Salto XS4 Face | Terms of Service

Salto XS4 Face Terms of Service

1. PURPOSE AND APPLICABILITY

1.1. The purpose of this Agreement is to govern the rights and obligations of the Parties in relation to the limited licence to use the Software granted and the provision of the Services by the Licensor to Licensee in accordance with the terms and conditions set out herein.

1.2. By clicking the box “I accept”, “I agree” or any equivalent box, the Licensee is fully and irrevocably accepting the terms and conditions of this Agreement and is undertaking to comply with such terms and conditions. The Licensee is requested to read and review carefully this Agreement before clicking such box and getting access to the Software.

1.3. If an individual accepts this Agreement on behalf of a legal entity, such individual represents and warrants to the Licensor that he or she is duly authorized to bind such legal entity to this Agreement. In any case, the individual accepting this Agreement on behalf of a legal entity shall hold harmless the Licensor in the event of any dispute with such or legal entity for any claim arising from lack of capacity or authority.

1.4. This Agreement, including the Data Processing Agreement, constitutes the sole and entire agreement among the parties in connection with the Licence and the provision of the Services, and supersedes any previous agreements or terms agreed by the Licensee in connection therewith. In case of discrepancy between these Terms of Service and the Data Processing Agreement, the latter shall prevail.

1.5. The Licensee understands that, if the Subscription to the Software was purchased from an Authorized Distributor in the context of the acquisition of the Hardware, such Authorized Distributor is not acting as Licensor’s agent and therefore is not authorized to make any representations, conditions or warranties, statutory or otherwise, on the Licensor’s behalf or to vary any of the terms or conditions of this Agreement. The Licensor is not bound by the agreements reached by the Licensee with Authorized Distributors.

1.6. The terms capitalized in this Agreement shall have the meaning ascribed to them in Annex 1, except the capitalized terms of the Data Processing Agreement which are defined therein.

2. GRANT OF LICENCE

2.1. During the term of the Subscription and subject to Licensee’s strict compliance of the terms of this Agreement, Licensor grants to Licensee a non-exclusive, non-transferable, non-assignable, non-sublicensable, revocable, temporary and limited licence to use the Software for the sole purpose of managing access control by face authentication at the Site (the “Licence”).

2.2. With respect to the On-premise component, the scope of the Licence shall include the right to install, use and maintain the On-premise component on Licensee’s server or infrastructure.

2.3. With respect to the Cloud component, the scope of the Licence shall include the right to remotely access and use the Cloud component.

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3. PERMITTED AND RESTRICTED USES

3.1. The only permitted use of the Software is described in section 2 above. The Licensee shall access, install and use the Software at all times in accordance with the Instructions provided by Licensor and all other terms of this Agreement.

3.2. The Licensee shall restrict the access to the On-premise component to those employees or contractors of the Licensee which, due to their duties and offices, are responsible for the management of the supervision of the access-control systems of the Site.

3.3. Any other use is expressly prohibited and shall be deemed as a software piracy act in breach of the intellectual and industrial property legislation. The Licensor reserves its right to claim from the Licensee the damages caused by a breach of this provision pursuant to the applicable legislation.

3.4. Without prejudice of the generality of the above, the Licensee shall not and shall not attempt to:

- (i) use the Software in any way that is unlawful, illegal, fraudulent or harmful, or in connection with or to conduct any unlawful, illegal, fraudulent or harmful purpose or activity, or for any purpose that infringes any third parties' rights;
- (ii) use the Software to interface or interact with hardware other than the Hardware or with systems that are not integrated with the Software; (iii) use the Software together with other computer programs that may affect the proper functioning of it or otherwise use the Software in any way that causes, or may cause, damage to the Software or impairment of the availability or accessibility of it;
- (iv) use the Software in a way that could be detrimental to the Licensor, its Group companies or Authorized Distributors;
- (v) use the Software for monitoring its availability, security, performance or functionality or for any other benchmarking or competitive purposes;
- (vi) copy or in any way reproduce or duplicate the Software;
- (vii) modify, translate, make derivative works based on the Software, manipulate in any manner or make changes to the Software directly from the database, access the source code or make any alteration to it; or
- (viii) decompile, decrypt, reverse engineer or dissemble the Software or create derivative works of the Software.

3.5. The Licensee shall not exceed the permitted use and acknowledges that it shall be required, without prejudice to any other rights or remedies to which Licensor may be entitled, to pay Licensor at Licensor's then-current rates for any additional usage of the Software. 3.6. The Licensee shall notify Licensor in writing as soon as it becomes aware of any actual or suspected unauthorised installation or use of the Software (including any installation or use in excess of the permitted use).

4. EXECUTION OF THE AGREEMENT

4.1. The Client acknowledges that the Software cannot be operated in connection with or in association to any other hardware different from the Hardware, which the Client must purchase from a Seller.

4.2. The terms and conditions set forth in the Distributor's Documentation agreed upon between an Authorized

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Distributor and the Client shall not be binding nor enforceable towards Salto or any other company of Group companies, unless expressly agreed upon in this Agreement. In case certain terms of the Distributor's Documentation which the Client considers essential and which conflict with, modify are in addition to or deviate from the provisions of the Agreement, the Client shall have a period of ten (10) calendar days since the acceptance of this Agreement in order to notify to Salto its decision of terminating the Agreement or its decision of discontinuing the formalization process of the Agreement, as the case may be. In such cases, when agreed upon with the Seller and when the applicable law allows it, the Client shall return the Hardware to the Seller and the latter shall refund the price of the Hardware and the Fees of the relevant Subscription eventually paid by the Client to the Seller. In no event shall the Client be entitled to claim or request any indemnification to Salto for any conflict, modification, addition, or deviation between Distributor's Documentation and the Agreement, in case the Client decides to terminate the Agreement or discontinue the formalization process of the Agreement on these grounds.

4.3. Under motivated notification, Salto may refuse a request for a Subscription and thus, decide not to formalize the Agreement with the Client. In such cases, the Client shall return the Hardware to the Seller and the Seller shall refund the price of the Hardware as well as the Fees of the relevant Subscription in force eventually paid by the Client to the Seller. For avoidance of doubt, in no event shall the Client be entitled to claim or request any indemnification to Salto in case the latter refuses a request for a Subscription in accordance with this paragraph.

5. TECHNICAL REQUIREMENTS

5.1. Licensor shall provide or make available documentation containing instructions on how to use the Software and detailing any specific user requirements or restrictions relating to the Software.

5.2. The Client shall download the On-premise component (in object code form only) by using the access credentials provided by the Licensor, and as detailed in the Salto XS4 Face software user manual or any other Instructions. The Licensor shall not be responsible for any incorrect installation of the Software by the Client or any Authorized Distributor.

5.3. For a correct performance of the On-premise component, Client's Operating Environment which must comply with the necessary minimum specifications set out in the Instructions (the "Software Technical Requirements"), including among other, server and network performance requirements. It is the Licensee's sole responsibility that the Client's Operating Environment complies with said requirements. The Licensor disclaims any liability for any incidence or malfunction of the Software that may arise as a consequence of Client's Operating Environment or the integration of the Software thereto. The Licensee acknowledges and accepts that some of the features of the Software may not be fully operational due to the characteristics of the Client's Operating Environment.

5.4. The Licensee shall be solely responsible for adopting appropriate security measures to protect the On-premise component at the Site. The Licensor shall in no event be liable for the adequacy of such measures and the impact they may have on the Software. In any case, the Licensee shall immediately notify the Licensor of any security incidents relating to the Software of which it may become aware and keep the Licensor harmless of any damages or prejudices arising therefrom.

5.5. The Client shall also ensure that the installation of the necessary Hardware for the usability of the Software complies with the requirements, and that the installation was done correctly by using the cabling and other equipment provided within the product packaging.

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5.6. The Client shall also be responsible for correctly managing and storing any credentials needed for the installation or use of the Software, and for keeping their confidentiality.

6. FREE TRIAL

6.1. If the Client has been provided with a Free Trial Period in order to allow the Client to test the Software, this shall be limited to a determined maximum of days since the Software is activated or made available to Client. During the Free Trial Period, the contents of this clause shall apply and shall supersede any other conflicting term of this Agreement.

6.2. The Software shall be made available to the Client during the Free Trial Period free of charge.

6.3. For the full usability of the Software and to be able to test certain functionalities during Free Trial Period, the Client may require to previously purchase and install the Hardware.

6.4. Once the Free Trial Period concludes, the Client shall not have access and licence to use the Software, unless it activates a valid Subscription.

6.5. In the event that the Client does not activate a Subscription and remain having access to certain functionalities of the Software, Salto shall not be liable whatsoever, for any kind of damages, whether directly or indirectly, that may derive from the use by the Client of the Software and the Hardware.

7. FEES AND PAYMENT

7.1. The granting of the Licence is subject to the payment by the Client of the Fees corresponding to each type of Subscription, which shall be paid to Salto or to the Seller, as the case may be.

7.2. When the Subscriptions are purchased from a Seller, the Fees are freely negotiated by the Seller and the Client without Salto's interference. In such a case, the Fees to be paid by the Client for each Subscription for the access and use of the Services are those agreed upon between the Client and the Seller.

7.3. Client's full payment of the Fees is a prerequisite for the activation of the Subscription by Licensor.

8. TERM AND RENEWAL OF THE SUBSCRIPTION

8.1. The Subscriptions will be valid for a term of one (1) year as of its activation date (the "Term").

8.2. The Subscriptions will not be automatically renewed. In the event the Client wishing to renew the Subscription, the Client must purchase a new Subscription (voucher) from a Seller and fully pay the corresponding Fees before the expiration of the Term. Salto will notify the Client by e-mail of the expiration of the Subscription no later than two (2) calendar weeks before the expiration of the Subscription. Once purchased, the Client must activate the new Subscription so as to continue having access and using the Software for a new year-validity Term.

8.3. Payments for the Subscription are non-refundable. Salto and/or the Seller shall not provide refunds or credits to the Client should the Client wish to terminate the Agreement before the expiry date of the Subscription.

8.4. If the Client has not paid the Fees owed to the Seller or to Salto on time and is therefore in default, Salto is

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entitled to terminate the Agreement with immediate effect and to immediately suspend and deny access to the Software. In that case, the Client shall be liable for all damages suffered by Salto, comprising, among other things, loss of profits and costs in connection with judicial and extrajudicial measures.

8.5. Salto may modify the contents of this particular clause to other fees and payment models by notifying the Client in the thirty (30) days prior to the modification via email. The Client will have fifteen (15) calendar days to expressly oppose any such changes, otherwise they will be deemed accepted by the Client and fully applicable. If the Client does expressly reject the aforementioned modifications, the Client shall be entitled to cancel the Subscription and to obtain a refund from the corresponding Seller of the Fees paid in advance proportional to the time remaining before the expiry of the Subscription.

8.6. Upon the expiry of the Term (without the Client purchasing a new voucher) or upon termination of the Agreement for any reason:

- (i) the Licence shall be deemed automatically cancelled and the Licensee shall lose any and all rights in connection with the Software;
- (ii) the Licensee shall immediately cease to use the Software; and
- (iii) the Licensee shall within thirty (30) calendar days after termination uninstall the Software and destroy all the information related thereto. The Licensor may require the Licensee to certify in writing the compliance with the foregoing obligations.

8.7. Termination or expiry of this Agreement shall not affect any accrued rights and liabilities of either party at any time up to the date of termination or expiry and shall not affect any provision of this Agreement that is expressly or by implication intended to continue beyond termination.

8.8. Upon termination of the Subscription, the Licensor reserves the right of blocking the Software or adopting other technical measures to make the Software unusable for the Licensee. The Licensee expressly waives any actions or claims towards the Licensor for the damages or prejudices that such actions may cause to the Licensee.

8.9. The provisions of the Agreement which by their terms or nature survive termination, will survive any termination of the Agreement.

9. WARRANTIES

9.1. The Licensee acknowledges that the Software is provided ‘As Is’ and Licensor does not give any warranty or representation and does not accept any liability (howsoever arising whether under contract, tort, in negligence or otherwise) in relation to the Software or the consequences of its use.

9.2. Without prejudice to clause 9.1 and subject to clause 14, Licensor shall have no liability (howsoever arising whether under contract, tort, in negligence or otherwise) to the extent that any breach, liability, loss, damage, cost or expense arises as a result of:

- (i) the Software failing to meet the Licensee’s needs or requirements, whether or not such needs or requirements have been communicated to Licensor;
- (ii) incorrect operation or use of the Software or installation or use of the Software other than for the purposes for

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which it is intended; or

(iii) the Software failing to operate in a manner which is uninterrupted or free from errors or defects or the Software being incompatible with the Licensee's Operating Environment.

9.3. Neither Licensor nor any Group companies, nor any of its or their directors, officers, agents, employees or advisers makes any representation or warranty concerning the accuracy, efficacy, completeness, capabilities or safety of the Software or other materials disclosed or made available by it under of in connection with this Agreement, except to the extent expressly agreed by Licensor in writing. The Licensee must make its own independent assessment of the Software or any of the other materials and rely on its own judgment in reaching any conclusion or decisions.

9.4. Licensor is under no obligation to correct any defects or inaccuracies in the Software or any of the other materials disclosed or made available by it under of in connection with this Agreement.

9.5. Subject to clause 14, all warranties, conditions, terms, undertakings or obligations whether express or implied and including any implied terms relating to quality, fitness for any particular purpose, reasonable care and skill or ability to achieve a particular result are excluded to the fullest extent allowed by applicable law.

10. SOFTWARE UPDATES

10.1. During the Term of the Licence, the Licensor may make available to the Licensee new software versions, updates and upgrades of the On-premise component that may be developed and released from time to time. The Licensor does not assume any undertaking or obligation whatsoever.

10.2. The download and use of any new version, upgrade or update of the On-premise component may require the prior acceptance by the Licensee of the terms and conditions of the Agreement (as amended, should that be the case, in accordance with clause 19 below).

10.3. The Licensee acknowledges that the Software is licensed on standard-basis and that no specific adaptation, customization or development will be done by the Licensor as per Licensee's request, unless specifically agreed in writing by the Parties.

10.4. All intellectual and/or industrial property rights over the new versions, upgrades, or updates of the Software shall exclusively belong to the Licensor or its licensors.

11. CLOUD COMPONENT AVAILABILITY AND MAINTENANCE

11.1. Salto shall use reasonable endeavors to maintain the availability of the Cloud component to the Client, but Salto does not guarantee 100% availability.

11.2. If the Cloud component is not available, the Client shall notify Salto in writing during its unavailability so that Salto could confirm and determine the cause of the unavailability. Salto shall make its best efforts to rectify malfunctions and restrictions on the Cloud component as soon as possible.

11.3. In the event that Salto schedules in advance any general maintenance of the Software, and in particular, of the Cloud component, that may affect the availability of the aforementioned, Salto will make its best effort to give prior

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notice of the scheduled maintenance to the Client.

11.4. Without prejudice to the above, Salto is entitled at any time to immediately block, suspend or restrict the use of (parts of) the Software and/or of the access to the Cloud component, and/or take other measures if deemed necessary in Salto's view, for maintenance purposes or for compliance with any statutory requirements, without the Client being entitled to claim for compensation of any direct or indirect damage or loss suffered. In any case, Salto shall use reasonable efforts to minimize any such disruption of the Cloud component.

11.5. If possible, Salto shall inform the Client in advance as soon as possible of such measures. In case such prior notice is not feasible in view of the circumstances, upon the suspension Salto shall provide the Client with written notice specifying the reason for the suspension.

11.6. The Client is obliged to provide all cooperation required by Salto for servicing and maintenance, including stopping the use of the Software by the Client, if Salto considers this necessary.

12. SUSPENSION OF THE SOFTWARE

12.1. Without prejudice to any other suspension events foreseen in other clauses of this Agreement, Salto may suspend and/or deny the access to the Software, without the Client being entitled to any indemnification or compensation whatsoever it if:

- (i) Salto deems it necessary to prevent or terminate a use of the Software prohibited under this Agreement and in particular, among others, under clause 3 above.
- (ii) Upon notice to the Client, if the Client commits a material breach of this Agreement.
- (iii) The Licensee is in breach of any of its obligations under the supply or purchase contract by virtue of which acquired the Hardware and/or Software to the Licensor or to any of its Authorized Distributors, or any other agreement, including, among others, support services agreements, executed with the Licensor, any of its Authorized Distributors, or any entity of the Salto Group.
- (iv) The Client does not pay the Fees owed to the Seller on time in accordance with clause 8.4.
- (v) Technical difficulties exist that, at Licensor's criteria, may reduce the security measures for the proper functioning or protection of the Software.

12.2. Suspension of the Services shall be without prejudice to any rights or liabilities accruing prior to the suspension.

13. OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS

13.1. Any and all Intellectual Property Rights over the Software exclusively belong to the Licensor and/or its licensors, as applicable.

13.2. The Licensee expressly acknowledges and agrees that by virtue of this Agreement no intellectual or industrial property rights of any nature relating to the Software or the Open Source Software are transferred, assigned or made available to the Licensee.

13.3. The Licensee shall not, either directly or indirectly, take any action to jeopardize, limit, interfere with, or

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dispute in any manner, the intellectual and industrial property rights of the Licensor's and/or its licensors over the Software or the Open Source Software. In particular, the Licensee shall not apply for or register, directly or through any third party, anywhere in the world, any industrial or Intellectual Property Rights relating to the Software.

13.4. The Licensee undertakes to perform adequate measures to ensure that its directors, managers, employees, advisors and any other third party related to the Licensee respect Licensor's intellectual and industrial property rights over the Software, being jointly and severally liable towards the Licensor for any breach by such parties.

13.5. The Licensee must inform the Licensor of any circumstances of any nature of which it becomes aware that may affect the intellectual or industrial property rights associated to Software or the Open Source Software. If reasonably required by Licensor, the Licensee shall immediately cease to use the Software.

13.6. Should the Licensee breach this undertaking, the Licensor may be entitled to be indemnified for all damages and losses (including loss of profits) caused to the Licensor or any of its Group companies or Authorized Distributors without limitation whatsoever.

14. LIMITATION OF LIABILITY

14.1. The extent of Licensor's liability under or in connection with this Agreement (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation or under any indemnity) shall be as set out in this clause 14.

14.2. Subject to clause 14.5, Licensor shall have no liability of any kind in any circumstances whatever to the Licensee in respect of the Software. In particular, Licensor shall have no liability in any circumstances whatever for any data loss or corruption on the On-premise component and the Licensee agrees that it has sole responsibility for protecting its data during the use of the Software.

14.3. Subject to clause 14.5, the Licensor shall not be liable for any (whether direct or indirect) loss of profit, loss or corruption of data, loss or corruption of software or systems, loss or damage to equipment, loss of use, loss of production, loss of contract, loss of opportunity, loss of savings, discount or rebate (whether actual or anticipated), harm to reputation or loss of goodwill, and/or consequential, indirect or special losses.

14.4. The Licensor's total maximum aggregate liability towards the Licensee shall be equal to the MSRP (manufacturer's suggested retail price) for Licensee's specific Subscription indicated in the Licensor's price list applicable at the time of the damages, corresponding to the geographic area where the Licensee is located.

14.5. Subject to clause 14.5, notwithstanding any other provision of this Agreement, Licensor's liability shall not be limited in any way in respect of death or personal injury caused by negligence, fraud or fraudulent misrepresentation, or any other losses which cannot be excluded or limited by applicable law.

14.6. Neither Party shall be liable for, nor shall either Party be considered in breach of this Agreement due to, any failure to perform its obligations under this Agreement as a result of a cause beyond its control, including any act of God or a public enemy or terrorist, act of any military, civil or regulatory authority, change in any law or regulation, fire, flood, earthquake, storm or other like event, theft or criminal misconduct by unrelated third parties, disruption or outage of communications (including the Internet or other networked environment), power or other utility, unavailability of supplies or any other cause, whether similar or dissimilar to any of the foregoing, which could not

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have been prevented by the non-performing Party with reasonable care.

14.7. This clause 14 shall survive the termination or expiry of this Agreement and continue indefinitely.

15. SUPPORT SERVICES

15.1. The Licensee shall benefit from the support services related to the Software in accordance with the terms and conditions that may be agreed with the Licensor, its Group companies or any of its Authorized Distributors.

15.2. In case the Licensee has purchased the Subscription from an Authorized Distributor, the Licensee shall contact the Authorized Distributor before contacting Salto or its Group companies.

16. AUDIT

16.1. The Licensor reserves the right to carry out, either directly or through the advisors it considers fit, an audit on the performance by the Licensee of the provisions of this Agreement.

16.2. The Licensee shall allow access to the Licensor and/or its advisors to the Site and the Client's Operating Environment, provide all the information required for the purposes of the audit and, in general, cooperate in good faith with the Licensor and/or its advisors.

17. CONFIDENTIALITY

17.1. The Software constitutes valuable, sensitive and confidential business information and intellectual property of the Licensor.

17.2. The Parties undertake not to reveal the Confidential Information to third parties, without the prior written consent of the other Party. Nevertheless, the Parties hereby expressly authorize that Confidential Information may be shared with Group companies and Authorized Distributors in order to guarantee the provision of the Services set forth in this Agreement.

17.3. This obligation of confidentiality shall oblige both Parties and their representatives. Under this clause, the term representative shall mean any employee, director, agent consultant, adviser or any other person related to them.

17.4. With the purpose of avoiding the reveal of the Confidential Information, each Party undertakes to adopt any arrangements and measures it may deem appropriate in order to preserve the Confidential Information, in particular all the measures necessary related to its employees that have access to the Confidential Information.

17.5. If any of the Parties or its representatives breaches the confidentiality obligations herein, the breaching Party shall indemnify the other Party for any damages or losses, suffered as a consequence of the aforesaid breach, within the limitations set forth in clause 14 of this Agreement. The Licensee shall be jointly and severally liable for any breach of this confidentiality obligation by any of its directors, managers, employees or contractors.

17.6. In the event that the Licensee is requested by a judicial or administrative authority to provide the Confidential Information it shall inform the Licensor immediately.

17.7. This confidentiality obligation shall remain in force for an indefinite term, while the Confidential Information preserves its confidential and secret nature.

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17.8. For the avoidance of doubt, any previous confidentiality agreement, or non-disclosure agreement in force that the Parties may have signed, or that the Client may have signed with the Seller, shall remain in force and valid, and will not be affected by this provision, and still applicable for the information disclosed thereunder.

18. ASSIGNMENT

18.1. The Licensee may not license, sublicense, loan, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to third parties the Software and/or its contractual position, rights or obligations under this Agreement; nor permit the use of the Software by third parties, without having obtained the prior written consent of the Licensor.

18.2. As an exception to the above:

- (i) The Licensor is entitled to assign the rights and obligations deriving from the Agreement to any company of its group without requiring the consent of the Licensee.
- (ii) In case the Licensee transfers the property of the Site, the Licensee and the new owner of the Site may request to the Licensor to assign the rights and obligations deriving from the Agreement, including the License, to the new owner by means of a joint communication. Where appropriate, the Licensor may request supporting documentation about the Site property transfer.

19. AMENDMENTS

19.1. Salto reserves the right to modify this Agreement at any time. For these purposes, Salto will inform the Client by electronic means (such as by email or through the Software) about the modifications. The Client shall have a period of fifteen (15) calendar days since the receipt of the referred notification to expressly reject such modifications in the manner set forth in Salto's notice. Continuous use of the Software after the aforementioned period shall be considered an acceptance of the modifications to this Agreement.

19.2. In the event that the aforesaid period has elapsed without Client's express rejection, the modifications shall be deemed accepted by the Client and therefore, fully applicable. In any case, the aforementioned amendments shall be deemed to be accepted by the Client in the event that the later enters into a new Agreement with Salto. If the Client does expressly reject the aforementioned modifications, the Client shall be entitled to cancel the Subscription and obtain a refund from the corresponding Seller of the Fees paid in advance proportional to the time remaining before the expiry of the Subscription.

20. COMPLIANCE WITH LAW

20.1. Each party shall comply with all applicable laws and shall maintain such authorisations and approvals as required from time to time to perform their obligations under or in connection with this Agreement.

20.2. Without prejudice to the generality of clause 20.1, the parties shall comply with all applicable laws, rules, and regulations governing export of goods and information that apply to the Software, and shall not export or re-export, directly or indirectly, separately or as a part of a system, the Software to any country for which an export licence or other approval is required, without first obtaining such licence or other approval. The Client shall be solely

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responsible for ensuring its access, importation or use of the Software in or into any part of the corresponding territory complies with all export laws.

21. PERSONAL DATA

21.1. The use of the Software shall involve the processing by the Licensee of personal data owned as controller or, in some situations, as data processor. The Licensee is responsible for processing such data in compliance with the applicable data protection law.

21.2. Any Personal Data accessed by Salto, in relation to the Software, for which the Client is Controller or Processor shall be processed by Salto as Processor or sub-processor (as these terms are defined in the DPA). In this regard, the obligations of each Party deriving from such processing of Personal Data shall be governed by the Data Processing Agreement applicable from time to time. The Data Processing Agreement may be modified in accordance with the procedure set forth in clause19.

21.3. It will be the Licensee's sole responsibility, to have previously informed the data subjects of how their personal data will be processed by the Licensee and its processors and, to ensure that the Licensee has a legitimate legal basis to carry out such data processing.

22. MISCELLANEOUS

22.1. Each party acknowledges that it has not entered into this Agreement in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in this Agreement.

22.2. The Client recognises that its breach or threatened breach of this Agreement may cause to the Licensor irreparable harm, and that the Licensor may therefore be entitled to injunctive or other equitable relief.

22.3. The parties are independent businesses and not partners, principal and agent, or employer and employee, or in any other relationship of trust to each other.

22.4. A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions.

22.5. If any clause in this Agreement (or part thereof) is or becomes illegal, invalid or unenforceable under applicable law, but would be legal, valid and enforceable if the clause or some part of it was deleted or modified (or the duration of the relevant clause reduced), the relevant clause (or part thereof) will apply with such deletion or modification as may be required to make it legal, valid and enforceable.

22.6. Unless otherwise expressly agreed, no delay, act or omission by either party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy.

22.7. The official language of this Agreement is English. In case of any discrepancy between the English version and any other version the Agreement could be translated to (for the exclusive purposes of facilitating the Licensee's understanding), the content of the English version shall prevail.

23. GOVERNING LAW AND JURISDICTION

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23.1. This Agreement and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of Spain.

23.2. The parties irrevocably agree that the courts of Donostia – San Sebastian (Gipuzkoa – Spain) shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Agreement, its subject matter or formation (including non-contractual disputes or claims).

ANNEX 1 - Definitions

For the purposes of this Agreement, the terms listed herein mean the following:

- **Agreement:** means, jointly, these terms of service, as amended, supplemented or restated from time to time pursuant to the terms hereof, and the Data Processing Agreement.
- **Authorized Distributors:** means either an Affiliate or the Licensor's authorized partners, dealers and distributors.
- **Client's Operating Environment:** means the Client's computing environment (consisting of hardware, software and telecommunications networks) that is to be used by the Client in connection with the Software.
- **Cloud component:** The cloud-based portion of the Software accessible remotely via the internet.
- **Confidential Information:** means all information (whether in oral, written or electronic form) relating to a party's business which may reasonably be considered to be confidential in nature including information relating to that party's technology, know-how, Intellectual Property Rights, assets, finances, strategy, products and Clients. The Software and all information relating to the Software, the documentation and the descriptions given by the Licensor of the Software and any other technical or operational specifications or data relating to the Software shall be part of Licensor's Confidential Information.
- **Data Processing Agreement (or DPA):** means the supplementary agreement entered into by Salto and the Client, on which basis Salto shall process Personal Data as set forth in clause 21.2.
- **Distributor's Documentation:** means any contractual documentation entered into and between an Authorized Distributor and the Client (either in writing or by digital means) for the purchase of the Hardware and/or a Subscription by the Client, which shall include the Fees for accessing and using the Software.
- **Fees:** means the fees to be paid by the Client to the Seller for the purchase of each Subscription in order to have access and use of the Software, all in accordance with the provisions of clause 7.
- **Free Trial Period:** means determined maximum of days indicated by Salto in which the Client can have access and use the Software free of charge pursuant to clause 6.
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