



15-Jun-22 | 11:53 AM CEST

## TrustBuilder Terms and Conditions

### 1. General & Scope

- 1.1. The present TrustBuilder Terms and Conditions, together with its Schedules, are applicable to each Order Form executed between TrustBuilder and the Customer and to all Software and Services offered by TrustBuilder to the Customer.
- 1.2. The Customer agrees to waive its own general and special terms and conditions, even where it is stated therein that only those conditions may apply and even if such terms and conditions were not protested by TrustBuilder. This Agreement shall prevail over any differing or additional terms and conditions proposed by Customer, including, without limitation, those contained in any purchase order issued by Customer.
- 1.3. TrustBuilder may from time to time change the General Terms or its Annexes. The Customer has thirty days to protest such changes, after which period the new terms are deemed to have been accepted by the Customer. If the Customer does not accept the new terms, TrustBuilder reserves the right not to extend or renew any Subscription and/or Professional Services.

### 2. Definitions

Capitalised notions used throughout the Agreement shall have the meaning given to them below, unless stated otherwise:

**"Acceptance Criteria"** means, with respect to the Professional Services, the criteria for acceptance as set forth in the Order Form or attached documents.

**"Acceptance Period"** means a period of ten (10) days following delivery of the Professional Services, unless otherwise agreed in writing between the Parties.

**"Acceptance Date"** means the date on which the Professional Services are accepted.

**"Active user"** means any user that has logged in to the Software at least once in the past 12 months.

**"Agreement"** means the entire contractual relation between TrustBuilder and the Customer, consisting of (i) these Terms and Conditions, (ii) the relevant Order Form(s) and (iii) the Schedules.

**"Business Day"** means Monday through Friday, exclusive of local public holidays.

**"Business Hours"** means the hours of 08:00 to 18:00 CET on a Business Day.

**"Changes"** means the services performed by TrustBuilder from time to time to ensure a correct functioning of the Software.

**"Cloud Setup"** shall have the set out in clause 4.

**"Confidential Information"** of a Party means the information of such Party, whether in written, oral, electronic or other form, and which (i) is designated as confidential or proprietary, or (ii) should reasonably be considered confidential given its nature or the circumstances surrounding its disclosure, regardless of whether or not it is expressly designated as confidential, including information and facts concerning business plans, customers, prospects, personnel, suppliers, partners, investors, affiliates or others, training methods and materials, financial information, marketing plans, sales prospects, customer lists, inventions, program devices, discoveries, ideas, concepts, know-how, techniques, formulas, blueprints, software (in Object and Source Code form), documentation, designs, prototypes, methods, processes, procedures, codes, and any technical or trade secrets, including all copies of any of the foregoing or any analyses, studies or reports that contain, are based on, or reflect any of the foregoing. The Confidential Information of TrustBuilder shall include the Software, Documentation and Deliverables.

**"Customer", "you" or "your"** means the legal entity entering into contractual relations with TrustBuilder, as identified in the Order Form.

**"Customer Data"** means any information, data and files transmitted, uploaded or stored by the Customer or Active Users in association with the Customer's use of the Software and the Services, or by TrustBuilder on the Customer's behalf for the purpose of facilitating the Customer's use of the Software and when providing any Services.

**"Customer Personal Data"** means all Personal Data within the Customer Data.

**"Delivery Date"** means the date on which the Professional Services Deliverables are made available to the Customer, as set out in the Order Form.

**"Daily Rates"** means the daily rates for Professional Services as specified in the Order Form. Daily Rates are based on an eight-hour man day on Business Days and are exclusive of taxes and expenses.

**"Data Processing Agreement"** means the document attached to these Terms and Conditions in Schedule 2 (*Data Processing Agreement*) setting out the terms and conditions governing the processing of Personal Data under the Agreement.

**"Data Protection Laws"** means all relevant regulation, national or international, concerning privacy and data protection, including but not limited to the General Data Protection Regulation ("**GDPR**").

**"Deliverable"** means any concrete Professional Services output of a task or activity that TrustBuilder is obligated to deliver under this Agreement.

**"Documentation"** means the operating manual, including a description of the functions performed by the Software, user instructions, and such other related materials as ordinarily

made available by TrustBuilder to its customers to facilitate the use of the Software

**"Effective Date"** means the effective date as set out in the Order Form.

**"Fees"** means any and all amounts payable by the Customer to TrustBuilder under the Agreement, which may include the Subscription Fees and fees in respect of Professional Services as detailed in the Order Form.

**"Initial Term"** shall have the meaning given to it in clause 0 of these Terms and Conditions.

**"Intellectual Property Rights"** means all intellectual or industrial property right or equivalent, whether registered or unregistered, including but not limited to: (i) copyright (including moral rights), patents, database rights and rights in trademarks, logos, designs, other artwork, know-how and trade secrets and other protected undisclosed information; and (ii) applications for registration, and the right to apply for registration, renewals, extensions, continuations, divisions, reissues, or improvements for or relating to any of these rights.

**"Invoice Date"** means the date indicated on the invoice from which the payment term will be calculated.

**"Major Release"** means a release of Software that provides additional features and/or functions, denoted by a change of the first number as per the 'major.minor' software versioning scheme.

**"Milestones"** means the milestones for the Professional Services set out in the Order Form.

**"Minor Release"** means an incremental release of the Software that provides maintenance fixes and additional Software features, denoted by a change of the second number as per the 'major.minor' software versioning scheme.

**"Module"** means any of the modules which are available for use as part of the Software and to which the Customer can subscribe by means of a Subscription.

**"Object Code"** means software assembled or compiled in magnetic or electronic binary form on software media that is readable and usable by machines but not generally readable by humans without reverse assembly, reverse compiling or reverse engineering.

**"Order Form"** means a written document signed by both Parties, regardless of its entitlement (e.g. "quotation" or "product order"), indicating the nature, number and other specifics of the Modules Subscribed to, and the Services ordered by, the Customer, including the specific conditions under which such order is made, and which forms an integral part of the Agreement.

**"Party"** means Customer and/or TrustBuilder.

**"Personal Data"** has the meaning given to it in article 4 (1) of the General Data Protection Regulation.

**"Professional Services"** means implementation and integration services as indicated in the Order Form or as may be agreed between the Parties from time to time.

**"Renewal Term"** shall have the meaning given to it in clause 11. of these Terms and Conditions.

**"SaaS Services"** means the services provided by TrustBuilder as described in Schedule 1 (*TrustBuilder SaaS Services*).

**"Schedule"** means any annex, schedule, appendix or other complementary document which forms a part of the Agreement.

**"Service Level Agreement"** or **"SLA"** means the service level agreement added as defined in Schedule 1 to these Terms and Conditions.

**"Services"** means SaaS Services and Professional Services.

**"Software"** means any Module as described in the Order Form.

**"Source Code"** means computer software written in programming languages including all comments and procedural code such as job control language statements, in a form intelligible to trained programmers, and capable of being translated into the Object Code form of the software for operation on computer equipment through assembly or compiling.

**"Subscription"** means the payable subscription to the Software by the Customer, and which shall consist of a subscription to the agreed Module(s) for the agreed number of Active Users per Module, both of which shall be detailed in the relevant Order Form(s). The notion **"Subscribe"** and **"Subscribed"** shall be interpreted accordingly.

**"Subscription Fees"** means the sums payable by the Customer in respect of the Subscription.

**"Subscription Term"** means the applicable subscription term of a Module, as set out in the Order Form.

**"Support Services"** means the Software-related support services that are part of the SaaS services as exhaustively set out in Schedule 1.

**"Term"** means the Initial Term and the Renewal Term(s) (if any).

**"Terms and Conditions"** means the present TrustBuilder terms and conditions, including its Schedules.

**"Territory"** means the territory as defined in the Order Form.

**"Third Party"** means any natural or legal person who is not a Party to the Agreement.

**"Third Party Software"** means the third-party software which, if expressly listed in the Order Form to be licensed to the Customer, shall be licensed to the Customer by TrustBuilder subject to the applicable Third-Party Software license terms and conditions.

**"TrustBuilder"**, **"our"**, **"we"** or **"us"** means TrustBuilder Corporation NV, a company organized and existing under the laws of Belgium having its registered office at Poortakkerstraat 93, 9051 Ghent (Belgium) and registered with company number 0466.701.444.

The Schedules may contain additional definitions, specific to those Schedules.

### 3. Right to access the Software

- 3.1. In consideration of the Customer's compliance with the provisions as set out in this Agreement (including timely payment of all Fees), TrustBuilder grants the Customer during the Term in respect of the Software and for the duration of the relevant Subscription Term in respect of the Modules (if any) a personal, restricted, non-exclusive, non-transferrable and non-assignable, renewable and revocable, worldwide

license to access and use the Modules for the maximum number of Active Users as specified in the Order Form.

- 3.2.** Any such access and use by the Customer and its Active User(s) shall be strictly subject to the terms as set out in these Terms and Conditions and in the remainder of this Agreement.
- 3.3.** All access to and use of the Software to which the Customer has Subscribed, shall at all times be in accordance with (i) the applicable Documentation; (ii) the provisions of the Agreement; and (iii) any reasonable instruction of TrustBuilder in relation to the use of the Software.
- 3.4.** To the extent Third Party Software is expressly stipulated in the Order Form to be licensed to the Customer hereunder, the Customer is granted a license to the Third Party Software subject to the applicable Third Party Software terms and conditions and timely payment of the Fees.
- 3.5.** The Customer explicitly agrees (and shall procure that its Active Users agree) not to, directly or indirectly (including, without limitation, through the actions of any affiliate, agent, subcontractor, Active Users or, in general, any Third Party):
- (i) use the Software other than in accordance with the Software's intended purpose and for the Customer's internal business purposes;
  - (ii) sell, lease, commercialize, rent, display, license, sublicense, transfer, provide, disclose, or otherwise make available to, or permit the use of, or access to, the Software or the Documentation, in whole or in part, to any third party, whether or not related to the Customer, except as expressly permitted in this Agreement or otherwise use the Software on a "service bureau" basis, or use the Software for processing transactions of third party financial institutions/insourcing transactions (save as expressly agreed otherwise in writing and subject to payment of the additional compensation payable in respect of such (insourcing) activities);
  - (iii) modify the Software or develop any derivative works based on the Software or any Confidential Information of TrustBuilder;
  - (iv) use the Software except as expressly authorized herein;
  - (v) decompile, disassemble, translate, reverse engineer or attempt to reconstruct, identify or discover, copy, create derivative works based upon the Source Code of the Software (unless permitted by law), underlying ideas, underlying user interface techniques or algorithms of the Software by any means whatsoever (except to the extent such restriction is prohibited under applicable law), or disclose any of the foregoing;
  - (vi) encumber or suffer to exist any lien or security interest on the Software;
  - (vii) take any action that would cause the Software, or the Source Code to be placed in the public domain;
  - (viii) use the Software in any computer environment not expressly permitted under this Agreement,
  - (ix) work around any technical limitation in the Software;
  - (x) make (backup) copies of the Software (unless permitted by law or elsewhere in this Agreement); and
  - (xi) remove proprietary notices (including copyright notices) of TrustBuilder.
- 3.6.** The Customer shall comply with all applicable laws relating to the use of the Software. The Customer (including the Active Users) shall not use the Software in any way that is unlawful, illegal, fraudulent or harmful, or in connection with any unlawful, illegal, fraudulent or harmful purpose or activity. The Customer acknowledges that the Software may include encryption and may, accordingly, be subject to export or other additional restrictions.
- 3.7.** The Customer shall use reasonable endeavours to ensure that no unauthorised person may gain access to the Software.
- 3.8.** The right to access and use the Software Subscribed to, is expressly restricted to the rights, limitations and other terms set forth in the Agreement and the Customer shall not be able to invoke any alleged implied rights which are not expressly set out under the Agreement.
- 3.9.** The Customer acknowledges and agrees that any access to and use of the Software outside the scope of the respective Subscriptions and/or in breach of the terms as set forth in this Agreement (unless such access and/or use has been expressly approved in writing by a duly authorized representative of TrustBuilder), shall entitle TrustBuilder to immediately terminate (or alternatively, at TrustBuilder's option, suspend) one or more of the respective Subscriptions and/or the entire Agreement for material breach by the Customer, without any formalities being required and without prejudice to any other right or remedy available to TrustBuilder pursuant to this Agreement or under applicable law.
- 3.10.** The Customer hereby acknowledges and agrees that any modification or attempted modification of the Software by any party other than TrustBuilder shall void TrustBuilder's warranties and shall be deemed to represent a material breach of this Agreement by the Customer.
- 3.11.** Any additional Subscriptions (in terms of Modules, a new Major Release and/or number of Active Users) shall require the completion of an (additional) Order Form or may be activated from within the Customer's TrustBuilder account (if and to the extent such option is made available by us).

#### **4. Delivery of the Software and Acceptance**

- 4.1.** The Software will be delivered as-is.
- 4.2.** The Software shall be hosted by TrustBuilder's Third Party hosting provider and the following shall apply:
- (i) TrustBuilder shall make the Software and corresponding Documentation available to the Customer as of the date indicated in the Order Form; and
  - (ii) The Software shall be licensed to the Customer and shall subject to timely payment of the Subscription Fees, be supported by TrustBuilder in accordance with Schedule 1.

#### **4.3 Professional Services.**

- (i) The Customer may perform acceptance testing of the Deliverables against the Acceptance Criteria defined in the Order Form, provided that any such acceptance testing must be completed within ten (10) days following the Delivery Date. TrustBuilder shall be entitled to attend and witness such acceptance testing, but shall not assist the Customer during acceptance testing (except as otherwise agreed in writing between the Parties). The Customer shall be deemed to have accepted the Deliverables without reservation if (a) the Customer uses such Deliverables in a production environment, (b) the Deliverables performs in accordance with the Acceptance Criteria during the acceptance testing, (c) the Customer notifies TrustBuilder that it accepts the Deliverables, (d) the Customer has not completed acceptance testing of the Deliverables or has not given notice of rejection within the Acceptance Period.
- (ii) If the Deliverables fail to perform in accordance with the Acceptance Criteria during the acceptance testing, the Customer shall promptly (and in any event within three (3) Business Days as of the end of such acceptance testing) deliver to TrustBuilder a written (incl. email) notice listing all deficiencies in reasonable detail. TrustBuilder shall then, at its own expense, modify the Deliverables until TrustBuilder determines that the Deliverables meet the Acceptance Criteria. TrustBuilder shall then deliver to the Customer notice of its determination that the modified Module meets the Acceptance Criteria. Following its receipt of such notice, the Customer shall promptly recommence acceptance testing of the Deliverables. The deemed acceptance criteria set out above shall apply to such additional acceptance round.
- (iii) If after additional acceptance testing pursuant to clause 4.2.(ii), the Deliverables still fail to perform in accordance with the Acceptance Criteria, the Parties shall repeat the steps described in clause 4.2.(ii) until such time that the Deliverables are accepted by the Customer or deemed accepted.
- (iv) The Deliverables shall not be deemed to have failed to perform in accordance with the Acceptance

Criteria as a result of any deficiency which (i) was not attributable to TrustBuilder or the Deliverables; or (ii) was or reasonably should have been discovered by the Customer in a prior acceptance testing but which has not been notified to TrustBuilder; or (iii) which is minor in nature as defined by the Acceptance Criteria.

#### **5. Evolution and Availability of the Software**

- 5.1.** TrustBuilder may periodically update and improve the Software and will make them available to the Customer.
- 5.2.** TrustBuilder reserves the right to make operational or technical changes to the Software, and to modify, add or remove certain functionalities via Changes.
- 5.3.** Where practicable, TrustBuilder shall give to the Customer prior written notice of scheduled Changes that are likely to affect the availability of the Software or are likely to have a material negative impact upon the Software. TrustBuilder shall not be liable for costs incurred by the Customer as a result of any non-availability of the Software due to Changes for which prior written notice has been given.

#### **6. Intellectual Property Rights**

- 6.1.** TrustBuilder is and remains the sole and exclusive proprietary owner of all Intellectual Property Rights related to the Software, the Services and the Documentation (including any new versions, updates, customizations, enhancements, modifications or improvements made to the Software or Documentation).
- 6.2.** Nothing in the Agreement shall convey any title or proprietary right or Intellectual Property Rights in or over the Software, the Services and the Documentation to the Customer or any Third Party. The Customer shall not in any way acquire any title, rights of ownership, copyright, intellectual property rights or other proprietary rights of whatever nature in the Software, the Services or Documentation. The Customer agrees not to remove, suppress or modify in any way any proprietary marking, including any trademark or copyright notice, on or in the Software, or visible during its operation, or on media or on any Documentation. The Customer shall incorporate or reproduce such proprietary markings in any permitted back-up or other copies.

#### **7. Customer Data**

- 7.1.** All Customer Data shall remain property of the Customer.
- 7.2.** The Customer hereby grants to TrustBuilder a non-exclusive licence to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Customer Data to the extent reasonably required for the performance of TrustBuilder's obligations and the exercise of TrustBuilder's rights under this

Agreement. The Customer also grants to TrustBuilder the right to sub-license these rights to its hosting, connectivity and telecommunications service providers to the extent reasonably required for the performance of TrustBuilder's obligations and the exercise of TrustBuilder's rights under this Agreement, subject always to any express restrictions elsewhere in this Agreement.

**7.3.** The Customer warrants to TrustBuilder that the Customer's Data when used by TrustBuilder in accordance with this Agreement will not infringe the Intellectual Property Rights or other legal rights of any Third Party, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.

## **8. Usage Control**

**8.1.** TrustBuilder has the right to monitor and inspect the usage of the Software by the Customer (including but not limited to monitoring that the number of users does not exceed the number of Active Users).

**8.2.** If such inspection shows that the Customer has underpaid the amount of Fees due to TrustBuilder, without prejudice to any other rights and remedies available to TrustBuilder, the Customer shall promptly pay the amount of such underpayment to TrustBuilder together with any applicable late payment interest. The amount to be paid will be calculated as valid for the current Term, meaning that if the number of Active Users has been exceeded with X users, the Customer will pay for that X users for the duration of the current Term.

## **9. Services**

**9.1. SaaS Services.** Subject to timely payment of all Subscription Fees, TrustBuilder shall provide SaaS Services in accordance with Schedule 1.

**9.2. Professional Services.** If and to the extent the Customer has specified in the Order Form to appoint TrustBuilder for the provision of certain Professional Services, the following provisions will apply:

- (i) TrustBuilder shall provide the Professional Services in complete independence and shall plan its activities as it sees fit. This independence constitutes an essential element of the Agreement, without which the Parties would not have concluded it. In no case shall the Agreement be interpreted as an employment contract between the Customer and TrustBuilder or its employees.
- (ii) TrustBuilder shall invoice the Professional Services on a time and materials basis and the basis of its Daily Rates, it being understood that the Daily Rates are exclusive of taxes and of any travel (incl. local transport and flights), accommodation and other out-of-pocket expenses incurred by TrustBuilder in furtherance of the Agreement, which shall be charged to the Customer in addition to the Daily Rates.

- (iii) The Customer shall promptly inform TrustBuilder of any delay or particular problem in connection with the performance of the Professional Services.
- (iv) The Customer acknowledges and agrees that in order for TrustBuilder to effectively perform the Professional Services in a proper, timely and efficient manner, the Customer must cooperate with TrustBuilder by (a) making available on a timely basis management decisions, information, and approvals; and (b) at no cost to TrustBuilder, providing timely and appropriate access to the Customer facilities, personnel, equipment, resources and systems, and any relevant information and documentation (to be accurate and complete) as necessary to facilitate performance of the Professional Services.
- (v) TrustBuilder shall be entitled to reassign or remove any of its resources assigned at TrustBuilder's sole discretion.
- (vi) TrustBuilder shall provide Professional Services in accordance with the Milestones (if any) set out in the Order Form, generally accepted industry standards and shall exercise reasonable care and skill in doing so.
- (vii) Any Deliverable received by Customer in the context of the Professional Services shall be deemed accepted by Customer if no notice of rejection has been given to TrustBuilder within the Acceptance Period.

## **10. Fees and Payment Terms**

**10.1.** The Yearly Subscription shall be invoiced as from the Effective Date of the relevant Subscription and thereafter each year during the Term.

**10.2.** The Professional Services Fees will be invoiced monthly or in accordance with invoicing Milestones as specified in the Order Form.

**10.3.** After the Initial Term and after each Renewal Term, TrustBuilder shall have the right to increase the Fees due under the Agreement by using the following formula:  $P = P0 \times [0.2 + 0.8 \times (S/S0)]$ , whereby:

"P" stands for the revised price;

"P0" stands for the price on the Effective Date;

"S0" shall be the national average reference salary as published by Agoria ("**Reference Salary**") on the Effective Date (or, if this index is no longer published, the index replacing it or failing such index by another index reflecting the increases of labour cost);

"S" shall be the Reference Salary at the time of the price revision; and

"S/S0" shall be referred to as "**Index**".

A negative Index shall have no impact on the Fees. The base Index taken is the Index applicable three (3) months before the signing of the first Order Form.

**10.4.** All invoices are payable within thirty (30) calendar days after the Invoice Date. If the Customer disputes

an invoice (or any portion thereof), the Customer must notify TrustBuilder in writing of the nature of such dispute within five (5) Business Days, after the Invoice Date. Failure to notify TrustBuilder within such period shall result in the invoice deemed accepted by the Customer. The undisputed portion of the invoice shall be paid as set forth in the Agreement. If the Customer fails to pay any outstanding amounts within sixty (60) days from receipt of a written payment default notice, TrustBuilder shall be entitled to suspend its obligations and the Customer's rights hereunder until receipt of payment of such outstanding amounts.

- 10.5.** Payments made by the Customer to TrustBuilder under the Agreement shall be final and non-refundable.
- 10.6.** All Fees payable to TrustBuilder under the Agreement shall be paid without the right to set off or counterclaim and free and clear of all deductions or withholdings whatsoever unless the same are required by law, in which case the Customer undertakes to pay TrustBuilder such additional amounts as are necessary in order that the net amounts received by TrustBuilder after all deductions and withholdings shall not be less than such payments would have been in the absence of such deductions or withholding.
- 10.7.** Invoices shall be sent in PDF-format to the Customer's email address, specified in the Order Form.
- 10.8.** Any amounts of undisputed invoices that have not been paid within thirty (30) days after the Invoice Date shall automatically and without notice be subject to a late payment interest equal to 1.5% per month or the maximum permitted by applicable law, which interest shall be compounded daily as of the due date until receipt of full payment by TrustBuilder. In addition, the Customer shall pay all costs incurred by TrustBuilder as a result of the (extra)judicial enforcement of the Customer's payment obligation under this clause.

## **11. Term of the Agreement**

The Agreement is entered into for a fixed term of three (3) years (the "**Initial Term**") and commences on the Effective Date. After the Initial Term, the Agreement shall be automatically and tacitly renewed for consecutive periods of one (1) year (each a "**Renewal Term**"), unless a Party provides a written notice to terminate at least six (6) months before the end of the Initial Term or the then-running Renewal Term.

## **12. Termination**

- 12.1.** TrustBuilder may, at its sole discretion, suspend or terminate the Agreement and all then-running Subscriptions, partially or wholly, by written notice to the Customer, if the Customer fails to pay to

TrustBuilder any amount due under the Agreement and the Customer fails to cure such failure to pay within sixty (60) days from the date of a written notice of default from TrustBuilder to the Customer.

- 12.2.** Either Party may immediately terminate the whole or any portion of the Agreement without any judicial intervention, without being liable for compensation and without prejudice to its rights to damages and any other rights, remedies and/or claim to which it may be entitled by law, upon providing the other Party with written notice of termination if:
- (i) the other Party performs a material breach to any provision of the Agreement and fails to cure such material breach within thirty (30) calendar days after receipt of written notice of the material breach;
  - (ii) the other Party becomes insolvent, is subject to voluntary or involuntary bankruptcy, insolvency or similar proceeding or otherwise liquidates or ceases to do business, or
  - (iii) the other Party breaches clause 6 (*Intellectual Property Rights*) or clause 17 (*Confidential Information*).

## **13. Effects of Termination**

### **13.1.** Upon termination of the Agreement:

- (i) the Customer's right to use the Software will, subject to clause 0 (if applicable), automatically cease and all licenses granted to the Customer pursuant to the Agreement shall automatically terminate;
- (ii) each Party shall return, within reasonable time of such termination or expiration, all Confidential Information, except as required to comply with any applicable legal or accounting record keeping requirement;
- (iii) TrustBuilder shall return all Customer Data stored in the Software;
- (iv) Customer shall promptly pay TrustBuilder all Fees due to TrustBuilder up to and including the date of termination.

## **14. Warranties**

- 14.1.** The Customer acknowledges that the Software and Services are provided "as is" and that other than as set out in clause 15.2, TrustBuilder makes no additional warranties, implied or express (including warranties of merchantability and fitness for a particular purpose).

## **15. Privacy and Data Protection**

- 15.1.** Each Party shall comply with the Data Protection Laws with respect to the processing of the Customer Personal Data. The Customer warrants to TrustBuilder that it has the legal right to disclose all Personal Data that it does in fact disclose to TrustBuilder under or in connection with this Agreement and that the Customer has obtained

sufficient consent from all data subjects concerned (if applicable).

**15.2.** The Customer shall only supply to TrustBuilder, and the TrustBuilder shall only process, in each case under or in relation to this Agreement, the Personal Data of data subjects falling within the categories specified in the Data Processing Agreement as concluded between the Parties and as attached hereto.

**15.3.** If any changes or prospective changes to the Data Protection Laws result or will result in one or both Parties not complying with the Data Protection Laws in relation to processing of Personal Data carried out under this Agreement, then the Parties shall use their best endeavours promptly to agree such variations to this Agreement as may be necessary to remedy such non-compliance.

## **16. Infringement Claims by Third Parties**

**16.1.** TrustBuilder shall indemnify and defend the Customer against any claims brought by Third Parties to the extent such claim is based on an infringement of the Intellectual Property Rights of such Third Party by the Software in the Territory.

**16.2.** Claims resulting out any of the following are excluded from clause 16.1:

- (i) the Customer's unauthorized use of the Software;
- (ii) the Customer's or any Third Party's modification of the Software;
- (iii) the Customer's failure to use the most recent version of the Software made available to the Customer;
- (iv) the Customer's failure to integrate or install any corrections to the Software issued by TrustBuilder, if TrustBuilder indicated that such update or correction was required to prevent a potential infringement; or
- (v) Customer's use of the Software in combination with any non-TrustBuilder Software or Services.

**16.3.** The indemnity obligation under this section shall be conditional upon the following:

- (i) the Customer promptly notifies TrustBuilder in writing of any such claims;
- (ii) the Customer grants TrustBuilder sole control of the defence and settlement of such claim;
- (iii) the Customer fully cooperates with TrustBuilder upon request; and
- (iv) the Customer makes no admission as to TrustBuilder's liability in respect of such claim, nor does the Customer agree to any settlement in respect of such a claim without TrustBuilder's prior written consent.

**16.4.** If, in TrustBuilder's reasonable opinion, the Software is likely to become the subject of a Third-Party claim, TrustBuilder shall, at its sole discretion, have the right to:

- (i) modify parts of the Software so that they become non-infringing, provided equivalent functionality is preserved;
- (ii) obtain for the Customer a license to continue using the Software in accordance with the Agreement; or
- (iii) terminate the relevant license and pay to the Customer an amount equal to a pro rata portion of the Subscription Fee paid to TrustBuilder for that portion of the Software which is the subject of such infringement.

**16.5.** The Customer acknowledges and agrees that the foregoing states the entire liability and obligation of TrustBuilder and the sole remedy of the Customer with respect to any infringement or alleged infringement of any Intellectual Property Rights caused by the Software or any part thereof.

## **17. Confidential Information**

**17.1.** Parties shall treat all Confidential Information received from the other Party as confidential, keep it secret and shall not disclose it to any Third Party, other than its agents, employees, advisors or consultants where such disclosure is necessary for the performance of the Agreement and only in case such agents, employees, advisors or consultants are bound by a confidentiality obligation at least as strict as included in the Agreement.

**17.2.** Confidential information disclosed in the execution of this Agreement shall not be used for any purpose other than as required for the performance of either Parties' obligations under the Agreement.

**17.3.** Both Parties shall take sufficient measures to maintain the confidentiality of all Confidential Information. Parties in particular agree that they:

- (i) shall not copy or otherwise exploit any component of the Confidential Information other than as herein provided, nor make any disclosures with reference thereto to any Third Party; and
- (ii) shall promptly notify the other Party if it becomes aware of any breach of confidentiality and give the other Party all reasonable assistance in connection with the same.

**17.4.** Shall not be considered Confidential Information, information that:

- (i) is published or comes into the public domain other than by a breach of the Agreement,
- (ii) can be proven to have been known by the receiving Party before disclosure by the disclosing Party;
- (iii) is lawfully obtained from a Third Party other than by a confidentiality breach of such Third Party; or
- (iv) can be shown to have been created by the receiving Party independently of the disclosure.

**17.5.** If and to the extent required in accordance with a judicial or other governmental order, the receiving Party may disclose Confidential Information, provided that the receiving Party:

- (i) gives the disclosing Party reasonable notice prior to seek a protective order or equivalent, unless the receiving Party is legally prohibited from doing so;
- (ii) reasonably cooperates with the disclosing Party in its reasonable efforts to obtain a protective order or other appropriate remedy;
- (iii) discloses only that portion of the Confidential Information that it is legally required to disclose; and
- (iv) uses reasonable efforts to obtain reliable written assurances from the applicable judicial or governmental entity that it will afford the Confidential Information the highest level of protection available under applicable law or regulation.

**17.6.** The obligations set out in this clause 17 shall enter into force as from the start of negotiations between the Parties and shall survive during five (5) years after the termination or expiration of the Agreement. The confidentiality obligations in the Agreement replace any prior non-disclosure agreement signed between the Parties.

## **18. Limitation of Liability**

**18.1.** Subject to the maximum extent permitted under applicable law, TrustBuilder's liability under the Agreement shall: (i) per event (or series of connected events) not exceed the Fees paid by the Customer to TrustBuilder under the Agreement for a period of six (6) months prior to the date of the event (or last of the series of connected events) giving rise to the claim, and (ii) in the aggregate not exceed EUR 250.000.

**18.2.** TrustBuilder shall under no circumstances be liable to the Customer for any indirect, punitive, special consequential or similar damages (including damages for loss of profit, lost revenue, loss of business, loss or corruption of data, loss of customers and contracts, loss of goodwill, the cost of procuring replacement goods or services, and reputational damage) whether arising from negligence, breach of contract or of statutory duty or otherwise howsoever, and third parties' claims. Each Party shall have the duty to mitigate damages. The exclusions and limitations of liability under this article shall operate to the benefit of TrustBuilder's affiliates and subcontractors to the same extent such provisions operate to the benefit of TrustBuilder.

**18.3.** TrustBuilder cannot be held liable in any way, neither contractually nor extra-contractually, for discontinuing an older release of the Software or for damages caused by the wrongful (or out of scope) use of the Software.

## **19. Miscellaneous**

**19.1. Entire agreement.** The Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and

supersedes all prior oral or written agreements, representations or understandings between the Parties relating to the subject matter hereof. No statement, representation, warranty, covenant or agreement of any kind not expressly set forth in the Agreement shall affect, or be used to interpret, change or restrict, the express clauses of the Agreement.

**19.2. Electronic signatures.** The words "execution," "signed," "signature," and similar words shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based record keeping system, as the case may be, to the extent and as provided for in any applicable law.

**19.3. Amendments.** The terms of the Agreement may be modified or amended only by written agreement executed by a duly authorized representative of both Parties hereto.

**19.4. Waiver.** The terms of the Agreement may be waived only by a written document signed by both Parties. Each such waiver or consent shall be effective only in the specific instance and for the purpose for which it was given and shall not constitute a continuing waiver or consent.

**19.5. Severability.** If any provision of the Agreement is determined to be illegal, void, invalid or unenforceable, in whole or in part, the remaining provisions shall nevertheless continue in full force and effect. The provisions found to be illegal, invalid or unenforceable shall be enforceable to the full extent permitted by applicable law. Each Party shall use its best efforts to immediately negotiate in good faith a valid replacement provision with an equal or similar economic effect.

**19.6. Survival.** Expiration, termination or cancellation of the Agreement shall be without prejudice to the rights and liabilities of each Party which have accrued prior to the date of termination, and shall not affect the continuance in force of the provisions of the Agreement which are expressly or by implication intended to continue in force, including, without limitation, the provisions relating to Intellectual Property Rights, Confidential Information and Limitation of Liability.

**19.7. Non-solicitation.** During the Term of this Agreement and for a period of one (1) year after the expiration or termination of this Agreement, each Party agrees that it shall not without the other Party's prior written consent, directly or indirectly (including through its Affiliates or recruitment agencies), hire or otherwise engage, in whatever capacity (including as an employee or consultant), or solicit the services of, any personnel member of the other Party or its Affiliates, while such person is employed or engaged by the

other Party and during six months after such employment or engagement ends. For the purpose of this section, "hire" means to employ an individual as an employee or engage such individual as an independent contractor, whether on a full-time, part-time or temporary basis. Both Parties agree that they will not encourage third parties to act in a manner that would constitute a breach of this section, if such action had been performed by either TrustBuilder or the Customer. In case the above non-solicitation/non-hire obligations are not complied with and give rise to actual employment/engagement of the other Party's personnel, the defaulting Party shall compensate the other Party by paying, upon a first request, a lump-sum amount corresponding to twelve times the gross salary/compensation each such person so hired/engaged earned with the aggrieved Party during the last full month such person worked for the aggrieved Party.

**19.8. Assignment.** The Customer shall not assign or otherwise transfer any of its rights or obligations under the Agreement without TrustBuilder's prior written consent. TrustBuilder's consent should be requested by registered letter, disclosing the identity of the prospective transferee. Subject to any restrictions on assignment herein contained, the provisions of the Agreement shall inure to the benefit of and shall be binding upon the Parties hereto and their respective heirs, legal representatives, successors and assignees.

**19.9. Force Majeure.** In the event that either Party is prevented from performing or is unable to perform any of its non-monetary obligations under this Agreement due to an Act of God, fire, casualty, flood, earthquake, war, strike, lockout, epidemic, destruction of production facilities, riot, insurrection, unavailability of material, or any other cause beyond the reasonable control of the Party invoking this section, provided such Party has used reasonable efforts to mitigate the effects of such force majeure event, such Party shall give prompt written notice to the other Party, its performance shall be excused, and the time for performance shall be extended for the period of delay or inability to perform due to such occurrences.

**19.10. Publicity.** TrustBuilder shall have the right to use any trademarks, logos or other marks of the Customer (including the Customer's corporate name) for Customer references on TrustBuilder's website, social media announcements and sales presentations. Upon both Parties explicit consent, Parties shall jointly issue a press release in which they announce the partnership between the Customer and TrustBuilder.

**19.11. Relationship between the Parties.** The relationship between TrustBuilder and the Customer is that of independent contractors. Neither Party is agent for the other and neither Party has any authority to make any contracts, whether expressly or by implication, in

the name of the other Party, without that Party's prior written consent for express purposes connected with the performance of the Agreement.

**19.12. Notices.** Any notice required to be served by the Agreement shall in first instance be given by electronic mail. Notices given to the Customer shall be done to the email address set out in the Order Form (or in case no email address is available via post to the Customer's registered address). Notices to TrustBuilder shall be done by email to orders@trustbuilder.com. All notices given by electronic mail, shall only be valid in case confirmation of receipt was expressly given by electronic mail by the receiving Party. In case no confirmation of receipt was given by TrustBuilder within five (5) Business Days, all notices can be done in writing and served by personal delivery, registered letter, addressed to either Party at its address given in the Order Form or to such other address as a Party may designate by notice hereunder. All notices shall be deemed to have been given either (i) if by hand, at the time of actual delivery thereof to the receiving Party at such Party's address, (ii) if sent by overnight courier, on the next Business Day following the day such notice is delivered to the courier service, or (iii) if sent by registered or certified mail, on the fifth (5<sup>th</sup>) Business Day following the day such mailing is made.

**19.13. Conflict.** In case of conflict between the provisions of the contractual documents executed between the Parties, the first document shall prevail on the latter: (i) the Order Form, (ii) the Terms and Conditions (iii) the Schedules, unless explicitly agreed otherwise in written between the Parties.

**19.14. Interpretation.** The terms of the Agreement shall be interpreted as follows (unless the context shall otherwise require or permit):

- (i) reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted;
- (ii) words importing the singular include the plural, words importing any gender include every gender and words importing persons include bodies corporate and incorporate; and each case vice versa;
- (iii) the headings or captions to the clauses are for ease of reference only and shall not affect the interpretation or construction of the Agreement.

**19.15. Language.** The Agreement is entered into in the English language only; which language shall be controlling in all respects. Furthermore, all communications and notices made or given pursuant to the Agreement shall be in the English or Dutch.

**19.16. Applicable law and jurisdiction.** The Agreement shall be governed by and construed in accordance with the laws of Belgium and the Parties hereto submit to the exclusive jurisdiction of the courts of Ghent, division Ghent. The United Nations Convention for the

International Sale of Goods shall not apply to the Agreement.

**19.17.**