

# Friends Terms of Service

Version 1.0.2 - 24.9.2023

## 1. Scope

These Friends Terms of Service ("Terms of Service") together with the applicable Order Form, if any (collectively the "Agreement"), govern the use of the Friends Platform by an entity identified in the Order Form, or any individual who opens an account or accesses the Friends Platform (all referred to as "Customer"), and the provision of the Friends Platform by Friends Technology ("Friends") to Customer. The Agreement constitutes the entire agreement between Customer and Friends with respect to Customer's use and Friends' provision of the Friends Platform.

By (i) accessing or using the Friends Platform and/or related Professional Services; (ii) submitting an Order Form to Friends; or (iii) submitting registration information to open an account on the Friends' website, Customer acknowledges that Customer has read, understands and agrees to be bound by these Terms of Service (including all terms and conditions specified or referenced herein) as well as the applicable Order Form, if any.

Customer hereby also acknowledges that, in the event that any Friends standard products or standard services or third-party material, software or services is delivered to Customer pursuant to the Agreement, such standard products, standard services and third-party material or software shall be exclusively subject to the terms and conditions of the



standard product or service in question.

The effective date ("Effective Date") of the Agreement shall be the date on which Customer accepts these Terms of Service by one of the methods stipulated hereinabove.

## 2. Definitions

"Access Credentials" means the identifiers, passwords and usernames required for and related to the use of the Frends Platform, the purpose of which is to identify the user of the Frends Platform in a reliable manner.

"Affiliate" means any natural or legal person which controls, is controlled by, or is under common control with a Party. For purposes of this definition, "control" means the aggregate ownership of more than fifty percent (50 %) of the beneficial interest, or the power to direct or cause the direction of management or policies of the entity.

"Community Component" means any components on the Frends Platform, which are created by the user community of Frends Platform and which are identified as "community created".

"Customer Data" means the data and materials owned or controlled by Customer and made available by Customer to Frends for the purposes of Frends being able to provide the Frends Platform and/or in connection with Customer's use of the Frends Platform. Customer Data may also include personal data. "Data Breach" means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed.

"Documentation" means the description of the functionality



and features of the Friends Platform and all other materials made publicly available at <https://docs.friends.com> or within the Friends Platform. Friends may, at its sole discretion, update the Documentation from time to time during the term of the Agreement, provided that such updates shall not result in a material degradation of the functionality, performance, availability, security, or stability of the Friends Platform. For the avoidance of doubt, unless explicitly otherwise stated elsewhere in the Agreement, the Documentation (including any information and materials contained therein) shall not be regarded as part of the Agreement.

“Error” means a material deviation of the Friends Platform (excluding Documentation) from what has been set out in the Friends Platform Documentation.

“Friends Platform” means the Friends’ software platform, related Professional Services and Documentation that provides the Customer with the capability to create, monitor and maintain enterprise grade integrations, API's and automations.

“Intellectual Property Rights” mean patents (including utility models), design patents, and designs (whether capable of registration), chip topography rights and other like protection, copyright, trademark and any other form of statutory protection of any kind and applications for any of the foregoing respectively as well as any trade secrets.

“Non-paid Subscription” means the time period following the expiry of the Trial Period during which Customer shall be able to access and use the Friends Platform with limited features free of charge. The entry into force of the Non-paid Subscription shall be conditional upon the Parties not having entered into a commercial agreement in relation to



the use of the Friends Platform and Friends not having prevented Customer from accessing said service.

“Order Form” means the written or electronic document entered into between Customer and Friends pursuant to which Customer has purchased access to the Friends Platform as stipulated in the Order Form. The Order Form shall by reference also encompass these Terms of Service.

“Party” means either Friends or Customer and “Parties” mean Friends and Customer together.

“Personnel” means the authorized users of the Friends Platform of Customer, who shall be limited to Customer’s employees, agents, and consultants the work contribution of whom is necessary for Customer’s own internal business operations. Customer shall be responsible and liable for the use of the Friends Platform by its Personnel as for its own.

“Professional Services” means the implementation and/or support services that Friends provides to Customer in relation to the Friends Platform.

“Subscription” means the Customer’s subscription plan for the Friends Platform as set forth in the applicable Order Form.

“Subscription Term” means the term during which the Subscription shall be in effect.

“Trial Period” means a predetermined period of time defined in the applicable Order Form during which Customer shall have the right to use the Friends Platform with limited features as provided by Friends or otherwise described in the Order Form, solely for Customer’s internal evaluation in a non-commercial environment and excluding any general production use.



“Work Order” or “WO” means the written or electronic document entered into between Customer and Frends pursuant to which Customer has purchased the Professional Services defined in said document. The Work Order shall by reference be subject to the terms and conditions of the applicable Order Form, including these Terms of Service.

## 3. General Obligations of the Parties

### 3.1 Customer Responsibilities

Customer acknowledges and agrees that:

1. Customer undertakes to perform the tasks of Customer in conformity with the Agreement with due care, professional skill and in a timely manner. Customer shall ensure that its Personnel involved in the use and/or provision of the Frends Platform duly fulfil their obligations and have the necessary skills to perform their tasks. Customer shall provide all necessary information and instructions in writing to Frends in order for Frends to perform its duties under the Agreement. Customer shall be responsible for the accuracy and adequacy of the information and instructions provided by Customer.
2. Customer’s and its Personnel’s use of the Frends Platform is dependent upon Customer maintaining access to telecommunications, Internet services and other Customer controlled hardware and/or infrastructure at its own cost and expense. Customer shall also be responsible at its own cost for obtaining and maintaining necessary test and other environments, data connections, equipment, software, systems, applications and devices required by Frends to provide the Frends Platform and required for Customer to use the Frends Platform, in accordance with information provided by Frends from time to time. This shall include, without limitation, any and all costs, fees, expenses, and taxes of any kind related to the foregoing. Frends shall not be responsible for any loss or corruption of content, lost communications, or any other loss or



damage of any kind arising from any such telecommunications and Internet services.

3. By using the Frends Platform, Customer warrants that it has obtained and will maintain all necessary licenses, authorizations, approvals and consents to use, transmit and process Customer Data through the Frends Platform, and Frends is authorized to perform any processing initiated through instructions given to Frends via Customer's or its Personnels use of the Frends Platform or through other means, notwithstanding that these may contain personal data and/or cross international borders. Customer shall solely be responsible for the accuracy, quality and legality of the Customer Data, the means by which Customer acquired the Customer Data, and Customer's use of the Customer Data. Customer shall comply with all applicable privacy and data protection laws that govern the collection, use, and transfer of such data.

### 3.1 Frends Responsibilities

Frends acknowledges and agrees that:

1. Frends agrees to perform the agreed measures and tasks as specified in the Agreement to meet and fulfil its respective obligations thereunder and agree to contribute to the performance of the provision of the Frends Platform with respect to any factors that are under the command or control of or otherwise can be influenced by Frends. Frends undertakes to promptly make all decisions that are necessary for the provision of the Frends Platform.
2. Frends shall ensure that the Frends Platform is provided with reasonable skill and care and in accordance with the Agreement. Further obligations of Frends in relation to the provision of the Frends Platform, if any, shall be agreed in the applicable Order Form.
3. Frends' liability for Errors in the Frends Platform shall be limited to correction of the Error without undue delay at its own expense, provided that Customer has informed Frends in writing of the Error within the time limit for acceptance set out



above. In no event shall Frends, however, assume any responsibility for the suitability of the Frends Platform for a particular purpose (including the Customer's and its Personnel's intended use) or any errors in the software, programming interfaces or services of third parties. The correction of the Error by Frends as defined herein shall be the sole remedy for Customer regarding the Errors in the Frends Platform, and in no event shall Customer be entitled to any refund, payment, indemnification nor reimbursement of any kind for the Error or for the delay in the correction of the Error.

## 4. Use of the Frends Platform

### 4.1 Frends Platform License

Upon execution of the Agreement and Customer's due payment of the agreed compensation, Frends grants Customer a limited, non-exclusive and non-transferable right to use the Frends Platform in Customer's internal operations during the term of the Agreement and under its terms and conditions.

In connection with the aforementioned license, Customer may allow its Personnel to use the Frends Platform on Customer's behalf, subject to Personnel's compliance with the terms of the Agreement. Customer shall ensure that all Personnel comply with the terms and conditions of the Agreement and Customer agrees that Customer will be responsible for such Personnel's use of the Frends Platform.

Except as otherwise expressly set forth in this Section, Frends does not grant Customer any license, express or implied, to the Intellectual Property Rights of Frends or its licensors.

### 4.2 Restrictions



Customer agrees that Customer's Subscription to the Frends Platform shall be limited to Customer's own internal business operations and no right is granted hereunder to use the Frends Platform for the benefit of third parties, including as service bureau, time-sharing or managed Frends services arrangement. Customer and its Personnel shall not permit any third party to access the Frends Platform, with the exception of subcontractors and consultants working for the benefit of Customer.

The Frends Platform may not be accessed for any benchmarking, comparative or competitive purposes, unless otherwise preauthorized in writing by Frends.

### 4.3 Customer Affiliates

In the applicable Order Form, the Parties may agree that the license granted to Customer by Frends as defined in this Section 4 shall cover the use of the Frends Platform by certain Customer Affiliates as well. This kind of extended license shall cover only the Customer Affiliates expressly identified in the applicable Order Form, and the use of the Frends Platform by such Customer Affiliates shall be strictly subject to the terms and conditions of the Agreement. Customer shall be fully responsible and liable towards Frends for any acts and omissions of its Affiliates in relation to the use of the Frends Platform and for its Affiliates complying with the terms and conditions of the Agreement.

### 4.4 Access Credentials

Customer and its Personnel are obligated to create and maintain unique Access Credentials for their use of the Frends Platform. Customer and its Personnel shall be obligated to keep all Access Credentials secret and confidential. Customer remains responsible and liable for





any use of the Friends Platform under its Access Credentials regardless of the identity of the user. Customer must notify Friends immediately if there is a reason to suspect or believe that the Access Credentials in question have been accessed by an unauthorized third party.

## 4.5 Community Components

Community Components of the Friends Platform will be available to all customers and are provided on "AS-IS" basis only. Friends shall not be liable for Customer's use of, and shall not provide any indemnity, warranties or representations of any kind for any Community Components, notwithstanding any other provision of the Agreement. Such Community Components include, but are not limited to, Friends Community Tasks and Friends Community Templates.

## 4.6 Suspension of the Service

Friends reserves the right to immediately suspend Customer's and/or its Personnel's access to and use of the Friends Platform or interrupt the Professional Services, completely or partly and without first consulting Customer, due to the following reasons:

1. in the event that Friends justifiably suspects that Customer and/or its Personnel burden or use the Friends Platform in a manner that causes problems, threat, or damage to the Friends Platform or to the other users thereof, or jeopardizes the provision of the Friends Platform to other users, or that they otherwise are in breach of the Agreement;
2. suspension of access to and use of the Friends Platform is (i) necessary for performing installation, repair, change or maintenance work in respect of the Friends Platform or the general communications network (or a part thereof), (ii) due to a severe data security risk related to the Friends Platform, (iii)



required by law or regulation by authorities, or (iv) due to a Force Majeure event. If Frends suspends the Customer's and/or its Personnel's access to and use of the Frends Platform for any of the reasons mentioned herein, Frends shall inform Customer of the suspension and the estimated duration of the suspension in good time in advance or, if this is not reasonably possible, without delay after Frends has become aware of such matter;

3. Customer has not paid any due and correct payment within ten (10) days of a written overdue payment reminder;
4. Frends has reason to suspect that Customer's Access Credentials are unlawfully in an unauthorized third party's possession and the Frends Platform is accessed via such Access Credentials; or
5. according to Frends' reasonable understanding the Frends Platform has been used or is used for operations violating the law or regulations.

Any suspension of Customer's and/or its Personnel's access to and use of the Frends Platform or interruption of the Professional Services in accordance with this Section shall not have an effect on Customer's responsibility to pay the applicable fees in accordance with the Agreement.

Frends shall without undue delay inform Customer of the reasons for any suspension of Customer's and/or its Personnel's access to and use of the Frends Platform or interruption of the Professional Services that occurs pursuant to this Section.

## 4.7 Professional Services

### 4.7.1 General

Frends shall ensure that the Professional Services are performed with due care and professional skill required by the tasks from time to time, in a workmanlike manner and in accordance with the Agreement. Customer shall provide



Friends with timely access to materials and resources reasonably needed for the delivery of Professional Services, and Friends shall use the materials and resources only for purposes of providing the Professional Services.

For the avoidance of doubt, the terms and conditions stipulated in this Section 4.7 shall be applicable to Professional Services only, and to the extent the terms and conditions provided herein conflict or are inconsistent with the other terms of the Agreement, the terms and conditions defined herein shall take precedence with respect to matters concerning Professional Services.

#### **4.7.2 Purchase of Professional Services**

Professional Services shall be detailed in a mutually agreed upon Work Order referencing the applicable Order Form, and Friends shall perform the Professional Services for Customer as agreed by the Parties in the applicable Work Order. In the Work Order, the Parties shall define and identify additional terms and/or practices for the delivery of the Professional Services in question.

Unless the fees and prices applicable for the Professional Services to be purchased by Customer have already been agreed upon in the Order Form under which the Work Order is being concluded, the Parties shall also agree in the Work Order on the fees and prices of the Professional Services. Unless otherwise agreed in the applicable Work Order, Customer shall reimburse Friends with reasonable travel and lodging expenses incurred by Friends in providing the Professional Services.

#### **4.7.3 Errors**

Customer shall inspect the Professional Services, including any results thereof, without delay after the provision and delivery of the same by Friends to Customer. The Professional



Services shall be deemed accepted by Customer if it does not submit a detailed written description of the Error within fourteen (14) days of the performance of the Professional Services.

Frends' liability for Errors shall be limited to correction of the Error or reperforming the defective service (as chosen by Frends at its sole discretion) without undue delay at its own expense, provided that Customer has informed Frends in writing of the Error within the time limit for acceptance set out above. In no event shall Frends, however, assume any responsibility for the suitability of the results of the Professional Services for a particular purpose (including the Customer's and its Personnel's intended use) or any errors in the software, programming interfaces or services of third parties. The correction of the Error or reperforming of the defective service by Frends as defined herein shall be the sole remedy for Customer regarding the Errors in the results of the Professional Services, and in no event shall Customer be entitled to any refund, payment, indemnification nor reimbursement of any kind for the Error or for the delay in the correction of the Error.

#### **4.7.4 Support Services**

Notwithstanding the stipulations in Section 4.7.2 above, Customer's license to use the Frends Platform and the fees related thereto also include Customer's use of certain communication channels offered by Frends through which Customer may receive support for the use of the Frends Platform, and this kind of low-level support shall not be regarded as separately orderable and chargeable "Professional Services" as defined herein.

However, if the low-level support service provided by Frends defined above is, subject to Customer's prior written approval, forwarded to be handled by the professional



services experts of Friends, then such support service shall be regarded as Professional Service as defined hereinabove and Friends shall have the right to separately charge for it in accordance with its price list applicable at the time. The initiation of this kind of further support service, which is offered as a continuation for the low-level support service defined above, shall not require the execution of a Work Order between the Parties unlike all other Professional Services provided under the Agreement.

## 4.8 Changes in the Friends Platform

Customer acknowledges that Friends has the right to make further developments and improve the Friends Platform and make changes to the Friends Platform provided that these do not have any material adverse effect on Customer. Friends reserves the right to update these Terms of Service from time to time in connection with its software development and the development of the Friends Platform. The updated Terms of Service shall be incorporated as such into the Agreement.

Customer is not entitled to make any alterations, modifications, or changes to the Friends Platform. Any violation of this restriction shall render any warranties and responsibilities null and void and entitles Friends to terminate the licenses granted. In addition, if any third party has made any alterations, modifications or changes to the Friends Platform and/or the results of the related Professional Services, any responsibility of Friends, including any and all warranties, shall automatically become null and void.

## 5. Trial Period and Non-Paid Subscriptions



Notwithstanding any other provision of the Agreement, the Trial Periods and Non-paid Subscriptions of the Frends Platform shall be exclusively governed by the terms and conditions provided for in this Section 5.

## 5.1 Limited License

In the Order Form the Parties may agree that, for the Trial Period defined in the applicable Order Form, Frends grants Customer a non-exclusive, non-transferable, non-sublicensable, and limited license to use the Frends Platform with limited features for Customer's internal evaluation of the service. Customer's use of the Frends Platform during the Trial Period shall be restricted to use that occurs in a non-commercial environment and it shall exclude any production use.

## 5.2 Limited Liability

During the Trial Period, the Frends Platform shall be provided on "AS-IS" basis only and no warranty or indemnification provisions of the Agreement shall be applicable. With respect to the use of the Frends Platform that occurs during the Trial Period, under no circumstances shall Frends or its Affiliates be liable for any special, indirect, incidental, consequential, punitive, reliance, or exemplary damages that result from the Agreement or the access and use of the Frends Platform, even if Customer or its authorized representative had been advised of the possibility of such damages. In no event shall Frends or its Affiliates be liable to Customer for any damages, losses, or causes of action arising out of or relating to the Trial Period that in the aggregate exceed 100 EUR.

## 5.3 Term and Termination of the Trial Period



The term of the Trial Period shall be thirty (30) days as of the Effective Date of the Agreement or as otherwise defined in the applicable Order Form (if any). Frends may immediately prevent Customer's access to the Frends Platform under a Trial Period if Frends reasonably determines that Customer has committed any breach of the Agreement or otherwise threatens the security, integrity or availability of the Frends Platform or the use of the Frends Platform by other customers.

Frends shall also have the right to prevent Customer's access to the Frends Platform upon expiration of the term of the Trial Period, unless the Parties have entered into a commercial agreement for the use of the Frends Platform.

## 5.4 Non-Paid Subscription

In the event that the Trial Period expires without the Parties having entered into a commercial agreement, the Trial Period will immediately turn into a Non-Paid Subscription. Frends may terminate any Non-Paid Subscription and/or delete any Non-Paid Subscription for convenience or for any reason and without any further obligations or liabilities towards Customer in relation thereto. Customer's use of the Frends Platform during the Non-paid Subscription shall be subject to the provisions of Section 5.1 and 5.2 above.

For the sake of clarity, any Subscription or license provided by Frends free of charge, e.g. for universities or other such institutions or parties, shall not be regarded as a Non-Paid Subscription as defined herein even though such Subscription or license shall not incur any costs to the users of the Frends Platform thereunder. This kind of special free-of-charge right of use shall be expressly agreed upon between the Parties separately in writing.



## 6. Intellectual Property Rights

Under this Agreement, no Intellectual Property Rights will be assigned between the Parties.

All Intellectual Property Rights in the Frends Platform and any changes thereto shall vest in and be the exclusive property of Frends or its licensors.

All Intellectual Property Rights in the Professional Services and the results of the Professional Services shall vest in and be the exclusive property of Frends.

Customer is not entitled to transfer, assign, or sublicense its right to use the Frends Platform or resell or in any other way distribute its rights to access and use the Frends Platform and related Professional Services to any third party without Frends' prior written approval.

Frends shall not be liable for any Errors resulting from changes made by Customer or a third party to the Frends Platform, including the results of the Professional Services and the Documentation related thereto.

Any Intellectual Property Rights to the materials created by Customer in connection with the Frends Platform shall vest in and be the exclusive property of Customer.

Customer also retains all Intellectual Property Rights in and to the Customer Data provided by Customer to Frends in relation to the provision of the Frends Platform and Professional Services by Frends. Customer grants to Frends, or shall procure the grant of, a royalty-free, non-exclusive, non-transferable limited license to use such Customer Data to the extent necessary for providing the Frends Platform and related Professional Services. Customer shall be





responsible for Customer Data and for ensuring that Customer Data does not infringe any third-party rights or violate any legislation in force from time to time.

## 7. Frends Indemnification

Frends shall defend Customer against all claims alleging that the Frends Platform (excluding the Customer Data and other artifacts created or produced by Customer or any third party) infringes the Intellectual Property Rights of a third party, provided that Customer (i) notifies Frends promptly in writing of such claims and actions; (ii) permits Frends to have sole control over the defence or settle the claims and actions; and (iii) gives Frends all reasonable information and assistance available and the necessary authorizations. Frends shall pay all damages that are finally awarded to a third party by a competent court, provided that the Customer has acted in accordance with the foregoing.

If it is established that, or if in the justified opinion of Frends, the Frends Platform infringe any of the above-mentioned rights of a third party, Frends shall at its own expense either: (a) obtain the right of continued use of the Frends Platform, or (b) replace the infringing parts of the Frends Platform, or (c) modify the Frends Platform in order to eliminate the infringement. If none of the aforesaid options are available to Frends on commercially reasonable terms, Customer shall cease to use the Frends Platform and Frends shall refund the money paid by Customer for the Frends Platform reduced with the proportion of the price corresponding to the actual time of use.

Frends shall, however, not be liable if the claim for infringement: (a) results from an alteration of the Frends



Platform made by Customer; (b) results from use of the Friends Platform in a manner that violates this Agreement or the Documentation, or the instructions given to Customer by Friends; (c) results from the use of the Friends Platform in combination with any third-party software, applications, products, processes, materials or other technology not supplied by Friends; (d) results from compliance by Friends with Customer's instructions; or (e) is based on any information, technology, materials or data (or any portions or components of the foregoing) not created or provided by Friends.

This Section 7 states Friends' entire liability with respect to infringement of third-party Intellectual Property Rights.

## 8. Customer Indemnification

Customer shall defend, indemnify and hold Friends, its Affiliates and each of its and its Affiliates' officers, directors, agents and employees harmless from all liabilities, claims, and expenses awarded by a court or agreed to pursuant to a settlement agreement reached with an unaffiliated third party, that arise from or relate to any third party claim:

1. Alleging that any Customer Data infringes or misappropriates such third party's Intellectual Property Rights, proprietary rights or any applicable law;
2. Arising from Customer's or its Personnel's use of the Friends Platform in violation of the Agreement, the Documentation, or applicable law.

## 9. Data Security and Data Protection

### 9.1 Data Security

Friends has built in data security protections in accordance



with industry standards. An overview is available at <https://frends.com/legal/security>, which describes the appropriate technical and organizational measures that Frends has implemented to ensure the security, privacy and confidentiality of Customer Data. Frends has defined security incident management policies and procedures, and will notify Customer without undue delay after becoming aware of Data Breach. Frends will take remedial steps pursuant to its security incident management policies and procedures that are necessary and reasonable to identify and remediate the cause of such Data Breach.

## 9.2 Data Protection

Each Party shall:

1. Ensure that their performance under the Agreement complies with all applicable personal data protection and security legislation, including the General Data Protection Regulation (EU) 2016/679, as applicable, and as amended, repealed, replaced and consolidated from time to time.
2. Be responsible for the data security of its own data systems and communications network. Neither Party is responsible for the data security of the general communications network or any disturbance in the general communications network or for any other impediment affecting the use of the Frends Platform or the Professional Services beyond its control nor for damage resulting thereof.
3. Ensure that the part of the provision an/or use of the Frends Platform and related Professional Services as well as the Party's own communications network and environments, such as equipment, service production facilities and business premises, within that Party's responsibility under the Agreement, are protected against data security threats in accordance with customary data security procedures, and shall ensure that measures relating to data security and backup are complied with.
4. Be entitled to undertake necessary measures in order to



prevent data security risks and to remove disturbances affecting data security. Such measures may include, for example, prevention of message transmission or reception or removal of malicious software that poses a threat to data security from messages.

5. Notify the other Party if it reasonably believes there is any non-conformity with any applicable data protection or security laws and work jointly to address any such non-conformity.
6. Unless otherwise agreed expressly in writing, be responsible for making back-up copies of its own data and data files and for verifying the functionality of such back-up copies.

If Frends processes personal data on behalf of the Customer, unless separate data processing agreement is entered into between Frends and the Customer, the following Data Processing Agreement (located at <https://frends.com/legal/dpa>) shall be incorporated into the Agreement, which governs the obligations of the Parties in relation to data protection. In case of any inconsistency or discrepancy, the Data Processing Agreement or the separate agreement in relation thereto shall prevail over the Agreement.

## 10. Prices and Payment Terms

### 10.1 Prices

The applicable fees and prices for the Frends Platform, its usage volumes and Professional Services are described on publicly available at <https://frends.com/pricing> and/or applicable Order Form and/or Work Order.

Depending on the subscription chosen by the Customer refer to the following Service Descriptions of each Frends Tier to understand limitations imposed to the purchased Frends Tier. For the avoidance of doubt both parties agree that unless otherwise agreed in writing the limitations set



forth in the Service Descriptions affect the functionality of the Frends Platform and form an integral part of this Agreement:

- [Frends Basic - Service Description](#)
- [Frends Startup - Service Description](#)
- [Frends Business - Service Description](#)
- [Frends Enterprise - Service Description](#)

Frends shall be entitled to adjust the applicable fees and prices for the Frends Platform, its usage volumes, Tier restrictions and Professional Services by notifying Customer of the change and of the reason of the change in writing at least sixty (60) days before the effective date of the change. In the event that a price increase is more than ten (10) percent yearly, Customer shall be entitled to terminate the Agreement for convenience on the effective date of the price change by notifying Frends thereof in writing at least thirty (30) days before the effective date of the change.

## 10.2 Payment Terms

Customer shall pay all fees due to Frends monthly in arrears unless otherwise specified in the applicable Order Form and/or Work Order. The usage volumes of Frends Platform during each calendar month are summarized at the end of the calendar month and the total fee for that month shall be based on those volumes, the Subscription and/or the Professional Services purchased as set forth in the applicable Order Form and/or Work Order. All Fees paid are non-refundable and payment obligations are non-cancellable.

Fees are due thirty (30) days net from the date of the invoice unless otherwise specified in the applicable Order Form and/or Work Order. Customer shall be responsible for



providing Frends with complete and accurate billing and contact information and for notifying Frends of any changes in relation thereto without undue delay.

Unless otherwise agreed in writing, all payments shall be made in Euro.

### 10.3 Late Payments

Interest on overdue payments shall accrue monthly at the lower of 2 %, or the maximum rate permitted by law, chargeable from the date such payment was due until the date when Frends receives the payment in full.

### 10.4 Taxes

Unless otherwise agreed in writing, the prices specified in the Agreement are exclusive of taxes. Value added tax shall be added to the prices in accordance with the Finnish Value Added Tax Act. Customer shall pay all import duties, levies or other imposts, and all sales, use, value added, property or other taxes of any nature assessed upon or with respect to the payments to Frends (except for tax based on Frends' income) and all payments will be made without deduction, withholding, counterclaim or set-off of any kind or nature.

If any withholding taxes are imposed on any payments by Customer to Frends hereunder, Customer shall either: i) pay Frends such additional amount as shall cause the net amount of the aggregate payment to Frends, after giving effect to such deduction, to equal the amount of the payment otherwise due to Frends under the Agreement or ii) Customer shall provide Frends with such taxation documentation that entitles Frends to claim corresponding tax reduction in Finland providing Frends with the corresponding equal net amount of payments.



If Friends has the legal obligation to pay or collect taxes for which Customer is responsible, including any penalties and interest, the appropriate amount will be invoiced from and paid by Customer, unless, on or before the time of the submission of its Order Form, Customer provides Friends with a valid tax exemption certificate authorized by the applicable taxing authority.

## 11. Confidentiality

"Confidential Information" means any non-public information relating to a Party's (the "Disclosing Party") technology, pricing or business disclosed under or in connection with the Agreement to the other Party (the "Receiving Party") that is at the time of disclosure indicated by the Disclosing Party to be "confidential" or "proprietary," or under the circumstances, a person would reasonably assume to be confidential or proprietary information of the Disclosing Party.

During the term of the Agreement, and for a period of five (5) years following the expiration or termination of the Agreement, the Receiving Party shall maintain the confidentiality of the Confidential Information using at least the same degree of care that such Party uses to protect its own Confidential Information of a similar nature, which shall be no less than reasonable care. Neither Party shall use or disclose to any third party any Confidential Information without the prior written consent of the Disclosing Party, except as specifically contemplated herein, or other than to its employees or agents who are part of its Personnel and who need to know the Confidential Information for their performance of the Agreement. Such employees and/or agents shall be bound by confidentiality obligations substantially similar to the ones stipulated herein and the



Receiving Party shall be fully responsible towards the Disclosing Party for its employees' or agents' breach of these confidentiality obligations. The Receiving Party may only use Confidential Information for the purposes of the Agreement.

The foregoing restrictions shall not, however, apply to information or material that:

1. has been independently developed by the Receiving Party without use of or access to the Disclosing Party's Confidential Information;
2. is generally available or has become publicly known through no breach of this Section by the Receiving Party;
3. has been rightfully received by the Receiving Party, without obligation of confidentiality, from a third party authorized to make such disclosure;
4. has been approved for release in writing by the Disclosing Party; or
5. was known by the Receiving Party without any obligation of confidentiality related thereto prior to receipt of the same from the Disclosing Party.
- 6.

Furthermore, the disclosure by the Receiving Party of the Confidential Information shall not be considered a breach of this Section to the extent that such Confidential Information is required to be disclosed pursuant to a law, decree, or other order issued by the authorities or judicial order, provided that the Receiving Party gives the Disclosing Party prompt written notice of such requirement prior to disclosure, assists in obtaining an order to protect the information from public disclosure and will only disclose that portion of Confidential Information that is legally required to be disclosed.

Except as may be necessary to be retained by legal or archival requirements, external accounting standards, or





regulatory requirements, each Party shall cease using the Confidential Information received from the other Party and all Confidential Information within any copies and records shall be promptly returned or destroyed by the Receiving Party, at the Disclosing Party's discretion and request (i) upon the Disclosing Party's written request thereof, (ii) upon any written notice of termination of this Agreement by either Party, or (iii) when the Party no longer needs the Confidential Information in question.

Notwithstanding anything to the contrary, the Receiving Party shall not be obligated to erase Confidential Information contained in an archived computer system backup made in accordance with reasonable disaster recovery procedures, provided that such archived copy will remain subject to these confidentiality obligations.

For the avoidance of doubt, Frends shall be entitled to use the professional skills and experience acquired in connection with the Agreement.

## 12. Reference Use

Frends shall have the right to use the Agreement, Customer's name and Customer's primary trademark or logo as its reference in Frends' public marketing activities. If not otherwise agreed in writing, the Parties shall not have any other right to use the other Party's trademark, product names or other business marks.

While using the other Party's trademarks, product names or other business marks, the Parties agree to comply with the reasonable written instructions of use provided by the other Party.

Frends shall have the right to register any and all products



developed by Friends as trademarks or domain names. Customer agrees not to register any such products or products names, trademarks or domain names which may be confused to Friends' trademarks, product names or domain names.

## 13. Force Majeure

Neither Party shall be responsible for delays or damages if caused by an impediment beyond its reasonable control, which it could not have reasonably taken into account at the time of the conclusion of the Agreement, and the consequences of which could not reasonably have been avoided or overcome by such Party ("Force Majeure"). Such impediments shall include, but not be limited to, acts of war, hostility, or sabotage; acts of God; electrical, internet, or telecommunication outages that are not caused by the obligated Party; and government restrictions (including the denial or cancelation of any export, import or other license). Strike, lock-out, boycott and other industrial actions shall constitute a Force Majeure event also when the Party concerned is the object or a party to such an action.

A Force Majeure event suffered by a sub-contractor of a Party shall also discharge such a Party from liability if subcontracting from another source cannot be made without unreasonable costs or loss of time.

A Party shall notify the other Party in writing without delay of a Force Majeure event. The Party shall correspondingly notify the other Party of the termination of a Force Majeure event. Both Parties shall use reasonable efforts to mitigate the effects of a Force Majeure event.

If a Force Majeure event continues for more than thirty (30) days, either Party may terminate for convenience any



unperformed services related to the Order Forms and/or Work Orders affected by the Force Majeure event upon written notice.

For the avoidance of doubt, this Section shall not excuse either Party's obligation to take reasonable steps to follow its normal disaster recovery procedures or the Customer's obligation to pay for the services.

## 14. Limitation of Liability

The total aggregate liability, including possible liquidated damages payable due to delay, service credits or other similar contractual penalties or credits, of each Party towards the other Party during a calendar year relating to or arising out of the Agreement shall not exceed three hundred percent (300 %) of the amount corresponding to the average monthly fee payable by Customer to Frends under the applicable Order Form during the calendar year in question.

However, if the breach of the Agreement concerns only the delivery of Professional Services, the total aggregate liability of each Party towards the other Party shall not exceed fifty percent (50 %) of the total price of the Professional Services in question, including possible liquidated damages payable due to delay, service credits or other similar contractual penalties or credits. Neither party shall be liable for any indirect or consequential damages, loss of profit, anticipated savings, loss of data or the cost of substitute goods or services.

The Parties shall not be responsible for the destruction, loss or alteration of data or files of the other Party and the resulting losses and costs, such as the costs of recreating the files.



These limitations of liability shall not apply to damages caused by wilful misconduct or gross negligence, or to breach of confidentiality obligations.

## 15. Miscellaneous

The Agreement together with these Terms of Service and their other appendices forms the entire agreement between the Parties relating to the subject matter thereof and supersedes all prior communications, written and oral, between the Parties. Save for stipulation in Section 4.8 above in relation to Friends' right to update these Terms of Service, all amendments and modifications to the Agreement shall be made by a written document signed by both Parties in order to become valid and binding on the Parties.

Neither Party shall be entitled to assign the Agreement to a third party without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed.

Unless otherwise agreed in writing, each Party shall have the right to subcontract its obligations under the Agreement. Each Party shall be liable for the performance of its subcontractors as for its own.

## 16. Governing Law and Dispute Resolution

The Agreement and all matters arising out of or in connection with the Agreement shall be construed and governed exclusively in accordance with the laws of Finland without regard to its choice of law provisions or Sale of Goods Act. Any dispute, controversy or claim arising out of



or relating to the Agreement, or the breach, termination or validity thereof, should primarily be resolved through negotiations between the Parties. If no settlement is reached, the matter will be finally settled by arbitration in accordance with the Arbitration Rules of the Finland Chamber of Commerce by one (1) arbitrator. The Arbitration will be held in Helsinki, Finland, in the English language, unless both Parties are domiciled in Finland in which case the arbitration will be held in the Finnish language.

As an option to the arbitration to be conducted in accordance with the Arbitration Rules of the Finland Chamber of Commerce, the Parties may agree that the dispute arising out of or in connection with the Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one (1) arbitrator appointed in accordance with the said Rules. The Arbitration will in this case be held in the Hague, Netherlands, in the English language. The Parties may also in this connection request the arbitral tribunal for a virtual hearing, as stipulated in section VII(C) of the ICC's "Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration (1 January 2021)".

## 17. Term & Termination

### 17.1 Term

The Agreement shall become effective on the Effective Date and shall remain in force until further notice, and it may be terminated by either of the Parties by giving a three (3) months' written notice to the other Party. The period of notice shall be calculated from the last day of the month during which the notice of termination was given.

The Subscription Term of the Friends Platform shall



commence on the date stipulated in the applicable Order Form and shall remain in force for three (3) months thereof. The Subscription Term shall thereafter automatically renew for successive three (3) month periods at Friends' then-current pricing, unless either Party provides the other Party with a written notice of non-renewal at least thirty (30) days prior to the end of the then-current Subscription Term. Upon termination of the Agreement for any reason, the then-current Subscription Term shall automatically terminate simultaneously with the Agreement. The termination of the Subscription Term shall, however, have no effect on the validity and effectiveness of the Agreement.

## 17.2 Termination

Notwithstanding anything to the contrary, each Party shall be entitled to terminate the Agreement, wholly or in part, with immediate effect by written notice to the other Party if:

1. the other Party is materially in breach of the terms and conditions of the Agreement. If the breach is capable of being remedied, the Agreement may be terminated only if the Party in breach has not rectified its breach within thirty (30) days after receiving a written notice thereof.
2. the other Party suffers distress or execution or commits an act of bankruptcy or goes or is put into liquidation (otherwise than solely for the purpose of amalgamation or reconstruction) or if a receiver is appointed over any part of such other Party's business or if an administration order is made in respect of such other Party.

All rights to use the Friends Platform shall cease upon termination or expiration of the Agreement.

## 18 Terms of Service Previous Versions

- [Frends iPaaS Terms of Service v1.0.0](#)



- [Friends iPaaS Terms of Service v1.0.1](#)

