licensed Products and credentials shall be deactivated and suppressed;
  - Customer shall permanently delete any part of the Licensed Products stored or installed on its IT systems, if any;
  - Confidential Information shall be returned to the Disclosing Party and/or permanently deleted from any support of the Receiving Party, at the Disclosing Party's option, and

Receiving Party shall cease using the Confidential Information; and

- all Fees already paid by Customer shall remain acquired to Provider and are not reimbursable to Customer (subject to Section 10.2). Customer shall immediately pay all outstanding amounts due to Provider.

All terms which are expressed or intended to survive, and any provisions of the Agreement necessary for its interpretation or enforcement will continue to apply regardless of the reason for termination or expiry of the Agreement.

## 18. Miscellaneous

- 18.1. Independent Contractors. The Parties acknowledge and agree that they shall be considered as independent contractors with no authority to contract for the other or in any way to bind or to commit the other or in a way to bind or to commit the other to any agreement of any kind or to assume any liabilities of any nature in the name of or on behalf of the other. Under no circumstances shall either Party, or any of its staff, if any, hold itself out as or be considered an agent employee, joint venture, or partner of the other. Neither Party shall pay any contributions to social security, unemployment insurance, federal or state withholding taxes, any other applicable taxes whether federal, state, or local, or provide any other contributions or benefits which might be expected in an employer-employee relationship.
- 18.2. Subcontractors. Provider may use subcontractors for the provision of the Licensed Products and Services. Provider's use of subcontractors shall not relieve Provider of any of its duties or obligations hereunder, which shall be imposed on subcontractors.
- 18.3. Force Majeure. Neither Party shall be liable for any delay or failure to perform its obligations hereunder due to causes beyond its reasonable control, such as natural catastrophes, war, strikes, blackouts, Internet failure, virus outbreaks, or similar events. Any such excuse for delay shall last only as long as the event remains beyond the reasonable control of the delayed Party. However, the delayed Party shall use its best efforts to minimize the delays caused by any such event beyond its reasonable control. The delayed Party must notify the other Party promptly upon the occurrence of any such event, or performance by the delayed Party will not be considered excused pursuant to this Section, and inform the other Party of its plans to resume performance.
- 18.4. Amendment. Provider reserves the right to amend these GTC by a 15 days prior written notice to Customer, in which case Customer's sole remedy shall be to cancel its Subscription Plan and terminate the Agreement in accordance with Section 17.4. In the absence of termination, such amendments shall become effective as of the beginning of the upcoming Renewed Plan.

18.5. Entire Agreement. The Agreement constitutes the entire agreement between the Parties and supersedes any and all previous representations, understandings, or agreements between them, as to the subject matter hereof.

remedy available at law in any jurisdiction in case of any infringement of its Intellectual Property Rights.

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18.6. Severability. If any provision of the Agreement is held to be invalid or unenforceable for any reason, the Parties hereby agree to replace such provision with a valid and fully enforceable provision reflecting the original intent of the Parties to the fullest extent possible. In any event, all other provisions of the Agreement shall remain valid and enforceable to the fullest extent possible.

18.7. Electronic Form. The words “execution”, “signature” and similar words in the Agreement shall be deemed to include unqualified electronic signatures (e.g. DocuSign or any equivalent e-signature provider) which shall be of the same legal effect, validity or enforceability as a manually executed signature; while the term “in writing” shall include communications by email or other electronic forms.

18.8. No Waiver. The failure of either Party at any time to require performance by the other Party of its obligations hereunder shall in no way affect that Party's right to fully enforce the other Party's obligations thereafter.

18.9. Assignment. Except for transfers or assignments authorized pursuant to the terms of the GTC, Neither Party shall assign and transfer any or all of its rights and obligations hereunder, in whole or in part, to any third party without the other Party's prior written consent; provided however, that Provider may assign and transfer all of its rights and obligations hereunder to any third party acquiring all or substantially all of its business related to the Licensed Products or Services, without Customer's consent.

18.10. No Third Party Beneficiaries. Except pursuant to Section 16 GTC, this Agreement shall be binding and inure solely to the benefit of the Parties (and their respective lawful successors and assigns). Nothing in the Agreement is intended to or shall confer upon any third party any rights, benefits or remedies of any nature whatsoever under or by reason of the Agreement.

## **19. Governing Law and Jurisdiction**

19.1. Governing Law. The Agreement and/or any use of the Licensed Products shall be governed by and construed in accordance with Swiss substantive law, at the exclusion of its conflict of laws provisions.

19.2. Jurisdiction. Any dispute or controversy arising out of or in relation to the Agreement and/or Customer's use of the Licensed Products shall be subject to the exclusive jurisdiction of the competent ordinary courts at the place of the registered office of Provider. Notwithstanding the preceding, nothing in these GTC shall prevent Provider from seeking injunctive relief or any other