

ACTUALS.IO B.V.
GENERAL TERMS AND CONDITIONS
(2016)

1. DEFINITIONS

Where capitalised in these General Terms and Conditions, the following terms have the meanings set forth hereafter:

"Actuals.io": Actuals.io B.V., a private limited liability company, with statutory seat in Uden, The Netherlands, and trade registration number 65131762;

"Agreement": the relevant executed agreement between Actuals.io and Customer, which may or may not be an accepted SO;

"Confidential Information": information disclosed under these GTCs by the Discloser to the Recipient, which information is either marked as "confidential" or would reasonably under the circumstances be considered confidential information. It does not include information that the Recipient already rightfully knew, that becomes public through no fault of the Recipient, that was independently developed by the Recipient, or that was lawfully provided to the Recipient by a third party;

"Connection": data stream between 2 systems storing, processing and/or streaming data;

"Consulting": the provisions of consulting services, with regards to requirements and KPIs, strategy, data science, data process management, analytics and expert advice;

"Customer": the customer with which Actuals.io has entered into an Agreement;

"Discloser": the Party disclosing Confidential Information to the Discloser;

"Fees": the fees payable or paid by Customer for the use of the Services;

"GTCs": the terms and conditions set forth in this document "General Terms and Conditions", as amended from time to time by Actuals.io;

"Optimization & Supporting Technology": the provision of services related to automation and standardization as well as the provision of a user license to related supporting technology;

"Party": Customer or Actuals.io, as the context requires;

"Personal Data": any information relating to an identified or identifiable natural person; an identifiable 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 his physical, physiological, mental, economic, cultural or social identity;

"Recipient": the Party receiving Confidential Information from the Discloser;

"Services": all services provided by Actuals.io under an applicable SO, including but not limited to Support, Tooling, Skills & Resources, Consulting and Optimization & Supporting Technology and including access to the Software and a license to use the Software;

"Skills and Resources": the provision of services related to recruitment, resource planning, insourcing, outsourcing, assessment, training and coaching;

"SO": a "Service Offer", being the detailed offer from Actuals.io to Customer on the provision of Services;

"Software": any software in executable form, used for providing, or underlying the delivery of, the Services to Customer, either through access via the Internet or otherwise;

"Support": the provision of i) help desk support in response to reported incidents, ii) corrective, perfective and preventive maintenance on the Software, iii) enhancements to the Software, and iv) documentation related to the Software;

"Tooling": the provision of advice and services related to the selection and set-up of various software tools as well as support to administrators.

2. OFFER AND AGREEMENT

- 2.1. These GTCs apply to all offers, Agreements and legal relations under which Actuals.io supplies or may supply Services to Customer.
- 2.2. The applicability of purchase terms or other terms and conditions from Customer is hereby expressly excluded.
- 2.3. All Actuals.io's offers and other statements are without prejudice and subject to agreement unless expressly stated otherwise by Actuals.io. Any Actuals.io offer will be valid for a period of 30 days after date of such offer.

- 2.4. Actuals.io has the right to amend these GTCs at any time. Upon amendment, Actuals.io will provide Customer with the amended GTCs. In case Customer does not accept the amended GTCs being applicable to the Agreement, Customer shall inform Actuals.io in writing within 30 days after the date on which Actuals.io has provided the amended GTCs to Customer. In such case, Actuals.io shall be entitled, in its sole discretion, to either offer Customer a variation to the amendment or to terminate the Agreement. In case Customer informs Actuals.io that it accepts the amended GTCs or in case Customer does not inform Actuals.io of its acceptance or non-acceptance within 30 days after the date on which Actuals.io has provided the amended GTCs to Customer, the amended GTCs instead of the previous GTCs shall be deemed applicable to the Agreement as of 30 days after the date on which Actuals.io has provided the amended GTCs to Customer.

3. THE SERVICES

- 3.1. Upon commencement of the relevant Agreement, and provided payment of the Fees due and further for the duration of the agreed term for the Services, Customer is granted, and Customer accepts, the non-exclusive, non-assignable, non-transferable, temporal, worldwide, limited right to use the Services, solely for Customer's internal use and benefit and for volume, usage and time parameters agreed and paid for.

4. SOFTWARE

- 4.1. In case the provision of Services includes the access and license right to use Software, the provisions of this article 4 apply in addition to all other articles of these GTCs.
- 4.2. Customer shall not modify, adapt, translate, reverse engineer, decompile, disassemble, or create derivative works based on the Software, unless and in so far as explicitly permitted under the Agreement or applicable law.
- 4.3. Customer shall not sell, rent, host, assign, lease, sublicense, transfer, network, reproduce the Software, except in so far as explicitly allowed by the Agreement.
- 4.4. Customer shall not offer on a bureau basis or use the Software to perform work for a third party, except with the prior written approval of Actuals.io.
- 4.5. Actuals.io or its licensor shall own and retain all right, title, and interest in the Software and all intellectual property rights inherent therein, including without limitation all changes and improvements made, requested, or suggested by Customer, notwithstanding any use of terms such as "purchase", "sale" or the like. Any unauthorized use of the Software will be deemed to be a material breach of this article.
- 4.6. In case a part of the Services consists of access to and the use of Software from any third party, then Actuals.io shall notify Customer of any usage or license terms applicable for such third-party Software. In case of conflicting terms, the relevant terms and conditions of such third-party Software will prevail over the relevant terms and conditions of these GTCs.
- 4.7. Actuals.io reserves all rights not specifically granted to Customer.

5. FEES AND PAYMENT

- 5.1. All Fees are in Euros unless specified otherwise and are exclusive of sales tax, withholding tax, value added tax (VAT) and any other taxes and levies.
- 5.2. The Fees will be separately agreed in the Agreement. Actuals.io will provide an invoice to Customer for the appropriate Fees.
- 5.3. Customer shall pay the Fees not later than 14 days after date of invoice, by default of which Customer shall be due, without notice of default from Actuals.io required, payment to Actuals.io of the applicable statutory trade interest rate from the date of invoice, in addition to the main sum due.

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- 5.4. If following a notice of default Customer still fails to pay an invoice within 14 days of such notice of default, Actuals.io may engage a collection agency, in which case Customer shall be due all judicial and extrajudicial costs in full, including but not limited to all costs charged by (external) experts and/or mediators in addition to the costs determined at law related to collection of this claim or of enforcement otherwise, the amount of which is a minimum of 15% of the total amount due.
- 5.5. Customer is not entitled to set-off or suspend payments.
- 5.6. Upon a notice period of 1 month, Actuals.io has the right to modify once per calendar year the effective rates as agreed between Customer and Actuals.io with a percentage equal to the increase in the consumer price index as published by the Central Bureau of Statistics in the Netherlands (CBS). Notwithstanding the foregoing, in case a third party provider of services or software that are or is used by Actuals.io in its delivery to Customer of the Services, increases its fees, Actuals.io shall be entitled to increase such part of the Fees agreed between Customer and Actuals.io that represents the share of such third party software and services, with the percentage with which such third party has increased its fees to Actuals.io.

6. TERMINATION AND SUSPENSION

- 6.1. Either Party has the right to terminate the Agreement with immediate effect by registered letter, without any requirement to observe a notice period, if the other Party:
- a. has committed any material breach of its obligations under the Agreement and has failed to cure such breach within 30 days of written notice by the non-breaching Party specifying in reasonable detail the nature of the breach (or, if such breach is not reasonably curable within 30 days, has failed to begin and continue to work diligently and in good faith to cure such breach); or
 - b. applies for suspension of payments, reaches a settlement with creditors, or is declared bankrupt; or
 - c. wishes to enter into a composition with its creditors or execution is levied on all its assets or otherwise loses control of its assets, or
 - d. discontinues its operations or decreases its operations substantially, or a resolution has been passed to wind up or liquidate such other Party.
- 6.2. Either Party has the right to terminate for convenience the Agreement: a. in case no expiration date is agreed: upon 12 months' written notice to the other Party; b. in case an expiration date is agreed: at least 3 months' prior written notice, by absence of which the then current term will automatically be extended for a same period of time.
- 6.3. Actuals.io has the right to suspend its obligations under an Agreement if Customer defaults on its payment obligations towards Actuals.io.
- 6.4. In the event of termination of an Agreement other than by the expiration of it, the Services already rendered by Actuals.io at the time of termination of the Agreement and the related payment obligation cannot be revoked unless Customer proves that Actuals.io is in default with regard to those Services. Any amounts invoiced by Actuals.io before termination in connection with the Services already duly provided under the Agreement will remain payable in full with due observance of the provisions contained in the preceding sentence and will become immediately payable upon termination.
- 6.5. Upon termination of an Agreement, Customer shall immediately seize the use of the Services related to such Agreement.

7. CUSTOMER OBLIGATIONS AND AUDIT RIGHTS

- 7.1. Customer agrees not to, and not to allow third parties to use the Services: to violate, or encourage the violation of, the legal rights of third parties; to engage in, promote or

encourage illegal activity; for any unlawful, invasive, infringing, defamatory or fraudulent purpose; to intentionally distribute viruses, worms, Trojan horses, corrupted files, hoaxes, or other items of a destructive or deceptive nature; to interfere with the use of the Services, or the equipment used to provide the Services; to disable, interfere with or circumvent any aspect of the Services; or, to generate, distribute, publish or facilitate unsolicited mass email, promotions, advertisements or other solicitations.

- 7.2. Actuals.io may audit Customer's use of the Services in order to verify compliance with the applicable terms of these GTCs and the Agreement at any time during the term of the Agreement or 1 year thereafter.
- 7.3. If any audit by Actuals.io yields any deficiency in the amounts paid to Actuals.io, Customer shall promptly remit payment to Actuals.io of such amounts plus interest calculated at the maximum rate allowed under applicable law.

8. CONFIDENTIAL INFORMATION

- 8.1 The Recipient will not disclose the Confidential Information received from Discloser, except to affiliates, employees, agents or professional advisors who need to know it and who have agreed in writing to keep it confidential. The Recipient will ensure that the Confidential Information will exclusively be used to exercise rights and fulfill obligations under these GTCs. The Recipient will use the same degree of care, but at least a reasonable degree of care, to keep the Confidential Information confidential. The Recipient may also disclose Confidential Information to the extent required by applicable competent court, provided that the Recipient uses reasonable efforts to: (i) promptly notify the Discloser of such disclosure before disclosing; and (ii) comply with Discloser's reasonable requests regarding its efforts to oppose the disclosure.

9. DATA PROTECTION

- 9.1 Each Party agrees that Personal Data shall not be used by such Party for any purpose other than the performance or use of the Services.
- 9.2 Each Party shall treat all Personal Data as Confidential Information. Neither Party shall make any copies of Personal Data without prior written approval from the other Party.
- 9.3 Each Party agrees that the other Party, exclusively in the performance or use of the Services or its obligations in relation therewith, is entitled to process Personal Data from the other Party's employees, prospects or customers.
- 9.4 Each Party shall inform the other Party promptly upon becoming aware of any suspicion of a breach of Personal Data protection or other irregularities in processing of Personal Data.
- 9.5 Customer shall at all times be the data controller (as referred to in applicable data protection laws) and as such shall be responsible at all times for all Personal Data processed or used in accordance with instructions under these GTCs. It is understood that the type and scope of any data processing and utilization shall be exclusively governed by Customer, whose instructions Actuals.io carries out.
- 9.6 Customer owns all right, title and interest in the Customer data. Customer hereby grants to Actuals.io, and Actuals.io hereby accepts, a non-exclusive, non-transferable, non-sublicensable right and license to use, copy, transmit, modify and display the Customer data solely for purposes of the performance of Actuals.io's obligations under the Agreement.
- 9.7 Customer agrees that Customer's website(s) that is/are subject to the delivery of the Services, a) will feature a privacy policy, linked conspicuously from the home page that identifies the collection and use of information gathered in connection with third party services being

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used by Actuals.io and/or Customer and the data reporting activities related thereto, and b) will require visitors of the website to agree that visitors may be tracked by or on behalf of Customer.

- 9.8 Parties further agree that they shall comply with applicable laws and regulations on privacy, including but not limited to the EU General Data Protection Regulation and related regulations. Notwithstanding the foregoing, in case Customer is located in, or uses the Services in, or processes information from individuals located in, The Netherlands, Parties shall be in compliance with the "Telecommunicatiewet", the "Wet Bescherming Persoonsgegevens" and the "Wet meldplicht datalekken en uitbreiding boetebevoegdheid Cbp".

10. INTELLECTUAL PROPERTY RIGHTS AND INDEMNIFICATION

- 10.1 Actuals.io or in so far as applicable its licensor(s) shall own and retain all right, title, and interest in the Software, other Services and any materials developed under Services, such as source code, executables, analyses, designs, documentation, reports, as well as preparatory materials (however excluding the data processed from, or generated for, Customer) and all intellectual property rights inherent therein, including without limitation all changes and improvements made, requested, or suggested by Customer, notwithstanding any use of terms such as "purchase", "sale" or the like within these GTCs or Agreements. Any unauthorized use of the Services will be deemed to be a material breach of the Agreement between Actuals.io and Customer.
- 10.2 Actuals.io and its licensors may take technical measures to protect the use of the Software. If the Software is secured by technical protection, Customer shall not remove or evade such security features.
- 10.3 Actuals.io shall defend or settle, at its expense, any claim, suit or proceeding brought or made against Customer alleging that the Software or Services infringes any patent, copyright or trade secret of any third party in the USA or Europe, and will pay all costs, damages and reasonable attorneys' fees attributable to such claim that are awarded against Customer; provided however, that (i) Customer shall have given Actuals.io prompt written notice of such claim, suit or proceeding, (ii) Customer shall cooperate with Actuals.io in the defence and settlement thereof, and (iii) Actuals.io shall have control of the defence of such claim, suit or proceeding and any settlement or compromise thereof.
- 10.4 Customer shall defend, indemnify and hold harmless Actuals.io from and against all damages, liabilities, losses and expenses, including reasonable attorneys' fees and expenses, resulting from any third-party claim, suit or proceeding that arises from the Customer's use of the Services.

11. PERFORMANCE, SERVICE LEVELS AND WARRANTY

- 11.1 Actuals.io shall use commercially reasonable efforts to perform and provide the Services with due care. The Services provided or performed under any Agreement shall be of a good and workmanlike manner, consistent with generally accepted industry standards for the performance of services of a similar nature.
- 11.2 In case and in so far the Services consist of the provision of access to, and a license to use, any Software, Actuals.io:
- warrants that the Software will perform substantially in accordance with the specifications in the Agreement;
 - warrants that the Software (front end) will be accessible to Customer 99.5% of the time in any given calendar month, excluding any reasonable maintenance windows announced at least 72 hours in advance. Notwithstanding the foregoing, Actuals.io does not guarantee network availability between Customer and the hosting servers from or

used by Actuals.io, as such availability can involve numerous third parties and is beyond the control of Actuals.io. Actuals.io will not be liable for nor provide any service credits hereunder for any downtime caused in whole or part by a third party data center provider nor for any downtime that Customer experiences as a result of Customer's own network connectivity issues.

- warrants that the underlying Event Processing Platform (back end) will have an uptime of 99.9% of the time in any given calendar month. Notwithstanding the foregoing, Actuals.io does not guarantee network availability between Customer and the hosting servers from or used by Actuals.io, as such availability can involve numerous third parties and is beyond the control of Actuals.io. Actuals.io will not be liable for nor provide any service credits hereunder for any downtime caused in whole or part by a third party data center provider nor for any downtime that Customer experiences as a result of Customer's own network connectivity issues.
 - will use commercially reasonable endeavours to provide help desk Support if Customer experiences a Software outage and is unable to access the Software. Customer must then immediately contact Actuals.io 's help desk, providing any/all necessary information that may assist Actuals.io in determining the cause of the outage. Actuals.io will determine in good faith whether the outage was within Actuals.io 's reasonable control. If Actuals.io determines that a timely reported outage was attributable to Actuals.io, then Actuals.io will credit Customer 1 day of Software Fees for every 2 hours of downtime Customer experienced, up to a maximum of half of that month's Software Fees. This shall be Customer's sole remedy, and Actuals.io 's sole liability, for Actuals.io 's failure to provide the guaranteed availability set forth in this Article 11;
 - will use commercially reasonable endeavours to provide non-help desk Support, meaning regular and general provision of corrective, perfective and preventive maintenance on the Software, enhancements to the Software, and documentation related to the Software;
- 11.3 Except for the warranties expressly specified in this article 11, Actuals.io provides the Services without warranty or acceptance of liability of any kind, either express or implied, including but not limited to, any implied warranties of merchantability, or fitness for a particular purpose or warranties of quality or performance.

12. LIABILITY

- 12.1 To the extent permitted by applicable law, Actuals.io's liability under any Agreement shall not exceed the Fees paid or payable to Actuals.io in the 12 months preceding the event giving rise to the liability, with a maximum of € 50.000.
- 12.2 Notwithstanding the foregoing, to the extent permitted by applicable law, in no event shall Actuals.io be liable to Customer or any third party for any incidental, consequential, special or punitive damages, whether in tort or in contract, including lost profits, lost savings, reduced goodwill, damage caused by interruption of business operations, lost or damaged data, or other incidental or consequential damages, even if Actuals.io has been notified of the possibility of such damage.
- 12.3 Actuals.io's liability on account of breach in performance of the Agreement arises only if Actuals.io is given immediate and proper written notice of default by Customer, with a reasonable term to remedy the breach and Actuals.io is still in breach of its obligations after that term.

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13. FINAL PROVISIONS

- 13.1 Actuals.io and Customer are independent contractors and nothing related to the performance of the Agreement shall be construed to create any agent, employee or similar relationship between Customer and Actuals.io.
- 13.2 Both Customer and Actuals.io agree not to solicit or hire any personnel of each other until at least 12 months after the termination of the Agreement. A Party breaching the foregoing shall forfeit a penalty immediately payable to the other Party in the amount of € 25.000 without prejudice to the other Party's right to claim damages.
- 13.3 Neither Party shall be liable for non-performance or delay caused by acts of God, wars, riots, strikes, fires, floods, earthquakes, government restrictions or other causes beyond its reasonable control.
- 13.4 Customer does not have the right to transfer the rights and obligations under the Agreement to third parties in any manner whatsoever without Actuals.io's prior written consent. Actuals.io will not withhold its consent on unreasonable grounds.
- 13.5 If any provision of the Agreement is null and void or is declared void, the other provisions of the Agreement will remain fully effective and Parties will consult to agree on a new provision to replace the void provision, which' purpose and purport should be approximated as much as possible.
- 13.6 Any Agreement as well as these GTCs is governed exclusively by the laws of The Netherlands and Parties shall submit to the applicable court in The Netherlands.