

# EXPERIENZ

## Licence Terms and Conditions

The Experienz application and related hosting services (the “SaaS”) is provided by Experienz Limited (“Experienz”, “us”, “we”) to you. Your use of the SaaS and any additional services introduced by us and contained within constitutes acceptance of these Terms and Conditions.

You must be a minimum age of 18 to register on and use the SaaS. By registering and using the SaaS you warrant that you are 18 or older and understand your obligations under these Terms and Conditions.

### 1. DEFINITIONS

“Authorised User” means an individual employee, customer or Consultant of Customer or of any Affiliate of Customer, who is authorised by Customer to use the Subscription Services for the Permitted Purpose, regardless of whether or not the individual is actively using the Subscription Services at any given time and to whom Customer (or Experienz at Customer’s request) has supplied a user identification and password, provided that no Authorised Users may be, nor work for a direct or indirect competitor of experienz.

“Company IP” means the Software, the Documentation and all other software (including both source code and object code, as applicable), documentation, templates, designs (including screen and report designs), data, materials, technology and works created, utilized and/or provided by or on behalf of Customer in connection with the SaaS Services or the performance of this Agreement, and all Intellectual Property Rights related to any of the foregoing.

“Customer Data” means any Confidential Information of you or your Affiliates that is input and stored in any experienz system pursuant to your use of the Subscription Services.

“Confidential Information” means any information, including information, technical data or know-how relating to discoveries, ideas, inventions, concepts, software, equipment, designs, drawings, specifications, techniques, processes, systems, models, data, source code, object code, documentation, diagrams, flow charts, research, development, business plans or opportunities, products, projects or products under consideration, procedures, and information related to finances, costs, prices, suppliers, vendors, customers and employees, which is disclosed by the disclosing Party in connection with this Agreement whether before, on or after the Effective Date, directly or indirectly, in writing, orally or by drawings or inspection of equipment or software, to the receiving Party or any of its employees or designated agents. Confidential Information includes the terms of this Agreement. Confidential Information does not include any of the following: (a) information that is or becomes part of the public domain or otherwise available on an unrestricted basis to one or more third Persons without violation of this Agreement by the receiving Party; (b) information that was known to or in the possession of the receiving Party on a non-confidential basis prior to the disclosure thereof to the receiving Party by the disclosing Party, as evidenced by written records; (c) information that was developed independently by or on behalf of the receiving Party, without use of or reference to the Confidential

Information; or (d) information that is disclosed to the receiving Party by a third Person without violation of this Agreement by the receiving Party.

“Documentation” means the online user guides, documentation, help and training materials for the SaaS Services as made available by Experienz from time to time.

“Intellectual Property Rights” means all rights throughout the world in any and all of the following: (a) patents, patent applications, patent disclosures and inventions (whether patentable or not); (b) trademarks, service marks, trade dress, trade names, logos, corporate names, Internet domain names and registrations and applications for the registration thereof together with all of the goodwill associated therewith; (c) copyrights and copyrightable works (including computer programs and mask works) and registrations and applications for registration thereof; (d) trade secrets, know-how and other proprietary information of a like kind; (e) waivable or assignable rights of publicity, waivable or assignable moral rights; and (f) all other forms of intellectual property, such as data and databases, in each case, to the extent protectable under applicable Law.

“Law” means any and all statutes, laws, ordinances, regulations, rules, codes and other requirement or rule of law of any federal, state, local or foreign governmental authority.

“Professional Services” means consulting and professional services provided by Experienz, including onsite services, training, configuration, systems administration, database management, and assistance with day-to-day use of experienz Subscription Service or any other additional services required.

“Order Form” means Order Form executed by the Parties with respect to the SaaS and/or additional services that incorporate by reference this Agreement.

“Party” means Customer or Experienz and “Parties” means, collectively, all parties to this Agreement.

“Permitted Purpose” means the use, in accordance with the Documentation and the terms of this Agreement (including any applicable usage limits set forth in the Order Form) of the Subscription Services solely for Customer’s own internal business purposes.

“Person” means any individual, corporation, limited liability company, partnership, trust, joint stock company, business trust, unincorporated association, joint venture or other form of business or legal entity.

“experienz Application” means all software forming part of or used by Experienz to deliver experienz SaaS Services, including any upgrades, improvements, enhancements or derivatives thereof.

“Subscription Services” means the specific experienz Software to which Customer has purchased a subscription pursuant to an Order Form. Services associated with this subscription in this license agreement are explicitly outlined in **Annex B**.

“SLA” means Experienz’s standard service level agreement attached hereto as **Annex A** and incorporated by reference.

“Subscription Period” means the initial period for which Customer has contracted to subscribe to the Subscription Services as specified in the Order Form, along with each renewal period of Customer’s subscription pursuant to **Section 10.2**.

“Third Party Application” means any third-party application or third-party add-on

## **2. Registration and Account Security**

- 2.1. In order to use the SaaS you will need to create an account, including a username and password. It is your responsibility to ensure that the information you provide is accurate, not misleading and relates to you. You cannot create an account or username and password using the names and information of another person or using words that are the trademarks or the property of another party (including ours), or vulgar, obscene or in any other way inappropriate. We reserve the right with or without notice to suspend or terminate any account breach.
- 2.2. Where we provide an organisation with a number of user licences for the SaaS these must be adhered to. User licences cannot be shared between users. A breach of this clause will result in termination of the abused and/or all accounts provided to the organisation.

## **3. PROVISION AND USE OF SUBSCRIPTION SERVICES**

- 3.1. During the applicable Subscription Period, Experienz shall make available the SaaS to you on the terms and subject to the conditions set forth in this Agreement.
- 3.2. Experienz is responsible for the deployment, operation, management and hosting of the SaaS, including the provisioning and maintenance of all server-side hardware, software and telecommunications capacity. You are responsible for all hardware, software, connectivity and related infrastructure required for Authorised Users to access and use the Subscription Services.
- 3.3. You are solely responsible for the security and proper creation, use and termination of all Authorised User IDs, passwords and other security devices used in connection with the SaaS and shall take all reasonable steps to ensure that they are kept confidential and secure, are used properly and are not disclosed to unauthorised Persons. You shall immediately inform us if there is any reason to believe that a user ID, password, or any other security device has or is likely to become known to any Person not authorised to use it, or is being or is likely to be used in an unauthorised way. Experienz reserves the right (in its sole discretion) to require you to change any or all of the user IDs, passwords or other security devices used by you in connection with the Subscription Services, and you shall promptly comply with any such requirement. If the Order Form specifies a maximum number of Authorised Users for your subscriptions, then each Authorised User must be a unique individual and you shall be responsible for ensuring that the maximum number is not exceeded. An Authorised User licence may be permanently transferred from a former Authorised User (such as an individual whose employment by you terminates) to a replacement Authorised User, but two or more individuals may not share a single Authorised User login.
- 3.4. you are solely responsible for your relationships with all Authorised Users and your Affiliates, for their use of the SaaS, and for ensuring that they comply with all the terms and conditions of this Agreement. Any violation of the terms and conditions of this Agreement by an Authorised User or one or more of your Affiliates shall be deemed to be a violation by you of such terms and conditions. If you install or enable a Third Party Application for its use with the SaaS, you hereby grants Experienz permission to allow the provider of such Non-experienz Application to access the Customer Data as required for the interoperation of such Non-experienz Application with the SaaS. Experienz is not responsible for any

disclosure, modification or deletion of Customer Data resulting from access by any Non-experienz Application.

- 3.5. Experienz shall maintain administrative, physical, and technical safeguards designed to protect the security, confidentiality and integrity of Customer Data. Experienz shall not access or use Customer Data except (a) in connection with providing, supporting and maintaining the SaaS, including preventing or addressing service or technical problems; (b) as required by Law in accordance with **Section 11.2** below, or (c) as you expressly permit in writing. In the event that Experienz processes any information relating to an identified or identifiable natural person (an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person) contained in Customer Data, on your behalf, in the provision of the SaaS. You are solely responsible for all other aspects of Customer Data, including its sourcing, inputting, management, accuracy, quality, legality, results and the privacy of protected personal information.
- 3.6. You are solely responsible for backing up any content or data entered onto the SaaS by you. We strongly recommend that you regularly and completely backup all of your content and data on the SaaS. We follow appropriate professional practice and procedures to reduce the risk of data loss but do not make any guarantees that there will be no loss of Data. Experienz expressly excludes liability for any loss of data no matter how caused.

#### 4. RIGHTS AND LIMITATIONS OF USE

- 4.1. Subject to the terms and conditions of this Agreement (including your payment obligations hereunder), Experienz grants to you a limited, non-exclusive, non-transferable right and license during the applicable Subscription Period: (a) to access and use, and permit Authorized Users to access and use, the SaaS and Documentation solely for the Permitted Purpose; and (b) to the extent Experienz makes available to you, by way of download or other form of distribution, any predefined report formats, software components, tools, materials or technology intended for use in connection with the SaaS, to store, install, execute and use the same internally within your organization, solely in connection with your authorized use of the SaaS.
- 4.2. Except for the rights granted in **Section 4.1**, no other rights in or to any SaaS, Services or Company IP, express or implied, are granted to Customer. Without limiting the foregoing, except to the extent expressly authorized by this Agreement, you may not: (a) transfer to any other Person any of its rights to use SaaS; (b) sell, resell, license, sublicense, distribute, rent, lease or share any SaaS or software associated with such services; (c) permit any Person who is not an Authorized User to use or access any SaaS; (d) use any SaaS other than for the Permitted Purpose; (e) use any SaaS to provide outsourcing, service bureau, hosting, application service provider or online services to third Persons; (f) create any derivative works based upon any SaaS or Company IP; (g) copy any feature, design or graphic in any SaaS or Company IP; (h) attempt to circumvent any security device or access or derive the source code or architecture of any SaaS or Company IP; (i) use or access any SaaS or Company IP in order to build a competitive solution or to assist someone else to build a competitive solution; (j) load or penetration test the SaaS or otherwise use any SaaS in any way that is, or could reasonably be expected to be, detrimental to Experienz's ability to provide services to any other customer; (k) use any SaaS to access the data of any other customer of Experienz; (l) alter, remove or conceal any government restricted rights notice or any copyright, trademark, trade name or other proprietary marking or notice that may appear in or on the SaaS, the Documentation or any other Company IP; (m) use the SaaS to store or transmit infringing, libelous, or otherwise unlawful or tortious material including code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses, or to store or transmit material in violation of third-party privacy rights; (n) reverse engineer any SaaS or related software (to the extent

such restriction is permitted by Law) or (n) use the SaaS in a manner that violates any applicable Law, ordinance, regulation or administrative order; or (o) permit any other Person to do any of the foregoing.

## 5. SUPPORT AND MAINTENANCE

- 5.1. Any SaaS support is provided via helpdesk portal and email and such other means as we decide in order to provide a proper service to users.
- 5.2. We take all reasonable steps to ensure that the SaaS is available and functioning fully at all times. However, in the event the SaaS is unavailable or functioning incorrectly either wholly or partly we shall offer (where possible) the opportunity of repeat performance of the SaaS we should have offered to you in the first place - where appropriate and practical.
- 5.3. Refunds will not be offered where a third party provider who supplies a service to you, rather than us causes the issue.
- 5.4. Experienz may provide maintenance on its hosting environment from time to time. We reserve 10 hours per month for scheduled maintenance purposes and 8 hours per month for updates. Scheduled maintenance and updates will only be performed between the hours of 10pm and 6am (UK Time) on business days and 8pm and 8pm (UK Time) on weekends and holidays. Under certain conditions, we may need to perform urgent or emergency preventative maintenance, such as installing security patches. In such cases, we may not be able to provide advance notice.
- 5.5. We reserve the right not to provide a full SaaS support service to free or trial account users.
- 5.6. You acknowledge that the SaaS was not designed or produced to your individual requirements and that you are solely responsible for confirming that the SaaS meet such requirements. You further acknowledge that the SaaS are based on a standardized service platform made available by Experienz to a variety of customers. Experienz will make available to you as part of the SaaS the error corrections and improvements that Experienz makes available to its customers generally as part of their subscription to the SaaS, but specifically excluding any new products, offerings, applications or add-ons for which Experienz charges a separate fee, unless you separately purchases a license or subscription thereto. Experienz reserves the right to make changes to the SaaS. If any such change materially diminishes the functionality and value of the SaaS as a whole, then: (a) Experienz shall notify you at least thirty (30) days prior to implementing such change (except in cases where Experienz determines that expedited implementation is required); and (b) if Customer disapproves of any such change that materially diminishes the functionality and value of the SaaS as a whole, you shall have the right, exercisable no later than thirty (30) days after such change has been implemented, as your sole remedy, to terminate this Agreement upon notice to Experienz and recover a refund of prepaid subscription fees pursuant to **Section 10.7(d)**. You agree that your subscription to the SaaS is not contingent on the delivery of any future functionality or features, or dependent on any statements made by Experienz regarding possible future functionality or features. Unless otherwise agreed by the Parties in a separate Order Form, after each update to the SaaS, you will not be able to use the previous version and, even in cases where Experienz may be able to accommodate and has expressly authorized your continued use of a previous version, any such previous version is provided solely on an "as is" basis and none of the covenants, obligations, representations or warranties of Experienz set forth Sections 3, 5, 7.2 or 8.1 shall apply to such previous version.

## 6. FEES AND PAYMENTS

- 6.1. You shall pay all fees and charges as specified in each Order Form. Except as otherwise set forth in this Agreement, (i) fees are based on the SaaS and Professional Services being ordered and not actual usage of such services by you or your Authorized Users; (ii) all payment obligations under an Order Form are non-cancelable and amounts paid are non-refundable and (iii) ordered quantities including those related to Authorized Users number cannot be decreased during the relevant Subscription Period. Unless otherwise

specified in an Order Form, all fees and charges for the initial Subscription Period are due upon the effective date of such Order Form, and you shall pay all other fees and charges within thirty (30) calendar days of the date of Experienz's invoice therefore. You are responsible for providing complete and accurate billing and contact information to you and notifying Experienz of any changes to such information. The payment date shall be considered the date under which the amount payable is credited to Experienz's bank account. You shall pay all commissions for the wire transfer payments.

- 6.2. If any invoiced amount is not received by Experienz by the due date, then without limiting Experienz's rights or remedies, (a) Experienz may charge you interest at the rate of 1.4% per month (or the highest rate allowable by Law, if less) for any past due amounts, from the date payment was due until the date paid, other than with respect to any amount disputed by you in good faith where you are cooperating diligently to resolve the dispute) and/or (b) Experienz may condition future subscription renewals and invoices on payment terms shorter than those specified in **Section 6.1**. If any amount owing by you under these Terms and Conditions or any other agreement between the Parties is 20 (twenty) or more days overdue, Experienz may, without limiting its other rights and remedies, accelerate any or all of your unpaid fee obligations under any such agreements so that all such obligations become immediately due and payable, and/or suspend SaaS to you until such amounts are paid in full. Experienz will give you at least 7 (seven) days' prior notice that your account is overdue before suspending the SaaS to you. You shall bear any costs (including attorneys' fees and costs) incurred by us in collecting any amounts due hereunder.
- 6.3. Experienz fees do not include and you shall pay any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes and import duties, assessable by any jurisdiction whatsoever (other than corporate income taxes payable by Experienz) due as a result of any amounts paid by you to Experienz under any Order Form.
- 6.4. You shall not charge any fee to Experienz related to invoice processing, and shall pay or reimburse Experienz for any such fee charged by any third party that you require Experienz to use in connection with processing Experienz's invoices to Customer.

## **7. WARRANTIES**

- 7.1. Each Party represents and warrants to the other Party that: (a) it has the full power and authority to enter into this Agreement and perform its obligations under this Agreement; and (b) the execution, delivery and performance of this Agreement by it does not violate, conflict with or constitute a default under any agreement or instrument to which it is a party or by which it is bound, or any applicable Law, regulation or order of any court or other tribunal, except where such violation, conflict or default would not materially impair such Party's performance of its obligations or the other Party's enjoyment of its rights under this Agreement.
- 7.2. Experienz further warrants to you that: (a) the SaaS will function substantially in accordance with the applicable Documentation; and (b) it will use a generally commercially available virus detection or scanning program to test the SaaS for the presence of viruses. In the event of any nonconformance with any of the warranties specified in this **Section 7.2**, You will promptly (and in no event later than thirty (30) days after the non-conforming services were provided) notify Experienz of such nonconformance and Experienz will, following receipt of such notice from you, use commercially reasonable efforts to make available to you a conforming version of the SaaS. If Experienz fails to do so within thirty (30) days, and such nonconformance has the effect of materially diminishing the functionality and value of the SaaS as a whole, then you shall have the right to terminate this Agreement upon notice and recover the subscription fees paid to Experienz, pursuant to **Section 10.7(d)**; provided, however, that such termination shall not be permitted if, within such thirty (30) day period, Experienz has provided you with reasonable assurances that such nonconformance will be remedied within a reasonable period of time. The foregoing sets forth your exclusive remedies, and the sole liability of Experienz, in the event of any nonconformance with any of

the warranties set forth in this **Section 7.2** or otherwise with respect to any errors, service interruptions or other problems with the Subscription Services.

- 7.3. Except as expressly provided in this **section 7**, neither party makes any warranty of any kind, whether express, implied, statutory or otherwise in connection with these Terms and Conditions. Without limiting the foregoing, except as expressly provided in these Terms and Conditions, Experienz is providing the SaaS on an “as is” and “as available” basis and Experienz does not make, and hereby expressly disclaims, to the fullest extent permitted by applicable law, all representations, warranties and conditions, express or implied, with respect to the SaaS or their performance hereunder, including the warranties of merchantability, fitness for a particular purpose and non-infringement. In particular, Experienz does not warrant that the SaaS will meet customers’s expectations or be secure, accurate, error-free, or operate on an uninterrupted basis or in combination with any other hardware, software or system. Without limiting the foregoing, Experienz will not be liable for any problems with the SaaS attributable to the internet, force majeure or your or any Authorized User’s network or ability to access the internet.

## **8. INDEMNIFICATION**

- 8.1. In no event shall Experienz be liable to you in contract (including under any indemnity), tort (including negligence or breach of statutory duty) or otherwise for any loss (whether direct or indirect) of profit, business or revenue, failure to realise anticipated savings or benefits, loss of goodwill, loss of opportunity, loss of operation time, loss of or corruption to data, wasted management or staff time, or for any indirect or consequential loss, damage, cost or expense of any kind whatsoever and howsoever caused, even if reasonably foreseeable and even if it has been advised of the possibility of such losses or events.
- 8.2. Experienz’s aggregate liability to you in relation to these Terms and Conditions whether arising in contract, tort (including negligence or breach of statutory duty) or otherwise shall not exceed the limits described in section 9.2.
- 8.3. You shall indemnify, defend and hold harmless Experienz and its Affiliates and their respective employees and agents from and against any loss, cost, damage or expense (but specifically excluding attorneys’ fees and costs) in respect of any Claim that relates to (a) Customer Data or any other content or materials provided by you or your Affiliates or Authorized Users or (b) the use by you or your Affiliates or Authorized Users of the SaaS or Company IP in breach of these Terms and Conditions or in violation of applicable Law or third party rights.
- 8.4. As a condition to the obligations of the indemnifying party under either of Sections 8.1 or 8.2 above, the indemnified Person shall: (a) promptly notify the indemnifying Party of any Claim for which indemnity will be sought; provided that no delay in providing such notice shall relieve the indemnifying Party of any liability or obligations hereunder except to the extent the indemnifying Party has been prejudiced by such delay; (b) permit the indemnifying Party to assume control of the defense and settlement of such Claim with counsel of its choosing; and (c) provide cooperation reasonably requested by the indemnifying Party in investigating and defending such Claim, at the indemnifying Party’s expense (provided that the indemnified Person shall not be entitled to compensation for time spent providing such cooperation). The indemnified Person shall have the right to participate in (but not control) the defense of any such Claim, at its sole cost and expense, using counsel of its choosing.

## **9. LIMITATIONS OF LIABILITY**

- 9.1. Except for liability arising from a willful or intentional breach of **section 11** (confidentiality) or from a breach of **section 12** (proprietary rights), in no event will either party be liable to the other for any loss of data, loss of business or profits, or any other special, punitive, indirect, incidental or consequential losses or damages of any sort, whether or not such damages are foreseeable, arising under or in connection with this agreement.

- 9.2. Experienz's aggregate liability to customer arising under or in connection with these Terms and Conditions, whether in contract, tort (including negligence) or otherwise, shall in no event exceed the total subscription fees actually paid by you to us under this agreement during the twelve (12) months immediately preceding the date on which the applicable claim occurred.
- 9.3. The limitations of liability and damage exclusions contained in this agreement will apply regardless of the success or effectiveness (or lack thereof) of any remedies provided herein. These limitations and exclusions are reflected in the pricing of the SaaS, and they represent an agreed allocation of risk between the parties and are an essential part of this agreement.
- 9.4. Each party shall take, and cause its Affiliates to take, all reasonable steps to mitigate any damages upon becoming aware of any event or circumstance that would be reasonably expected to, or does, give rise to an indemnification claim or other damages claim arising under or in connection with this agreement.
- 9.5. Any action by either party related to an actual or alleged breach of this agreement by the other party, other than a willful or intentional breach of **section 11** (confidentiality) or a breach of **section 12** (proprietary rights), must be commenced within one year after the date on which the breach is discovered. Any action not brought within that two-year period shall be barred, without regard to any longer limitations period set forth in any applicable law or statute.

## **10. Subscription Period, Renewals, Termination and Suspension**

- 10.1. Experienz makes the SaaS available on a subscription basis, and Customer is purchasing a subscription to access and use the SaaS upon these Terms and Conditions, for the Subscription Period specified in the Order Form. Neither Party may terminate the SaaS for convenience prior than the end of its Subscription Period.
- 10.2. These Terms and Conditions are effective from the date that you register to use the SaaS and continue until all subscriptions hereunder have expired or have been terminated. Upon expiration of the initial Subscription Period, your subscription to the applicable SaaS, and the term of these Terms and conditions, shall automatically renew for consecutive additional periods equal to 1 year each, at Experienz's then-current subscription price on the first day of such next renewal (subject to Section 6.3), unless either Party notifies the other Party no later than thirty (30) days prior to the scheduled renewal date that it is electing not to renew these Terms and Conditions, in which case the subscription and the term of these Terms and Conditions shall end upon the expiration of the then-current Subscription Period.
- 10.3. Either Party may terminate these Terms and Conditions by notice if the other Party breaches any material term of this Agreement and fails to cure such breach within thirty (30) days after receipt of notice of the breach from the non-defaulting Party. Any such termination shall be without limitation of any other right or remedy available to the terminating Party.
- 10.4. Upon ten (10) days' notice to you, Experienz may suspend the SaaS in whole or in part if you fail to make when due any payment required under these Terms and Conditions or under any other agreement entered into by the Parties. Upon receipt of payment in full of all overdue amounts, provided you are not otherwise in breach of these Terms and Conditions or any other agreement entered into by the Parties, Experienz shall promptly restore the suspended SaaS. Experienz may also suspend the SaaS in whole or in part if you otherwise breach any term of these Terms and Conditions or any other agreement entered into by the Parties and fails to cure such breach within thirty (30) days after receipt of notice of the breach from Experienz, until such time as the breach is cured. Notwithstanding the foregoing, Experienz may immediately suspend the SaaS, with or without prior notice to you, in order to avoid or mitigate irreparable harm to Experienz. Any suspension hereunder shall be without limitation of any other right or remedy available to Experienz.



- 10.5. Either Party may terminate these Terms and Conditions immediately upon notice to the other Party if the other Party has a receiver or similar party appointed for all or substantially all of its property, is declared insolvent by a court of competent jurisdiction, ceases to do business in the ordinary course, files a petition in bankruptcy or has a petition filed against it in bankruptcy, becomes the subject of any court or administrative proceeding related to its liquidation or insolvency (whether voluntary or involuntary) that is not dismissed within ninety (90) days, or makes an assignment for the benefit of its creditors.
- 10.6. Experienz may terminate these Terms and Conditions immediately upon notice to you for breach of Section 15.
- 10.7. Upon the termination or expiration of these Terms and Conditions for any reason:
- (a) Experienz will terminate access to the SaaS, and all rights and licenses granted by Experienz pursuant to these Terms and Conditions shall terminate.
  - (b) You shall pay all amounts that have accrued and are owed hereunder within ten (10) days following any termination or expiration of these Terms and Conditions.
  - (c) Upon written request by you made within thirty (30) days after the effective date of expiration or termination and provided you have complied with Section 10.7(b), Experienz shall make available in format of Experienz's choice to you for download one or more electronic files of any Customer Data stored in the SaaS. After such thirty (30)-day period, Experienz shall have no obligation to maintain or provide any Customer Data unless otherwise agreed between the Parties in respective Order Form with any Customer Data retention for the period exceeding such thirty (30) days period to be payable by you to us at then current rates. After that 30 (thirty) day period, Experienz will have no obligation to maintain or provide Customer's Data, and will thereafter delete or destroy all copies of Customer Data in Experienz's systems or otherwise in Experienz's possession or control, unless legally prohibited and excluding any copies of Customer Data that may be retained on backup media beyond the end of such period pursuant to Experienz's then current back-up procedures.
  - (d) If these Terms and Conditions are validly terminated by you pursuant to either of Sections 5.2, 8.1 or 10.3 and you are in full compliance with all material terms and conditions of this Agreement, Experienz shall within ten (10) days following the effective date of such termination refund to you all subscription fees previously paid by you for the SaaS with respect to the then remaining portion of any prepaid but unused Subscription Period.
  - (e) If requested by a Party, the other Party shall promptly destroy or return to the requesting Party, as directed, all of the requesting Party's Confidential Information, and other materials of the requesting Party in such other Party's possession or under its control. Notwithstanding the foregoing, each Party shall be entitled to retain any records to the extent it has been advised in writing by counsel that such retention is required to comply with applicable Law or regulation.

Any provision of these Terms and Conditions which, by its nature, would survive termination or expiration of these Terms and Conditions shall survive any such termination or expiration.

## **11. Confidentiality**

- 11.1. Both Parties acknowledge that, during the term of these Terms and Conditions and the course of providing the SaaS or performing Professional Services, the Party (Disclosing party) may disclose certain nonpublic information marked as "confidential information" to other Party (Receiving party) and/or the information which Receiving party received by performing these Terms and Conditions, has marked as "confidential information" ("Confidential Information").

- 11.2. Receiving party agrees that the Confidential Information will be used only in the course of providing the SaaS or performing Professional Services and will not be used in any way which is detrimental to Disclosing party.
- 11.3. Receiving party shall not disclose, directly or indirectly, the Confidential Information to any third party without the prior in written notice by Disclosing party. Receiving party ensures that all Receiving party employees authorized to use the Confidential Information shall perform the confidentiality obligations under these Terms and Conditions.
- 11.4. Notwithstanding the foregoing, receiving party may disclose any Confidential Information which is required to be disclosed by law, government regulation, any competent court order or arbitral body that has the jurisdiction over it. If such disclosure is required, Receiving party will give Disclosing party notice immediately for such disclosure and list of Confidential Information disclosed.
- 11.5. Receiving party ensures to return to Disclosing party / destroy any Confidential Information in any format after termination these Terms and Conditions without the prior written notice by Disclosing party. To avoid misunderstanding, the Parties agree that any Confidential Information is owned by Disclosing party, any possession and/or storage without the prior in written notice by Disclosing party is considered illegal.
- 11.6. Receiving party will continue to be bound by the terms of privacy contained in Section 8 during 5 (five) years after the termination of these Terms and Conditions.
- 11.7. The term "Confidential Information" does not include information that:
  - (a) is or becomes generally available to the public or is disclosed to Receiving party by a third party other than by disclosure in violation of these Terms and Conditions;
  - (b) was within Receiving party's possession prior to being furnished by Disclosing party;
  - (c) becomes available to Receiving party on a nonconfidential basis from a source other than Disclosing party

## 12. Proprietary Rights

- 12.1. As between the Parties, all Intellectual Property Rights in and to the Company IP are and shall remain the sole property of Experienz and its Affiliates and their respective licensors, as applicable, and you shall acquire no right of ownership or use with respect to any Company IP except for the limited license right specified in **Section 4**. Without limiting the foregoing, you acknowledge that the SaaS and the inventions, know-how and methodology embodied therein are proprietary to, and are the valuable trade secrets of Experienz, its Affiliates and licensors, as applicable, and that the SaaS constitutes Confidential Information of Experienz, its Affiliates and licensors, as applicable.
- 12.2. You, your Affiliates or Authorized Users may from time to time provide Experienz with suggestions, comments, recommendations and/or feedback regarding the SaaS and/or Experienz related technologies ("**Feedback**"). Any and all Feedback is and shall be given entirely voluntarily and without compensation. As between the Parties, all Feedback shall be exclusively owned by Experienz and Experienz shall be freely entitled to reproduce, prepare derivative works of, disclose to third Persons, display and perform (publicly or otherwise), sell, lease, license, distribute, and otherwise use and exploit any and all such Feedback, at

its sole discretion, without obligation or liability of any kind to Customer or to any other Person.

### **13. Force Majeure**

**13.1** Force Majeure is understood as an objective, unforeseeable occurrence, including but not limited to events such as natural disasters, fires, earthquakes, wars, riots, armed conflict, etc., affecting the exercise of the rights and obligations of the Parties in these Terms and Conditions.

**13.2** The party directly affected by Force majeure must notify the other party in writing within twenty four (24) hours from the commencement of a Force majeure. Both Parties agree that the Party affected by the Force Majeure shall be entitled to delay, extend the performance of the obligation within a reasonable period of time or apply other remedies appropriate to the situation at that time.

**13.3** The Parties shall be exempt from liability in the event of delay in performing obligations caused by Force majeure, unless the Party is in breach of the obligation to notify as provided in **Section 13.2**.

**13.4** After the termination of the Force majeure, the Parties are obliged to continue to implement these Terms and Conditions, Order Form unless there are other agreements.

### **14. Publicity**

You hereby grant Experienz the right to issue a press release announcing that you have become a customer of Experienz, and to reproduce and display your name, logo and trademarks on Experienz's website and in brochures, social media and other marketing materials for the purpose of identifying Experienz's relationship with you. Except as provided in the preceding sentence, all media releases, public announcements and public disclosures by either Party relating to these Terms and Conditions or its subject matter shall require the mutual approval of the Parties.

### **15. Additional Customer Representations and Covenants**

You shall, and shall ensure that your directors, officers, employees, agents and Affiliates, at all times (a) comply with all Laws applicable to these Terms and Conditions, your performance of your obligations hereunder and use of the SaaS and (b) not engage in any activity involving the SaaS that violates any Law, including any Trade Restriction (as defined below), or may cause Experienz to violate any Law, including any Trade Restriction. You represent and warrant to Experienz, and covenant and agree at all times, that none of you, your Authorized Users, owners, subsidiaries and you and your directors, officers, employees, agents and Affiliates are a person or entity designated in or subject to any Law, including Laws administered by the Office of Foreign Assets Control of the United States Department of the Treasury, the Export Administration Regulations administered by the United States Department of Commerce, or Laws administered by any other foreign, federal or state governmental authority, imposing economic sanctions or trade embargoes ("Trade Restrictions") against countries ("Embargoed Countries") and persons or entities ("Embargoed Targets"). Without limiting the foregoing, you are not and have never been an Embargoed Target, owned or controlled, in whole or in part, by an Embargoed Target, or conducted business in any Embargoed Country or with any Embargoed Target. You have not received or been offered any unlawful bribe, kickback, payment, gift or thing of value from any of Experienz, its subsidiaries or its, or their, directors, officers, employees or agents in connection with these Terms and Conditions.

## 16. General Provisions

- 16.1. Experienz shall have the right to modify any of these Terms and Conditions from time to time, provided that no such modification shall take effect until the start of the next Subscription Period following Experienz's notice to you of such modification sent no later than sixty (60) days prior to the start of such Subscription Period. Your failure to object to such modification and/or terminate these Terms and Conditions pursuant to **Section 10.1** within thirty (30) days after its receipt of such modification notice shall constitute your acceptance of such modification. Except as set forth in this **Section 16.1**, no waiver or modification of any of the provisions of these Terms and Conditions shall be binding unless in writing and signed by a duly authorized representative of each Party. Any forbearance or delay on the part of either Party in enforcing any of its rights under these Terms and Conditions shall not be construed as a waiver of such right to enforce the same for such occurrence or any other occurrence.
- 16.2. These Terms and Conditions shall be governed by, and construed in accordance with, the Laws of England and the parties submit to the jurisdiction of the Courts of England and Wales.
- 16.3. Neither Party shall assign or otherwise transfer these Terms and Conditions, or delegate any duty or assign or otherwise transfer any right hereunder, including by operation of Law, without the prior written consent of the other Party in each case. Notwithstanding the foregoing, Experienz may freely assign or otherwise transfer this Agreement without your consent to any Affiliate or in connection with a merger, corporate reorganization or sale of all or substantially all of Experienz's business or assets to which these Terms and Conditions relate. Any purported assignment or transfer in contravention of this **Section 16.3** shall be null and void ab initio. Subject to the foregoing, these Terms and Conditions will bind and inure to the benefit of the Parties and their respective permitted successors and permitted assigns.
- 16.4. Unless otherwise specified in these Terms and Conditions, any notice required or permitted to be sent under these Terms and Conditions shall be sent, in writing, by certified mail (return receipt requested), overnight courier or personal delivery, to Experienz or to you at the addresses for notices set forth in the Order Form or as changed from time to time by notice. Such notices shall be effective when received.
- 16.5. If any one or more of the provisions of these Terms and Conditions are for any reason held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining provisions of these Terms and Conditions shall be unimpaired and shall remain in full force and effect, and the invalid, illegal or unenforceable provision(s) shall be replaced by a valid, legal and enforceable provision or provisions that comes closest to the intent of the Parties underlying the invalid, illegal or unenforceable provision(s).
- 16.6. The headings and other captions in these Terms and Conditions are for convenience only and shall not be used in interpreting, construing, or enforcing any of the terms of these Terms and Conditions. The words "including," "include" and "includes," and the phrases "by way of example," "such as" and "for example" when used in these Terms and Conditions shall each be deemed to be followed by the words "without limitation."
- 16.7. These Terms and Conditions do not create or evidence a partnership, joint venture or any other fiduciary relationship between the Parties. The Parties are independent, and each has sole authority and control of the manner of, and is responsible for, its performance of these Terms and Conditions. Neither Party may create or incur any liability or obligation for or on behalf of the other Party, except as described in these Terms and Conditions.
- 16.8. These Terms and Conditions constitute the entire agreement between Parties with regard to the subject matter hereof and supersedes any and all previous communications, whether oral or written, as well as any previous memoranda of understanding and side letters between the Parties with respect to such subject matter. In the event of any conflict, discrepancy or inconsistency between an Order Form and these Terms and Conditions, the

terms of the Order Form shall govern. Neither the course of conduct between Parties nor trade usage shall modify or alter these Terms and Conditions.

- 16.9. Any Order Form may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Any Order Form may be executed and delivered by facsimile or other electronic image transmission.