

1. General

- 1.1. The general terms and conditions incorporated herein shall apply to every agreement (the "Agreement") regarding a Right of Use and/or the Services (as defined below) to be granted and/or delivered by Howaboutsals B.V. or any of its affiliates ("HAS") to a customer (the "Customer").
- 1.2. These general terms also apply to all agreements with the Customer, the execution of which calls for the services of third parties.

2. Application, Right of Use and Services

- 2.1. HAS has developed an application which enables companies to structure and monitor their sales process and might develop other applications (the "Application").
- 2.2. Under the terms of the Agreement, Customers can purchase a right from HAS that entitles them to access the Application online under (the "Right of Use") and parties can agree on certain services to be provided by HAS to the Customer such as, but not limited to, customization and support services in relation to the Application (the "Services").
- 2.3. Both the scope of the Right of Use and the scope of the Services are, when agreed upon, limited to what has been explicitly agreed upon in the Agreement.
- 2.4. If not explicitly agreed otherwise in the Agreement, the Application will be made available to Customers online as 'Software as a Service'.
- 2.5. For technical reasons, the parties might agree that the Application is (also) installed at the Customer's premises. In such case the parties agree with regard to the Software (as defined in clause 3.4.1 below) installed at the Customer's premises that:
 - 2.5.1. the Customer is granted a licence to the Software (the "Licence"), the scope of which is limited to the rights necessary to use the Application in accordance with the Right of Use;
 - 2.5.2. the Licence contains all rights that the Customer has under applicable mandatory law, such as the right to make 1 (one) copy of the Software for back-up purposes;
 - 2.5.3. the Licence is non-exclusive, non-sublicensable and non-transferable;
 - 2.5.4. the Customer is not entitled to any other upgrade, repair, modification or support services with regard to the Software than as explicitly stipulated in the Agreement as being part of the Services;

3. Scope Right of Use

- 3.1. Subject to the full payment of all fees with regard to the Right of Use (the "Subscription Fee") and the restrictions, as set out in the Agreement, the Right of Use of the Customer consists of a non-exclusive, non-transferable right to permit an in the Agreement agreed upon amount of users (the "Authorised Users"), to use the Application during the subscription term as determined in the Agreement, solely for the Customer's internal business operations.
- 3.2. The subscription term in clause 3.1 is initially 12 (twelve) months from the effective date of the Agreement (the "Effective Date") with automatic 12 (twelve) months renewals subject to 3 (three) months prior written termination.
- 3.3. In relation to the Authorised Users, the Customer undertakes that:
 - 3.3.1. the maximum number of Authorised Users that it authorises to access and use the Application shall not exceed the number it has purchased from time to time;
 - 3.3.2. each Authorised User shall keep a secure password for his use of the Application and that each Authorised User shall keep his password confidential;
 - 3.3.3. it shall maintain a written, up to date list of current Authorised Users and provide such list to HAS within 7 days of HAS' written request at any time;
 - 3.3.4. it shall not access, store, distribute or transmit any viruses, or any unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive material during the course of its use of the Application.
- 3.4. The Customer shall not except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
 - 3.4.1. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Application and the software vested therein (hereinafter together: the "Software") in any form or media or by any means; or
 - 3.4.2. attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
 - 3.4.3. access all or any part of the Software in order to build a product or service which competes with the Software; or
 - 3.4.4. license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software available to any third party except the Authorised Users.
- 3.5. The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Application and, in the event of any such unauthorised access or use, promptly notify HAS.
- 3.6. HAS shall use commercially reasonable endeavours to keep the Application available 24 hours a day, seven days a week, except for:
 - 3.6.1. planned maintenance carried out during the maintenance window of 10.00 pm to 6.00 am CET; and
 - 3.6.2. unscheduled maintenance performed outside the maintenance window identified above, provided that HAS has used reasonable endeavours to give the Customer at least 24 hours' notice in advance.
- 3.7. HAS will, as part of the Services and at no additional cost to the Customer, provide the Customer with HAS' standard customer support services during normal business hours in accordance with HAS' *support services policy* in effect at the time that the Services are provided. HAS may amend its support services policy in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at HAS' then current rates.

4. Customer data

- 4.1. The Customer shall own all rights, title and interest in and to all of the data inputted by the Customer, Authorised Users, or HAS on the Customer's behalf for the purpose of or while using the Application (the "Customer Data") and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the (processing of the) Customer Data.
- 4.2. HAS shall follow its archiving procedures for Customer Data and shall make regular back-ups of the Customer Data. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for HAS to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by HAS in accordance with its archiving procedure. HAS shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by HAS to perform services related to Customer Data maintenance and back-up).

5. Data Protection

- 5.1. Both parties will comply with all applicable requirements of the applicable national data protection legislation and the General Data Protection Regulation (EU) 2016/679 ("Regulation") and any other directly applicable European Union regulation relating to privacy (all together hereinafter referred to as "Data Protection Legislation"). Clause 5 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 5.2. The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and HAS is the processor of the Customer Data (where controller and processor have the meanings as defined in the Regulation). The data processing agreement ("Processing Agreement") attached as Schedule II to the Agreement sets out the scope, nature and purpose of processing by HAS, the duration of the processing and the types of Personal Data and categories of Data Subjects (as defined in the Regulation).

- 5.3. Without prejudice to the generality of clause 5.1, the Customer will ensure that and warrants it has all necessary appropriate consents, notices and other arrangements in place to enable lawful transfer of the Personal Data (including the Customer Data) to HAS for the duration and purposes of the Agreement.

6. Supplier's obligations

- 6.1. HAS undertakes that the Application will perform and that the Services are delivered as may be reasonably expected based on the documentation and other information made available by HAS as part of the Agreement.
- 6.2. The undertaking at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Application contrary to HAS's instructions, or modification or alteration of the Application by any party other than HAS or HAS's duly authorised contractors or agents. If the Application does not conform due to other causes than the foregoing, HAS will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1. Notwithstanding the foregoing, HAS:
 - 6.2.1. does not warrant that the Customer's use of the Application will be uninterrupted or error-free; nor that the services, documentation and/or the information obtained by the Customer through the Application will meet the Customer's requirements; and
 - 6.2.2. is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the use of the Application may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 6.3. HAS warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Agreement.

7. Customer's obligations

- 7.1. In addition to the timely fulfilment of all its obligations under the Agreement the Customer shall:
 - 7.1.1. provide HAS with all co-operation and information reasonably required for the execution of the Agreement; and
 - 7.1.2. comply with all applicable laws and regulations with respect to its activities under the Agreement, including but not limited to its obligations under the Data Protection Legislation as the controller of the Personal Data processed by HAS as a data processor;
 - 7.1.3. ensure that the Authorised Users use the Application in accordance with the terms and conditions of the Agreement and shall be responsible and liable for any Authorised User's breach of the Agreement;
 - 7.1.4. obtain and shall maintain all necessary licences, consents, and permissions necessary for HAS, its contractors and agents to perform their obligations under the Agreement, including without limitation the Services; and
 - 7.1.5. be solely responsible and liable for procuring and maintaining its network connections and telecommunications links from its systems to HAS's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

8. Charges and payment

- 8.1. The Customer shall pay the Subscription Fee and the fee for the Services (the "Service Fee") to HAS for the Right of Use in accordance with this clause 8.
- 8.2. HAS shall invoice the Customer as per the Effective Date for the Subscription Fee and the fee for the Services (the "Service Fee") as agreed upon in the Agreement.
- 8.3. The Customer shall pay each invoice within 30 (thirty) days after the date of such invoice.
- 8.4. If HAS has not received payment within 30 (thirty) days after the due date, and without prejudice to any other rights and remedies, HAS may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Application and HAS shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
- 8.5. All amounts and fees stated or referred to in the Agreement:
 - 8.5.1. shall be payable in euro;
 - 8.5.2. are non-cancellable and non-refundable;
 - 8.5.3. are exclusive of value added tax or any other taxes, which shall be added to HAS's invoice(s) at the appropriate rate.
- 8.6. If, at any time whilst using the Application, the Customer exceeds the rights it has been granted under the Right of Use, HAS shall charge the Customer, and the Customer shall pay, the fees applicable based on HAS' standard rates increased with interest and reasonable administrative costs.
- 8.7. At the start of each renewal term as identified in clause 3.2 HAS may automatically adjust the Subscription Fee in according with the latest official Belgian Consumer Price Index. In addition, HAS shall be entitled to increase the Subscription Fees upon 90 (ninety) days' prior notice to the Customer.

9. Proprietary rights

- 9.1. The Customer acknowledges and agrees that HAS and/or its licensors own all intellectual property rights in the Services, the Application and the Software ("HAS IPR"). Except as expressly stated herein, the Agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of HAS' IPR.
- 9.2. HAS acknowledges and agrees that the Customer and/or its licensors own all intellectual property rights in the Customer Data.
- 9.3. As part of the Services or the Right of Use the Application might be customized for the Customer (the "Personalisation"). The Personalisation is limited to the customization of the Customer specific settings of the Application and does not involve any material adjustments to the Software itself. The Personalisation and all results thereof are part of the Application and therefore HAS' IPR.
- 9.4. As part of the Services HAS may deliver certain specifically for the Customer developed deliverables to the Customer (the "Deliverables"). For the sake of clarity, the Application and the Software are explicitly excluded from the Deliverables. Subject to full payment of all invoices, HAS grants the Customer a perpetual, non-transferable, non-exclusive right to use, copy and modify the Deliverables in accordance with the terms of the Agreement. The Customer is entitled to use the Deliverables for its own internal business purposes only.

10. Acceptance

- 10.1. If an acceptance procedure has been agreed upon in writing, the acceptance period shall amount to 10 (ten) days after delivery or, if a phase to be implemented by HAS has been agreed upon in writing, after completion of the phase in question. During the acceptance period the Customer may not use the Application or Deliverables or other results of the Services for productive or operational purposes.
- 10.2. The Deliverables or other results of the Services shall be deemed to have been accepted by the Customer:
 - 10.2.1. on completion of the provision of Services, in case an acceptance test has not been agreed between parties;
 - 10.2.2. on the first day after the acceptance period, in case an acceptance test/period has been agreed between parties in writing;
 - 10.2.3. when the Customer notifies HAS in any way before the end of the acceptance period that the Deliverables or other results of the Services are accepted or that only imperfections remain that do not prevent this acceptance; or
 - 10.2.4. the Customer makes any use of the Services and/or any Deliverables provided, for productive or operational purposes before the formal moment of acceptance.
- 10.3. If, within 10 (ten) days after delivery, the Customer has not provided to HAS written notice identifying specifically any basis for not approving the Services or Deliverables, all Services and Deliverables submitted to the Customer for approval shall be deemed accepted.

- 10.4. If the Customer does not accept the provision of the Services and/or the Deliverables, then the Customer and HAS will together draft a list with those errors that prevent the Services and/or Deliverables from being accepted by the Customer. HAS will remedy these errors within a reasonable time. With HAS having proved the remedy of all errors of the list the Services and/or the Deliverables are deemed to be accepted.
- 10.5. When HAS has not succeeded in remedying all errors within a reasonable period, parties will discuss any possible next steps.
- 10.6. If the Services are provided in phases, the non-acceptance of a certain phase shall be without prejudice to any acceptance of an earlier phase.

11. Confidentiality

- 11.1. Each party may be given access to confidential information from the other party ("Confidential Information") in order to perform its obligations under the Agreement. A party's Confidential Information shall not be deemed to include information that:
- 11.1.1. is or becomes publicly known other than through any act or omission of the receiving party;
 - 11.1.2. was in the other party's lawful possession before the disclosure;
 - 11.1.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - 11.1.4. is independently developed by the receiving party, which independent development can be proven by written evidence; or
 - 11.1.5. is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 11.2. Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of the Agreement.
- 11.3. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the Agreement.
- 11.4. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 11.5. HAS acknowledges that the Customer Data is the Confidential Information of the Customer.
- 11.6. This clause 11 shall survive termination of the Agreement, however arising.

12. Indemnity

- 12.1. The Customer shall defend, indemnify and hold harmless HAS against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the – processing of the – Customer Data or related to use of the Application and/or Services in a manner not permitted under the Agreement, provided that:
- 12.1.1. the Customer is given prompt notice of any such claim;
 - 12.1.2. HAS provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - 12.1.3. the Customer is given sole authority to defend or settle the claim.
- 12.2. HAS shall, subject to clause 13, defend the Customer, its officers, directors and employees against any claim that HAS' IPR infringes any EU patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
- 12.2.1. HAS is given prompt notice of any such claim;
 - 12.2.2. the Customer provides reasonable co-operation to HAS in the defence and settlement of such claim, at HAS' expense; and
 - 12.2.3. HAS is given sole authority to defend or settle the claim.
- 12.3. In the defence or settlement of any claim, HAS may procure the right for the Customer to continue using the Services and/or the Application, or replace or modify the Services and/or Application so that they become non-infringing or, if such remedies are not reasonably available, terminate the Agreement on 7 (seven) days notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 12.4. In no event shall HAS, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- 12.4.1. a modification of the Services, Application or Software by anyone other than HAS; or
 - 12.4.2. the Customer's use of the Services or Application in a manner contrary to the instructions given to the Customer by HAS; or
 - 12.4.3. the Customer's use of the Services or Application after notice of the alleged or actual infringement from HAS or any appropriate authority.
- 12.5. The foregoing states the Customer's sole and exclusive rights and remedies, and HAS' (including HAS' employees, agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

13. Limitation of liability

- 13.1. Except as expressly and specifically provided otherwise in the Agreement:
- 13.1.1. the Customer assumes sole responsibility for results obtained from the use of the Services and the Application by the Customer, and for conclusions drawn from such use;
 - 13.1.2. all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Agreement; and
 - 13.1.3. the Services, the Application, the Software and the Deliverables are provided to the Customer on an "as is" basis.
- 13.2. Except in case of gross negligence or wilful misconduct of HAS or its directors, HAS' total aggregate liability arising in connection with the Agreement:
- 13.2.1. excludes any loss of profits, loss of business, loss of goodwill, loss or corruption of data or information and any special, indirect or consequential loss, costs or damages however arising under the Agreement; and
 - 13.2.2. shall be limited to direct damages up to the total fees paid under the Agreement during the 12 (twelve) months immediately preceding the date on which the claim arose.

14. Term and termination

- 14.1. Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate (*ontbinden*) the Agreement without liability to the other if:
- 14.1.1. the other party commits a breach of any of the essential obligations of the Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
 - 14.1.2. an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors.
- 14.2. On termination of the Agreement for any reason:
- 14.2.1. the Right of Use shall immediately terminate;
 - 14.2.2. each party shall return and make no further use of any equipment, property, Confidential Information and other items (and all copies of them) belonging to the other party; and
 - 14.2.3. HAS may destroy or otherwise dispose of any of the Customer Data in its possession unless HAS receives, no later than 10 (ten) days after the effective date of the termination of the Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. HAS shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 (thirty) days of receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination.

15. Force majeure

- 15.1. HAS shall have no liability to the Customer under the Agreement if it is prevented from or delayed in performing its obligations under the Agreement, or from carrying on its business, by acts, events, omissions or accidents due to force majeure, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of HAS or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious

damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

16. Severance

- 16.1. If any provision (or part of a provision) of the Agreement is found to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 16.2. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted and/or modified, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

17. Governing law and jurisdiction

- 17.1. The Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the laws of the Netherlands. The Vienna Sales Convention shall be explicitly excluded.
- 17.2. The parties irrevocably agree that the courts of Amsterdam, the Netherlands have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Agreement.

18. General

- 18.1. The Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 18.2. The Customer shall not, without the prior written consent of HAS, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.
- 18.3. HAS may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.
- 18.4. Nothing in the Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).