

## Anywhere365 Dialogue Cloud Agreement

This Software as a Service Agreement ("Agreement") is entered into by CUSTOMER on the Effective Date, either directly with WSP or indirectly through a Partner, and governs CUSTOMER's purchase and use of proprietary SaaS Services, as identified in an Order (all as defined below).

Note that by executing an Order for the purchase of SaaS Services or otherwise using the SaaS Services, CUSTOMER shall be deemed to confirm its acceptance of this Agreement and CUSTOMER's agreement to be a party to this binding contract.

This Agreement shall be interpreted and applied in accordance with Sections 1 and 2.

### 1 INTERPRETATION AND DEFINITIONS.

1.1 In this Agreement, unless the context otherwise requires:

1. Reference to the parties include their respective successors and permitted assigns;
2. Words in the singular include the plural and in the plural include the singular;
3. Headings are for ease of reference only;
4. Any reference to "Agreement" also refer to any amendment or supplement to it;
5. The term "including" means including without limitation;
6. Capitalised words, phrases and acronyms shall have the meanings given to them in the Agreement or shall have their ordinary (technical or other) meaning; and
7. Parties have expressly required the Agreement to be drawn up in English.

1.2 In the case of a conflict between any provision of this SaaS Agreement and any other contract documents, the following descending order of precedence shall apply: (1) the provisions of the body of this SaaS Agreement, (2) the provisions of the attachments, annexes or schedules and (3) the provisions of the Order. In case of a conflict between the provisions of the Service Level Agreement and the provisions of the SaaS Agreement, the latter shall prevail.

1.3 "Affiliate" means any entity which directly or indirectly controls, is controlled by, or is under common control of the parent company of, as appropriate, CUSTOMER Group or WSP Group. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

1.4 "Agreement" means (as the context requires): (i) this SaaS Agreement (including the Exhibits attached hereto), or (ii) the agreement described under (i) and all Orders, further agreements and other contract documents (taken together).

1.5 "Confidential Information": means all information in any medium or format (including written, oral, visual or electronic, and whether or not marked or described as "confidential"), together with all copies, which relates to a party (the "Disclosing Party") or to its employees, officers, customers or suppliers, and which is directly or indirectly disclosed by the Disclosing Party to the other party (the "Receiving Party") in the course of their dealings relating to this Agreement, whether before or after the date of this Agreement. However, the following information is not "Confidential Information" for the purposes of this Agreement: (i) information which is in the public domain other than as a result of breach of this Agreement or any separate confidentiality undertaking between the parties; (ii) information which the Receiving Party received, free of any obligation of confidence, from a third party which itself was not under any obligation

- of confidence in relation to that information; and (iii) information which was developed or created independently by or on behalf of the Receiving Party.
- 1.6** "CUSTOMER" means the (potential) counter party of WSP that entered into an Agreement or (directly or indirectly) entered into any negotiations regarding such Agreement.
  - 1.7** "Content" means information rightfully obtained by WSP from publicly available sources or its third party content providers and made available to CUSTOMER through the Services, beta Services or pursuant to an Order, as more fully described in the Documentation.
  - 1.8** "Customer Data" means electronic data provided by or on behalf of the CUSTOMER or CUSTOMER Group (or its End Users) to WSP's Host via the SaaS Services and excluding any Content. For clarity purposes, Customer Data is the confidential information of CUSTOMER.
  - 1.9** "CUSTOMER Group" means CUSTOMER and its Affiliates including CUSTOMER.
  - 1.10** "Data Protection Agreement" or "DPA" means the specific provisions to be agreed between the parties pursuant to Section 11.1, if any, for processing of personal data by WSP on behalf of CUSTOMER.
  - 1.11** "Data Protection Laws" means in relation to any personal data (if any) which is processed in the performance of this SaaS Agreement, the applicable (local) law(s) or any other (local) regulations, guidelines or policies, instructions or recommendations of any competent governmental authority, including any amendments, replacements, updates or other later versions thereof.
  - 1.12** "Documentation" means the user guides, tutorials, online help, release notes, printed instructions, reference manuals, requirements and other explanatory materials developed by WSP regarding the use or operation of the SaaS Services.
  - 1.13** "End User" means, as applicable and unless stated otherwise herein, any person or entity (including, for the avoidance of doubt, any employee or agent of CUSTOMER) authorized by CUSTOMER to access or use the Products.
  - 1.14** "Fees" means in respect of each Agreement, the total sum of fees and charges payable by the CUSTOMER for Products and/or Services as specified in the relevant Order(s) or (if appropriate) to be calculated by WSP based on the most current version of the Pricebook.
  - 1.15** "Host" means the computer equipment on which the WSP Software is installed, which is owned and operated by WSP or its subcontractors.
  - 1.16** "Object Code" means the form of WSP Software wherein computer programs are assembled or compiled in magnetic or electronic binary form on software media, which are readable and usable by machines, but not generally readable by humans without reverse-assembly, reverse-compiling, or reverse-engineering.
  - 1.17** "Operational Readiness" means the SaaS platform is operational and ready for configuration.
  - 1.18** "Orders" means an order referencing this Agreement as may be agreed from time to time with WSP (or a Partner) identifying the SaaS Services, Fees and other details of each transaction that is subject to and governed by this Agreement. An Order may consist of either (a) a schedule, quotation, or statement of work that has been signed by both CUSTOMER and WSP (or a Partner), and/or (b) if applicable, a purchase order issued by CUSTOMER pursuant to this Agreement.
  - 1.19** "Partner" means a third party that is authorised by WSP on the basis of a separate and valid agreement, to resell the Products and Services to certain End Users.
  - 1.20** "Pricebook" means the pricelist issued by WSP to the general business community and/or public as the centralised source of pricing information and license metric (such as, without limitation, the license type) for all Products and Services and other items, all as may be amended from time to time by WSP.
  - 1.21** "Premium Plus Support" means Standard Support that is optionally upgraded by CUSTOMER, against the execution of an Order, to 24/7 accessibility only for incidents with the highest priority.
  - 1.22** "Products" means the WSP Software and including the SaaS Services.
  - 1.23** "SaaS Services" means the subscription cloud-based services identified in the Order and that are hosted by WSP or its service provider and made available to CUSTOMER (Group) over a network on a term-use basis, as may be amended by WSP from time to time.
  - 1.24** "Services" means any services provided or to be provided by or on behalf of WSP pursuant to this Agreement, as identified in an Order.
  - 1.25** "Service Levels" means the service levels as included the Agreement.
  - 1.26** "Standard Support" means the provision of technical support for issues related to the performance of the WSP Software and reported by CUSTOMER or its End Users through a web based ticket system with a response provided on weekdays between 08:00h and 18:00h CET. Standard Support may require the execution by CUSTOMER of a an Order. If WSP, at its sole discretion, determines that an issue is solely caused by a malfunction of the WSP Software, WSP will resolve the issue free of charge. In all other

situations, WSP's or (if appropriate) Partner's assistance in remediating the issues identified will be charged to CUSTOMER subject to CUSTOMER's execution of a separate.

- 1.27 "Start Date" means, unless agreed otherwise in the Order, when CUSTOMER is informed by WSP about Operational Readiness of the Products. Operational readiness means the SaaS Services platform is operational and ready for configuration.
- 1.28 "Subscription Period" means the period described in Section 3.7.
- 1.29 "Support Services" means any Standard Support, Premium Plus Support or other services in support of the SaaS services provided or to be provided by or on behalf of WSP pursuant to this Agreement, as identified in an Order.
- 1.30 "Third Party Software" means, if appropriate, the software referred to as redistributable code that is licensed to WSP by third party licensors for redistribution with the WSP Software. The redistributable code is the property of WSP's licensors, and protected under international copyright, trade secret or other proprietary rights laws, and international treaties.
- 1.31 "Term" means any initial term or any renewal term of the Agreement as mutually agreed to by the parties in writing from time to time.
- 1.32 "WSP" means, unless agreed otherwise in the Order, WORKSTREAMPEOPLE B.V. with its registered offices at Van Nelleweg 1, Building 9C, 3044 BC Rotterdam, The Netherlands.
- 1.33 "WSP Group" means Anywhere365 Group B.V. and its Affiliates its in each case from time to time.
- 1.34 "WSP Software" means, as applicable, the Object Code form of WSP Anywhere365 Suite or such other WSP software products to which CUSTOMER is provided access as part of the Services, as may be identified in an Order, and shall be deemed to include the Documentation for such WSP Software, the license keys, clip art, fonts and multimedia files included in such WSP Software, their related software options, software extensions, enhancement, upgrades, updates, and Third Party Software integrated into such identified products.

## 2 APPLICABILITY

- 2.1 This SaaS Agreement shall govern all quotes, and Orders between CUSTOMER and WSP for SaaS Services. For all other Products and Services, the EULA available via WSP's web site <https://anywhere365.io/terms-conditions/>, shall govern the relevant (non-SaaS) quotes, and Orders between CUSTOMER and WSP. The SaaS Agreement is also applicable to the negotiations regarding such quotes or agreements, even if said negotiations do not result in the conclusion of an Agreement and will accordingly apply to all future trading relationships with WSP, even if they are not communicated as new. By using the SaaS Services, CUSTOMER agrees to be bound unconditionally by the terms and conditions of this Agreement.
- 2.2 The applicability of any general terms and conditions of CUSTOMER or Partner to any quote, Order or other agreement, said negotiations or the relationship in general, is hereby excluded. Regardless of their form, deviations from or supplements to the Agreement shall only apply if parties explicitly agree to the same in writing.

## 3 SAAS SERVICES, RESTRICTIONS AND TERM

- 3.1 **Provision of SaaS Services.** Subject to the terms, restrictions and limitations set forth in the Agreement, WSP hereby grants to CUSTOMER a non-exclusive, non-transferable, non-sublicensable, terminable license to access and use (and to permit its End Users to access and use) the SaaS Service during the Subscription Period in accordance with the Documentation, solely for Customer Group's internal business operations. CUSTOMER agrees that its purchase of the Services is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by WSP with respect to future functionality or features.
- 3.2 **Required software.** CUSTOMER acknowledges that use of the SaaS Service may require the installation of software as a pre-requisite for using the SaaS Service, as specified in the Documentation and/or as advised by WSP or Partner from time to time ("Required Software") CUSTOMER agrees to install such Required Software, including any required updates if and when available at its own cost.
- 3.3 **End Users.** Customer is responsible for all activities conducted by it or through the accounts of its End Users on the SaaS Service. CUSTOMER shall ensure that the End Users shall abide by the terms of this Agreement. Any breach by an End User will be deemed to be a breach by CUSTOMER. WSP may terminate or suspend any End User's access to the SaaS Service for any breach without notice.
- 3.4 **Restrictions.** CUSTOMER and its End Users shall not, and shall not permit any third party to: (i) copy or republish the SaaS Services or Software, (ii) make the SaaS Services available to any person other than properly authorised End Users, (iii) use or access the SaaS Services to provide service bureau, time-sharing or other computer hosting services to third parties, (iv) modify or create derivative works based

upon the SaaS Services or Documentation, (v) remove, modify or obscure any copyright, trademark or other proprietary notices contained in the software used to provide the SaaS Services or in the Documentation, (vi) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code of the Software used to provide the SaaS Services, except and only to the extent such activity is expressly permitted by applicable law, or (vii) access the SaaS Services or use the Documentation in order to build a similar product or competitive product. Subject to the limited licenses granted herein, WSP shall own all right, title and interest in and to the Software, services, Documentation, and other deliverables provided under this SaaS Agreement, including all modifications, improvements, upgrades, derivative works and feedback related thereto and intellectual property rights therein. Customer agrees to assign all right, title and interest it may have in the foregoing to WSP.

- 3.5 Service Level Agreement.** The Service Level Agreement for the production instance of the SaaS Service available via WSP’s web site <https://anywhere365.io/terms-conditions/>, as may be amended by WSP from time to time.
- 3.6 Customer feedback.** WSP may from time to time request CUSTOMER to provide certain information or content by which the End User can be identified when using the SaaS Service including the control panel, and the registration functionality that are compatible with the WSP Software. WSP will only use and protect such information in accordance with the DPA. WSP shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the SaaS Services any suggestions, enhancement requests, recommendations or other feedback provided by Customer, including End Users, relating to the operation of the SaaS Services.
- 3.7 Term and Subscription Period.** The term of this SaaS Agreement shall begin on the Effective Date and shall continue until terminated by either party in accordance with the terms of this Agreement. Each Order shall identify the Start Date and the initial subscription term applicable to the SaaS Service (“Initial Subscription Period”). At the end of the Initial Subscription Period the SaaS Services subscription can be renewed for subsequent periods against the execution of a follow-on Order (collectively, “Subscription Period”).

**4 CUSTOMER RESPONSIBILITIES**

- 4.1 Assistance.** CUSTOMER shall provide commercially reasonable information and assistance to WSP to enable WSP to deliver the SaaS Services. Customer acknowledges that WSP’s ability to deliver the SaaS Services in the manner provided in this SaaS Agreement may depend upon the accuracy and timeliness of such information and assistance.
- 4.2 Compliance with Laws.** CUSTOMER shall comply with all applicable local, state, national and foreign laws in connection with its use of the SaaS Services, including those laws related to data privacy, international communications, and the transmission of technical or personal data. Customer acknowledges that WSP exercises no control over the content of the information transmitted by CUSTOMER through the SaaS Services including the Customer Data. CUSTOMER shall and ensure the End Users shall not upload, post, reproduce or distribute any information, software or other material protected by copyright, trade secret, trade mark, privacy rights, or any other intellectual property right without first obtaining the permission of the owner of such rights.
- 4.3 Acceptable Use and ID Information.** Customer shall: (i) notify WSP immediately of any unauthorised use of any password or user id or any other known or suspected breach of security, (ii) report to WSP immediately and use reasonable efforts to stop any unauthorised use of the SaaS Services that is known or suspected by CUSTOMER or any End User, and (ii) not provide false identity information to gain access to or use the SaaS Services.
- 4.4 Administrator Access.** CUSTOMER shall be solely responsible for the acts and omissions of its End Users with an administrator role. WSP shall not be liable for any loss of data or functionality caused directly or indirectly by the administrator End Users.
- 4.5 Customer Data.** Except for WSP’s obligations described in Section 6 and Section 11, CUSTOMER shall have sole responsibility for: (i) the accuracy, quality, and legality of the Customer Data and the means by which Customer acquired the Customer Data and the right to provide the Customer Data for the purposes of this SaaS Agreement (including ensuring the receipt of all permissions from individuals and other third parties as may be necessary in order to provide the Customer Data for the purposes contemplated in this SaaS Agreement); (ii) the security and confidentiality of CUSTOMER’s and its End Users’ account information; (iii) maintaining a back-up of all Customer Data; (iv) preventing unauthorized access to, or use of, the Services, and notify WSP promptly of any such unauthorized access or use; (v) collecting, inputting and updating all Customer Data stored on the Host, (vi) ensuring that

the Customer Data does not include anything that actually or potentially infringes or misappropriates the copyright, trade secret, trademark or other intellectual property right of any third party or contain anything that is obscene, defamatory, harassing, offensive or malicious, and (vii) collecting and handling all Customer Data in compliance with all applicable Data Protection Laws, rules, and regulations.

- 4.6 **License from Customer.** Subject to the terms and conditions of this SaaS Agreement, CUSTOMER shall grant to WSP a limited, non-exclusive and non-transferable license, to copy, store, configure, perform, display and transmit Customer Data solely as necessary to provide the SaaS Services to CUSTOMER.
- 4.7 **Ownership and Restrictions.** CUSTOMER retains ownership and intellectual property rights in and to its Customer Data, WSP or its licensors retain all ownership and intellectual property rights to the services, Software programs, and anything developed and delivered under the SaaS Agreement.

**5 FEES, PAYMENT AND TAXES.**

- 5.1 **SaaS Service Fee.** During the Term, starting from the Start Date, CUSTOMER agrees to pay the annual fixed fee for the SaaS service and/or fee for the Support Service, all as specified in the Order (or if no order was agreed, the then current Pricebook will apply)..
- 5.2 **Outbound Fees.** If CUSTOMER has authorised the use of outbound capabilities for the SaaS service, CUSTOMER agrees that WSP will charge the fees for consumption by End Users including a 20% administration fee.
- 5.3 **Payment and Payment term.** CUSTOMER shall pay an invoice from WSP within 30 days from the date of issuance. WSP shall issue its invoice when: (a) it receives the Order from CUSTOMER, (b) the agreed (periodic) invoice date(s) has (have) elapsed. A late payment charge of the lesser of 1.5% per month or the highest interest rate allowed by applicable law will be charged upon all past due amounts hereunder.
- 5.4 **Suspension.** If any amounts owing by CUSTOMER under this Agreement are thirty (30) or more days overdue, WSP may, without limiting WSP's rights and remedies, suspend the Services to CUSTOMER and/or limit access to Products until such amounts are paid in full. WSP will give at least ten (10) days prior notice that CUSTOMER's account is overdue before any suspension.
- 5.5 **Taxes and Duties.** Prices to CUSTOMER do not include taxes, duties, tariffs, handling fees, or other such assessments of any nature. Whenever imposed, such assessments are payable by CUSTOMER. Income or other taxes that are required to be paid or withheld by CUSTOMER or WSP under the laws of jurisdictions other than The Netherlands, in connection with the Fees paid by CUSTOMER hereunder, are the sole obligation of CUSTOMER and shall be exclusive of the Fees paid by CUSTOMER.

**6 CONFIDENTIAL INFORMATION, TITLE AND COPYRIGHTS.**

- 6.1 **Confidential Information.** Each Disclosing Party shall maintain strict confidentiality with regard to any Confidential Information disclosed to the Receiving Party. It shall deploy such procedures with regard to Confidential Information that shall be no less restrictive than the strictest procedures used by it to protect its own confidential and proprietary information, but not less than reasonable care. Each party acknowledges that a breach of this obligation will constitute a material breach of the Agreement and will lead to liability on its part. Each party shall ensure that its personnel or (the personnel of) any sub-contractors are advised of the confidential and proprietary nature of the Confidential Information and are bound in writing to confidentiality obligations no less strict than as set out in this Agreement. During the term of this SaaS Agreement, any Confidential Information disclosed will be protected for a period of three (3) years from date of disclosure (perpetually in the case of intellectual property), each party shall treat as confidential all Confidential Information of the other party, shall not use such Confidential Information except to exercise its rights and perform its obligations under this SaaS Agreement, and shall not disclose such Confidential Information to any third party. Without limiting the foregoing, each party shall use at least the same degree of care, but not less than a reasonable degree of care, it uses to prevent the disclosure of its own confidential information to prevent the disclosure of Confidential Information of the other party. Neither party shall reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody the other party's Confidential Information and which are provided to the party hereunder.
- 6.2 **Notifications.** Each party shall promptly notify the other party of any actual or suspected misuse or unauthorised disclosure of the other party's Confidential Information.
- 6.3 **Title.** CUSTOMER acknowledges that the WSP Software (including , any enhancements, modifications, additions) contains confidential information of, are trade secrets of, and are proprietary to WSP and its licensors. CUSTOMER shall not assert any right, title or interest in the WSP Software or other materials

provided to CUSTOMER under this Agreement, except for the limited license rights expressly granted to CUSTOMER in Section 3.

- 6.4 Copyright.** CUSTOMER shall not obscure or remove any copyright or other proprietary notice or legend contained on or included in the WSP Software and shall reproduce all such information on all copies made hereunder. CUSTOMER shall not, directly or indirectly, disclose or distribute any technical information of WSP provided with or in the WSP Software without the prior written consent of WSP, which consent may be withheld at WSP's sole discretion.

**7 LIMITED WARRANTIES.**

- 7.1 Product Warranty.** Provided that CUSTOMER is not in breach of any of its obligations under this Agreement, WSP warrants from the Start Date that (i) WSP has validly entered in this SaaS Agreement and has the legal power to do so, (ii) WSP will provide the SaaS Services in a professional manner consistent with general industry standards and that the SaaS Services will perform substantially in accordance with the Documentation and (iii) the overall functionality of the SaaS Services will not materially decrease during the subscription term.
- 7.2 Disclaimer of Warranties.** WSP and its licensors make no warranty, representation or promise except as specifically set forth in this Agreement. to the fullest extent permitted by law, WSP does not guarantee that the SaaS Services will: (i) be performed error-free or uninterrupted, or (ii) that WSP will correct all SaaS Services errors, or (iii) will satisfy CUSTOMER's requirements. CUSTOMER acknowledges that WSP does not control the transfer of data over communications facilities, including the Internet, and that the SaaS Service may be subject to limitations, delays, and other problems inherent in the use of such communications facilities. This Section 7 sets forth the sole and exclusive warranty given by WSP (express or implied) with respect to the subject matter of this SaaS Agreement. Neither WSP nor any of its licensors or other suppliers warrant or guarantee that the operation of the SaaS Services will be uninterrupted, virus-free or error-free, nor shall WSP or any of its service providers be liable for unauthorised alteration, theft or destruction of CUSTOMER's or any User's data, files, or programs
- 7.3 Exclusive Remedy.** As CUSTOMER's sole and exclusive remedy and WSP's entire liability for any breach of the warranty set forth in Section 7.1, CUSTOMER's exclusive remedy shall be as provided in Section 10.
- 7.4 Exclusions from Warranty.** The limited warranty is void if non-conformance of the WSP Software results from or is related to the:
1. factors outside of our reasonable control (for example, natural disaster, war, acts of terrorism, riots, government action, or a network or device failure outside our control);
  2. use of hardware, or software not provided or not approved (as recommended in the Documentation) by or on behalf of WSP, including, but not limited to, issues from inadequate bandwidth, high latency or related to third-party software or services resulting
  3. use of WSP Software after advice was given to modify your use of the WSP Software and provided CUSTOMER did not modify its use as advised;
  4. unauthorized action or lack of action when required, or from CUSTOMER's employees, agents, contractors, or vendors, or anyone gaining access to WSP's network by means of CUSTOMER's passwords or equipment, or otherwise resulting from a failure attributable to CUSTOMER to follow appropriate security practices;
  5. CUSTOMER's failure to adhere to any required configurations, install Required Software, use supported platforms, follow any policies for acceptable use, or CUSTOMER's use of the SaaS Services in a manner inconsistent with WSP's published guidance;
  6. CUSTOMER's faulty input, instructions, or arguments (for example, requests to access files that do not exist);
  7. CUSTOMER's attempts to perform operations that are not permitted or supported by the Documentation; or
  8. Products or Services for which CUSTOMER at the time of the claim has not or not fully paid.
- 7.5 Try & Buy.** If the WSP Software is purchased as a trial or evaluation version, a limited license will be granted to use certain key functionality of the Software on an "AS IS" basis for your own internal evaluation purposes and during a limited period of maximum thirty (30) calendar days and otherwise subject to the express limitations of the trial. Unless CUSTOMER and WSP agree otherwise in writing prior

to the expiration or termination of the trial period, CUSTOMER agrees to cease all use of the WSP Software & Services.

**8 LIMITATION OF LIABILITY.**

**8.1** WITHOUT PREJUDICE TO SECTION 8.2 BELOW, TO THE MAXIMUM EXTENT PERMITTED BY LAW, WSP'S AGGREGATE LIABILITY ARISING FROM OR RELATING TO THE LICENSE, PRODUCTS OR SERVICES PROVIDED UNDER THIS AGREEMENT, IRRESPECTIVE OF THE NATURE OF THE CLAIM, IS LIMITED TO THE FEES ACTUALLY PAID OVER THE CONTRACT YEAR (EXCLUSIVE VAT) IN WHICH THE DAMAGE CAUSING EVENT OR, IN CASE OF A SERIES OF RELATED EVENTS, THE FIRST DAMAGE CAUSING EVENT OCCURRED OR COMMENCED.

**8.2** IN NO EVENT SHALL WSP OR ITS LICENSORS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS). IT IS SPECIALLY UNDERSTOOD AND AGREED THAT WSP EXCLUDES LIABILITY FOR ANY FAILURE BY WSP TO MEET AGREED SERVICE LEVELS FOR THE SAAS SERVICE AS A RESULT OF NETWORK INTRUSIONS AND/OR INCIDENTS ATTRIBUTABLE TO CRITICAL IT SERVICE PROVIDERS INCLUDING MICROSOFT CORP (AZURE). SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMIT ACTION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY. ANY LIMITATION OR EXCLUSION OF LIABILITY AS SET OUT IN SECTION 8.1 OF THE AGREEMENT SHALL NOT APPLY IN SO FAR AS THE DAMAGE IS CAUSED BY: (I) GROSS NEGLIGENCE OR WILFUL MISCONDUCT OF THE SENIOR MANAGEMENT OF WSP, OR (II) PERSONAL OR FATAL INJURY, OR (III) IP INFRINGEMENT CLAIMS AS DESCRIBED IN SECTION 9.1.

**9 INDEMNITIES AND CUSTOMER OBLIGATIONS**

**9.1 Infringement Indemnity:** Subject to Section 9.2 and the restrictions and limitations set forth herein, WSP shall indemnify and hold harmless CUSTOMER from and against any costs or demands awarded against CUSTOMER by a court of competent jurisdiction pursuant to a final judgment as a result of a claim or action by a third party against CUSTOMER that the SaaS Service or Documentation infringes a registered copyright, trademark, valid patent or other intellectual property right of a third party in North America, European Economic Area or Japan. The foregoing indemnity is conditioned on CUSTOMER:

- A. promptly notifying WSP of such claim;
- B. permitting WSP to control the response thereto and the defence thereof, including any agreement relating to the settlement thereof, and
- C. assisting and cooperating with WSP in the defence or settlement thereof. CUSTOMER may participate, at its own expense, in such defence directly or through counsel of its choice on a monitoring, non-controlling basis. WSP shall obtain CUSTOMER's prior written consent to any compromise or settlement of any claim which would require an admission of liability on the part of CUSTOMER or which would subject CUSTOMER to any injunction or other equitable relief.

**9.2 CUSTOMER Indemnity.** If a third party makes a claim against WSP that the Customer Data infringes any patent, copyright or trademark, or misappropriates any trade secret, CUSTOMER shall defend WSP and its directors, officers and employees against the claim at CUSTOMER's expense and CUSTOMER shall pay all Loss finally awarded against such parties or agreed to in a written settlement agreement signed by CUSTOMER, to the extent arising from the claim.

**9.3 Exclusions.** WSP shall have no obligation under Section 9.1, and otherwise will have no liability for, any claim of infringement caused or alleged to be caused by:

- A. the Customer Content;
- B. modification of the SaaS Services not authorised by WSP, or;
- C. use of the SaaS Services other than in accordance with the Documentation and this SaaS Agreement.

**9.4** WSP may, at its sole option and expense, procure for CUSTOMER the right to continue use of the SaaS Services, modify the SaaS Services in a manner that does not materially impair the functionality, or

terminate the subscription/ Term and repay to CUSTOMER any amount paid by CUSTOMER with respect to the subscription following the termination date.

**9.5 Exclusive Remedy:** Without prejudice to section 9.3, the foregoing Sections 9.1 and 9.2 set forth the exclusive remedy and entire liability and obligation of WSP with respect to third party claims against CUSTOMER alleging intellectual property infringement or misappropriation.

**9.6 Injunctions.** In the event that a claim of infringement of a valid North American, European Economic Area or Japanese software patent or copyright is made against WSP or CUSTOMER or if WSP reasonably believes that such a claim will be made, WSP, at its option and in lieu of indemnification, may:

- A. procure for CUSTOMER the right to use the WSP Software without patent or copyright infringement;
- B. modify the WSP Software to make it non-infringing;
- C. replace the WSP Software with substantially equivalent software that is non-infringing; or
- D. direct CUSTOMER to cease use of the WSP Software, and refund to CUSTOMER a percentage of the aggregate fees received for such WSP Software that are the subject of such a claim, based on a five (5) year straight line depreciation.

**9.7 CUSTOMER Obligations.** CUSTOMER is solely responsible for:

- A. its use of the SaaS Services, including ensuring a level of security appropriate to the risk in respect of the Customer Data, securing its account authentication credentials, protecting the security of Customer personal data when in transit to and from the SaaS Services, taking appropriate steps to securely encrypt and/or backup any Customer personal data uploaded to the SaaS Services, and properly configuring the SaaS Services and using available features and functionalities to maintain appropriate security in light of the nature of the Customer personal data processed by CUSTOMER's use of the SaaS Services; and
- B. the Customer Data that CUSTOMER (Group) elects to store or transfer outside of WSP's and (if appropriate) its sub-processors' systems (for example, offline or on-premise storage). WSP has no obligation to protect such data; and
- C. reviewing the security measures and evaluating for itself whether the SaaS Services and the security measures and WSP's commitments in respect of data processing will meet CUSTOMER's needs, including with respect to any obligations of CUSTOMER under data protection laws, as applicable.
- D. not allowed to give any third parties/agents access to Products and/or SaaS Services provided to the CUSTOMER which are hosted by or on behalf of WSP. CUSTOMER shall, during the Term, allocate sufficient third party software licenses as required to run (as appropriate) the WSP Software or the Software as a Service in accordance with the Documentation.

## **10 TERMINATION.**

**10.1 Termination for Breach.** Each party will have the right to terminate this Agreement (in whole or in part) at any time by giving written notice to the other party if (i) the other party breaches any material term of this Agreement and fails to cure such breach within thirty (30) days after written notice thereof; (ii) the other party repeatedly breaches any terms of this Agreement in such manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement, (iii) if any of the following events occur: (a) the presentation of a petition for winding up (b) is the subject of an order or an effective resolution is passed for winding up; (c) the application for an order or application for the appointment of a receiver (including an administrative receiver), administrator, trustee or similar officer in respect thereof; (d) if a receiver, administrative receiver, administrator or similar office is appointed over all or any part of the assets or undertaking; (e) making a composition with its creditors generally or an assignment for the benefit of its creditors or other similar arrangement; (f) goes into liquidation; or (g) ceasing, or threatening to cease, to carry on business.

**10.2 Suspension for Non-Payment.** WSP reserves the right to suspend delivery of the SaaS Services if CUSTOMER fails to timely pay any undisputed amounts due to WSP under the Agreement, but only after WSP notifies CUSTOMER of such failure and such failure continues for thirty (30) days or more after the payment due date. Suspension of the SaaS Services shall not release CUSTOMER of its payment obligations under this SaaS Agreement. CUSTOMER agrees that WSP shall not be liable to CUSTOMER or



to any third party for any liabilities, claims or expenses arising from or relating to suspension of the SaaS Services resulting from CUSTOMER's non-payment.

**10.3 Suspension for Ongoing Harm.** WSP reserves the right to suspend delivery of the SaaS Services if WSP reasonably concludes that CUSTOMER or an End User's use of the SaaS Services is causing immediate and ongoing harm to WSP or others. In the extraordinary case that WSP must suspend delivery of the SaaS Services, WSP shall immediately notify CUSTOMER of the suspension and the parties shall diligently attempt to resolve the issue. WSP shall not be liable to Customer or to any third party for any liabilities, claims or expenses arising from or relating to any suspension of the SaaS Services in accordance with this Section 10.3. Nothing in this Section 10.3. will limit WSP's rights under Section 10.5 below.

**10.4 No dissolution.** To the extent permitted by law, the parties hereby waive their right under Articles 2:265 through 2:272 BW to terminate this Agreement or to claim termination (ontbinding) of this Agreement in accordance with said Articles.

**10.5 Effect of Termination.**

- A. Upon expiration or termination of this Agreement WSP shall immediately cease providing the SaaS Services and all usage rights granted under this Agreement shall terminate.
- B. If WSP terminates this SaaS Agreement due to a material, uncured breach by CUSTOMER, then CUSTOMER shall immediately pay to WSP or Partner (if purchased through a Partner) all amounts then due or to become due during any Order issued under. If CUSTOMER terminates this SaaS Agreement due to an uncured material breach by WSP, then WSP shall immediately refund to CUSTOMER all pre-paid amounts for any unperformed SaaS Services scheduled to be delivered for the remainder of the (Initial) Subscription Period.
- C. Upon termination of this SaaS Agreement and upon subsequent written request by the disclosing party, the receiving party of tangible Confidential Information shall promptly return such information or destroy such information and provide written certification of such destruction, provided that the receiving party may permit its legal counsel to retain one archival copy of such information in the event of a subsequent dispute between the parties.

**10.6 Termination of Orders.** All Orders issued under this Agreement shall terminate immediately on termination of this Agreement in accordance with this section 10, unless agreed otherwise.

**11 PERSONAL DATA AND PRIVACY**

**11.1 Scope.** The parties will comply with Data Protection Laws relating to WSP's processing of CUSTOMER GROUP personal data as part of the SaaS Services provided pursuant to this Agreement. Parties may further detail the aforementioned in a Data Processor Agreement which, if agreed between the parties, will form part of this Agreement as a separate Exhibit. If no separate Data Processor Agreement is executed, this Agreement will be considered a data processing agreement as defined under Data Protection Laws.

**12 GENERAL.**

**12.1 Non-Exclusive Service.** CUSTOMER acknowledges that SaaS Services are provided on a non-exclusive basis. Nothing shall be deemed to prevent or restrict WSP's ability to provide the SaaS Services or other technology, including any features or functionality first developed for CUSTOMER, to other parties.

**12.2 License administration and Audit.** CUSTOMER shall keep complete and accurate books and records of its use of the SaaS Services to demonstrate its compliance with this Agreement. Further, WSP may audit CUSTOMER's use of the SaaS Services in order to verify compliance with this Agreement. CUSTOMER agrees to cooperate with WSP's reasonable request for access to CUSTOMER's computer systems to ensure CUSTOMER's adherence with the license terms hereunder.

**12.3 Notices.** Any notice required or permitted to be given by CUSTOMER hereunder shall be in writing and delivered by courier or overnight delivery services, by email (with a read-receipt) or by certified mail, and in each instance will be deemed given upon receipt. Any such notice shall be delivered or sent to WSP, Van Nelleweg 1, 3044 BC Rotterdam, The Netherlands.

**12.4 Governing Law and Disputes.**

- A. United States. If you acquired the WSP Software or Services in the United States, all matters arising from or connected with this Agreement, are governed by New York state law, excluding the United

- Nations Convention on the International Sale of Goods (“CISG”), conflict of law rules and choice of law principles that provide otherwise.
- B. Outside the United States. If you acquired the WSP Software or Services in any other country outside the United States, all matters arising from or connected with this Agreement, are governed by the laws of the Netherlands, excluding CISG, conflict of law rules and choice of law principles that provide otherwise.
- C. Disputes. Any dispute between CUSTOMER and WSP with regard to this Agreement shall exclusively be submitted to the courts of New York if you acquired the WSP Software or Services in the United States. In all other cases, such dispute shall be exclusively settled by arbitration in The Hague, The Netherlands, in the English language in accordance with then existing Rules of Conciliation and Arbitration of the International Chamber of Commerce (“ICC”) by 1 (one) arbitrator to be selected in accordance with the said rules. The parties request the ICC Court of Arbitration to attempt to appoint an arbitrator who is knowledgeable in the area of information technology; if no such arbitrator can be appointed, the normal appointment process shall apply. The award rendered therein shall be final and binding upon the parties to such arbitration proceedings.
- D. Urgent relief. CUSTOMER acknowledges and agrees that any copying or use of the WSP Software other than as expressly permitted by this Agreement would result in irreparable injury to WSP for which money damages would be inadequate and in such event submission to arbitration shall not preclude WSP’s ability, in addition to other remedies available at law and in equity, to immediate injunctive relief to prevent any such unauthorized use.
- 12.5 Legal Effect.** This Agreement describes certain legal rights. You may have other rights under the laws of your state or country. You may also have rights with respect to the party from whom you acquired the WSP Software. This Agreement does not change your rights under the laws of your state or country if the laws of your state or country do not permit it to do so.
- 12.6 Assignment.** Neither party may assign any rights, duties, obligations or privileges under this Agreement without the prior written consent of the other party. Furthermore, CUSTOMER may not assign (or pledge) a claim against WSP in a way that is valid under applicable property law without the prior written consent of WSP. A change of control or ownership shall not be deemed to be an assignment under this Section so long as the new owner has expressly assumed in writing all of the duties and obligations of the assignor and further provided, that CUSTOMER shall remain liable and responsible to WSP (and its licensors) for the performance and observance of all such duties and obligations.
- 12.7 Severability.** Should any part or provision of this Agreement be held unenforceable or in conflict with the law of any jurisdiction, the validity of the remaining parts or provisions shall not be affected by such holding.
- 12.8 Limitation on Effect of Waiver.** Failure on the part of WSP to exercise, or WSP’s delay in exercising, any of WSP’s rights hereunder shall not be construed as a waiver or waiver of other breaches of this Agreement. Any single or partial exercise by a party of any right shall not preclude any other or future exercise thereof or the exercise of any other right in the Agreement.
- 12.9 Entire Agreement and Amendments.** The Agreement contains the entire understanding of the parties with respect to the transactions contemplated and supersedes any prior agreements or understandings among the parties with respect to the subject matter hereof. This Agreement may be amended only in writing signed by authorised representatives of both parties.
- 12.10 Export Law Assurances.** CUSTOMER acknowledges that it is familiar and shall comply with all domestic and international export laws and regulations that apply to the WSP Software. These laws include restrictions on destinations and use. CUSTOMER hereby expressly agrees to defend, hold harmless and indemnify WSP, its directors, officers, and employees, from any claim, suit or dispute alleging that CUSTOMER has exported the WSP Software in violation of such laws.
- 12.11 Construction.** The headings in this Agreement are for convenience of the parties only. They do not constitute a portion of this Agreement and shall not be used in interpreting the construction of this Agreement.
- 12.12 Third Party Beneficiary.** CUSTOMER hereby agrees that the licensors of Third Party Software shall be considered third party beneficiaries of this Agreement and shall be entitled to bring a direct action against CUSTOMER in the event of breach of any applicable provisions of this Agreement, pursuant to the terms and conditions of this Agreement.
- 12.13 Force Majeure.** Neither party shall be in default if failure to perform any obligation hereunder is caused solely by unforeseen supervening conditions beyond that party’s reasonable control, which could not

have been prevented by the non-performing party's reasonable precautions, commercially accepted processes or substitute services, including acts of God, civil disturbances, strikes and labour disputes.

**12.14 Survival.** The rights and obligations of the parties which by their nature extend beyond the expiration or termination of the Agreement shall survive termination or expiry of this Agreement for any reason.

**12.15 Negation of Agency and Similar Relationships.** Nothing contained in this Agreement shall be deemed to create an agency, joint venture or partnership relationship.

**VERSION SAAS AGREEMENT: [2020.10]**

