

# 1. General

1.1 These general terms and conditions (hereinafter the "Terms and Conditions") automatically apply to all current and future quotes, offers, agreements and deliveries with regard to the provision of Managed Hosting and Cloud Services as described in the relevant Offer (hereinafter the "Services") by Stone-IS to the Customer.

1.2 By signing an Offer, the Customer acknowledges and accepts these Terms and Conditions.

# 2. Definitions

" **Affiliated Enterprise**": In respect of each Party, this means (i) an enterprise or legal entity that exercises Control of that Party, directly or indirectly, or (ii) an enterprise over which that Party exercises control, or (iii) an enterprise having a majority interest in that Party at any time during the term of this Agreement by being the owner of a majority of the voting shares or by exercising Control in another manner through the holding of shares.

" **Agreement**": These Terms and Conditions, the Offer and other Appendices attached thereto.

" **Control**": The effective or legal authority of an enterprise to exert a decisive influence on the appointment of the majority of the board of directors/management and/or on the policy of another enterprise.

" **Documentation**": User manuals and other documentation related to the Services.

" **Effective Date**": The date on which the first Offer is signed by Stone-IS or, failing that, the date on which a Party commences with the fulfilment of the obligations as specified in an Offer.

" **Force Majeure**": Circumstances beyond the control of Stone-IS and which could not reasonably have been foreseen and which prevent the full or partial performance of an obligation arising from the Agreement including acts of force majeure ('acts of god') or of a public enemy, civil war, revolt or riot, fire, flood, explosion, earthquake, power interruption due to one of the above events, strikes or labour conflicts leading to the cessation of work, 'work-to-rule' actions or work stoppages, national emergency, the imposition or disallowing of activities by a government body or agency, the inability to obtain equipment, data or materials from suppliers.

" **Initial duration of the Offer**": The initial duration as specified in the relevant Offer.

" **Services**": A service described in an Offer. A Service includes only the tasks, responsibilities or features that are explicitly mentioned in the Offer.

" **Service Level Agreement**": The Agreement with regard to the minimum levels of availability to which the Services must comply and the time periods within which Stone-IS must perform certain actions.

" **Offer**": The application with which the Customer orders the delivery of certain Services from Stone-IS and in which the description of the service, the price and, if applicable, any special conditions are stated.

" **Working Day**": All days of the week, apart from Saturday, Sunday and official public holidays in Belgium.

" **Customer**": The entity that purchases the Services from Stone-IS and concludes the Agreement with Stone-IS.

" **Invoice Date**": The date on which the invoice is produced.

### **3. Delivery of the services**

3.1 Stone-IS will take all reasonable measures to perform the Services in accordance with the Agreement.

3.2 Stone-IS will use reasonable care and judgment when providing the Services, will only deploy skilled and trained personnel, or hire skilled and trained third parties to assist in the provision of the Services, and all Services will be of professional and technical quality that is consistent with industrial standards.

3.3 If service levels are defined for certain Services, Stone-IS will perform those Services in such a way that the service levels are achieved as defined in the Service Level Agreement.

### **4. Customer obligations**

4.1 The Customer shall cooperate in good faith at all times with Stone-IS in order to promote the provision of the Services.

4.2 The Customer shall use the Services at all times in accordance with the Stone-IS's Acceptable Use Policy, as amended from time to time. The most recent version can be found at <https://www.stone.hosting/en/acceptable-use-policy/>.

4.3 If the Customer does not fulfil his obligations arising from this Agreement, he agrees to bear all costs and expenses associated with the extra services performed by Stone-IS to remedy any problems resulting from the Customer's failure to fulfil his obligations arising from this Agreement.

### **5. Price, invoicing and payment**

5.1 All prices and other amounts are stated in Euros and are exclusive of VAT, other taxes and duties.

5.2 Unless explicitly specified otherwise in the Offer, all fees for the Services will be invoiced on a monthly basis.

5.3 If the Offer contains a Service that can be ordered by measured units, the Customer may be entitled to exceed the volume of the Services as set in the Offer. In this case, Stone-IS will invoice the ordered Services as specified on the Offer, thirty (30) days before the quarter in which the Services will be performed. At the end of the quarter in which the Services were performed, Stone-IS will communicate to the Customer the actual volume used. If the actual volume used exceeds the ordered volume of Services, then the excess usage at the end of the quarter will be invoiced at the unit price of the volume used as stated in the Offer.

5.4 The invoices are payable within thirty (30) calendar days after the Invoice Date.

5.5 In January of each year, Stone-IS has the right to index our prices on the basis of the movement in the consumer price index of the immediately preceding month of December relative to the consumer price index of December one year earlier.

5.6 If, due to an increase in energy prices or licensing costs, the costs which Stone-IS incurs or must bear to fulfil its obligations, arising from the Agreement or an Offer, increase, Stone-IS will then, after providing evidence of this to the Customer, be entitled to adjust the charges reasonably so that they reflect the increase in costs. In that case, Stone-IS will inform the Customer of this fourteen (14) days in advance.

5.7 Payment of an invoice, or a part thereof, means that the Customer accepts the full invoice and the performance of the invoiced Services.

5.8 Every complaint regarding the delivery, of whatever nature, must be communicated to Stone-IS by the Customer by registered letter within 8 working days from the delivery of the goods or the starting date of the fulfilment of the services. Any complaints regarding the delivery or performance cannot be used as a pretext for suspending or delaying payment of invoices.

5.9 The lack of written objection to an invoice within 8 Working Days from its despatch implies the irrevocable acceptance of the invoice and the amounts, products and services it contains. Invoices are payable within the month after Invoice Date. If the invoice has not been paid by the due date, whereby the credit date counts as the payment date, then a contractual interest on arrears of 1% per month is due by operation of law and without any notice of default. For every late payment by the Customer, a 10% penalty payment is automatically due with a minimum of 65.00 EUR.

5.10 The Customer is not entitled to any adjustment in relation to Stone-IS.

## **6. Term and Termination**

6.1 The Agreement will take effect on the Effective Date and will remain in effect for a period of one (1) year after the termination of the last Offer. Each Party may terminate these Terms and Conditions at any time by means of a registered letter, with due observance of a notice period of three (3) months, provided that all Offers have been properly completed.

6.2 An Offer shall come into effect on the Effective Date. Each Offer will specify an Initial duration of the Offer and at the end of this period, the Offer will automatically be extended for a period of twelve (12) months, unless one of the Parties notifies in writing its intention not to extend the Offer, and this three (3) months before the expiry date of the then current period.

6.3 Each Party may terminate the Agreement and/or an Offer immediately by means of a registered letter, without prior legal claim and without any other notification, if the other Party:

a) remains in serious breach of the performance of one of its obligations under this Agreement or the relevant Offer, and this is not duly corrected within twenty (20) Working Days following a written notice from the other Party to the defaulting Party, in which the nature of the violation is fairly described;

b) files for bankruptcy, or is either declared bankrupt, shut down or becomes insolvent.

6.4 Stone-IS may suspend the delivery of one or all Services under an Offer, temporarily refuse the Customer access to Stone-IS's buildings, or terminate this Agreement and any Offer by registered letter, at its own discretion, without prior legal claim and without any other notification, if the Customer fails to pay an amount owed to Stone-IS in due time on the basis of the Agreement or an Offer, and does not remedy this within a period of fourteen (14) Working Days after having received a notice of default from Stone-IS, which specifically states the date of termination.

6.5 Any termination of an Offer will only relate to the relevant Offer without affecting any other Offers existing at that time. These will thus remain in force.

## 7. Intellectual Property Rights and Licenses

7.1 The fulfilment of its obligations under this Agreement or an Offer by Stone-IS will not entail any transfer of any intellectual, industrial or other property rights to the Customer or any of its Affiliated Enterprises, and the costs paid by the Customer to Stone-IS under this Agreement or any subsequent agreement will not imply payment for the transfer of any intellectual, industrial or other property rights.

7.2 All intellectual, industrial or other property rights relating to works made by Stone-IS, its employees, consultants or sub-contractors, whether or not during the implementation of the Agreement, such as software, the Documentation and all equipment, documents, drawings, technology, skills, know-how and information relating to the software, whether or not before the Effective Date of the Agreement, will exclusively be held by or licensed to Stone-IS and/or its respective licensors where appropriate.

7.3 If the delivery of the Services requires the use of software that is the property of Stone-IS or for which the latter has been licensed, Stone-IS will grant a non-exclusive, non-transferable licence to the Customer to use the software during the period in which Stone-IS delivers the Services to the Customer, and only to the extent that this is necessary to allow the Customer to make use of the Services. Such licence is included in the price as stated on the Offer.

7.4 The licence does not entitle the Customer to (a) copy, sell, loan, give, rent, grant, bring to market, disclose or otherwise make available to third parties the software ( b) reproduce, copy or otherwise duplicate the software, (c) (attempt to) reverse-assemble, reverse-compile or reverse-engineer the software and (d) use the software for the purpose of (helping to) develop software or any other method or module, to (essentially) perform the same function as (a part of) that software.

7.5 All intellectual, industrial or other proprietary rights relating to any modifications, changes and updates to software or to hardware, documents, technology, drawings, skills, know-how and information relating to the Services or software made as a result of information, advice or know-how derived from the Customer or one of its Affiliated Enterprises will exclusively be vested in Stone-IS. The Customer and its Affiliated Enterprises will refrain from instituting claims in connection with the aforementioned intellectual, industrial or other property rights or any similar protection, and from taking steps to obtain a registration, filing or protection of any alleged rights that relate thereto.

7.6 If the performance of the Services entails the delivery of licences for third-party software, then the Customer undertakes to strictly comply with the licence conditions as provided by the relevant suppliers of the third-party software.

## 8. Confidential Information

8.1 "**Confidential Information**" means all information in any format whatsoever made known or made available by or on behalf of one Party to the other Party in relation to this Agreement, except for information:

(a) which had already become public in a way that does not conflict with this Agreement;

(b) which was legally received from a third party in a manner that does not conflict with any

confidentiality obligations;

(c) that was independently developed by employees or representatives of a Party without access to the confidential information of the other Party;

(d) which is proved to have been already known by the receiving party at the time of publication;

(e) which is given in accordance with applicable law or a court decision, provided that the disclosing Party first informs the receiving Party of this legislation or decision and provides the latter an opportunity to lodge an objection to such disclosure and/or to try and limit the disclosure.

8.2 Each Party will treat Confidential Information as strictly confidential, will not disclose it or make it available to third parties without the prior written consent of the other Party, and will only use it in connection with the performance of this Agreement.

8.3 Each Party shall only disclose Confidential Information and make it available to its employees, agents and sub-contractors who are involved in the performance of this Agreement, and on condition that they are subject to the same confidentiality obligation as the one stated in this Article. Such disclosure only takes place insofar as it is necessary.

8.4 Without prejudice to Article 13.1, each Party will be entitled to make public the existence of this Agreement, provided it informs the other Party in advance of its intention to do so.

8.5 This Article will continue to apply for a period of twelve (12) months after termination of this Agreement.

## 9. Data Protection

9.1 "**Personal data**" means any information relating to an identified or identifiable natural person; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to the physical, physiological, mental, economic, cultural or social identity of that natural person.

9.2 If Stone-IS, during the performance of the Agreement, processes Personal Data relating to the Customer or the employees, customers, suppliers or business operations of the Customer, then the Customer remains the only person who can supervise the processing of that personal data and Stone-IS is the processor thereof within the meaning of the applicable data protection legislation. In such a case, Stone-IS will act solely in the name of the Customer and will process the personal data in accordance with the Agreement, the Offer and all applicable data protection legislation, and only according to the instructions of the Customer, and only for the purpose of obligations arising from this Agreement.

9.3 Stone-IS will take the necessary technical and organisational measures to protect the personal data against accidental or unlawful destruction, accidental loss, alteration of or access to personal data by unauthorised persons, and against any other unlawful form of processing of personal data.

9.4 The Customer will at all times use the Services in accordance with the Processor Agreement as well as the Privacy Policy.

## 10. Guarantee

Stone-IS will take all reasonable measures to fulfil its obligations under this Agreement and any

Offer. Stone-IS does not give explicit or implicit guarantees in connection with the Services, unless expressly agreed in this Agreement, in particular with regard to their suitability for a particular purpose, their merchantability or their compliance with any legal or regulatory requirements.

## **11. Insurance and liability**

11.1 Both Parties will take out appropriate insurance for professional and public liability in connection with the fulfilment of their respective obligations under this Agreement.

11.2 Stone-IS cannot be held liable for any consequential or indirect loss or damage suffered by the Customer or its Affiliated Enterprises, such as loss of data, profit, revenue, turnover or any other financial or commercial loss, regardless of whether this loss or damage results from a breach of contract or an unlawful act.

11.3 The liability of Stone-IS for any damage under an Offer shall be limited to three (3) times the monthly amount that is payable for the Services under a Service Request.

11.4 The limitation of liability of Article 11.3 will not apply in case of a deliberate error by Stone-IS.

## **12. Force Majeur and transfer**

12.1 Events of Force Majeure will discharge each Party, for as long as that event lasts, of those obligations under this Agreement or an Offer whose performance has become impossible or impracticable, provided that the Party immediately notifies the other Party in writing and describes the Force Majeure, and that it immediately continues to perform the relevant obligations when and insofar as the event of Force Majeure has disappeared.

12.2 None of the Parties shall have the right to claim compensation for non-compliance by the other Party with one of its contractual obligations as a result of an event of Force Majeure.

12.3 None of the Parties may pass on or transfer this Agreement or any of its rights and/or obligations under the Agreement without the prior written consent of the other Party. This permission will not be unreasonably withheld or delayed. The foregoing is without prejudice to the right of Stone-IS to have the Offer partially performed by sub-contractors, on the understanding, however, that such an act of sub-contracting will not release Stone-IS from its obligations under this Agreement.

## **13. Disclosure and refusal prohibition**

13.1 The Customer authorises Stone-IS to publish a press release regarding the Agreement and the performance of the Services.

13.2 The Customer authorises Stone-IS to identify the Client verbally or in writing, including the use of the Customer's logo or brand, to use as a reference to (potential) customers of Stone-IS.

13.3 The Customer shall not hire, recruit or approach any employees, independent consultants, agents, sub-contractors or their personnel, of Stone-IS involved in the performance of the Agreement and the Offer, irrespective of their status, directly or indirectly, with a view to recruitment or any form of cooperation, directly or indirectly, for the duration of the Terms and Conditions and for thirty-six (36) months after termination thereof. If the Customer fails to comply with this article, he will be automatically and legally obliged to pay compensation equal to the gross annual salary

(including all benefits) of the employee(s) concerned.

## **14. Applicable Law and Competent Courts**

This Agreement constitutes the complete and only agreement between the Parties in relation to the subject matter of this Agreement, and completely supersedes any prior verbal or written proposals, declarations, agreements, commitments, presentations, calculation models, arrangements or notifications relating to the subject of this Agreement. Each Party acknowledges that it has not entered into this Agreement and that it will not enter into any Offer on the basis of a statement that is not explicitly stated in this Agreement or the relevant Offer.

Belgian law applies to this Agreement concluded with Stone-IS. Any dispute relating to this Agreement will exclusively be handled by the courts of the district of Ghent.