

End-User Terms and Conditions v3.1 Servoy BV (hereinafter: “Terms & Conditions”)

Servoy BV (hereinafter: “Servoy”) develops and licenses certain business application platform software and provides support and several services for such application. The Terms & Conditions are applicable to the licensing, support, possible hosting and consultancy/development services of the software products being offered by Servoy to End-User.

Article 1. Definitions.

1.1 End-User shall mean an entity with whom Servoy has settled the Agreement for the distribution, licensing, delivery/hosting, the provision of 1st line support and/or the services of the Software for the internal business and benefit of End-User and of the Affiliates as to the extent agreed upon in the Agreement.

1.2 Affiliate(-s) shall mean legal entities affiliated with End-User, and which are directly or indirectly controlling, controlled by or under common control with the End-User. For these purposes “control” means that a company a) directly or indirectly holds more than 50% of the nominal value of the issued share capital, or b) has more than 50% of the voting power at general meetings; or c) has the power to appoint a majority of the directors; or d) otherwise maintains core control of such entity.

1.3 Product Order Form shall mean a purchase order/sales order form of Servoy to be signed by Servoy and End-User, fully incorporating the Terms & Conditions for entering into a License/Support/Services agreement between End-User and Servoy and stating the relevant factual details of the same including attachments if and to the extent agreed upon in writing by Servoy and End-User.

1.4 The Agreement shall mean the combination of a by Servoy and End-User fully executed Product Order Form and the Terms & Conditions including all attachments, addenda, schedules, exhibits and documents referenced at URLs.

1.5 Open Source Product shall mean any present and future open source software which is subject to the relevant open source licensing terms; the list of this software and the text of these different applicable terms, as the same may be modified by Servoy from time to time, can be found at: <https://servoy.com/download/opensourcelist>.

1.6 Third Party Application(-s) shall mean applications, integrations and/or implementations owned by third parties, that can be used in connection with the Servoy Software; the list of these applications and the text of the different applicable terms, as the same may be modified by Servoy from time to time, can be found at: <https://servoy.com/download/3rdparties>.

Third Party Applications can be divided into two (2) types: add-ons or embedded. The different types of conditions relating to each of these types can be found at: <https://servoy.com/download/3rdparties>. The factual description of Third Party Application(-s) as actually provided to End-User specified by release/version number, type, measuring units, fees, payment schedule etc. is indicated in the Product Order Form.

1.7 Servoy Software shall mean the present and future standard proprietary computer business application platform software of Servoy which is generally commercially available and marketed under the name “SERVOY” and the subsequent Releases. The components of Servoy Software are the Servoy integrated development environment, the Servoy server and the Servoy client technology (smart-, web-, mobile-, NG-, and headless clients). Servoy Software is explicitly excluding any background/underlying technology, software, concepts, tools, expertise, knowhow, materials and/or information which are/will be used by Servoy to develop and to maintain the Servoy Software and is explicitly excluding all other software created by Servoy (e.g. products and services needed for hosting, cloud pipeline). The Servoy Software products as actually licensed to End-User are indicated in the Product Order Form.

1.8 Software shall mean the Servoy Software and the Open Source Product and, if ordered under the relevant Product Order Form, the Third Party Application.

1.9 End-User Product(-s) shall mean the software products of End-User as independently developed End-User and/or developed with the cooperation (development services) of Servoy, by using the Software.

1.10 Software Product Description shall mean the on-line help text/manual being part of the Servoy Software and/or the Servoy standard user manual related to the Release concerned - which texts may be modified by Servoy from time to time - can be found at: <https://wiki.servoy.com>

1.11 License shall mean the right as granted by Servoy to End-User to use the Servoy Software, which right is described in Article 3.

1.12 Support shall mean the provision by Servoy to End-User of 1st line (helpdesk) assistance as to the Servoy Software in accordance with Article 5. The description of the possible support levels (A, B, C or D), related response times and support windows are indicated in the SULA (support level agreement) contents of which can be found at: <https://servoy.com/download/sula>; the actually agreed level is indicated in the Product Order Form. Servoy reserves the right to reasonably modify its support policy set forth at <https://servoy.com/download/sula>, provided that Servoy agrees not to materially diminish the related scope or the Support level during the Term.

1.13 Hosting shall mean the acquiring, installation, maintenance and hosting of the hardware infrastructure for the account and risk of Servoy which infrastructure is required to provide End-User access to the Servoy Software under the Agreement. If Hosting is agreed under the relevant Product Order Form, the Hosting Terms - as the same may be modified by Servoy from time to time - are applicable and can be found at: <https://servoy.com/download/hosting>. If and in so far as Hosting is also provided with respect to Third Party Application, this is indicated in the Product Order Form.

1.14 Services shall mean any consulting services provided by Servoy to End-User as to the Software - not being Support - including but not limited to: project management, implementation (consisting of e.g., installation, training, configuration and translation), change request, customization, development etc. The description of the possible service levels (platinum, gold, silver), related response times and service windows are indicated in the SLA (service level agreement) (contents of which can be found at: <https://servoy.com/download/sla/>); the actually agreed Service level is indicated in the Product Order Form. Servoy reserves the right to reasonably modify its Services policy set forth at <https://servoy.com/download/sla> provided that Servoy agrees not to materially diminish the related scope or the Services during the Term.

1.15 Assurance Program shall mean start up assistance; contents of which and the actually agreed Assurance level are indicated in/as part of the Product Order Form and the Assurance Program Addendum.

1.16 Measuring Unit shall mean the unit of account in accordance with which the use of the Servoy Software is measured. Such unit can be e.g.: concurrent user, named user, etc. The licensed quantity and the type of Measuring Units are indicated in the Product Order Form.

1.17 Release shall mean either a:

- Major Release (x.0.0): the annual (calendar year), generally commercially available release of the Servoy Software which primarily contains corrections and new functionality;
- Minor Release (0.x.0): the quarterly (calendar year = 03,06,09,12), generally commercially available release of the Servoy Software;
- Long Term Support Release (0.03.0LTS): the annual (calendar year) 03 Minor generally commercially available Release of the Servoy Software;
- Maintenance Release (0.0.x): the generally commercially available patch of the Servoy Software which is limited to bug fixing - Maintenance Releases are only released for the latest Minor Release and the Long Term Support Releases.

The timing of the provision by Servoy of the Releases shall be at its sole discretion.

1.18 Bug shall mean a defect in the Servoy Software and in the and the embedded Third Party Application that prevents it from functioning substantially in accordance with the specifications/ functionalities as specified in the Software Product Description. Malfunctions are only considered as 'Bugs' in the event they are demonstrable/repeatable and can be duplicated.

1.19 Software Key shall mean an encrypted element or piece of software related to the Servoy Software provided by Servoy that enables ongoing functioning of the Servoy Software.

1.20 Effective Date shall mean the starting date of the Agreement as indicated in the Product Order Form.

1.21 Term shall mean the number of Contract Years as of the Effective Date for which the Agreement is in force which term is defined in the Product Order Form.

1.22 Contract Year shall mean each period of twelve (12) consecutive months from the Effective Date and each anniversary of the Effective Date.

1.23 Contract party-/ies shall mean any Servoy authorized distributor, system integrator, consulting firm or other third party operating under a written partner agreement with Servoy.

Article 2. Scope of the Agreement.

2.1 Ordering. End-User may elect to purchase the License, sub-license for Third Party Applications, Support, Hosting and/or Services under the terms of this Agreement by executing one or more Product Order Forms. A Product Order Form becomes effective once fully executed by both parties. Servoy shall provide the same to End-User and End-User shall have the right to use the same solely for End-User and Affiliates own business purposes and subject to the limitations documented in the Agreement.

2.2 Cooperation. End-User acknowledges that the timely provision of, and access to, assistance, cooperation, complete and accurate information from its officers, agents, and employees are required to enable Servoy to provide the Support, Hosting and/or Services.

2.3 Affiliates. All provisions of these Terms&Conditions that protect the rights of End-User (e.g. confidentiality and the protection of personal data) shall equally apply to Affiliates that make use of the Software and End-User Product. Customer shall be responsible for compliance with the Agreement by any Affiliate which uses the Software and End-User Product hereunder.

Article 3. License, Open Source Product and the sub-license of Third Party Application.

3.1 License. Upon acceptance by Servoy of the Product Order Form and in return for the applicable License fee paid and subject to the Agreement, Servoy grants End-User the non-transferable and non-exclusive right during the Term to use the Servoy Software and the embedded Third Party Application for the (internal business) benefit of the End-User and the Affiliates.

End-User acknowledges and warrants that under the Agreement, it is only entitled to use the Servoy Software as part of the End-User Product and that the License does not relate to the Servoy Software and the embedded Third Party Application as a 'stand-alone' product.

3.2 Add-ons Third Party Application. Article 3.1 applies accordingly towards the sub license of the add-ons Third Party Application. The possible fee due for the sub license of an add-ons Third Party Application is mentioned separately in the Product Order Form.

3.3 Software Key. End-User acknowledges that an updated Software Key is required for continued operation of the Servoy Software. The Software Key may prevent the Servoy Software from operating outside the boundaries of the License granted and from operating in the event any fee due to Servoy is more than fourteen (14) calendar days past due.

3.4 Releases & Support level A. The License includes the provision/delivery of all Releases and Support level A (contents of which can be found at: <https://servoy.com/download/sula>). Servoy shall have no obligation to provide Releases and the provision of Support level A until full payment of the License fee has been received.

3.5 Open Source Product. The Open Source Product as referred to in Article 1.5 is the only open source software included in the Servoy Software and that falls within the definition of Open Source

Product. Servoy has and continues to respect all applicable open source licensing terms and provides End-User with all relevant license texts for each version of the Open Source Product by means of publishing the same on the URL as indicated in Article 1.5. End-User shall respect all applicable open source licensing terms.

3.6 Ownership Rights. End-User only acquires the right to use the Servoy Software subject to the Agreement. End-User confirms and acknowledges that all intellectual property rights used or embodied in the Servoy Software shall be and remain the sole property of Servoy. End-User shall maintain the copyright and proprietary notice on the Servoy Software and shall reproduce such copyright and proprietary notice on any copy of the Servoy Software. End-User remains liable for the protection and security of such copy(-ies). End-User recognizes and agrees that it obtains no rights in the Servoy Software or other materials provided by Servoy except for the limited rights specifically granted in the Agreement. This Article 3.6 applies accordingly towards Third Party Applications and towards the ownership rights of the relevant owners/licensors.

Parties hereby however acknowledge that all intellectual property rights pertaining to the End-User Product - in this context excluding the Software - will be and remain the sole property of the End-User.

3.7 Suitability. End-User alone is responsible for determining which software best suits its needs. End-User alone is responsible for operating the Software, the End-User Product and the results obtained.

3.8 Compliance with laws. Servoy makes no representations that the Software conforms to or satisfies any applicable laws or regulations. However, Servoy shall endeavour to follow changes of federal, national, state and local laws to the extent that such required in order to establish the conformity of the Software with the laws. However, since the impact of such changes, the geographical scope and the time schedule of such changes are not clear in advance and may be dependent on political decisions, Servoy is not able to make any statement nor provide any guarantee with respect to the scope of changes needed and any date of compliance to such changes by the Software.

3.9 Restrictions on Use. End-User shall only use the Servoy Software for the purposes noted in the Agreement subject to the following restrictions:

- a. is allowed to copy the Servoy Software for the purpose of archive and back-up only;
- b. shall not modify and/or alter, improve, supplement or translate the Servoy Software not even to comply to any local standards and requirements;
- c. shall not, except as authorized by applicable law, attempt to (or permit others to) decipher, reverse translate, decompile, disassemble or otherwise reverse engineer the source code or underlying ideas or algorithms of the Servoy Software by any means whatsoever;
- d. agrees that it will not alter, disable, tamper with and/or inhibit any billing system components, technical measures such as the Software Key that protects misuse of the Servoy Software, or functionality included as part of the Servoy Software;
- e. is prohibited from using any product with the Servoy Software when such product is used to restrict, limit, reduce, or hide the number of Measuring Units using the Servoy Software; and
- f. is prohibited to change the type/total number of Measuring Units as granted under the Product Order Form.

Article 4. Hosting.

4.1 Upon acceptance by Servoy of the Product Order Form and in return for the applicable Hosting fee paid and subject to the Agreement, Servoy shall provide the Hosting. Hosting consists of Pipeline Hosting and/or Deployment/Production Hosting. The related Hosting period/Hosting fees are indicated in the Product Order Form.

4.2 Hosting will be provided:

- as part of the development hosting phase under the name Servoy Cloud Pipeline - if so, the same will be indicated Product Order Form as well as the related hosting level, term and fee;
- as part of the deployment hosting phase under the name Server Cloud Production Hosting - if so, the same will be indicated Product Order Form as well as the related hosting level, term and fee.

The Hosting Terms which are applicable can be found at: <https://servoy.com/download/hosting>.

4.3 End-user shall not interfere with or disrupt Servoy's operation of the systems used to host the Software or other equipment or networks connected to the Hosting.

4.4 Servoy may subcontract the Hosting to a Contract party. The name of the relevant Contract Party for Hosting is indicated in the Product Order Form.

Article 5. Support.

5.1 Contents Support. Subject to the support level concerned as agreed as part of the Product Order Form, Servoy shall provide End-User either level A in return for the payment of the License fee (see Article 3.1) and - if agreed - on top of level A also level B, C or D Support in return for the applicable Support fees in the English and/or Dutch language as of the starting date indicated in the Product Order Form.

5.2 Product Life Cycle. Servoy provides Support only for the then current latest Minor Release and for the latest Long Term Support Release respectively the Long Term Support Release of the foregoing calendar year.

5.3 Subcontracting. Servoy may subcontract Support to a Contract party. However, Servoy shall remain liable to provide Support as described in the Agreement.

5.4 Modifications. Servoy shall not be obligated under the Agreement to provide Support for any portion of the Servoy Software which is modified in whatever way. Similar assistance towards the Servoy Software as modified and/or supplemented by Servoy shall be provided as part of the Services; the reimbursement for the same shall be in accordance with the then Servoy's then current hourly fees for consultancy or in accordance with the related agreed upon fees being part of the Product Order Form.

5.5 Exclusions. Support does not include:

- the installation and/or the implementation of Releases;
- providing remote assistance with the integration of Releases with any modified Servoy Software and/or with the End-User Product;
- the migration of any modified Servoy Software nor the End-User Product to a new Release;
- on-site visits to provide assistance;
- the possible requirement of change management/migration of the Servoy Software nor the End-User Product to any modified/ updated/migrated version of the hardware/platform/servers/underlying technology etc.

Servoy is not obliged to provide Support regarding:

- the End-User Product, the Open Source Product nor an add-ons Third Party Application;
- altered, damaged or modified Servoy Software;
- the Servoy Software that is not the current Major Release or one immediately preceding Major Release;
- problems/Bugs caused by negligence, or misuse or misapplication, use of Servoy Software other than as specified in the Software Product Description and/or caused by events beyond the control of Servoy;
- Servoy Software installed on any computer hardware that is not supported by Servoy - supported hardware is as among others described in the Software Product Description.

In the event that in the course of investigating a possible Bug, Servoy establishes that the problems concerned are not attributable directly to an inherent problem in the Servoy Software the embedded Third Party Application and/or Services, including without limitation problems caused by any software, accessories, network, hardware, system or other devices and/or equipment not supplied by Servoy and/or an add-ons Third Party Application, the End-User Product and/or an Open Source Product, End-User shall reimburse Servoy at the Servoy's then current hourly fees for consultancy or in accordance with the related agreed upon fees being part of the Product Order Form plus reasonable travel and accommodation expenses.

ANY CLAIM BY END-USER TO REMEDY DEFECTS REGARDING THE ADD-ONS THIRD PARTY APPLICATION SHALL BE MADE SOLELY BETWEEN END-USER AND THE RELEVANT PARTY THAT OWNS SUCH ADD-ONS THIRD PARTY APPLICATION.

Consequently the SULA as referred to in Article 1.12 is not applicable towards add-ons Third Party Applications. Unless explicitly provided to the contrary in the Product Order Form, the add-ons Third Party Applications are supported directly by the relevant third party in accordance with the conditions relating thereto which can be found at the URL mentioned in Article 1.6.

If despite this above provision, Servoy provides any kind of support with respect to the add-ons Third Party Application, such support shall be mutually agreed upon in writing and in advance and shall be reimbursed at the Servoy's then current hourly fees for consultancy (time and material base).

5.6 Primary Contact. End-User shall appoint so called key-user individuals as the primary and sole contact with Servoy for Support; their names will be indicated in the Product Order Form.

5.7 Cooperation. End-User shall provide to Servoy reasonable debugging information (such as memory dumps or log files) and shall cooperate in investigating Bugs including allowing access to the Servoy Software via remote dial-in facilities during normal business hours for test and debugging purposes. End-User shall certify that the Bug is directly related to the Servoy Software and verify that the Bug has been corrected. End-User shall at its expense acquire and maintain any products which permit Servoy to access End-User's software (such as dial-in and diagnostic software). If End-User fails to provide access as noted herein, Servoy shall on its own discretion decide, subject to its personnel availability, if and when it is required to provide on-site assistance. On site assistance falls outside the scope of Support (see also Article 5.5). If Servoy provides on-site assistance, End-User shall reimburse Servoy at the Servoy's then current hourly fees for consultancy or in accordance with the related agreed upon fees being part of the Product Order Form plus reasonable travel and accommodation expenses. Servoy shall not be obligated to provide Support for any malfunction or Bug resulting from improper use of the Servoy Software by End-User.

Despite the fact that End-User has to provide said access to the Servoy Software, End-User is and remains fully responsible and liable for the security and accessibility of the testing/disaster/ recovery and the production environment where the Servoy Software runs and shall apply strict security procedures which avoid easy access by means of e.g. regular changing password policies.

5.8 Assistance. Telephone/internet assistance shall be provided by Servoy to End-User at the agreed Support level; this level is indicated in the Product Order Form. If the assistance provided to End-User exceeds this agreed level, End-User might be requested to upgrade to a higher Support level and/or to undergo, and pay for, additional training on the use of the Servoy Software and pay on a time and material basis for the extra hours based on Servoy's then current hourly fees for consultancy or in accordance with the related agreed upon fees being part of the Product Order Form.

Article 6. Services.

6.1 Services. Subject to the service level concerned agreed as part of the Product Order Form, Servoy shall provide End-User in return for the applicable Services fees - in the English and/or Dutch language - the Services as of the starting date as indicated in the Product Order Form. Since Services as such may apply to great variation of activities, the scope/content/further details/the related time schedule of the Services shall be agreed every time in writing by parties. The reimbursement for the service level concerned is indicated in the Project Order Form.

End-User shall reimburse Servoy for documented and reasonable travel, administrative, and out-of-pocket expenses incurred in conjunction with any performance of the Services.

Parties agree that Servoy shall use all commercially reasonable efforts to perform the Services to the best possible result, provided that as part of the provision of Services Servoy does not guarantee/ makes a warranty in whatever way any results and/or deliverables - including but not limited to the End-User Product - but only provides services hours as such.

6.2 Subcontracting. Servoy may subcontract the performance of the Services to a Contract party. However, Servoy shall remain liable to provide Services as described in the Agreement. In the event End-User agrees directly with a Contract party the provision of services regarding the Servoy Software

and the embedded Third Party Application, Servoy shall - also subject to Article 11.3.c - not be responsible or liable for any damages and costs resulting in whatsoever way from the same.

6.3 Cooperation. End-User acknowledges that the timely provision of and access to office accommodations, facilities, equipment, assistance, cooperation, complete and accurate information and data from its officers, agents, and employees, and suitably configured computer products are essential to the performance of any Services and that Servoy's ability to complete any Services is dependent upon same. If the relevant requirement(s), project plan(s), schedule, scope, specifications(s), design(s), software, hardware product(s), or related system environments(s) or architecture are changed or delayed by End-User or any other person, Servoy shall not be responsible for the change or delay unless End-User and Servoy specifically consent to the change, scheduling, and additional charges, if any, in writing. The provision of the last paragraph of Article 5.7 fully applies.

Article 7. Delivery Terms.

Unless otherwise agreed in the Product Order Form, delivery of the Servoy Software and Releases shall be made electronically through the download page of the website servoy.com/download. Any provided delivery date as stated in the Product Order Form is an estimates only and Servoy is not liable for direct or indirect loss arising from late delivery as the case may be. However, Servoy may be liable for direct damages in the event late delivery is due to wilful intent of Servoy. Servoy shall inform End-User, as soon as reasonably practical, of the inability of Servoy to deliver the Servoy Software by any previously agreed delivery date.

Article 8. Payment terms and taxes.

8.1 Under the Agreement the End-User shall pay to Servoy the:

License fee - an annual non-returnable License fee which amount and payment schedule are indicated in the Product Order Form (net of all taxes, if any).

Assurance Program fee - the fee due and the applicable period are indicated in the Product Order Form.

Support fee - monthly fixed for given number of monthly hours regardless the number of Measuring Units; such number of hours is indicated in the Product Order Form.

Services fee - monthly fixed for given number of hours - such number of hours is indicated in the Product Order Form as well Servoy's hourly rate for consultancy.

Hosting fee for the pipeline phase respectively for the deployment/production phase - see Article 4 - and the Product Order Form.

Add-ons Third Party Application fee - amount for the sub license of add-ons Third Party Applications, the fees due, payment schedule and the applicable period are indicated in the Product Order Form.

8.2 Pricing. The agreed upon annual fee due by End-User to Servoy for the License are due as of the Effective Date. The agreed upon fees due by End-User to Servoy for Support and for the Services are due as of the relevant starting date indicated in the Product Order Form. The payment schedule of the several payments due is indicated in the Product Order Form. The fees for the Assurance Program, License, Support, Hosting, Services and Servoy's hourly fees for consultancy are annually subject to a possible increase in accordance with the consumer index (CPI) as published by the CBS or of a maximum of five percent (5 %) whichever is higher.

8.3 Payment term. Unless otherwise agreed in the Product Order Form, all invoices are due and payable within thirty (30) calendar days of the date of the invoice. End-User's failure to pay any amount due, shall constitute a material breach of the Agreement. Any amounts due to Servoy hereunder which are not paid within fourteen (14) calendar days after they are due under the Agreement shall incur interest at the rate of one and one half percent (1 ½%) per month or any part of the month. The interest shall be calculated from the date payment is originally due hereunder until the date payment is made in full. End-User shall pay such interest and all payments shall first be applied to interest and then to principal. All legal/ collection costs and expenses (including related attorneys' fees) incurred by Servoy in enforcing its rights in relation to any overdue payment shall be paid by End-User to Servoy.

Servoy shall have no obligation to provide the License/Releases, Assurance, Support, Services, Hosting and/or consultancy until full payment of the relevant fees has been received. Servoy may

terminate or suspend the provision of the same immediately upon written notice if any payment due to Servoy is more than fourteen (14) calendar days past due.

8.4 Currency. All payments shall be made in the currency as indicated in the Product Order Form.

8.5 Taxes. All indicated payments are exclusive of VAT, all federal, provincial and local sales, use, excise, privilege and similar taxes. Each party shall pay and is responsible for payment of any taxes it is due to the competent authority including any tax on its own net income. End-User shall make no deductions for taxes of any kind, including withholding taxes, any payment to Servoy under the Agreement. End-User shall pay directly, and shall indemnify Servoy against and repay to Servoy on demand, any and all taxes such as, but not limited to, sales, use, value added, customs duties, and import fees including any expenses, interest and penalties related thereto. If End-User is required by law to withhold taxes, then End-User shall pay Servoy a gross amount of money, such that the net amount received by Servoy (after deducting or withholding the required taxes) is equal to the amount of the fee originally owed before subtracting withholding taxes.

8.6 Audit. Servoy may audit End-User's use of the Software, Hosting, Support and Services to verify that such usage is in accordance with the Agreement. End-User shall provide reasonable cooperation with such audits as Servoy may request.

8.7 Offset. Fees and/or charges due under the Agreement may not be withheld or offset by End-User against amounts possibly owed by Servoy party under any circumstances.

Article 9. Confidentiality & Privacy.

9.1 Confidential Information. Confidential information may include in any form, but is not limited to, the contents of the Agreement, processes, formulae, specifications, programs, instructions, technical know-how, methods and procedures of operation, benchmark test results, business or technical plans and proposals.

It is agreed that confidential information received by a party under the Agreement shall: (a) be kept confidential by the receiving party; (b) be treated by the receiving party in the same way as it treats confidential information generated by itself; (c) not be used by the receiving party other than in connection with the implementation of the Agreement; and (d) be divulged to the receiving party's personnel, only if they have a need to know and have undertaken to keep confidential information secret.

9.2 Extent of Confidentiality. These commitments shall cease if, but only to the extent that, confidential information:

- i) is or becomes generally known or available to the public at large through no act or omission of the receiving party; or
- ii) can be demonstrated to be available lawfully to the receiving party prior to the disclosure or has thereafter been furnished to the receiving party without restrictions as to disclosure or use; or
- iii) can be demonstrated to be independently developed by the receiving party without use of any confidential information received under the Agreement.

9.3 Employees. Each party may disclose confidential information to any of its employees on a need-to-know-basis only and on the condition that the same shall be bound by similar commitments undertaken under this Article 9.

9.4 Personal Data. To the extent that Servoy processes any Personal Data (as defined in the attached Data Processing Agreement) on End-User's behalf, within the scope of rendering the Support, Hosting and/or Services, the terms of such data processing addendum (as included in Appendix to the Product Order Form) which are hereby incorporated by reference (the "DPA") shall apply and Servoy shall comply to the same.

End-User acknowledges that solely the End-User performs the actual handling/processing of the End-User Data and the Personal Data and that Servoy as part of performing the Support, Hosting and Services may have occasional access to the same but does not check nor takes no responsibility/accept no liability for the correctness and completeness of any Personal Data entered by End-User. It is the responsibility of End-User, as the controller of the personal data, to observe all relevant personal data protection laws. End-User will indemnify Servoy against any claims based on a breach by End-User of applicable personal data protection laws and/or any conflict of an instruction by End-User with any applicable personal data protections laws.

Article 10. Intellectual Property Rights.

10.1. Each party acknowledges that the trademarks, copyrights, patents, logo's, descriptions and other intellectual property rights belonging to, embedded in or associated with the business, (software) products and/or services of the other party are and remain exclusively owned by that party. End-User confirms and acknowledges that any and all of the trademark(s), tradenames, copyrights, patents and other intellectual property rights used or embodied in the Servoy Software (including any future additions, Releases, enhancements, updates, translations or modifications as provided by Servoy) shall be and remain the sole property of Servoy.

End-User confirms and acknowledges that any and all of the trademark(s), tradenames, copyrights, patents and other intellectual property rights used or embodied in the Third Party Application shall be and remain the sole property of the relevant owner/licensor.

10.2 Servoy confirms and acknowledges that any and all of the trademark(s), tradenames, copyrights, patents and other intellectual property rights used or embodied in the End-User Product - in this context including the End-User Data but excluding the Software - will be and remain the sole property of the End-User.

Servoy shall not obtain any intellectual property rights in or to the confidential information, Personal Data of End-User and/or the End-User Data. Servoy shall not obtain any intellectual property rights in or to developments created by End-User using development tools provided by Servoy, provided that End-User shall not through such development obtain any intellectual property rights to the Software and/or any other materials owned by Servoy or the owners of Third Party Application and /or Open Source Product.

10.3 Subject to (the limitations of) Article 11, Servoy shall defend, at its expense, any action brought against End-User to the extent that it is based on a claim that the use of the Servoy Software when used within the scope of the Agreement infringes any third party's intellectual property right. Servoy shall indemnify End-User from any costs, damages and fees finally awarded or determined by irrevocable judgment by a court of law against End-User which are attributable to such claim, provided that End-User notifies Servoy promptly in writing of the claim. End-User shall permit Servoy at its sole discretion, to defend compromise or settle the claim and shall provide all available information, assistance and authority to enable Servoy to do so. Servoy shall reimburse End-User's reasonable costs for such activity. End-User shall have no authority to settle any claim on behalf of Servoy. Servoy will not indemnify End-User for any action brought against End-User to the extent that it is based on a claim that the use of the Open Source Product infringes any intellectual property right.

10.4 Servoy shall have no liability for any claim of intellectual property right infringement based on the (i) use of other than the then latest Minor Release, if such infringement could have been avoided by the use of the latest Minor Release, or (ii) use of a modified version of the Servoy Software where the infringement would have been avoided by using the standard Servoy Software, or (iii) use of the Servoy Software in conjunction with End-User data where use with such data gave rise to the infringement claim, (iv) use of the Servoy Software with other software or hardware, where use with such other software or hardware gave rise to the infringement claim; (v) use of any Servoy Software in a manner inconsistent with its documentation, (vi) use of the Open Source Product and/or (vii) use of the Software that breaches the Agreement.

10.5 Should the Servoy Software become, or in Servoy's opinion, is likely to become the subject of a claim of infringement of any intellectual property right, Servoy may at its sole option substitute the Servoy Software or the relevant part thereof with non-infringing computer programs, and/or modify the Servoy Software or the relevant part thereof in such manner that such infringement is removed.

Article 11. Warranty and Limitation of Liability.

11.1 Limited Warranty. Servoy warrants that the Servoy Software and embedded Third Party Application (excluding add-on Third Party Applications) shall be free from material program errors and material defects in material and workmanship and that the Servoy Software and embedded Third Party Application (excluding add-on Third Party Applications) shall function substantially in accordance with the Software Product Description. However, Servoy does not warrant that the Servoy Software and embedded Third Party Application (excluding add-on Third Party Applications) is completely error-free.

SERVoy PROVIDES THE OPEN SOURCE PRODUCT AND THE ADD-ON THIRD PARTY APPLICATION "AS IS" AND MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND CONCERNING THE SAME.

11.2 Warranty Term. This warranty in this Article 11 shall be valid only for one (1) year after the delivery by Servoy of the given Release to End-User. This warranty shall apply only to the then current Release for use on computer systems then recommended by Servoy as among others described in the Software Product Description.

11.3 Warranty Limitations. There are limits to the limited warranty described above. These are as follows:

- a. End-User must provide written notice of the Servoy Software malfunction in reasonable detail within the warranty period.
- b. End-User must have installed all Releases provided by Servoy.
- c. If End-User modifies the Servoy Software in any way, then the warranty applies only to the unmodified/standard Servoy Software as distributed by Servoy. End-User must maintain any modifications to the Servoy Software separately from the Servoy Software provided by Servoy.
- d. End-User must have installed and/or use the latest revision of all prerequisite underlying technology, operating system software, hardware, and configurations currently recommended by Servoy as among others described in the Software Product Description.
- e. Servoy shall not be obligated to remedy any Bug which Servoy cannot reproduce/repeat in a standard version of the Servoy Software on officially supported configurations.
- f. Servoy shall not be liable for any malfunction or error resulting from improper use by End-User of the Servoy Software.

11.4 Modifications Not Warranted. The warranty in this Article 11, shall be - subject to Article 11.3.c - limited in such a way that Servoy shall not be liable for any modification of the Servoy Software as made by End-User nor for any malfunction or error resulting from a modification made with or without the prior written explicit approval of Servoy.

11.5 NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR ANY LOSS OF PROFITS OR REVENUE.

11.6 MONETARY LIMITATION. PARTIES' MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THE AGREEMENT, WHETHER IN CONTRACT OR TORT OR OTHERWISE, SHALL BE LIMITED TO THE AMOUNT OF THE FEES END-USER PAID TO SERVOY OVER THE PREVIOUS SIX (6) CALENDAR MONTHS UNDER THE PRODUCT ORDER FORM GIVING RISE TO THE LIABILITY.

IF SUCH DAMAGES RESULT FROM END-USER'S USE OF THE LICENSE, HOSTING, SUPPORT AND/OR SERVICES, SUCH LIABILITY SHALL BE LIMITED TO THE FEES END-USER PAID SERVOY OVER THE PREVIOUS SIX (6) CALENDAR MONTHS FOR SUCH PARTICULAR PERFORMANCE.

THE FOREGOING MAXIMUM LIABILITY LIMIT SHALL NOT APPLY TO (1) DAMAGES ARISING FROM DEATH OR PERSONAL INJURY; OR (2) DAMAGES CAUSED BY GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

11.7 THE LIMITED WARRANTY EXPRESSED IN THE AGREEMENT IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NO OTHER WARRANTY IS MADE HEREUNDER BY SERVOY AND ALL OTHER CONDITIONS, WARRANTIES, AND REPRESENTATIONS, EITHER EXPRESS OR IMPLIED, ARE EXCLUDED, INCLUDING, BUT NOT LIMITED TO, CONDITIONS OR WARRANTIES RELATING TO THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

11.8 Loss/damage of Data. Servoy shall not be responsible for any loss and/or damage of data. End-User is responsible to have adequate backup procedures to avoid any loss or damage of data.

Article 12. Termination.

12.1 Term. The Agreement will commence on the Effective Date and, except as terminated in accordance with the Agreement, shall be valid for number of Contract Years as indicated in the Product Order Form.

12.2 Termination Term. The Term shall upon expiry be automatically renewed for subsequent one (1) year renewal terms until terminated by either party as provided herein. Either party may terminate the Agreement effective as of the end date of the initial Term or any subsequent anniversary thereof by delivering written notice of termination to the other party at least one hundred and eighty (180) calendar days before the desired termination date. The Agreement shall remain in effect during any renewal term, except as the parties agree otherwise in writing.

12.3 Termination for Breach. Each party shall be entitled forthwith to terminate the Agreement by a two (2) months prior written notice to the other party if the other party commits a material breach of any of its obligations under the Agreement and in the case of a breach which is capable of remedy, fails to remedy the same within thirty (30) calendar days after the date of the written notice giving particulars of the breach.

12.4 Termination for Insolvency. Each party may terminate the Agreement immediately by notice in writing if the other party enters into liquidation, whether voluntary or compulsory, or enters into a settlement with its creditors or applies for suspension of payment or admits its inability to pay its debts as and when due or is declared bankrupt or takes or suffers any similar action in consequence of debt.

12.5 Change of Ownership. Servoy may terminate the Agreement immediately by notice in writing in the event End-User sells or disposes of substantially all its assets or in the event that the ownership of End-User's business passes into other hands other than those now exercising or entitled to the same either voluntarily or by law. Servoy will not unreasonably invoke its power to terminate the Agreement under this Article 12.5 provided that any such change does not transfers control to owners whose business mission is detrimental to the interests of Servoy.

Article 13. Consequences of expiry/termination.

13.1 In the event of expiration or termination of the Agreement, End-User shall:

- i) discontinue all use of the Servoy Software;

- ii) within fourteen (14) calendar days of termination return to Servoy and not keep any copies of the Servoy Software and any other information supplied under the Agreement whether designated proprietary or not and testify in writing that all and any copies of the Servoy Software and mentioned material are returned to Servoy;
- (iii) pay Servoy all accrued and unpaid amounts then due and owing in accordance with the Agreement as and when the same would have in the normal course fallen due for payment and/or all future payments and other amounts as and when becoming due hereunder.

13.2 Expiry/termination, either voluntary or involuntary, shall not entitle End-User to any refund for any fees paid nor shall it relieve End-User of the obligation to pay any outstanding amounts due to Servoy. Termination of the same with retrospective effect (dissolution) is excluded.

Article 14. General.

14.1 Law. The Agreement shall be construed, interpreted, and applied in accordance with the laws of The Netherlands. Any dispute arising between the parties shall be settled by the relevant court of Amsterdam.

14.2 Non-assignability. The Agreement may not be assigned by End-User without the written consent of Servoy, which consent shall not unreasonably be withheld.

14.3 Enforcement. The failure of either party to enforce any provision of the Agreement shall not be construed to be a waiver of such provision or such party's right to thereafter enforce the same, and no waiver of any breach shall be construed as an agreement by such party to waive any subsequent breach of the same or other provisions.

14.4 Force Majeure. A party shall be excused for failures and delays in performance of its obligations under the Agreement caused by war, riots, or insurrections, laws and regulations, strikes, floods, fires, explosions or other catastrophes beyond the control of such party. This provision shall not release such party from using its best efforts to avoid or remove such cause and such party shall continue performance hereunder with the utmost dispatch whenever such causes are removed. The party claiming force majeure shall give prompt written notice thereof to the other party.

14.5 Notices. Any notice required to be given under the Agreement shall be in writing and delivered in such a manner that proof of delivery can be verified and shall be sent to the party to be notified at the address specified in the Product Order Form.

14.6 Severability. To the extent that law, statute, treaty, or regulation by its terms as determined by court, tribunal, or other government authority or competent jurisdiction is in conflict with the Agreement, the conflicting terms of the Agreement shall be superseded only to the extent necessary by the terms required by law, statute, treaty, or regulation. If any portion of the Agreement shall be unlawful, void, or for any reason unenforceable, then that provision shall be enforced to the maximum extent permissible so as to effect the intent of the parties. In either case, the remainder of the Agreement shall continue in full force and effect.

14.7 Survival. The Articles 8.5, 8.6, 9, 10, 11, 13 and 14.1 of the Terms & Conditions shall survive the expiry or termination of the Agreement.

14.8 English Language. The original of the Agreement has been written in the English language. End-User hereby waives any right it may have under the laws of the Territory or the country in which the Software is licensed to have the Agreement written in the native language.

14.9 International Transactions. The parties hereby acknowledge and agree that the U.N. Convention on Contracts for the International Sale of Goods shall not apply to the Agreement.

14.10 Entire Agreement. Once the Agreement is executed, all previous agreements between the parties shall be inadmissible to explain, modify or contradict the Agreement. The Agreement replaces and supersedes all prior agreements between the parties in respect of the Activities and constitutes the final, complete and exclusive statement of the Agreement between the parties in respect of the subject matter hereof. The Agreement cannot be altered, enlarged, or abridged except in writing signed by Servoy and End-User and specified therein to be an amendment hereof, provided that Servoy is entitled to change the Terms & Conditions as well of the contents of the so-called tables attached to a Product Order Form at any time. If such changes are material, Servoy shall inform the End-User by means of a posting a notice on <https://servoy.com/download/notices>. The notice will designate a reasonable amount of time after which the changes will go into effect.

14.11 Escrow. If agreed as such as part of the Product Order Form, under the conditions of the escrow agreement as agreed between Servoy and the regional escrow agent and in the event End-User is subscribed as a participant with such escrow agent upon payment of an annual fee by End-User to Servoy, End-User is entitled to a release of a copy of the source code of the Servoy Software and to continuation of use as described in Article 3. These conditions of this escrow agreement can be found at: <https://servoy.com/download/escrow>.