

## Master Services Agreement

This Master Services Agreement is entered into by and between the relevant Provider entity and the Customer entity, each as set out in an applicable Order Form (“**Provider**” and “**Customer**”, each also referred to as a “**Party**” and collectively as the “**Parties**”) as of the Effective Date. This Services Agreement, its Schedules, any applicable Order Form, including any Document incorporated therein and any applicable amendment (collectively the “**Agreement**”) constitute the entire agreement between the Parties with respect to the Customer’s purchase and use of the Services.

When incorporated by reference, this Agreement shall govern the provision of the Services by Provider to Customer.

Now therefore, the Parties agree as follows:

### 1. Definitions.

Any capitalized terms not otherwise defined in the Agreement have the meanings set out below. Any reference to the singular includes a reference to the plural and vice versa, unless expressly otherwise provided in this Agreement, and any reference to the masculine includes a reference to the feminine and vice versa, and (unless the context clearly indicates the contrary) the words “including” and “in particular” shall be deemed to be followed by the words “without limitation”.

<b>Affiliate</b>	As used in relation to any Persons means any other Person that, directly or indirectly, controls, is controlled by, or is under common control with, such first Person; provided in any event that the holding of more than 50% of the capital or voting rights in another Person or the power to, directly or indirectly and by whichever means, direct, or cause the direction of, the management of another Person shall irrefutably be deemed to confer ‘control’ over such Person, provided, that, any direct or indirect shareholders of the Parties and their Affiliates (that are not subsidiaries of the Parties) and any fund directly or indirectly holding an interest in the one of the Parties or otherwise affiliated with the a Party or with an aforementioned fund, or operating/portfolio entities in which any such fund directly or indirectly holds an interest, shall not be deemed to be an Affiliate of the relevant Party.
<b>Applicable Data Protection Laws</b>	All applicable state and federal statutory and regulatory requirements regarding privacy and the protection of “personal data” or “personally identifiable information” (as defined by such laws) as amended from time to time or any other applicable similar laws relating to the protection of personal data in other jurisdictions, including, as applicable, the General Data Protection Regulation (EU) 2016/679 (and as implemented under applicable national law) and any other applicable data protection laws and regulations.

<b>Confidential Information</b>	<p>Information of a party concerning its business and/or affairs, including without limitation to information relating to a party’s operations, technical or commercial know-how, specifications, inventions, processes or initiatives, plans, product information, pricing information, know-how, designs, trade secrets, software, documents, data and information which, when provided by a party to the other: a) are clearly identified as “Confidential” or “Proprietary” or are marked with a similar legend; b) are disclosed orally or visually, identified as Confidential Information at the time of disclosure and confirmed as Confidential Information in writing within 10 days; or c) a reasonable person would understand to be confidential or proprietary at the time of disclosure. Details of the Provider Software, Documentation, Services, Provider Data, the Pricing and other Customer-specific commercial terms subject to the applicable Order Form, feedback on the Services and the results of any performance tests of the Services, constitute Provider’s Confidential Information.</p>
<b>Effective Date</b>	<p>The date this Agreement takes effect, which is the date of the last signature of the Parties to the applicable Order Form incorporating this Agreement by reference.</p>
<b>Force Majeure Event</b>	<p>Acts, events, omissions or accidents beyond a party’s reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes, failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, fire, flood or storm; Notwithstanding the foregoing, as the Services are provided virtually, a government mandated office location or other work closure shall not constitute Force Majeure unless such Force Majeure also involves significant interruption of telecommunications or internet service.</p>
<b>Initial Subscription Term</b>	<p>The period for which a Subscription is purchased initially, as set out in an applicable Order Form.</p>
<b>Order Form</b>	<p>An order document or statement of work that is signed by the Parties, incorporating this Agreement by reference, and setting out the commercial specifications of the Agreement, in particularly regarding Provider, the purchased Services and the Scope.</p>
<b>Professional Services</b>	<p>The in-person Services provided by Provider to assist Customer in its use of the Solutions, as set in an applicable Order Form.</p>

<b>Renewal Term</b>	Such period for which a Subscription auto-renews, as set out in section 6.2 of the Master Services Agreement.
<b>Schedule</b>	Any document incorporated by reference or otherwise included in the Agreement that the Parties agree to further specify the rights and obligations agreed under the Agreement that may or may not be signed by the Parties and may or may not be titled schedule.
<b>Scope</b>	the scope of Customer's use of the Services as set out in applicable Order Form and this Agreement.
<b>Scoping Document</b>	A document used by the Parties to assess and specify Customer's technical needs and requirements and for the Provider to generate the offer and Order Form. A Scoping Document is typically used only to assess the technical background needed to prepare the offer, whereas the contractual, commercial specifications will be detailed exclusively in an applicable Order Form based on standardized Subscriptions and/or Service Packages. If a Customer requires the provision of non-standard Professional Services, this must be agreed, and the Scoping Document shall be attached to the relevant Order Form.
<b>Services</b>	The enterprise product to consumer cloud software Solutions and certain additional Professional Services, such as, but not limited to, implementation, onboarding, data migration, managed services, and support services, in each case as further defined in this Agreement, its applicable Schedules and an applicable Order Form.
<b>Solutions</b>	The (i) Productsup Platform, (ii) all Productsup Products, Features, and Functions, (iii) the Documentation, and (iii) the Productsup Product and Account Support, together the "Productsup Platform Solutions" - each as further described in the Productsup Platform Solutions Description, available via <a href="https://www.productsup.com/legal/">https://www.productsup.com/legal/</a> and as set out in the Agreement.
<b>Subscription</b>	Services purchased for a fixed period, as set out in an applicable Order Form.

<b>Term</b>	Collectively means the Initial Subscription Term and the Renewal Term, as set out in section 6.2 of the Master Services Agreement.
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## 2. Services

2.1 This Agreement governs the provision of certain enterprise product to consumer cloud software Solutions and certain additional Professional Services, such as, but not limited to, implementation, onboarding, data migration, managed services, and support services, in each case as further defined in this Agreement, its applicable Schedules and an applicable Order Form (collectively the “**Services**”), from Provider to Customer.

2.2 The Services set out under this Agreement are services provided by or on behalf of the Productsup Group (“**Productsup**”) to its customers and/or authorized partners, in each case as further defined in this Agreement. They may be provided to Customer by any Affiliate of Productsup or by an authorized Partner. The relevant Provider entity will be set out in an applicable Order Form.

### 2.3 Solutions

Solutions shall be provided in accordance with the applicable Solutions Schedule. All available Solutions are listed and described in the Productsup Platform Solutions Description.

### 2.4 Professional Services

Productsup Professional Services shall be provided in accordance with the Professional Services Schedule. All available Professional Services are listed and described in the Productsup Professional Services Description.

## 3. Purchase and Scope, Provision of Services.

Customer and Provider shall enter into an Order Form specifying (i) the Customer; (ii) the Provider of each of the Services; (iii) the relevant terms and conditions that shall form the Agreement and govern the provision of the Services; (iv) the Scope of the Customer’s purchase of the Services from the Provider and (v) such other relevant terms and conditions of the purchase, as further set out in this Agreement. An applicable Order Form may reference different Providers regarding the provision of certain Services. The Provider shall provide the Services, as set out in the applicable Order Form and in this Agreement. The provision of the Services will commence on the relevant date set out in the applicable Order Form. Order Forms shall be created on the basis of a Scoping Document filled out by Customer, which Provider shall use to assess the required Services and Scope.

## 4. Warranty

4.1 Provider warrants that, throughout the Term, the Services will be provided and will function substantially in accordance with the specifications and service levels set out in any applicable Schedule, including the applicable Documentation, in the Scope set forth in an applicable Order

Form and any applicable Schedule, and that the Services will be delivered with reasonable skill and care.

- 4.2 The warranties provided in this section shall not apply to the extent of any non-conformance which is caused by:
- 4.2.1 Customer's use of the Services contrary to Provider's instructions, the applicable Documentation or otherwise in breach of the Agreement; or
  - 4.2.2 modification or alteration of the Services by any party other than Provider or on behalf of Provider by Provider's duly authorized contractors or agents.
- 4.3 If the Services do not conform with the warranty provided in this section, Provider will, at its expense, (i) use commercially reasonable efforts to correct any such non-conformance within a reasonable period of time; or (ii) provide the Customer with an alternative means of accomplishing the desired performance.
- 4.4 Notwithstanding the foregoing, Provider:
- 4.4.1 does not warrant that Customer's use of the Services will be uninterrupted or error-free, or that the Services, applicable Documentation or the information obtained by Customer through the Services will meet Customer's requirements; and
  - 4.4.2 is not responsible for any Virus which was not detected by Provider using reasonable current commercial methods of detection or transmitted through any third-party services other than third party-services provided by Provider's duly authorized contractors or agents.
- 4.5 EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS SECTION 4, PROVIDER (AND ITS AFFILIATES) TO THE EXTENT PERMITTED BY APPLICABLE LAW, DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, ACCURACY, CORRESPONDENCE WITH DESCRIPTION, FITNESS FOR A PARTICULAR PURPOSE OR USE, AND SATISFACTORY QUALITY, AND NON-INFRINGEMENT.
- 4.6 This Agreement shall not prevent Provider from entering into similar agreements with third parties, or from independently developing, using, selling, or licensing documentation, products and/or services which are similar to those provided under the Agreement.

## **5. Fees and Payment Terms**

### **5.1 Invoicing and Payment**

- 5.1.1 Provider will invoice Customer for the fees as specified in an applicable Order Form. The invoices of Provider are due for payment (i) within the time frame, (ii) in the currency and (iii) in the method agreed upon in an applicable Order Form. If Customer is in default repeatedly, Provider reserves the right to, in its sole discretion, accept payments from Customer via credit card or direct debit only. Customer acknowledges and agrees that it is obliged to transition its payment mode in this case.
- 5.1.2 All fees are exclusive of all taxes and may not be reduced to account for any taxes, including sales, value-added, use, excise, or withholding taxes imposed by any governmental entity in connection with the Services (excluding taxes based solely on Provider's income). Customer shall be solely responsible to pay all applicable taxes

relating to the Fees. In the event Provider invoices Customer for any such taxes, Customer shall pay all taxes invoiced by Provider.

- 5.1.3 If Provider has not received payment for any invoices which are not the subject of a bona fide dispute by the due dates and without prejudice to any other rights and remedies of Provider, Provider may (i) by giving fourteen (14) days prior written notice to Customer, may suspend the provision of or the access to any Services and shall be under no obligation to provide any or all of the Services while the applicable invoice(s) remain unpaid; and (ii) charge interest which shall accrue on past due amounts at the standard statutory interest rate under applicable law.

## 5.2 Increase of Fees

- 5.2.1 For each Renewal Term, all fees due under this Agreement or any applicable Order Form shall automatically increase at an annual rate of 5% or the consumer price index (overall average) as published by the U.S. Bureau of Labour Statistics (CPI) (whichever is higher).
- 5.2.2 In the case of a sudden, unforeseen and significant increase of the costs required to provide the Services, Provider is entitled to increase the fees such Services by a written notice with a notice period of ninety (90) days to the end of a month, provided that: (i) Provider cannot otherwise provide the Services in an economically reasonable manner (even in consideration of any eventual profits); (ii) the increase in costs is arising from a sphere out of Provider's reasonable control; and (iii) the fees are increased only insofar as it is necessary to provide the Services without incurring significant losses.

## 6. Term and Termination

- 6.1 This Agreement shall commence on the Effective Date and shall continue to be in effect until the expiration of the Term of any applicable Order Form (or until all Services have been provided, if later) unless otherwise terminated as provided in this section.
- 6.2 Each Subscription purchased under an Order Form shall commence on the date specified in the Order Form and shall continue for the Initial Subscription Term (also referred to as "**Initial Term**") set out in the Order Form. Thereafter, unless stated otherwise in the applicable Order Form, the Subscription shall automatically renew for successive periods of twelve (12) months (or such other period as specified in the applicable Order Form) (each a "**Renewal Term**" and collectively the "**Term**"), unless either Party terminates with not less than three (3) months' written notice prior to the end of the Initial Subscription Term or relevant Renewal Term or otherwise terminates in accordance with the provisions of this section. At the end of the Term, Customer's access and use of the Services shall automatically terminate.
- 6.3 Without prejudice to any other rights or remedies to which the Parties may be entitled, either Party may terminate this Agreement or an applicable Order Form without liability to the other at any time with immediate effect upon written notice if the other Party:
  - 6.3.1 is in material breach of any of its obligations under the Agreement and, in the case of a breach which is capable of remedy, fails to remedy such breach within thirty (30) days following notice of the breach; or
  - 6.3.2 files, or has filed against it, a petition of bankruptcy or insolvency, and the petition is not vacated within sixty (60) days being filed; or shall have a receiver or administrative receiver appointed over it or any of its assets; or shall pass a resolution for winding-up or dissolution of the business affairs of an entity; or if the other Party shall become

subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business; or is subject to any analogous event or proceeding in any applicable jurisdiction.

- 6.4 On termination or expiration of this Agreement or an applicable Order Form for any reason, (i) Customer's rights of use granted under this Agreement (or under the applicable Order Form in the case of termination of an individual Order Form only) shall immediately terminate and Customer shall immediately cease the use of the Services; (ii) Customer shall pay all fees due or to become due through the effective date of termination in respect of the Services that are subject to termination; and (iii) Provider shall refund on a pro-rata basis any fees paid by Customer in advance for the Services that are subject to termination for any period following the effective date of termination.
7. **Personal Data Protection.** Each Party shall, in connection with the exercise of its rights and the performance of its obligations under the Agreement, comply with all Applicable Data Protection Laws. Productsup acknowledges that the Customer is acting as a data controller in respect of any Customer Data which contains personal data. To the extent that Productsup has access to or processes any personal data pertain to citizens of the European Union in the provision of the Services, Customer and Productsup shall enter into the Productsup Data Processing Agreement ("DPA") Schedule - Agreement for order processing according to Art. 28 EU General Data Protection Regulation, available under <https://www.productsup.com/legal/>, incorporated by reference into this Agreement and exclusively agreed to by the Parties.

## 8. Confidentiality

- 8.1 Each Party may be given access to Confidential Information from the other Party in order to perform its obligations under the Agreement. A Party's Confidential Information shall not be deemed to include information that:
- 8.1.1 is or becomes publicly known other than through any act or omission of the receiving party;
  - 8.1.2 was in the receiving party's lawful possession before the disclosure;
  - 8.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
  - 8.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or
  - 8.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 8.2 Each Party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party except its employees, contractors, third-party service providers and advisors who have a need to know and are bound by confidentiality obligations no less restrictive than this section, or use the other Party's Confidential Information for any purpose other than the implementation of the Agreement.
- 8.3 Except where a Party is expressly required by law to retain a copy, on termination of the Agreement and when requested to do so in writing by the disclosing party, the receiving party shall promptly: (i) deliver to the disclosing party any documents and other materials in its possession or control that contain any of the Confidential Information; (ii) permanently delete,



destroy and/or erase all electronic copies of the Confidential Information from any computer or data storage system into which the Confidential Information was entered; and (iii) make no further use of the Confidential Information.

- 8.4 The receiving party, if requested by the disclosing party, shall confirm in writing that the provisions of section have been complied with. The obligations of confidentiality under this section shall survive any expiration or termination of the Agreement.

## **9. Limitation of Liability**

- 9.1 EXCEPT WITH RESPECT TO AMOUNTS OWED BY CLIENT TO PROVIDER HEREUNDER, THE AGGREGATE LIABILITY OF EACH PARTY FOR OR IN RESPECT OF ANY LOSS OR DAMAGE SUFFERED BY THE OTHER PARTY (WHETHER DUE TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE) UNDER OR IN CONNECTION WITH THE AGREEMENT IN ANY CLAIM YEAR SHALL BE LIMITED TO THE TOTAL AMOUNT OF FEES PAID BY CLIENT DURING SUCH CLAIM YEAR.

- 9.2 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL OR OTHER INDIRECT DAMAGES, OR FOR LOSS OF PROFITS, ANTICIPATED SAVINGS, BUSINESS OPPORTUNITY, GOODWILL, OR LOSS OF REVENUE, LOSS OF USE OR LOSS OF DATA (INCLUDING CORRUPTION OF DATA), OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES ARISING OF THE AGREEMENT, HOWSOEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING CONTRACT, TORT, NEGLIGENCE OR OTHERWISE) EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PARTIES ACKNOWLEDGE THAT THE AMOUNTS PAYABLE HEREUNDER ARE BASED IN PART ON THESE LIMITATIONS AND FURTHER AGREE THAT THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. PRODUCTSUP ACCEPTS NO LIABILITY FOR FAILURE TO MAINTAIN ANY LEVEL OF AVAILABILITY OF THE SERVICES OTHER THAN WHERE IT IS IN BREACH OF ITS OBLIGATIONS UNDER THE AGREEMENT.

- 9.3 IN ADDITION TO THE OTHER EXCLUSIONS SET OUT IN THIS SECTION 14, PROVIDER HAS NO LIABILITY:

9.3.1 FOR ANY OTHER THIRD PARTY PRODUCTS OR SERVICES ACCESSED AND/OR USED BY CLIENT THROUGH THE SERVICES;

9.3.2 WHERE ANY FAILURE TO PROVIDE THE SERVICES IS CAUSED BY A NETWORK, HARDWARE OR SOFTWARE FAULT IN EQUIPMENT WHICH IS NOT UNDER THE CONTROL OF PRODUCTSUP;

9.3.3 ANY ACT OR OMISSION OF CLIENT;

9.3.4 USE OF THE SERVICES IN BREACH OF THE AGREEMENT;

9.3.5 ANY UNAUTHORIZED ACCESS TO THE SERVICES INCLUDING A MALICIOUS SECURITY BREACH; OR

9.3.6 LOSS OR DAMAGE CAUSED BY CLIENT'S DELAY OR FAILURE TO TIMELY PROVIDE ANY REQUIRED INFORMATION OR TO FULFIL ITS OBLIGATIONS UNDER THE AGREEMENT.



- 9.4 IN THE EVENT OF ANY LOSS OR DAMAGE TO CLIENT DATA, CLIENT'S SOLE AND EXCLUSIVE REMEDY SHALL BE AS SET OUT IN THE PRODUCTSUP SOLUTIONS SCHEDULE AVAILABLE AT <https://www.productsup.com/legal/>.
- 9.5 CLIENT ASSUMES SOLE RESPONSIBILITY FOR RESULTS OBTAINED FROM THE USE OF THE SERVICES AND THE DOCUMENTATION BY CLIENT, AND FOR CONCLUSIONS DRAWN FROM SUCH USE. PROVIDER SHALL HAVE NO LIABILITY FOR ANY DAMAGE CAUSED BY ERRORS OR OMISSIONS IN ANY INFORMATION, DATA OR INSTRUCTIONS PROVIDED TO PROVIDER BY CLIENT IN CONNECTION WITH THE SERVICES OR ANY ACTIONS TAKEN BY PROVIDER AT CLIENT'S DIRECTION.
- 9.6 PROVIDER DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM THE NETWORK WHERE THE SERVICES RESIDE AND OTHER PORTIONS OF THE INTERNET INCLUDING DENIAL OF SERVICE ATTACKS (AN ATTACK WHICH SEND A FLOOD OF INCOMING MESSAGES TO THE TARGET SYSTEM FORCING THE SYSTEM TO SHUT DOWN, THEREBY DENYING SERVICE TO LEGITIMATE USERS). SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CLIENT'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). PROVIDER CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, PROVIDER, ITS SUPPLIERS AND SUBCONTRACTORS, IF ANY, DISCLAIM ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS AND CLIENT SHALL HAVE NO CLAIM IN RESPECT THEREOF.
- 9.7 PROVIDER SHALL HAVE NO LIABILITY TO CLIENT UNDER THE AGREEMENT IF IT IS PREVENTED FROM OR DELAYED IN PERFORMING ITS OBLIGATIONS UNDER THE AGREEMENT DUE TO A FORCE MAJEURE EVENT. PRODUCTSUP SHALL PROVIDE CLIENT WITH NOTICE OF A FORCE MAJEURE EVENT AND ITS EXPECTED DURATION.
- 9.8 EACH PARTY RECOGNIZES AND AGREES THAT THE WARRANTY DISCLAIMERS AND LIABILITY AND REMEDY LIMITATIONS IN THE AGREEMENT ARE MATERIAL, BARGAINED FOR BASES OF THE AGREEMENT, AND THAT THEY HAVE BEEN TAKEN INTO ACCOUNT AND REFLECTED IN DETERMINING THE CONSIDERATION TO BE GIVEN BY EACH PARTY UNDER THE AGREEMENT AND IN THE DECISION BY EACH PARTY TO ENTER INTO THE AGREEMENT.

## **10. Marketing**

### **10.1 Customer Logo Usage by Provider**

Unless explicitly excluded from the scope of the Agreement in an applicable Order Form, Customer agrees that Provider and its Affiliates may publish Customer's name and logo in its Customer lists, and promotional, marketing and investment materials, in any media and grants Provider a non-exclusive, revocable, unlimited license for the described purpose. Any use of Customer's name and logo shall be in accordance with the applicable brand guidelines as notified by Customer from time to time.

### **10.2 Further Marketing Cooperation**

If explicitly agreed and further specified in an applicable Order Form, Customer will co-operate with Provider in producing any press releases, case studies or other marketing materials regarding the supply of the Services to Customer.

## 11. General

- 11.1 **Force Majeure.** Neither Party shall be liable for any delay in performing or failure to perform its obligations under this Agreement to the extent that and for so long as the delay or failure results from a Force Majeure Event provided that the relevant affected Party shall (i) promptly upon becoming aware of the occurrence of the Force Majeure Event inform the other Party with detail of the circumstances giving rise to the Force Majeure Event and its anticipated duration and effects on the obligations; and (ii) take all reasonable steps to comply with the terms of this Agreement as fully and promptly as possible.
- 11.2 **Entire Agreement.** The Agreement sets out the entire agreement and understanding between the Parties and supersedes any previous agreement between the Parties relating to its subject matter. Unless otherwise expressly agreed in writing, the Agreement applies in place of and prevails over any terms or conditions contained in or referred to in (i) any Customer purchase order or general terms and conditions; (ii) any correspondence; or (iii) elsewhere or implied by trade custom or course of dealing. In entering into the Agreement each Party acknowledges and agrees that it has not relied on any representations made by the other. Any such representations are excluded. Nothing in this section shall limit liability for any representations made fraudulently.
- 11.3 **Warranty of Authority.** Each Party represents and warrants to the other that it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, and has the requisite power and authority to execute, deliver and perform its obligations under the Agreement. Each Party represents and warrants to the other that the Agreement has been duly authorized, executed and delivered by such Party and constitutes a valid and binding obligations of such Party enforceable against such party according to its terms.
- 11.4 **Governing Law and Jurisdiction.** The Agreement and any disputes or claims arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by the laws of the state of New York without reference to conflicts of laws principles. The Parties agree that any disputes under the Agreement shall be brought in the federal or state courts located in New York, New York. The Parties hereby consent to and waive defenses of the personal and exclusive jurisdiction and venue of these courts.
- 11.5 **Third Party Rights.** A person who is not a party to the Agreement has no rights to enforce, or to enjoy the benefit of, any term of the Agreement.
- 11.6 **Subcontracting and Assignment.** Provider may at any time involve any of its Affiliates, successors or assigns as subcontractors under the Agreement. Provider may, at any time by notice in writing to the Customer, assign or otherwise transfer its rights and obligations under the Agreement to any of its Affiliates, successors or assigns. Provider shall have the right to subcontract any of its obligations under the Agreement to a third party, provided that Provider shall continue to remain responsible for the performance of the Services. Customer may by notice in writing to Provider assign, or otherwise transfer its rights and obligations under the Agreement in full (but not in part) to an Affiliate provided that such Affiliate is at least of the same financial standing as Customer. Any attempted assignment, sub-contracting or other transfer in violation of the Agreement shall be null and void.
- 11.7 **Notices.** All notices to be given under the Agreement shall be given in English or German in writing via email or in writing by courier, by fax, or by certified or registered mail, to the contact set forth in an applicable Order Form with copy to the legal department at the address stated in the applicable Order Form, or to such other address as shall be given by either Party to the other in writing. All notices shall be deemed to have been given and received upon the date of actual receipt.

- 11.8 **Variations**. Save as otherwise expressly stated in this Agreement, this Agreement, its Schedules, an Order Form or a Scoping Document may only be modified or varied in writing executed by duly authorized representatives of both Parties through an amendment to this Agreement or an applicable Order Form. This also applies to any modifications of this section 11.8.
- 11.9 **Changes to the Agreement**. Notwithstanding anything in section 11.8, Provider may change the Agreement, provided that the change does not have any material impact on the contractual rights and obligations between the Parties, upon four weeks' notice to Customer and such change shall be deemed effective, if Customer does not expressly objects to such change within the four weeks' notice period. Provider will draw attention to this consequence in the notice. The notice may be sent by email to Customer's general contact person specified in the Order Form.
- 11.10 **Independent Contractor**. The Parties to the Agreement are independent contractors. Customer bears all risk and cost of operating its own business, including risk of loss. Nothing in the Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind or employment relationship between the Parties, not constitute any party an employee or agent of another party for any purpose. No party shall have authority to act as employee or agent for, or to bind, the other party in any way.
- 11.11 **Severability**. Should parts of the Agreement be or become invalid, this shall not affect the validity of the remaining provisions of the Agreement, which shall remain unaffected. The invalid provision shall be replaced by the Parties with such term which comes as close as possible, in a legally permitted manner, to the commercial terms intended by the invalid provision.
- 11.12 **Waiver**. The waiver of one breach or default or any delay in exercising any rights shall not constitute a waiver of any subsequent breach or default.
- 11.13 **Survival**. Those provisions which by their nature are intended to survive any termination of the Agreement shall survive such termination or expiration of the Agreement.

### List of Applicable Schedules

The applicable Schedules listed below, in each case in their then current form, are incorporated in this Agreement and form an integral part of the Agreement.

Schedule	Location
Solutions Schedule.	Available at <a href="https://www.productsup.com/legal/">https://www.productsup.com/legal/</a>
Acceptable Use Policy Schedule.	Available at <a href="https://www.productsup.com/legal/">https://www.productsup.com/legal/</a>
Productsup Platform Solutions Description.	Available at <a href="https://www.productsup.com/legal/">https://www.productsup.com/legal/</a>
System Availability Service Level Agreement (SLA) Schedule.	Available at <a href="https://www.productsup.com/legal/">https://www.productsup.com/legal/</a>
Product and Account Support Service Level Agreement - Processing times for Client Incidents Schedule.	Available at <a href="https://www.productsup.com/legal/">https://www.productsup.com/legal/</a>
Professional Services Schedule.	Available at <a href="https://www.productsup.com/legal/">https://www.productsup.com/legal/</a>
Productsup Professional Services Description.	Available at <a href="https://www.productsup.com/legal/">https://www.productsup.com/legal/</a>
Productsup Data Processing Agreement (“DPA”) Schedule - Agreement for order processing according to Art. 28 EU General Data Protection Regulation.	Available at <a href="https://www.productsup.com/legal/">https://www.productsup.com/legal/</a>
Productsup Information Security Policy.	Available at <a href="https://www.productsup.com/legal/">https://www.productsup.com/legal/</a>

Schedule	Location
Solutions Schedule.	Available at <a href="https://www.productsup.com/legal/">https://www.productsup.com/legal/</a>
Acceptable Use Policy Schedule.	Available at <a href="https://www.productsup.com/legal/">https://www.productsup.com/legal/</a>
Productsup Platform Solutions Description.	Available at <a href="https://www.productsup.com/legal/">https://www.productsup.com/legal/</a>
System Availability Service Level Agreement (SLA) Schedule.	Available at <a href="https://www.productsup.com/legal/">https://www.productsup.com/legal/</a>
Product and Account Support Service Level Agreement - Processing times for Client Incidents Schedule.	Available at <a href="https://www.productsup.com/legal/">https://www.productsup.com/legal/</a>
Professional Services Schedule.	Available at <a href="https://www.productsup.com/legal/">https://www.productsup.com/legal/</a>
Productsup Professional Services Description.	Available at <a href="https://www.productsup.com/legal/">https://www.productsup.com/legal/</a>
Productsup Data Processing Agreement (“DPA”) Schedule - Agreement for order processing according to Art. 28 EU General Data Protection Regulation.	Available at <a href="https://www.productsup.com/legal/">https://www.productsup.com/legal/</a>
Productsup Information Security Policy.	Available at <a href="https://www.productsup.com/legal/">https://www.productsup.com/legal/</a>