

## AppTec Contractual Conditions for the Use of AppTec Software Products

### 1. Definitions

- 1.1 “**Provider**” refers to AppTec GmbH, Freie Strasse 32, CH-4001 Basel, unless otherwise agreed.
- 1.2 “**User**” refers to a person who is authorised to access the software through the assignment of a unique user ID by the Customer.
- 1.3 “**Customer**” refers to the legal entity or person who is the contractual partner of the Provider and uses the software of the Provider.
- 1.4 “**Customer content**” refers to all data which is uploaded to the customer account for storage or to data in the computing environment of the Customer, to which the Provider obtains access for the provision of services, in particular data that is managed using the SaaS or on-premise solution.
- 1.5 “**On-premise**” refers to a software solution installed on site in the form of a virtual appliance.
- 1.6 “**Open-source software**” refers to software of a third-party provider which is distributed in connection with a product or SaaS solution from the Provider according to an open-source licence model (e.g. the General Public Licence (GNU), BSD, MIT) or a licence similar to one approved by the Open Source Initiative and for which standalone licence agreements apply that take precedence over these Contractual Conditions.
- 1.7 “**SaaS**” refers to the provision of software on servers of the Provider or a service provider commissioned by the Provider, via an Internet connection, during the term of this contract in order to use same for the Customer’s own purposes and to store and process its data with the help of such software.
- 1.8 “**Software**” refers collectively to all services which the Provider renders or provides for the Customer.
- 1.9 “**Updates**” refer to all corrections, error rectifications and newly added or removed features and characteristics, but exclude new service versions that are not generally contained in the purchased services.
- 1.10 “**Affiliated companies**” refers to any entity in connection with a contractual party, which directly or indirectly controls the party or to whose sole or joint control this party is subject; in this context, control means the power to determine the orientation, management and decisions of this entity, directly or indirectly, regardless of whether such power arises from ownership of voting rights or equity interests.
- 1.11 “**Contract**” refers to the order, the invoice (licence verification), these Contractual Conditions, the service descriptions, the maintenance and support conditions, the order processing agreement and all other documents which are included by reference in this document.

### 2. Contractual object and order of precedence

- 2.1 These Contractual Conditions apply to the use of the software of the Provider as well as third-party software, which is supplied or provided by the Provider, including updates.
- 2.2 The software is operated by the Provider as a SaaS or cloud solution as standard.
- 2.3 Moreover, the Provider also offers the software as an on-premise variant for installation on the Customer’s own servers or those of third parties.
- 2.4 The terms of business of the Customer do not apply, even if the Provider does not expressly object to their application in the individual case. Even if the Provider makes reference to a document that contains the terms of business of the Customer or which in turn refers to such terms of business, this may not be construed as agreement to the application of those terms of business.

- 2.5 In any case, individual agreements made with the customer in individual cases (including ancillary agreements, supplements and amendments) take precedence over these Contractual Conditions. A written contract or the written confirmation of the Provider is decisive for the content of such agreements.

### **3. Type and scope of services**

#### **For SaaS services:**

- 3.1 The Provider shall provide the Customer with the software in the respectively agreed version at the router of the data centre in which the server with the software is available for use (“handover point”).
- 3.2 The software, the computing power necessary for use and the required storage and data processing capacity shall be provided by the Provider. The Provider shall not owe the establishment and maintenance of the data connection between the IT systems of the Customer and the aforementioned handover point.

#### **For on-premise services:**

- 3.3 The Provider shall provide the Customer with the software for download. Installation and operation are the responsibility of the Customer.
- 3.4 Only the AppTec server and the client components, which are developed by AppTec and provided to the Customer, are a component of the licensed software. In particular, this does not include the appliance as such, the Debian server, Apache or MySQL/MariaDB database.
- 3.5 For SaaS and on-premise services: The system requirements for operation can be found on the AppTec website.

### **4. Registration**

- 4.1 The Customer must first register in order to use the software as a service. In this connection, the Customer shall correctly and completely enter the data requested during registration, such as regarding the company, device, location and its identity, which it shall update in the event of any changes.
- 4.2 Only one registration per customer is permitted. (If you forget your password, you can request it using the “Forgotten password” feature.) Multiple administrators may be set up per customer.
- 4.3 Passwords must be changed by the Customer to a password known only to it promptly after receiving the initial password; the Customer must keep its password secret. The Provider is not responsible for the consequences of the misuse of user passwords.

### **5. Installation, training and consulting**

- 5.1 For on-premise services: The Customer is responsible itself for proper installation at its site, commissioning and maintenance of the supplied software. Both installation by the Provider as well as training and induction of the Customer or its operators (end users) in the operation of the supplied software do not belong to the scope of services. These services are only provided on the basis of a corresponding agreement and are charged separately.
- 5.2 Insofar as the Provider renders training, consulting or installation services, the Customer shall ensure that the necessary prerequisites at its site are satisfied, in particular that the required space, infrastructure, documents and personnel are made available. Should the Customer fail to duly fulfil its cooperation obligations pursuant to Clause 1, the contractually agreed execution periods of the Provider will be suitably extended. The Provider may charge for the additional cost incurred due to the delay, in particular for the extended provision of its own personnel or materials.

### **6. Contract conclusion, order, remuneration and payment**

- 6.1 Offers of the Provider are non-binding. A contract only arises upon written order confirmation or upon order fulfilment by the Provider and is determined exclusively according to its content.
- 6.2 The payment period, the amount of the remuneration, the payment method and the due date are determined by the invoice.
- 6.3 The invoice is issued in advance prior to the commencement of the original contractual term or extension.
- 6.4 Should the Customer delay in the settlement of a due remuneration by more than fourteen (14) days, the Provider shall be permitted to block access to the software and to other services following previous reminder with the setting of a grace period and expiry of the grace period. The remuneration claim of the Provider as well as further rights, in particular default interest and compensation, remain unaffected by the blocking of software/services. Access to the software/services will be promptly reactivated upon settlement of the payments in arrears. The right to block access exists as a milder course of action even if the Provider has a right to extraordinary termination due to the default on payment.

## **7. Granting of rights**

### **7.1 Right to use the services for commercial purposes**

- 7.1.1 Subject to these conditions, the Provider shall provide the Customer with SaaS services in accordance with the orders, which the Provider has accepted, for use in compliance with the contract. The Customer accepts that the services are not intended for use by consumers.
- 7.1.2 The Customer may only use the services for commercial and professional purposes, as expressly permitted in this contract. The Provider shall hereby grant the Customer a temporally limited, personal, non-exclusive, non-transferable (unless expressly permitted in Point 16) licence to use the services up to the number of purchased licences or subscriptions and in compliance with the purchases licence model(s). The SaaS is rendered worldwide or with spatial limitation in accordance with the contractual agreement. Details are described in the contract.
- 7.1.3 Updates to the services are managed by the Provider and are included in the remunerations. The Customer shall use the respectively up-to-date version of the services, including all updates provided by the Provider.
- 7.1.4 Insofar as affiliated companies use the services, the Customer shall guarantee that it has the legal authority to commit these affiliated companies to this contract. The Customer shall be liable towards the Provider in the event that an affiliated company does not comply with a contractual condition.

### **7.2 Property rights and copyrights**

- 7.2.1 All rights to the software are the property of the Provider or the respective rights holder. The software is subject to copyright protection. The software may only be used up to a maximum of the scope of the licensed applications. As soon as the software contains components of different companies, all copyrights will remain with the originator of the respective components in this respect.
- 7.2.2 The licensee undertakes neither to copy the software nor to make the software accessible to third parties in any other form. This obligation must also be applied to the respective program users.
- 7.3 **Usage restrictions:** With the exception of the scope permitted by law, the Customer declares the following on behalf of itself and on behalf of its users: (i) it shall not modify or distribute the code used in connection with the services of the Provider, nor create works derived on this basis, nor reverse engineer, decompile, disassemble, dismantle or otherwise decrypt same; (ii) it shall not access or use the services with intent or gross negligence in such a manner that constitutes misuse of networks, security systems, user accounts or services of the Provider or a third party,

nor attempt to gain unauthorised access to one of the aforementioned components via unpermitted means; (iii) it shall not transmit or publish any offensive, harassing, fraudulent, defamatory or otherwise indecent or unlawful content using the services or in the services.

#### 7.4 **Export restrictions**

The Customer hereby declares that it shall use, disclose and/or transport the software in compliance with all applicable export control laws and regulations and shall not re-export or re-transfer the software to a destination subject to restrictive sanctions or trade embargos at a national, regional or international level without the corresponding authorisation and that only the Customer is responsible for compliance with all state requirements in connection with use by the Customer.

7.5 **Open-source software:** The software uses open-source software for which the supplementary licence conditions are applicable and take precedence. These conditions can be accessed via the AppTec management console or via [https://www.apptec360.com/Third\\_Party\\_Software\\_Notices.txt](https://www.apptec360.com/Third_Party_Software_Notices.txt).

7.6 **Third-party software:** The software uses third-party software for which the pertinent supplementary licence conditions of the respective manufacturer are applicable and take precedence.

### 8. **Rights to data processing**

For the purposes of contract performance, the Customer grants to the Provider the right to duplicate the data to be stored by the Provider for the Customer, insofar as this is necessary for performance of the services owed according to this contract. The Provider is also permitted to hold the data available in a backup system or separate backup data centre. In order to resolve disruptions, the Provider is also permitted to carry out changes to the structure of data or the data format.

### 9. **Support**

9.1 A support case exists if the software does not fulfil the contractual functions according to the product description. The manner of the error report and the scope of the support services are determined by the maintenance and support conditions.

9.2 In the event that a customer reports a support case, it shall provide a description of the respective malfunction with as much detail as possible in order to enable efficient resolution of the disruption.

9.3 The warranty rights of the Customer according to these Contractual Conditions remain unaffected.

### 10. **Cooperation obligations on the part of the Customer**

10.1 All customer information, which is provided by or on behalf of the Customer for a subscription and registration, must be up to date, complete and correct, and the Customer is responsible for keeping this information updated.

10.2 The Customer shall support the Provider in the provision of the contractual services to an appropriate extent.

10.3 For on-premise solutions: The Customer is responsible for the proper and regular backup of its data or the virtual appliance.

10.4 The Customer must satisfy the system requirements for the use of the software. Point 3.5 applies. The Customer is responsible itself in this connection.

10.5 The Customer must maintain secrecy with respect to all access data it receives and must ensure that any employees, who are provided with access data, likewise do so. The service of the Provider may not be provided to third parties, unless this was expressly agreed by the parties.

### 11. **Warranty**

- 11.1 When integrating third-party products, AppTec shall also be liable for errors of these products in accordance with the liability limitation pursuant to Point 12. This does not apply to errors of open-source software and other third-party software products, whose configuration is merely controlled by the software.
- 11.2 The Customer undertakes to report to the Provider malfunctions, disruptions or impairments in the software without delay and as precisely as possible.
- 11.3 The statutory warranty provisions apply.
- 11.4 However, the statutory right of the Customer to conduct rectification itself is excluded. The application of a duty to pay compensation on the part of the Provider is likewise excluded, insofar as the applicable standard prescribes strict liability for initial defects in the software.

## 12. **Liability**

- 12.1 The Provider shall render the owed contractual services with due care. A certain outcome is only owed if it is expressly assured in a separate contractual agreement.
- 12.2 The Provider shall be liable without limitation in the event of intent and gross negligence; however, the Provider shall only be liable for injury to life, limb or health in the case of slight negligence.
- 12.3 In the case of slight negligence, the Provider shall otherwise only be liable for the violation of an essential contractual duty, whose fulfilment makes due performance possible in the first place, in the amount of the typically foreseeable damage or the typically foreseeable expenses, yet no more than the amount of the order value.
- 12.4 In particular, the Provider shall under no circumstances be liable for indirect damages, collateral damages, consequential damages, purely financial damages (e.g. loss of profit or non-realised savings), operational disruptions, loss of earnings or revenue and/or additional costs, atypical and unforeseeable damages as well as for damages which the Customer could have prevented, had it taken reasonable measures (in particular through data backup).
- 12.5 Any further liability is excluded.
- 12.6 The provisions of this Point 12 also apply in favour of the employees and other agents of the Provider.

## 13. **Indemnification**

- 13.1 With respect to the Provider, the Customer undertakes not to use any prosecutable or content and data otherwise unlawful in absolute terms or in relation to individual third parties and not to use any viruses or other programs containing malware in connection with the software. In connection with personal data, the Customer remains the responsible party and must therefore always check whether the processing of such data through use of the software is authorised by corresponding legal bases.
- 13.2 The Customer is responsible alone for all content used and data processed as well as the necessary legal positions to this end and any third-party rights. The Provider does not acknowledge content of the Customer and, as a rule, does not check the content used by the Customer with the software.
- 13.3 In this regard, the Customer undertakes to release the Provider from any liability and any costs, including possible and actual costs of legal proceedings, in case the Provider faces claims from third parties, including employees of the Customer personally, as a result of claimed actions or omissions on the part of the Customer. The Provider shall inform the Customer of the assertion of such claims and give the Customer the opportunity to defend against the asserted claim, insofar as this is legally possible. At the same time, the Customer shall promptly and comprehensively inform the Provider regarding all information it has available in connection with the matter, which is subject to the asserted claim, and update the Provider on an ongoing basis.

13.4 Further compensation claims of the Provider remain unaffected.

#### **14. Confidentiality**

14.1 The parties shall maintain secrecy with respect to all confidential information, which become known to them in connection with the contractual relationship, and use such information with respect to third parties – for whatever reason – only in accordance with advance written agreement with the other respective party. The information to be treated confidentially includes the information explicitly marked as confidential by the disclosing party and such information whose confidentiality arises from the circumstances of disclosure.

14.2 The obligations according to Clause 1 do not apply to such information or parts thereof for which the receiving party is able to demonstrate that:

- a) it was known or was publicly accessible prior to the date of receipt, or;
- b) it was released by a third party after the date of receipt lawfully and without a confidentiality obligation, or;
- c) it was known or was generally accessible to the public, or;
- d) it was known or was generally accessible to the public after the date of receipt, without the receiving party being responsible for this.

14.3 The obligations according to Clause 1 continue to apply for an indefinite period after the end of the contract, until such time as an exception according to Clause 2 is demonstrated.

#### **15. Customer reference**

The Customer shall grant the Provider the right to use the name of the Customer, logos and other identifiers of the Customer on lists of the Provider for reference and marketing purposes. The Customer has the right at any time to object to use on important grounds. The objection must be submitted in writing.

#### **16. Data protection**

16.1 The Provider informs the Customer that company email addresses provided in connection with contract conclusion may also be used for purposes of promotional electronic communication. This only relates to email addresses entered during registration, but not to email addresses managed via AppTec software generally. The Customer or the affected email recipients have the right to object to this use.

##### **For customers based in the EU/EEA**

16.2 Insofar as the Provider is able to access personal data of the Customer or such data from its sphere of operations, it shall operate exclusively as a data processor and process and use this data only for contract performance. The Provider will comply with the instructions of the Customer for the handling of this data. The Customer shall bear any disadvantageous consequences of such instructions for contract performance. The Customer shall agree details with the Provider regarding the Provider's handling of the Customer's data according to data protection requirements in an order processing agreement pursuant to Art. 28 of the General Data Protection Regulation (GDPR), which also satisfies the requirements of Art. 10a of the Swiss Data Protection Act (*Schweizerisches Datenschutzgesetz – DSG*).

16.3 The Customer remains the controller both generally in the contractual relationship and in the meaning of data protection law. Should the Customer process personal data in connection with the contract (including collection and use), it shall be responsible for ensuring that it is authorised to do so in accordance with applicable regulations, particularly under data protection law, and shall indemnify the Provider of third-party claims in the event of a violation.

16.4 The Provider guarantees that data of the Customer will be stored exclusively in the EU or in another contracting state of the Agreement on the European Economic Area (EAA) or in Switzerland, unless otherwise agreed.



## **17. Transfer of rights and obligations**

- 17.1 The Provider is permitted to transfer to third parties its rights and obligations arising from this contract in whole or in part.
- 17.2 The Customer may not assign or delegate its rights and obligations arising from this contract in whole or in part without the advance written consent of the Provider, unless the Customer is able to transfer this contract in whole to an affiliated company or an interested successor in connection with a corporate reorganisation, consolidation, merger or sale of its entire assets or a significant part of its entire assets. The Customer shall notify the Provider following completion of a permissible assignment.
- 17.3 Any attempted assignment in violation of the above provisions is not valid.

## **18. Further provisions**

- 18.1 **Use associated with high risks:** The Customer acknowledges that the SaaS services are not designed or intended for access and/or use in or with activities with high risks. In particular, the Customer may not use the services for military, nuclear-related or medical purposes.
- 18.2 **Consent regarding log and analysis data:** The Provider and its external service providers may collect and use logs for the purpose of facilitating the services, including the backup, administration, measurement and improvement of services. Such logs may only be used in summarised, aggregated form. The collection and processing of customer-specific log data in support or warranty cases remain reserved, according to agreement.

## **19. Contractual term and termination**

- 19.1 Unless otherwise agreed, the customer has a fixed term of twenty-four (24) months. It will be extended automatically by the initial term if it is not terminated by one of the parties with a notice period of three (3) months to the end of the term or the extension. Termination must be made in writing.
- 19.2 Both parties reserve the right to extraordinary termination on important grounds in accordance with statutory requirements. In particular, important grounds exist for the Provider if the Customer is in default on payment of due remuneration for more than two (2) months in spite of a reminder. Insofar as the Customer is responsible for the reason for termination, the Customer undertakes to pay the Provider the agreed remuneration until the time at which the contract would end at the earliest in the event of ordinary termination.
- 19.3 Declarations of termination must be made in writing to be effective. Compliance with the written form is required for the effectiveness of termination.
- 19.4 Following the end of the contract, the Provider shall return to the Customer all documents and data media provided by the Customer and still in the possession of the Provider, which relate to the respective contract, or delete the data stored by the Provider, insofar as no duties or rights of retention exist.

## **20. Applicable law and legal venue**

- 20.1 These Contractual Conditions and the underlying contract are subject to Swiss substantive law. The application of the United Nations Convention on the International Sale of Goods dated 11 April 1980 is excluded.

20.2 The exclusive legal venue for all disputes arising from, or in connection with, this contract is the registered address of the Provider. However, the Provider is also permitted to take legal action against the Customer at its registered address in accordance with applicable statutory provisions.

**21. Final provisions**

21.1 This contract and amendments as well as all contractually relevant declarations, notifications and documentation obligation must be made in writing, unless a different form is agreed or is prescribed by law. This also applies to a rescission or change to the requirement for the written form.

21.2 Should individual provisions of this agreement be void, this will not affect the validity of the remaining provisions. In this case, the parties shall cooperate to replace the void provision with a valid provision which comes as close as possible to the intended purpose of the void provision.

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