

Anapaya's General Terms and Conditions

Anapaya Systems AG, Hardturmstrasse 253, 8005 Zürich, Switzerland

1. Scope and Definitions

1.1 Scope

- 1.1.1. These General Terms and Conditions (hereafter referred to as the "GTC") apply to all Software, Services and Supplies ("Deliverables") – whether subject to Fees or not – that Anapaya renders for the Customer, such as, without limitation, software, connectivity services, managed services, hardware, professional services and maintenance. General information about Anapaya's Deliverables are not binding for Anapaya.
- 1.1.2. These GTC contain general rules applicable to all types of Deliverables provided by Anapaya to the Customer. In addition, Specific Terms and Conditions (hereafter referred to as the "STC") apply specifically to Software, Services or Supplies. Each of the STC apply (i) in addition to the GTC, and (ii) only if, and to the extent that, such Software, Services or Supplies have been expressly agreed in an Individual Contract. In the absence of such Individual Contract, the STC do not constitute an independent obligation of Anapaya to provide such Software, Services or Supplies.
- 1.1.3. These GTC shall apply to all relationships between the Parties regarding the Deliverables, without express confirmation being necessary for this each and every time.
- 1.1.4. General terms and conditions of the Customer shall not apply, unless confirmed by Anapaya in writing.
- 1.1.5. The currently valid and binding version of the GTC is being published on Anapaya's website at www.anapaya.net/legal. A hardcopy can be obtained from Anapaya.
- 1.1.6. In case of contradictions, the contractual provisions in the order of i) the Order Form, ii) the Master Service Agreement (if any), (iii) the Partner Agreement (if any), and iv) the documents included in the Agreement by reference (e.g. STC) shall have precedence over the GTC.

1.2 Definitions

If nothing else is mentioned, the capitalized terms defined below shall always be used in the Agreement with the meaning given here:

- 1.2.1 "Agreement" means these GTC together with any other documents referring to the GTC, (including an applicable Master Service Agreement, a Partner Agreement or an Order) as well as any other documents referenced therein, including the applicable STC.
- 1.2.2 "Affiliate" means, with respect to a Party, any corporation, partner, partnership, association or other business entity which directly or indirectly controls, is controlled by, or is under common control with the such Party.
- 1.2.3 "Customer" is the party that benefits from the Agreement by way of consuming services. A Customer can be an entity directly consuming services as well as reselling services to other Customers (end-customers) at the same time, which makes it a Partner. For the sake of simplification, the term Customer is used interchangeably with Partner.
- 1.2.4 "Deliverables" are Software, Services and/or Supplies.
- 1.2.5 "Fees" (also known as "Charges") means all fees that Anapaya bills to the Customer. Fees may be invoiced as one-time fees or recurring fees, respectively as flat fees or (usage-based) variable fees.
- 1.2.6 "GTC" means these general terms and conditions.
- 1.2.7 An "Individual Contract" represents the contractual elements of the Agreement for a single individual Service or Supply. A single Order can aggregate several Services and/or Supplies and therefore several Individual Contracts.
- 1.2.8 "Location(s)" means the place(s) where Anapaya renders a Service or agrees to render a Service.
- 1.2.9 An "Order" is a signed Order Form and/or Quote and/or Statement of Work and/or Offer referring to the Agreement.
- 1.2.10 "Partner" is an entity entitled to resell deliverables to Customers. Partner is also a direct receiver for certain deliverables that enables Partner to resell deliverables to Customer.
- 1.2.11 "Service(s)" means all and any service(s) and/or parts thereof provided by Anapaya to the Customer under the Agreement.
- 1.2.12 "Software" means standard software licensed by Anapaya to Customer under the Agreement.
- 1.2.13 "STC" means specific terms and conditions.
- 1.2.14 "Supply(ies)" means equipment and other items sold by Anapaya to Customer (e.g. network appliance).

2. Anapaya's Deliverables

- 2.1.1 Anapaya's generally available Deliverables are ruled by the applicable Specific Terms and Conditions (STC) and its accompanying documents, such as Service Description (SD) and Service Level Agreement (SLA), if any.
- 2.1.2 Anapaya shall render the Services with due care and diligence. A Service shall only be qualified as a contract for works if the Order explicitly specifies it.
- 2.1.3 Anapaya may provide the Deliverables by any of its Affiliates.
- 2.1.4 Anapaya is entitled to use products or services of third parties as non-exclusive subcontractors at any time in order to perform the Services. No subcontracting shall in any way relieve Anapaya from the obligation to provide the Services and Anapaya shall at all times remain liable for any Subcontractor's performance of Services in accordance with its terms as if such Subcontractor were Anapaya. Anapaya shall be solely responsible for all payments to such Subcontractors including any applicable taxes, unless otherwise agreed in an Individual Contract.

3. Responsibilities of the Customer

3.1 Customer's Cooperation Obligations

- 3.1.1 The Customer ensures that all cooperation duties required for the provision of the Deliverables by Anapaya are provided timely and free of charge.
- 3.1.2 The Customer shall be obliged to actively assist Anapaya, including:
 - 3.1.2.1 notifying Anapaya of all processes and circumstances that could be relevant to the provision of the Deliverables.
 - 3.1.2.2 performing coordination work and make decisions in due time as needed.
 - 3.1.2.3 providing the required data, records, and information in due time and adequate quality.
- 3.1.3 The Customer's duties to cooperate include the creation of all preconditions in the Customer's operating environment that are needed to provide the Deliverables. Thus, the Customer shall:
 - 3.1.3.1 provide the technical and operational prerequisites on its premises and within its infrastructure in view of the provision of the Deliverables by Anapaya, whereas Anapaya gives to the extent possible appropriate instructions in this regard.
 - 3.1.3.2 obtain necessary approvals, authorizations and third-party consents needed for Anapaya to provide the Deliverables.
 - 3.1.3.3 provide and operate appropriate telecommunications services for on-site and remote works required for the provision of the Deliverables.
 - 3.1.3.4 grant the Anapaya staff and/or third parties engaged by Anapaya access to Customer's premises, both during ordinary working hours and, upon prior announcement, at other times, provided that the persons in question identify themselves.
 - 3.1.3.5 if needed, make available fully equipped workplaces for Services to be carried out on Customer's premises and ensure a safe working environment for the Anapaya staff and the third party's staff deployed by Anapaya on Customer's premises.
 - 3.1.3.6 treat the technical equipment which is the property of Anapaya or its suppliers, and which is in the Customer's possession, with the necessary care and ensure that the premises in which the technical equipment is installed are adequately protected, particularly from fire, theft and vandalism.
 - 3.1.3.7 make available duly qualified staff, including the designation for each service of a person acting as single point of contact.
- 3.1.4 The Customer shall nominate a contact person who is responsible for the provision of binding information.
- 3.1.5 The Customer shall be solely liable for the safekeeping and backing up of its data (including installed software).
- 3.1.6 In the event that the Customer does not fully and timely fulfil its cooperation obligations, Anapaya may adjust the deadlines and charge the Customer for any additional costs incurred.

4. Fulfilment and Acceptance of Deliverables

4.1 Deadlines

- 4.1.1 All deadlines shall be non-binding and for information purposes only, unless explicitly identified as binding deadlines.

4.2 Delays caused by Anapaya

- 4.2.1 If, for reasons for which it is responsible, Anapaya is unable to comply with a deadline expressly agreed to be binding in the Individual Contract, Customer shall grant grace period appropriate to the circumstances.
- 4.2.2 If Anapaya does not comply with such grace period, Customer shall be entitled to terminate the respective Individual Contract in whole or in part, provided that a second appropriate grace period issued by Customer has uselessly elapsed.
- 4.2.3 Services (or parts thereof) which have already been provided in accordance with the Individual Contract and which can be used as such in an objectively reasonable manner by the Customer must be compensated by Customer in full.

4.3 Delays outside Anapaya's control

- 4.3.1 If delays are caused by Customer, by a third party or by events beyond Anapaya's reasonable control, the schedule shall automatically be extended by a period equal to the duration of the hindrance and by a reasonable start-up period after the hindrance has ended.
- 4.3.2 Anapaya is entitled to bill the documented additional cost caused by such delay.

4.4 Delivery

- 4.4.1 At Anapaya's discretion, software, work results and documentation can be transmitted on data carriers or by data transmission to the Customer or can be made available to the Customer online.
- 4.4.2 Customer is obligated to take delivery of the Deliverables immediately upon provisioning.

4.5 Acceptance and Notification of Defects

- 4.5.1 Unless Customer states in writing that it is withholding acceptance and identifies material defects within 5 (five) calendar days of provisioning of the Deliverables, the Deliverables shall automatically be deemed accepted. Deliverables shall also automatically be deemed accepted as soon as Customer uses them in its operations or business or causes them to be used in such.
- 4.5.2 Anapaya may request acceptance of partial services, provided this is reasonable for Customer. In this case, any defects may be asserted at the next final acceptance only insofar as they were not and could not be detected during an earlier (partial) acceptance.
- 4.5.3 Minor defects do not entitle Customer to withhold acceptance but must be corrected by Anapaya within a reasonable period of time. If material defects are detected, acceptance shall be postponed. Anapaya shall correct the detected defects within a reasonable period of time and once again furnish the deliverable in question for approval by Customer.
- 4.5.4 If Customer withholds acceptance based on material defects after having given Anapaya at least two opportunities for proper delivery for each deliverable, Customer may withdraw from the respective Individual Contract. Software or Services (or parts thereof) that have already been provided substantially in accordance with the Agreement and can be used by Customer as such

in an objectively reasonable manner must be paid for in full. Any withdrawal from the Agreement shall not affect such Software or Services; they shall remain subject to the respective provisions of the Agreement.

5. Operations and Assurance

5.1 Operations and SLA

- 5.1.1 Depending on the Services subscribed to, Anapaya performs different operations for or on behalf of the Customer (including software support, maintenance, professional services and managed services) according to a Service Level Agreement (SLA).
- 5.1.2 All requests for operations must be recorded by creating a ticket with Anapaya electronically.
- 5.1.3 To be accepted, a ticket must contain qualified information that helps clearly identifying the concerned Deliverables.
- 5.1.4 The time of ticket acceptance is used to count down the time-based performance indicator from the SLA.
- 5.1.5 No operation for which a ticket has not been created may give rise to a claim.

5.2 Standard Operating Hours

- 5.2.1 The standard operating hours of the Service are defined in the Service Description and/or in the Order.
- 5.2.2 Unless otherwise agreed, the standard operating hours for Anapaya's services are weekdays, from 8:00am to 5:00pm CET (respectively CEST during summertime), excluding the bank holidays in Switzerland/Zurich.

5.3 Maintenance Windows

- 5.3.1 Maintenance windows are slots when Anapaya is expected to perform preventive maintenance (e.g., updates or upgrades) that can affect service availability. Maintenance windows are defined in the SLA.
- 5.3.2 Downtimes occurring during maintenance windows are not taken into account in the calculation of the availability rate.
- 5.3.3 In the event of planned maintenance, Anapaya will provide the Customer with reasonable prior notice.
- 5.3.4 Emergency maintenances can occur outside the maintenance windows.

6. Ordering

6.1 Ordering

- 6.1.1 Unless otherwise stated, offers issued by Anapaya shall be valid for 30 (thirty) calendar days.
- 6.1.2 To be binding, an Order must be signed by both Parties.
- 6.1.3 An Order is non-cancellable and is subject to the terms and conditions of the Agreement.
- 6.1.4 An Order placed via the internet or through a Partner is binding after Anapaya issues an order acknowledgment.
- 6.1.5 The Agreement comes into force whether the Order is placed directly to Anapaya or through a Partner provided it being accepted as per 6.1.4. The Partner is responsible for the accuracy of any Order placed for the Customer. Partners are not authorized to make any promises or commitments on Anapaya's behalf, and Anapaya is not bound by any obligations other than what Anapaya has explicitly agreed to in this Agreement.

7. Term and Termination

7.1 Commencement of the Agreement

- 7.1.1 Unless otherwise agreed in writing, the Agreement commences on the effective date of the first Individual Contract.
- 7.1.2 Unless otherwise agreed in the Order, an Individual Contract becomes effective at the date of delivery of the Deliverable.

7.2 Initial and Renewal Terms

- 7.2.1 Each Individual Contract is concluded for an initial term and after this initial term, automatically extended by additional renewal terms (each renewal being a new contractual term).
- 7.2.2 Unless otherwise agreed in the Order, the initial term is set at 12 months, the renewal term is set at 12 months each.
- 7.2.3 Under no circumstances may the renewal term be less than the billing frequency.

7.3 Ordinary Termination

- 7.4.1 The Agreement automatically expires on the date the last Individual Contract then in effect expires or is terminated.
- 7.4.2 Subject to section 7.7 and unless otherwise agreed in the Order, any Individual Contract can be terminated in writing by one of the parties (i) to the end of the initial term or any renewal term with a notice period of ninety (90) calendar days if the term is twelve (12) months or longer and thirty (30) days if the term is shorter than twelve (12) months, or (ii) to the end of any billing period with a notice period of thirty (30) days if there is no fixed initial or renewal term.

7.4 Termination for Cause or Suspension by Anapaya

- 7.5.1 Anapaya has the right to terminate one or more Individual Contracts:
 - 7.5.1.1 if bankruptcy proceedings are initiated against the Customer,
 - 7.5.1.2 if the Customer is granted a stay of bankruptcy or is liquidated,
 - 7.5.1.3 if there is an important reason that makes it seem unreasonable to respect the notice period,
 - 7.5.1.4 or if the law and/or official orders prevent either of the Parties from performing the Agreement.
- 7.5.2 In the case of such important reasons, Anapaya has the right to terminate one or all Individual Contracts with immediate effect. This particularly applies in the case of:
 - 7.5.2.1 any security deposit required by Anapaya not provided in due time,
 - 7.5.2.2 invoices repeatedly not paid on the due date,
 - 7.5.2.3 any use of the Deliverables for other than the intended use,
 - 7.5.2.4 endangering of Anapaya's equipment or equipment of partners of Anapaya,
 - 7.5.2.5 an imminent or acute threat to prevailing public or private interests,

- 7.5.2.6 a justified assumption that the Customer will not be able to pay the Fees as agreed,
- 7.5.2.7 any reasonable doubts regarding sufficient Customer solvency.
- 7.5.3 Instead of terminating it, Anapaya has the right to suspend an Individual Contract for a reasonable period of time, with the aim of finding an amicable solution with the Customer to remedy the situation.
- 7.5.4 Should Anapaya have well-founded doubts as to the lawfulness of a planned or actual use of the Software or Services provided by Anapaya, including the systems operated or supplied by it, then Anapaya may suspend the provision of the affected Software or Services or take other suitable measures without owing compensation, even if this conflicts with Anapaya's duty of performance under the Agreement. In this event, Anapaya shall inform Partner immediately.
- 7.5 **Termination for Cause by the Customer**
- 7.6.1 The Customer has the right to terminate an Individual Contract for cause if Anapaya is repeatedly in breach of any material obligation hereunder with respect to such Individual contract and Anapaya fails to remedy such breach within sixty (60) calendar days after receiving written notice requiring it to do so.
- 7.6 **Consequence of the Termination or Expiration.**
- 7.7.1 A termination of the Agreement (e.g. the MSA, or the Partner Agreement) shall terminate all the Individual Contracts in accordance with the applicable terms agreed for each Individual Contract, and the Agreement shall survive to the extent and for as long as the last Individual Contract is still valid.
- 7.7.2 The termination of an individual Contract does not affect the remainder of the Agreement or any other Individual Contracts.
- 7.7.3 Upon termination of an Individual Contract, the Customer's right-to-use the respective Deliverables ceases immediately.
- 7.7.4 Material delivered to the other Party for the duration of the Individual Contract (e.g. equipment, documents, keys) must be returned within thirty (30) calendar days after the termination or expiration of the respective Individual Contract, at the expenses of the returning Party.
- 7.7.5 At the end of an Individual Contract, regardless of the reason for its termination, both Parties shall cooperate for the purpose of a proper handover of operations.
- 7.7.6 In case of termination for cause by Anapaya, Anapaya undertakes to support the Customer in exchange for separate compensation in connection with the necessary termination activities. In turn, the Customer undertakes to inform Anapaya of its anticipated needs for assistance in good time before the end of the Agreement.
- 7.7 **Compensation for Premature Termination**
- 7.8.1 In the event of the premature termination of an Individual Contract by the Customer other than according to the section 7.5, or by Anapaya for one of the reasons set out in section 7.4, the Customer must immediately pay the remainder fees until the full term of the respective Individual Contract. Any cost, fee and/or penalties due by Anapaya to any sub-contracted third-party as a consequence of premature termination of its contract with the third-party shall be due immediately by the Customer.
- 7.8.2 In the event of a premature termination for cause by the Customer of an Individual Contract for one of the reasons set out in section 7.5, the Fees for the remaining term are not due by the Customer.
- 7.8 **Consequence of a Suspension**
- 7.9.1 The suspension of the Agreement shall suspend all the Individual Contracts
- 7.9.2 The suspension of an individual Contract does not affect the remainder of the Agreement or any other Individual Contracts.
- 7.9.3 Upon suspension of an Individual Contract, the Customer's right-to-use the respective Software or Service is suspended immediately.
- 7.9.4 During the period of suspension of an Individual Contract, the Customer shall be fully liable for all damage resulting thereof and remain liable for the corresponding Fees.
- 8. **Remuneration**
- 8.1 **Prices**
- 8.1.1 Fees are determined on the basis of (i) Anapaya's current pricelist (ii) the Agreement, which prevails over the pricelist in case of contradiction and (iii) the Order, which prevails over both the Agreement and the Pricelist in case of contradiction.
- 8.1.2 Any Fees are exclusive of any shipping costs and insurances.
- 8.2 **Expenses and Additional Costs**
- 8.2.1 As a rule, expenses and additional costs (e.g., travelling expenses, accommodation and subsistence) and the costs of auxiliary means specifically used for a given project (hardware, databank fees, etc.) shall be charged to the Customer additionally.
- 8.3 **Taxes**
- 8.3.1 The Fees do not include any taxes, levies or duties, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). The Customer is responsible for paying all Taxes associated with Customer's purchases.
- 8.3.2 If Anapaya has the legal obligation to pay or collect Taxes for which the Customer is responsible, the appropriate amount shall be invoiced to the Customer.
- 8.4 **Payment**
- 8.4.1 Fees will accrue from the Effective Date set forth in the Individual Contract and the Customer will be liable for Fees for the full term specified in each Individual Contract.

- 8.4.2 Unless otherwise agreed in an Order or in the Agreement, Customer shall pay in full all invoices from Anapaya within thirty (30) calendar days of the invoice date, in the currency stipulated in the Order. If no currency is indicated, payment must be made in Swiss Francs (CHF).
- 8.4.3 Unless otherwise mutually agreed, Anapaya will invoice monthly in advance for all recurring Fees and in arrears for usage-based or non-recurring Fees.
- 8.4.4 An Order or an Individual Contract may contain a date by which it will become effective at the latest.
- 8.4.5 Payment shall be deemed remitted once the full amount owed has been credited to the Anapaya account.
- 8.4.6 All charges and bank fees incurred through payment shall be borne by the Customer.
- 8.4.7 Invoices that are not challenged in writing within the payment period shall be deemed approved.
- 8.4.8 Upon expiration of the payment period, Anapaya shall be entitled, after one reminder, to charge interest on all outstanding payments at the statutory default interest rate.
- 8.4.9 Except otherwise agreed in the Order, Supplies shall be invoiced upon delivery and maintenance services shall be invoiced upfront.
- 8.4.10 Any fees for Supplies and Maintenance are exclusive of any shipping costs.
- 8.4.11 Any corresponding additional costs shall be borne by the Customer, in particular any adaptations of the technical environment at the Customer's end as well as the configuration of interfaces, data migration, parameterization and related activities

8.5 Set-off of Claims

- 8.5.1 The Customer waives its right to set-off with respect to all claims against Anapaya.

9. Ownership, Intellectual Property Rights, Right-to-Use

9.1 Ownership

- 9.1.1 Unless otherwise agreed, the Agreement does not provide any transfer of ownership.

9.2 Non-Transferrable and Non-Exclusive Right-to-Use

- 9.2.1 Anapaya grants the Customer and its Affiliates a non-transferrable and non-exclusive right-to-use the Service or the Software.
- 9.2.2 The content and scope of the right-to-use are indicated in the Agreement.
- 9.2.3 The right-to-use of Software or a Service is restricted to the duration of the corresponding Individual Contract(s).
- 9.2.4 If third-party products can be identified by the Customer as part of the Software or Service provided by Anapaya, the Customer accepts the related license terms and use restrictions associated to these third-parties parts and imposed by the third-party rights holder.

9.3 Intellectual Property Rights

- 9.3.1 All rights to intellectual property existing or arising at the time of performance of the Agreement (such as copyright, patents, know-how, designs and trademark rights) relating to Deliverables are retained by Anapaya or the third party holding the same.
- 9.3.2 In particular the rights to all Software, including source codes, software and interfaces descriptions or parameterizations, and all related documentation, paper, data media, are the exclusive property of Anapaya or its licensors.
- 9.3.3 If the Parties have developed Intellectual Property Rights jointly, they authorize each other permanently to use and exploit these rights independently of one another without restriction, subject to confidentiality obligations.

9.4 Protection of the Rights

- 9.4.1 The Customer acknowledges the legal validity of the Intellectual Property Rights of Anapaya and any third party regarding the services provided by Anapaya and will not take any action that could diminish their value.
- 9.4.2 The Customer takes all necessary measures in accordance with Anapaya's instructions to protect Anapaya's rights and to provide Anapaya with reasonable support in defending Intellectual Property Rights.

9.5 Audit

- 9.5.1 Anapaya is permitted to audit Customer's compliance with the provisions regarding use and protection of the Software or Service.
- 9.5.2 Ordinarily, Customer can conduct the measurement itself using the procedures and/or tools provided by Anapaya for that purpose. These can include a manual or automated notification of the audit results to Anapaya.
- 9.5.3 Anapaya shall be entitled to perform an on-site audit of Customer's compliance with the provisions regarding use and protection of the Software or Service, by itself or through a commissioned third party (e.g., a consultancy firm), if Customer refuses to conduct the measurement itself, or if the measurement does not produce meaningful results and/or there are reasonable grounds to suspect a breach or infringement by Customer.
- 9.5.4 If the Customer has requested an audit through a commissioned third party, and the audit shows that the Customer was or is in breach of the Agreement, the Customer has to pay the costs of the audit by the commissioned third-party company.
- 9.5.5 In the event of gross or ongoing violations, the rights to use the Software or the Service may be withdrawn without any indemnification and notice.

10. Warranty

10.1 Notification Duty

- 10.1.1 In the event of defects in the Deliverables, the Customer shall inform Anapaya immediately in a (electronical) written form of the exact extent of the complaint.

10.2 Warranty of Quality for Operational, Maintenance and Support Services

- 10.2.1 Anapaya warrants that it will comply with the service levels specified in the Agreement.

- 10.2.2 However, Anapaya cannot warrant a completely error free, undisturbed, or uninterrupted operation.
- 10.2.3 Services for which no service levels have been agreed upon shall be performed on a best effort basis. “Best effort” means that Anapaya shall strive in a manner that is appropriate and customary in the industry to perform the services and/or troubleshooting using the resources at its disposal but offers no assurances in this respect.
- 10.2.4 If the Software or Supplies showing a defect are covered by a maintenance agreement, the provisions of such maintenance agreement shall solely apply with regard to the correction of defects, to the exclusion of all other warranty rights.
- 10.3 **Limited Warranty**
- 10.3.1 Any and all warranty rights not explicitly stated in this clause 10 shall be excluded. The liability of Anapaya for damages resulting of defects shall be subject to clause 11 below.
- 10.4 **Exclusion of Warranty**
- 10.4.1 Anapaya shall be released from its warranty obligations to the extent that a defect is caused by circumstances that are not attributable to Anapaya, such as i) changes to the usage and operating conditions set out in the Agreement, ii) changes made to the Deliverables by the Customer or third parties, iii) use by the Customer of a Software release no longer supported by Anapaya, and iv) impacts by systems or programs not licensed from Anapaya.
- 10.4.2 Should a defect be attributable to the Customer, for example, if a user error occurred or if additional efforts are incurred due to Customer having failed to fulfil its obligation of cooperating with and providing adequate documentation to Anapaya, Anapaya shall be entitled to invoice the Customer on a time and material basis for the actual costs incurred by services to remedy such defect.
- 10.5 **Warranty of Title**
- 10.5.1 If a Deliverable or a part thereof is or, in the reasonable opinion of Anapaya, may become the subject of a complaint by a third party based on an alleged infringement of intellectual property rights, Anapaya may, at its option (i) provide the Customer the right to use the Deliverable free of all liability for breach of intellectual property rights, or (ii) replace the Deliverable with one that complies with the essential contractual properties of the existing Deliverable, or (iii) modify the Deliverable so that it no longer breaches any intellectual property rights; or, if none of the above possibilities can be achieved at reasonable costs or (iv) take back the Supply against reimbursement of an appropriate share of the Fees paid therefore, respectively terminate the Software license or Service without notice.
- 10.5.2 In the event that a third party disputes the Customer’s rights of property of a Deliverable, Anapaya may conduct the defence at its own costs and cover, subject to the limitations set forth in clause 11, all costs and damages incurred by the Customer as a result of any legal rulings, on the cumulative conditions that:
 - 10.5.1.1 the Customer informs Anapaya in writing as soon as any claims are raised, and
 - 10.5.1.2 authorises Anapaya to conduct the defence, including an amicable settlement, or in case this is not possible, Customer leads the defence according to Anapaya’s instructions, and
 - 10.5.1.3 supports Anapaya to an appropriate and reasonable extent free of charge, and
 - 10.5.1.4 the claim of the third party is based on the fact that the intended use of the unaltered Deliverable infringes Intellectual Property Rights in Switzerland or represents unfair competition, and
 - 10.5.1.5 such claim is not arising from (i) unauthorized modification of the Deliverable by Customer or any third party, or (ii) a combination of the Deliverable with a product not supplied by Anapaya provided that the infringement will not occur but for the combination, or (iii) use by the Customer of a Software release no longer supported by Anapaya, (iv) use of the Deliverable in breach of the terms and conditions of the Agreement.
- 10.6 **Warranty Period**
- Unless otherwise agreed in the relevant specifications incorporated by reference to this Agreement, the warranty period shall be (i) six (6) months from the provisioning date of Software, (ii) six (6) months from the final acceptance date of work results of Services and (iii) one (1) year from the date of delivery of Supplies.
- 10.7 **Warranty for Third-Party Products**
- 10.7.1 Notwithstanding anything to the contrary, with regard to third party products, the terms of the manufacturer’s or third-party supplier’s warranty shall solely apply to the exclusion of all other warranty rights.
- 10.7.2 To the extent permitted by law, Anapaya excludes any warranty for third party products supplied as part of the Deliverables and at the same time assigns all claims it may have against the manufacturer or supplier to the Customer.
- 10.8 **Warranty of Customer**
- 10.8.1 Customer warrants that it has obtained all necessary rights and licenses to receive and use the Deliverables in its own system environment.
- 10.8.2 In the event of legal claims of third parties or authorities against Anapaya based on data, content, or the resources provided by Customer (in particular, software licenses), Customer shall indemnify Anapaya, ensure an appropriate defence against such claims, and cover the costs of such defence.
- 11 **Limitation of Liability, Indemnity**
- 11.1 **Direct Damages**
- 11.1.1 The liability of Anapaya shall only be unlimited for cases where mandatory law provides for unlimited liability without possibility of a waiver, such as damages caused by unlawful intent or gross negligence, or for death or personal injury.

- 11.1.2 The liability of Anapaya for direct damages incurred by the Customer resulting from or in connection with the performance of the Individual Contract, irrespective of its legal basis (such as default, non or incorrect performance, breach of duty, warranty), shall be limited in aggregate for the term of the Individual Contract to the lower of the following amounts: a) the one-time and the recurring fees for the first contract year as set out in the respective Individual Contract, or b) CHF 100,000.-.

11.2 Exclusions

- 11.2.1 To the fullest extent permitted by law, the liability of Anapaya for indirect damages and financial loss, consequential damages, loss of data, lost profits, savings not realized, additional expenses, third party claims, etc. is excluded.
- 11.2.2 Anapaya has no liability on the content of any communication or data transmitted or processed by Anapaya Deliverables, except for contents solely created by Anapaya.
- 11.2.3 The Customer shall ensure observance of licensing terms for products procured by the Customer. Liability claims cannot be raised against Anapaya for breaches of proprietary rights that occur outside the direct work result provided by Anapaya.
- 11.2.4 Penalties paid by Anapaya under the Agreement shall be deducted from damages due.
- 11.2.5 All further liability of Anapaya is excluded.

12 Data Protection

12.1 Swiss Data Protection Law and EU GDPR

- 12.1.1 The Parties comply with the applicable provisions of the Swiss Data Protection Law and the EU GDPR.
- 12.1.2 The parties acknowledge that the purpose of the Agreement is not for Anapaya to process any Personal Data on behalf of Customer.
- 12.1.3 Should it – contrary to the previous provisions – become apparent after the conclusion of the Agreement, that the Service provision of Anapaya requires that Anapaya acts as a data processor, Anapaya agrees to enter into a separate data processing agreement with the Customer in compliance with applicable law before the affected Services are rendered.
- 12.1.4 Breach Notification

If Customer or Anapaya become aware of or suspect that there has been a personal data breach, they shall promptly, as the case may be, and in any event no later than 24 hours after so becoming aware or so suspecting, notify each other of the known or suspected breach.

12.2 Privacy Policy

- 12.2.1 Anapaya's privacy policy related to its website and CRM can be found here: <https://www.anapaya.net/privacy-policy>

13 Confidentiality

13.1 The Parties shall

- 13.1.1 keep confidential all Confidential Information of the other Party;
- 13.1.2 treat Confidential Information of the respective other Party with the same degree of care that they use for their own confidential information;
- 13.1.3 not disclose Confidential Information without prior written consent of the disclosing Party in whole or in part to any other person, save disclosure by the Recipient Party to employees, agents and sub-contractors involved in the provision or receipt of the services hereunder on a need-to-know basis provided that such persons bound by similar duties of confidentiality. A Party is jointly and severally liable for a breach of the provisions of this this section by its employees, agents or sub-contractors;
- 13.1.4 use the Confidential Information solely in connection with this Agreement.
- 13.2 Nothing in this section shall be deemed or construed to prevent the receiving Party from disclosing any Confidential Information on a need-to-know basis to (i) any Affiliate or subcontractor, provided that the receiving Party shall take all reasonable steps to ensure that such information is held in confidence by such Affiliate or subcontractor, including, where appropriate, requiring any Affiliate to enter into a nondisclosure undertaking resembling the provisions set out herein, and (ii) any advisor bound to professional confidentiality.
- 13.3 Any Confidential Information is and remains the property of the disclosing Party. Upon request of the disclosing Party, the receiving Party shall, at the instruction and option of the disclosing Party, destroy or return to the disclosing Party all Confidential Information including all copies, photographs, computer disks or other media for storage of information and any duplicates thereof of the receiving Party.
- 13.4 The provisions of this Section do not apply to Confidential Information which:
- 13.4.1 is generally known to the public except in consequence of a willful or negligent act or omission in contravention of this Section; or
- 13.4.2 is in the possession of the receiving Party without restriction in relation to disclosure before the date of receipt from the disclosing Party; or
- 13.4.3 is received from a third party which lawfully acquired or developed it and which is under no obligation restricting its disclosure; or
- 13.4.4 the receiving Party develops on its own without reference to the Confidential Information;
- 13.4.5 must be disclosed by the receiving Party in the discharge of its obligations to supply information for governmental, regulatory, audit, fiscal or judicial purposes provided that before making such disclosure the receiving Party shall insofar as possible consult with the disclosing Party concerning the extent and content of the information to be disclosed.
- 13.5 This Section applies for the term of this Agreement and for two years after the end of the last Individual Contract.

14 Miscellaneous Provisions

14.1 Export Control

- 14.1.1 Parts of the Deliverables may be subject to national and international export control laws, including the goods control regulations for dual-use items and the policies related to embargo/sanctions.
- 14.1.2 Customer agrees not to submit any Deliverable subject to export control without authorization by the respective government agency and the prior written consent of Anapaya. Neither shall the Deliverable be exported or re-exported, including deemed export, to countries, individuals or entities prohibited by such laws without the relevant governmental authorization has been received.
- 14.1.3 In addition, the Customer is responsible and ensures to comply with all applicable legal export control regulations as they may apply for the use of the Deliverable in their respective country.

14.2 Entire Agreement

- 14.2.1 This Agreement shall supersede all respective earlier arrangements, correspondence, declarations, negotiations, or undertakings of the Parties concerning the subject of the respective Agreement, unless the respective Agreement expressly make reference to the same. This also applies to offers, requests for tenders, and specifications.

14.3 Written Form

- 14.3.1 This Agreement and any amendments and supplements shall be made in writing and signed by both contracting parties in order to be valid. This formal requirement may itself only be waived by written agreement. Transmission by e-mail or any other equivalent form of electronic exchange or execution shall be deemed to comply with such form requirement. The Parties agree that the Agreement may be executed, exchanged, stored and processed by applying any form or simple or advanced e-signatures (e.g. DocuSign, etc.) and that such e-signatures shall comply with the form requirements set forth herein.

14.4 Force Majeure

- 14.4.1 Anapaya is not liable for damage caused by force majeure, such as earthquakes, avalanches, floods, power failure or malware (e.g. viruses, denial-of-service attacks and similar) acts of war, riots, unforeseeable official restrictions, etc. If Anapaya cannot fulfil its contractual obligations, the performance of the Agreement or the deadline for performing the same shall be postponed according to the force majeure event that has occurred. Anapaya shall not be liable for any losses incurred by the Customer because of the postponement of performance of the Agreement.

14.5 Assignment and Transfer

- 14.5.1 This Agreement and any rights and obligations arising thereof may only be transferred or assigned to third-parties upon prior written consent of the other contracting party, which may only be denied on important reasons.
- 14.5.2 For avoidance of doubt, the transfer or assignment to Affiliates is permitted without prior written consent of the other party.

14.6 Simple Partnership

- 14.6.1 The Parties agree that they are not forming a simple partnership (Art. 530 ff. CO) through the Agreement.
- 14.6.2 If, contrary to expectations, a simple partnership is adopted by the Parties, then the termination of the Agreement with which the simple partnership is associated shall result in the termination of the simple partnership at the same time.

14.7 Reference

- 14.7.1 Customer consents to the identification of Customer as a customer of Anapaya on Anapaya group's websites, and in other marketing materials distributed by Anapaya (which may include emails and other web and print materials) (collectively, "Anapaya Marketing Materials"). In connection with such activity, Anapaya may also display Customer's trademarks, service marks, and/or logos in Anapaya marketing materials. The foregoing shall be deemed a worldwide, nonexclusive and (except as set forth below) irrevocable license to the use of Customer's name, trademarks, service marks, and logos for this purpose. The Parties agree that such license and consent shall terminate upon termination of Partner's subscription to all Services.
- 14.7.2 In the case of using the trademark and logo for printed marketing material, Anapaya must preliminarily obtain Customer approval for "Good to Print".

14.8 Severability

- 14.8.1 If individual provisions or parts of the Agreement prove to be void or ineffective, the validity of the remaining parts of the Agreement shall not be affected. In such case, the contracting parties shall amend the Agreement in such way that the purpose of the void or ineffective parts is achieved as best as legally possible.

14.9 Applicable Law and Jurisdiction

- 14.9.1 This Agreement is governed by Swiss Law without reference to its conflict of law rules and principles.
- 14.9.2 The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.
- 14.9.3 Any dispute, controversy, or claim arising out of, or in relation to, this Agreement, including regarding the validity, invalidity, breach or termination thereof, shall be submitted to the exclusive jurisdiction of the courts of the city of Zurich, subject to the subsequent paragraph.
- 14.9.4 If the Customer is domiciled in a country other than Switzerland, a member state of the European Union or the European Economic Area, or the United Kingdom, any dispute, controversy, or claim arising out of, or in relation to, this Agreement, including regarding the validity, invalidity, breach or termination thereof, shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Arbitration Centre in force on the date on which the Notice of Arbitration is submitted in accordance with those Rules. The number of arbitrators shall be one or three; the seat of the arbitration shall be Zurich, Switzerland; the arbitral proceedings shall be conducted in English.

– END OF THE DOCUMENT –