Snapshot GmbH Terms & Conditions

1. **License of Service.** Snapshot grants to Customer for use by Customer's Properties indicated on the Agreement or added to this Agreement at a later time, a limited, nonexclusive license to access and use the Demand Management System indicated in the Agreement ("DMS") during the Term. Customer may not sublicense the DMS unless Customer has received written permission from Snapshot. This license is automatically revoked in the event of the Termination of this Agreement and can be revoked by Snapshot in the event of a breach of this Agreement by Customer.

2. **Snapshot Undertakings.** Snapshot will provide Customer with access to the DMS and support the ongoing usage by Customer as indicated in the Agreement. Snapshot is free to decide where – and in particular from which computer center in or outside the European Union – it renders its services for the Customer. Additional services (e.g. implementation, customizing and training) are performed by Snapshot at Customer's request. Specially arranged training & consultancy, considered extra to the existing service level agreement, can be arranged for an additional cost.

3. **Billing and Payment.** Snapshot will bill Customer via e-mail monthly, 3-monthly or yearly intervals based on product terms. Failure by Snapshot to invoice Customer promptly for any Snapshot Service does not constitute a waiver by Snapshot of its right to invoice Customer at a later time. Customer agrees to pay Snapshot for all of Customer's Properties that use Snapshot Services within thirty (30) days of receiving the Snapshot invoice. A late charge of 1½% per month (or the maximum provided by law, if less) will apply to past due amounts after respectively contacting the customer and sending reminders.

4. **Term.** The initial term of this Agreement is one (1) year commencing on the Effective Date (the "Term"). This Agreement shall automatically renew for successive renewal Terms based on then-valid pricing of one (1) year each unless written notice of termination is given by either party to the other at least ninety (90) days prior to the end of any term.

5. **Third Party Increases.** The fees and charges for third-party providers, including but not limited to connecting interface usage, may be increased at any time when those fees and charges to Snapshot are increased.

6. **Change of Terms.** Snapshot is entitled to change the Terms of the Agreement and/or the remuneration at any time. At least three months before implementation Snapshot shall notify the Customer about any changes. Customer is entitled to object to any planned change within one month of receiving notification thereof; otherwise it shall be deemed to have granted its approval in this respect. In each case, Snapshot shall draw the Customer's attention to the consequences of failing to object. Customer will not withhold his approval to a change unreasonably, i.e. not if Snapshot implements a change due to alterations by Snapshot GmbH.

7. **Termination.** This Agreement may be terminated in the event of a material breach that is not remedied within sixty (60) days following the delivery of written notice of the breach. In the event Customer does not pay when due, Snapshot shall have the right immediately and without notice to suspend access to Snapshot Services until satisfactory arrangements for the payment of current and future billings is made. Upon expiration or termination of this Agreement, Customer shall cease to utilize the DMS and any Snapshot Service.

8. **Early Termination Fee.** Customer will remain liable for all amounts due to Snapshot under this Agreement if this Agreement is terminated. In the event Customer terminates this Agreement prior to the expiration of any Term for any reason other than due to a material breach of the Agreement by Snapshot, Customer agrees to pay a termination fee equal to the number of months remaining in the Term.

9. **Proprietary Rights.** Customer will not allow the DMS and/or any Snapshot Services to be used by any Property or facility that is not listed on or added to this Agreement and Customer will not alter any software code or use the DMS to avoid payment. Customer will not reproduce or decompile the software code, documentation or any other proprietary technology owned or licensed by Snapshot.

10. **Publicity.** Customer may use Snapshot trade names, name and logo when identifying or advertising that Customer uses Snapshot Services in print or online advertising, press releases or publicity in accordance with the Snapshot name use policies in effect from time to time. Snapshot may use Customer's name, logo and Property descriptions including number of rooms and Properties by name in print or online advertising, press releases or publicity. Additionally, Customer grants to Snapshot a non-exclusive, worldwide, royalty-free license to use digital images, which may include digital firm clip(s), animation, audio clip(s) and associated material ("Images") related to a Property. Customer warrants that it is the owner or otherwise has the right to provide this license grant and that such Images accurately depict the Property. Customer shall maintain the timeliness and the accuracy of all Images supplied hereunder.

11. **Customer Data.** The customer is responsible for ensuring that the Material and Data it uses does not violate statutory or government regulations (e.g. protection of young persons, data protection, or competition law), and is free of third-party rights (in particular *droit moral* or copyrights) such as might restrict its being used for its intended purpose. To this extent, the customer shall indemnify Snapshot against all and any claims, including reasonable prosecution costs. Snapshot is entitled to transfer to and store customer data in its data centers in the EU and the USA. Snapshot is entitled to transfer selected data to associated companies with electronic or other customer approval. Snapshot holds the right to aggregate the data according to applicable data security and non-competition laws.

12. **Expenses.** Reasonable expenses and outlay (e.g. travel costs, allowances and overnight costs if applicable) in providing onsite services shall be paid by the Customer, either up to the highest rates under the tax laws in force at the time or as given in individual receipts. Time spent travelling, over 4 hours counts as time worked.

13. **Taxes.** Customer will be responsible for and will reimburse and indemnify Snapshot for all taxes or similar charges (including, without limitation, penalties, interest, additions to tax and similar amounts), whether federal, state, local, foreign or otherwise, including without limitation withholding taxes, which are related to this Agreement or to payments made under this Agreement, other than taxes imposed on the net income of Snapshot (collectively, "Taxes"). All payments due to Snapshot under this Agreement shall be made including 20% Value Added Tax (VAT/USt) if the customer is based in Austria. If the customer is based in other countries of the EU, the reverse charge method applies. If the customer is based outside of the EU, no VAT applies. If Customer is required by law to make any deduction or withholding of Taxes from any payment due to Snapshot under this Agreement, Customer will (i) timely and properly prepare and submit any necessary filings and remit such Taxes to the appropriate taxing authority, (ii) provide Snapshot with governmental receipts evidencing Customer's withholding and payment to the appropriate tax authorities in a timely manner and (iii) increase each payment related to this Agreement to the extent necessary to ensure that Snapshot actually receives the amount that Snapshot would have received if such payment had not been subject to Taxes.

14. **LIMITATION OF LIABILITY.** SNAPSHOT WILL NOT BE LIABLE FOR SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF PROFITS, REVENUE OR SAVINGS) ARISING OUT 0F CUSTOMER'S USE OF SNAPSHOT DEMAND MANAGEMENT SYSTEM WHETHER FOR BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF SNAPSHOT HAD BEEN ADVISED OF, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY THEREOF. IN NO EVENT WILL SNAPSHOT' LIABILITY FOR ANY REASON EXCEED THE AMOUNT PAID TO SNAPSHOT UNDER

THIS AGREEMENT DURING THE 12 MONTHS PRECEDING THE OCCURRENCE OF THE CLAIM. NO CLAIM MAY BE BROUGHT MORE THAN SIX (6) MONTHS AFTER CUSTOMER KNEW OF OR REASONABLY SHOULD HAVE KNOWN OF THE CLAIM, REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

15. **Mutual and Specific Indemnities.** Each Party agrees to defend, at its expense, and indemnify and hold the other harmless from and against any third party claim arising from a breach by the indemnifying Party of any term or condition of this Agreement.

16. **DISCLAIMER OF WARRANTIES.** THE DMS IS PROVIDED "AS IS" AND WILL FUNCTION IN ACCORDANCE WITH THE OPERATIONAL GUIDES. SNAPSHOT MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT SHALL BE DEEMED A WARRANTY FOR ANY PURPOSE OR GIVE RISE TO ANY LIABILITY OF SNAPSHOT WHATSOEVER. THE PARTIES AGREE AND ACKNOWLEDGE THAT THIS PROVISION IS MATERIAL TO THE AGREEMENT AND IS A SIGNIFICANT CONSIDERATION IN SNAPSHOT' WILLINGNESS TO ENTER INTO THIS AGREEMENT.

17. **Confidentiality.**

   A.   As between the parties, the Confidential Information of each party will remain its sole property. All Confidential Information shall be held and protected by the recipient in strict confidence, and shall be used by the recipient only as required to render performance or to exercise rights and remedies under this Agreement. Each party will protect the other party's Confidential Information from unauthorized use, access or disclosure with the same measures that the recipient takes to protect its own proprietary information of like importance, but in no event less than reasonable care. No Confidential Information will be disclosed to any third party by the recipient party without the prior written consent of the disclosing party. Customer agrees to hold all the terms, fees, prices, transactional and billing details, and contents of this Agreement in strict confidence. Customer may disclose the terms of the Agreement to their responsible employees, advisors and consultants with a bona fide need to know who agree to maintain confidentiality.

   B.   Required Disclosures. Each party may disclose the Confidential Information of the other party in response to a request for disclosure by a court or another governmental authority, including a subpoena, court order, or audit-related request by a taxing authority, if that party; (i) promptly notifies the other party of the terms and the circumstances of that request, (ii) consults with the other party, and cooperates with the other party's reasonable requests to resist or narrow that request, (iii) furnishes only information that, according to written advice of its legal counsel, that party is legally compelled to disclose, and (iv) uses reasonable efforts to obtain an order or other reliable assurance that confidential treatment will be accorded the information disclosed.

18. **Choice of Law.** This Agreement and any dispute arising hereunder shall be construed in accordance with the procedural, evidentiary and substantive laws of Austria without regard to principles of conflict of laws. This Agreement will not be governed by the U.N. Convention on the International Sale of Goods, the application of which is expressly excluded. The parties agree to the exclusive forum for any litigation arising hereunder may take place in Federal Republic of Austria's courts in Salzburg, and each party waives any objection which it may have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in such Courts.

Notwithstanding anything herein to the contrary, in the event of an actual or threatened breach of the use restrictions placed on the Snapshot DMS or related software or the Confidentiality provisions contained herein, the non-breaching party will be entitled, without waiving any other rights and remedies and without obligation to post a bond, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.

19. **Successors in Interest.** This Agreement shall be binding upon the successors, transferees and assigns of the Parties.

20. **Severability.** In the event that any provision of this Agreement is found invalid or unenforceable pursuant to a judicial decision, the remainder of this Agreement shall remain valid and enforceable.

21. **Survival.** All provisions of this Agreement relating to payment, confidentiality, nondisclosure, and proprietary rights shall survive the Termination of this Agreement.

22. **Notice.** Any notice under this Agreement shall be in writing and shall be deemed given when received and may be delivered (i) by hand, (ii) by mail, in Official Government Mail, postage prepaid, or (iii) by overnight delivery service. Notices to the Parties shall be sent to the above addresses.

23. **Entire Agreement.** This Agreement is the complete agreement of the Parties and supersedes all prior oral or written agreements, contracts, proposals, understandings, offers and discussions. This Agreement may not be modified or altered except by written instrument executed by both Parties.

24. **Subcontractors.** Snapshot is entitled to call in sub-contractors or self-employed persons for effecting the performance incumbent upon it, unless such party embodies a good reason for objection to their involvement.

25. **Third Party Providers.** Snapshot depends on contractual relationships with many third party providers for the products and services that are used by Snapshot in its business or that are offered to Customer from time to time. In the event that any contract upon which Snapshot relies for any service or product terminates, Snapshot will immediately take all reasonable action to provide such products and/or services itself or through another provider. Notwithstanding this, Snapshot and Customer agree that Snapshot shall have the right to suspend or terminate any products services to Customer if the contracts through which Snapshot provided the products or services are terminated by the providers without liability to Snapshot. Customer shall have no further obligation to pay for any such suspended or terminated product and/or service and Customer shall have the right to contract directly with another provider for such products and services.

26. **Force Majeure.** No Party shall be liable to any other Party for any delay or failure to perform due to causes beyond its control including, without limitation, fire, flood, wind, lightning, strike, work stoppage, war, insurrection or terrorist acts, failure of any local, state, national or international telecommunications carrier, computer hosting facility or Switch Provider to provide messaging or connectivity, or act of God or public enemy.