

# TARGIT Cloud

## GENERAL TERMS AND CONDITIONS (America)

These General Terms and Conditions ("**Cloud GTC**") apply between TARGIT (US) Inc, 3030 N. Rocky Point Drive W., SUITE 350, TAMPA, FL, 33607, USA ("**TARGIT**") and the customer identified in a Transaction Document (the "**Customer**"), in relation to TARGIT's provision and Customer's use of the Services (capitalized terms defined below), except as otherwise explicitly agreed between Customer and TARGIT. (TARGIT and Customer individually a "**Party**" and collectively the "**Parties**")

**THIS VERSION OF THE CLOUD GTC AS IDENTIFIED IN THE TOP RIGHT CORNER SHALL BE DEEMED AS AGREED BETWEEN THE PARTIES AS PART OF THE SUBSCRIPTION DOCUMENTS PURSUANT TO CLAUSE 2 BELOW. NOTWITHSTANDING ANYTHING TO THE CONTRARY, IF CUSTOMER DOES NOT ACCEPT THE CLOUD GTC, CUSTOMER IS NOT PERMITTED TO USE THE SERVICES IN ANY MANNER.**

### 1. DEFINITIONS

1.1 In addition to terms defined elsewhere in the Cloud GTC, the following definitions shall apply:

**Affiliates:** any entity that, directly or indirectly, through one or more intermediaries, Controls or is Controlled by, or is under common Control with a Party, except that in countries where ownership of a majority or Controlling interest by a foreign entity is not permitted by law, rule or regulations, the foreign entity's direct or indirect voting interest may be less than a majority or Controlling interest.

**Backup Procedure:** the procedure for backup of any data hosted in the Services as specified and accessible on the TARGIT Legal Site.

**Consumer:** A User who can browse and read documents such as dashboards and reports in the Services as further specified in the Documentation.

**Control:** the ability, directly or indirectly, to direct the affairs of another by means of: (i) ownership of at least 50% (fifty percent) of the voting shares in any entity, or, in the case of an entity that has no outstanding securities, having the right to 50% (fifty percent) or more of the profits of the entity, or having the right in the event of dissolution to 50% (fifty percent) or more of the assets of the entity; or (ii) by contract or otherwise.

**Customer Data:** data stored and/or processed through the Services.

**Designer:** A User who can browse, read and edit documents such as dashboards and reports in the Services as further specified in the Documentation.

**Documentation:** Instructions, user guides, manuals, and specifications of the Services, as updated by TARGIT from time to time using reasonable efforts, made accessible by TARGIT to Customer on the TARGIT Community, and otherwise made accessible to Customer on request prior to Customer's acceptance of the Transaction Document.

**Effective Date:** Either (i) the 1<sup>st</sup> day of the calendar month following the date of Customer's explicit or implicit acceptance of the Transaction Document if such acceptance is made on the 16<sup>th</sup> or thereafter in a calendar month, or (ii) the 1<sup>st</sup> day of the same calendar month if such acceptance occurs on or before the 15<sup>th</sup> of that calendar month.

#### Intellectual Property Rights:

- (a) copyright, rights affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trademarks, rights in internet domain names and website addresses and other rights in trade names, designs, know-how, trade secrets and other rights in confidential information (cf. Clause 20), including under marketing legislation and legislation on protection of trade secrets; and
- (b) applications for registration, and the right to apply for registration, for any of the rights listed in item (a) that are capable of being registered in any country or jurisdiction; and
- (c) all other rights having equivalent or similar effect in any country or jurisdiction in the world.

**IPR Claims:** claims, lawsuits, actions, or proceedings brought against a Party by a third party in a court of competent jurisdiction in a country which is a contracting party to The Patent Cooperation Treaty, alleging the infringement of such third party's Intellectual Property Rights existing under the laws of such country.

**Malicious Code:** harmful or malicious code, files, scripts, agents, programs, etc., e.g., viruses, trojan horses, keyloggers.

**Microsoft Azure:** Microsoft Azure cloud platform cf. <https://azure.microsoft.com/en-us/overview/what-is-azure/>.

**Microsoft:** Microsoft Corporation, 1 Microsoft Way, Redmond, WA, 98052-8300, United States.

**Personal Data:** means information about a natural person, which is subject to privacy regulation under the

law applicable to such information when loaded into the Services.

**Reseller:** the commercial third party from whom Customer has acquired the Subscription, and who is authorized by TARGIT to advertise, market, distribute, customize, and offer support for the Subscription directly to end users in the territory of Customer.

**Security Specifications:** TARGIT's specifications of the security measures taken in respect of the Services, as applicable to the Services from time to time and accessible on the TARGIT Legal Site.

**Service Level Agreement or SLA:** the service level agreement applicable for the Services and accessible through the TARGIT Legal Site.

**Services:** (i) the specific software-as-a-service solution, (ii) hosting of Customer's In-memory data warehouse by TARGIT, and (iii) associated services and features, (to be) provided or made available to Customer by TARGIT as specified in the Subscription Documents.

**Subscription:** means the subscription to the Services acquired by Customer under the Subscription Documents, including the number of Designers and Consumers specified therein.

**Subscription Documents:** these Cloud GTC, the applicable Transaction Document, Backup Procedure, Security Specifications, SLA and the Documentation.

**Subscription Fees:** the fees payable for the Subscription to either TARGIT or Reseller, as specified in the Transaction Document.

**Subscription Term:** means the term of the Subscription as specified in the Transaction Document (usually 1, 2, or 3 Subscription Years), and any subsequent term of the Subscription upon renewal pursuant to Clause 23.1.

**Subscription Year:** a continuing period of 12 (twelve) calendar months from the Effective Date.

**Support Services:** the support services provided by TARGIT as further described in the SLA.

**TARGIT Community:** the website <https://Community.targit.com>.

**TARGIT Legal Site:** the website <https://www.targit.com/legal>.

**TARGIT Management client:** the administrator configuration tool of the Services.

**TARGIT Portal:** the website <https://portal.targit.com> on which Customer must log in by use of the credentials provided by TARGIT.

**TARGIT Subscription Statement:** The information shown in the TARGIT Management client under "License"

specifying the scope of the Services, expiry date, the names and number of Users and Designers authorized to log in to and use the Services.

**Transaction Document:** a document issued by either Reseller or TARGIT, including addenda and amendments thereto, stipulating the scope of the Subscription and the Subscription Fees, which (i) refers to these Cloud GTC and (ii) is legally binding to Customer either through explicit or implicit acceptance, e.g. a written agreement, an order confirmation, a purchase order, an invoice from TARGIT or Reseller, etc., and (iii) if issued by Reseller, is confirmed by the TARGIT Subscription Statement or otherwise confirmed by TARGIT.

**User Subscription:** the right of a User to use the Services pursuant to the Subscription Documents.

**User:** A named natural person with a unique e-mail id who has obtained permission from the Customer to use the Services as either a Consumer or a Designer on behalf of Customer in accordance with these Cloud GTC.

## 2. CONCLUSION OF AGREEMENT

2.1 The Subscription Documents form the entire agreement between the Parties on TARGIT's provision and Customer's receipt and use of the Services and shall be subject to change as set out in Clauses 2.2 - 2.4, and Clause 2.5.

2.2 TARGIT shall be entitled to make changes to the Cloud GTC, Backup Procedure, Security Specifications and SLA (each a "**Legal Document**") in its discretion and publish the new version on the TARGIT Legal Site, and the new version shall be applicable between the Parties pursuant to Clauses 2.3 - 2.4.

2.3 A Legal Document shall be applicable in the version identified in the top right corner of the document as published on the Legal Site on the date of the Transaction Document, and shall be replaced by the most current version published on the TARGIT Legal Site on:

- (a) the date of any addenda, amendment, or replacement, of the Transaction Document, approved by the Customer in writing; and
- (b) on the date of the renewal of a Subscription, provided that the amended Legal Document was published before the last date of Customer's right to notify non-renewal under Clause 23.1.

2.4 Notwithstanding the foregoing, if TARGIT uploads a new version of a Legal Document on the TARGIT Legal Site and the changes from the previously applicable version are not materially detrimental to Customer, such version shall be applicable between the Parties as of the date of being published on the TARGIT Legal Site.

2.5 TARGIT shall in its discretion be entitled to make changes to the Documentation from time to time in accordance with good practices within the IT industry, and the Documentation shall be applicable between the Parties upon being published on the TARGIT Community.

2.6 In the event of a dispute between the Parties regarding the Subscription, the versions of the Subscription Documents on the date of the occurrence of the situation giving rise to the dispute shall be applicable between the Parties.

### **3. THE SERVICES**

3.1 TARGIT shall make the Services available and provide the Services, as applicable, in accordance with the Subscription Documents to Customer.

3.2 Customer agrees that the Subscription (including any later additions of Users and/or functionalities) is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by TARGIT with respect to future functionality or features.

3.3 Customer shall use the Services through Users only and shall subscribe to the number of Designers and Consumers as needed.

3.4 A User Subscription is strictly personal for the User and may not be used by any other person i.e. by sharing of same login details. Customer may transfer a User Subscription from one person to another either:

- (a) permanently, or
- (b) temporarily, once in a period of 30 days for each User Subscription.

3.5 If Customer requires additional User Subscriptions to the ones set out in the Subscription Documents, it may acquire these from TARGIT or Reseller, as applicable. TARGIT reserves the right to refer Customer to its Reseller for its acquisition of User Subscriptions.

3.6 If agreed, TARGIT shall as part of the Services host Customer's InMemory data warehouse on Microsoft Azure through a multi-tenant setup or a single instance dedicated to Customer and ensure the continued integration with other relevant parts of the Services. TARGIT shall be responsible for the management of the Microsoft Azure instance as required for the due performance of the hosting services.

3.7 To ensure the proper performance and functioning of the Services, TARGIT will backup Customer Data stored on the Services in accordance with the Backup Procedure and use reasonable commercial efforts to re-establish data in the event of data loss. The foregoing shall not limit or reduce Customer's obligation to ensure backup of its data, cf. Clause 8.2 below.

### **4. CUSTOMER AFFILIATES**

4.1 If agreed in the Subscription Documents, Affiliates of a Customer may order User Subscriptions, upon which the Affiliate shall be bound by the terms and conditions of the Subscription Documents. Customer and Affiliates shall then become jointly and severally liable to TARGIT

for any breach of the Subscription Documents, including in respect of number and type of Users.

### **5. USAGE RESTRICTIONS**

5.1 Customer assumes responsibility for ensuring that the Services are used solely for Customer's internal business purposes.

5.2 Customer shall be prohibited from: (i) licensing, sublicensing, selling, reselling, renting, leasing, transferring, assigning, distributing, time sharing or otherwise commercially exploiting or making any part of the Services available to any third party, except as agreed in the Subscription Documents; (ii) using the Services to send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (iii) using the Services to send, store or process infringing, obscene, threatening, defamatory, or otherwise unlawful or tortious material, including material that is harmful to children or violates third-party privacy rights; (iv) using the Services to send, store or process Malicious Code; (v) using the Services to interfere with or disrupt the integrity or performance of the Services or the data contained therein; (vi) attempting to gain unauthorized access to any part of the Services or its related systems or networks, (vii) permitting direct or indirect access to or using the Services in a way that circumvents a contractual usage limit or causes excessive use in general; (viii) using the Services to provide training to individuals for general use of services similar to the Services; (f) disclosing results of any benchmark or other performance, evaluation, or test run on or related to the Services to any third party; (g) letting the Services be included in any competition analysis or for the development of a competing product; or (h) otherwise using the Services in a manner inconsistent with the Subscription Documents.

5.3 Customer's use of any technology to enable Customer to redirect information from the Services to multiple recipients by use of a smaller number of User Subscriptions than the number of recipients, is prohibited and shall be considered a material breach of the Subscription Documents, unless otherwise explicitly agreed with TARGIT.

### **6. THIRD-PARTY SOFTWARE**

6.1 The Services may include access to a third-party software or service and may require Customer to conclude a separate agreement with the software and/or service provider in order to be able to fully use such software or service. Customer acknowledges and accepts that TARGIT shall not have any obligations or liability with regard to such third-party software and/or service and makes no warranties in relation thereto.

### **7. OBLIGATIONS OF TARGIT**

7.1 TARGIT shall (i) make the Services available to Customer pursuant to the applicable Subscription Documents (ii) maintain the security and integrity of the Services and Customer Data, (iii) make reasonable efforts to make the Services available as specified in the Service Level Agreement, (iv) not use, modify or disclose the Customer Data to anyone other than Users, official

representatives of Customers and TARGIT's employees, consultants and service providers in charge of running and maintaining the Services, except as provided for under the Confidentiality Obligations, (v) provide Support Services as set out in Clause 9 below, and (vi) maintain administrative and technical safeguards for the protection of the security, confidentiality and integrity of Customer Data in accordance with the Security Specifications and only process such data on behalf of the Customer.

7.2 Notwithstanding Clause 7.1 and at its sole discretion, TARGIT withholds the right to amend the Services at any time always provided that changes to features and functionalities shall not materially decrease the usability of the Services in general.

7.3 For Support Services in the form of professional services provided as part of the Services, TARGIT shall provide its services in a professional and workmanlike manner using reasonable efforts.

## **8. CUSTOMER RESPONSIBILITIES**

8.1 The Customer shall (i) be responsible for having adequate internet connections as required for the adequate use of the Services, (ii) be responsible and liable for all Users' compliance with the Subscription Documents; (iii) be responsible for the accuracy, quality, integrity, reliability and legality of all Customer Data, its processing in the Services and the means by which Customer has acquired Customer Data; (iv) be responsible to use or install such bug fixes, patches, modifications, updates, upgrades, new releases, releases to standard system software, any client software or tablet applications as made available by and/or instructed by TARGIT; (v) use the Services and store data on the Services only in accordance with the Subscription Documents and applicable laws and government regulations; (vi) use commercially reasonable efforts to prevent unauthorized access to or use of the Services by any third parties and notify TARGIT promptly of any such unauthorized use; and (vii) otherwise be responsible for all its activities pertaining to the use of the Services.

8.2 Customer shall be fully responsible for backup of any data on systems/databases outside of the Services to which the Services have access. This applies irrespective of TARGIT hosting any data warehouses on which the Services depend. Customer shall ensure that the backup is performed regularly and acknowledges and agrees that in the event of loss of any data the accuracy of the dashboards and reports of the Services will be affected.

8.3 It is the sole responsibility of Customer to ensure that its usage of the Services comply with the Subscription Documents.

## **9. SUPPORT SERVICES**

9.1 Support Services are governed by these Cloud GTC and the latest version of the Documentation at the time

of TARGIT's provision of the Support Services, except as may have been agreed in the Transaction Document.

9.2 If the Transaction Document is made with TARGIT, Customer shall notify TARGIT, of incidents in the Services, upon which a ticket for Support Services will be created by TARGIT ("**Support Ticket**"). If the Transaction Document is made with Reseller, Customer shall notify Reseller of any incidents in the Services in accordance with the terms of the Transaction Document, and if Reseller is unable to solve the incident Reseller is then to raise a Support Ticket with TARGIT.

9.3 TARGIT will respond to a Support Ticket in accordance with the Service Level Agreement.

9.4 TARGIT shall not have any responsibility to provide Support Services with respect to any problem with the Services caused by: (a) any software, device, data warehouse, or other product not supplied by TARGIT; (c) use of the Services for a purpose other than the purpose for which it was designed; (d) use of the Services through a software platform which it does not support according to the Documentation; (e) failure of Customer to install any client software on which the Services depend according to the Documentation; or (f) use of the Services inconsistent with the Documentation or advised practice.

## **10. PROCESSING OF DATA**

10.1 If Personal Data may be processed through the Services and under applicable law any data processing agreement is required between the Parties, then, Customer's right to use the Services shall be subject to Customer entering into TARGIT's standard US data processing agreement as available on the TARGIT Legal Site for any and all such processing. The Parties acknowledge that Customer is the owner of the data (data controller) and TARGIT processes data on behalf of Customer (the data processor). TARGIT may refuse to enter into any other data processing agreement and shall not incur any liability to Customer for such rejection.

10.2 If TARGIT is to gain access to Personal Data, and a data processing agreement is required under applicable law, Customer is responsible for entering into the data processing agreement referred to in Clause 10.1 prior to granting TARGIT access, and such agreement shall become part of the Subscription Documents.

10.3 If TARGIT is considered a data processor under applicable law without having agreed thereto under Clause 10.2, Customer shall indemnify TARGIT for the full amount of Data Subjects' Claims and for TARGIT's cost for any legal proceedings, and any other reasonable internal and external costs, pertaining to the handling of or defense against the Data Subjects' Claim, irrespective of Clause 22.6.

10.4 By using the Services, Customer acknowledges and agrees that apart from the Customer Data the following information will be processed by TARGIT: system specific information such as IP address, operating systems, and browser platforms as well as all information about Users' identity, activities on and the use of the Services. Except for Users' identity, and notwithstanding Clause 10.1, Customer acknowledges and agrees that TARGIT may use such information for its own business purposes,



including to improve the Services and/or other of its services or software products.

## **11. RESTRICTION OF ACCESS TO THE SERVICES**

11.1 If the Services cause damage, risk of damage or poor performance for TARGIT or customers of TARGIT, e.g., denial of service-attacks, unusual and/or excessive use of the Services by Users, TARGIT shall be free to restrict Customer's access to the Services without any obligation to compensate Customer.

## **12. PRICES AND FEES**

12.1 Customer shall pay the Subscription Fees as agreed in the Transaction Document as adjusted from time to time pursuant to Clause 13, and as applicable for renewals of Subscription Terms pursuant to Clause 23.1.

12.2 Unless otherwise explicitly agreed, (i) fees are based on number and types of Users with access to the Services, features and functionalities available to Customer, and may, if Services comprise hosting, also be based on usage, including of data storage, (ii) payment obligations are non-cancellable, and (iii) fees paid are non-refundable even if the Subscription, wholly or partly, is terminated before expiry of the Subscription Term. Restrictions may apply as to the reduction of the number and types of Users.

12.3 All prices and fees in the Subscription Documents are excluding VAT, if any, at the statutory rate applicable from time to time. Any and all indirect taxes, customs, duties, or charges as well as consular or legalization fees possibly levied shall be added at their applicable rate to the prices and fees set out in the Subscription Documents.

12.4 If Customer's account is 30 (thirty) days or more overdue, except with respect to charges then under reasonable and good faith dispute(s), TARGIT shall in addition to any of its other rights or remedies, be entitled to suspend the Services and to withhold Customer Data, without liability to TARGIT, until such amounts are paid in full. TARGIT must provide a minimum of eight (8) days' written notice of its intent to suspend the Services for overdue payment.

## **13. ADJUSTMENT OF SUBSCRIPTION FEES**

13.1 TARGIT may, without notice, increase Subscription Fees annually with the highest of (i) 2,5 % (two point five per cent) and (ii) the percentage change of the third quarter of the previous calendar year with the third quarter in the calendar year before that according to the "standardized index of average earnings in corporations and organizations of the IT and information services activities industry" as published by Statistics Denmark. The increased Subscription Fee shall be applicable for

Subscription Fees invoiced from 1 January that calendar year;

13.2 Notwithstanding the foregoing, if a subcontractor of TARGIT increases its fees to TARGIT for its services, TARGIT may increase the Subscription Fees accordingly.

13.3 In addition to Clauses 13.1 and 13.2, TARGIT may with a written notice of six (6) months to the end of a month increase the Subscription Fee in its sole discretion, and in such event, Customer shall in its discretion be entitled to terminate the Subscription for convenience with a written notice of 3 (three) months to the expiry of TARGIT's aforementioned notice period.

## **14. INVOICING AND PAYMENT**

14.1 Unless otherwise agreed in the Transaction Document, the Subscription Fees will be invoiced annually in advance by TARGIT or Reseller as applicable, with a payment term of 30 (thirty) days from the date of the invoice. The first annual invoice shall cover the first Subscription Year (to the end of a calendar month).

14.2 TARGIT or Reseller may invoice the Subscription Fees up to 60 (sixty) days prior to the start of a new Subscription Year or any renewal date of the Subscription.

14.3 Customer's delay with the payment of any amount due under the Subscription Documents shall be subject to interest at the rate of 2 % (two per cent) per month. For each payment reminder after the due date, up to 4 (four) times in 8 (eight) weeks, TARGIT may charge a fixed fee of USD 50.00.

## **15. PROPRIETARY RIGHTS AND LICENSES**

15.1 Subject to the limited rights granted under the Subscription Documents, TARGIT reserves all right and title to the Services including any Intellectual Property Rights related thereto. No rights are granted to Customer other than as expressly set forth in the Subscription Documents.

15.2 With the exception of any third-party software and any Customer Data, TARGIT, its Affiliates or its third-party licensors, own all rights, title, and interest in and to the Services and all parts thereof as well as in any results arising out of TARGIT's performance of the Services or Support Services.

15.3 Customer shall not (i) modify, copy, or create derivative works based on the Services; (ii) frame or mirror any content forming part of the Services, except as agreed with TARGIT; (iii) reverse engineer the Services; or (iv) access the Services in order to (A) build a competitive product or service, or (B) copy any ideas, features, functions, or graphics of the Services.

15.4 Customer grants to TARGIT a worldwide licence to host, copy, transmit and display Customer Data as

necessary for TARGIT to provide the Services in accordance with the Subscription Documents.

## **16. USE OF MICROSOFT AZURE**

16.1 The Services run on Microsoft Azure and shall be subject to Microsoft's applicable terms as set out on <https://www.microsoft.com/licensing/terms/>.

16.2 If the Services do not perform in accordance with these Cloud GTC due to incidents pertaining to the Microsoft Azure cloud platform, Customer shall never obtain a better right vis-à-vis TARGIT than TARGIT has vis-à-vis Microsoft Corporation.

16.3 Irrespective of the foregoing, no other rights and remedies shall be available to Customer than the ones explicitly set out in these Cloud GTC. Consequently, Customer shall not have the rights and remedies available to it vis-à-vis TARGIT that TARGIT has to it under the applicable terms of Microsoft Corporation.

## **17. OTHER SUB-SUPPLIERS**

17.1 By agreeing to these terms, Customer explicitly consents to the Services being managed by the Danish entity TARGIT A/S, Gasvaerksvej 24, 2., 9000 Aalborg, Denmark, with company registration no. 11562639, ("TARGIT DK").

17.2 TARGIT shall be liable for TARGIT DK's actions and omissions as if they were its own.

17.3 TARGIT may in its sole discretion engage other sub-suppliers to perform its obligations under the Subscription Documents.

## **18. INDEMNIFICATION**

18.1 TARGIT undertakes to defend Customer where an IPR Claim is made against Customer as a consequence of Customer's use of the Services, and to indemnify Customer from any damages which Customer may incur pursuant to a judgment, arbitral award or settlement regarding such IPR Claim; provided, that Customer (a) promptly gives written notice of the IPR Claim to TARGIT; (b) gives TARGIT sole control of the defense and settlement of the IPR Claim; and (c) provides to TARGIT, at TARGIT's cost, all reasonable assistance.

18.2 TARGIT's obligation to indemnify as set out in section 18.1 only applies provided that the alleged infringement has not been caused by (i) Customer's use of the Services in violation of the Subscription Documents; ii) Customer's use of the Services in combination with any other service, software or hardware where the infringement would have been avoided but for such combination, or iii) the Customer Data.

18.3 If the Services are, or in TARGIT's opinion are likely to be, held to be infringing any third party's Intellectual Property Rights, TARGIT will in its sole discretion and at its expense either:

- (a) procure the right for Customer to continue using it;
- (b) replace it with a non-infringing equivalent;
- (c) modify it to make it non-infringing; or

- (d) direct the cancellation of the Services against TARGIT's refund of fees paid for the remainder of the Subscription Term in which the cancellation occurs.

18.4 The provisions of Clause 18.1 and 18.3 shall constitute TARGIT's sole and exclusive responsibility and Customer's sole remedies in relation to infringements of any third party's Intellectual Property Rights.

18.5 Any third-party software or service which forms part of the Services is solely subject to the third party's terms and conditions regarding infringement.

18.6 Customer shall defend, indemnify and hold TARGIT harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with any claims made or brought against TARGIT by a third party alleging that the Customer Data or Customer's use of the Services in violation of the Subscription Documents or use of third-party software or services in violation of applicable third-party licenses and terms, infringe the Intellectual Property Rights of, or has otherwise harmed, a third-party; provided, that TARGIT (a) promptly gives written notice of the claim to Customer; (b) gives Customer sole control of the defense and settlement of the claim (provided that Customer may not settle or defend any claim unless it unconditionally releases TARGIT of all liability); and (c) provides to Customer, at Customer's cost, all reasonable assistance.

## **19. WARRANTIES AND DISCLAIMERS**

19.1 TARGIT warrants to Customer that during the Subscription Term subject to Customer performing its obligations or fulfilling the requirements set out in the Subscription Documents: (a) the Services shall perform substantially in accordance with its Documentation; (b) the Services will not contain or transmit to Customer any Malicious Code (except for any Malicious Code contained in User-uploaded attachments or otherwise originating from Users); (c) TARGIT owns or otherwise has sufficient rights in the Services to grant to Customer the rights to use the Services as set out in the Subscription Documents; (d) TARGIT has no actual knowledge about the Services infringing the valid rights of any third-party in the territory of Customer; and (e) Support Services will be provided with reasonable skill and care.

19.2 TARGIT's entire liability, and Customer's sole remedy, for each breach of warranty in: Clause 19.1(a) is limited to requiring TARGIT to correct or work around the portion of the Services giving rise to such breach within a commercially reasonable time, failing which, TARGIT shall refund a proportionate part of the Subscription Fee corresponding to the value of the non-performing/removed portion of the Services giving rise to the breach; Clause 19.1(b) is limited to requiring TARGIT to make the Services available without such Malicious Code; Clauses 19.1(c) and (d) is limited to Clause 18 applying; and Clause 19.1(e) is limited to requiring TARGIT to reperform such Support Services.

**19.3 EXCEPT AS EXPRESSLY PROVIDED HEREIN, TARGIT MAKES NO REPRESENTATIONS ABOUT THE SUITABILITY OR ACCURACY OF THE SERVICE FOR ANY PURPOSE, AND MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED,**

**INCLUDING FOR MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR THE SERVICE BEING FAULT-TOLERANT OR FREE FROM ERRORS AND BUGS.**

## **20. CONFIDENTIALITY**

20.1 . Each Party undertakes not to disclose to any third party without the consent of the other Party any information received from the other Party, including its business, which can reasonably be deemed to be of a confidential nature, including trade secrets and information which is covered by any statutory duty of secrecy. Information stated by one of the Parties to be confidential shall always be deemed to constitute confidential information.

20.2 The Parties' confidentiality obligations under this Clause 20 shall not apply to trade secrets or any other confidential information which the receiving Party can demonstrate (i) is already known when received, (ii) is or has become public knowledge other than through breach of these Cloud GTC, (iii) is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure, or (iv) is to be made publicly available due to a court order, a decision by a public body or as otherwise required by mandatory law.

20.3 Each Party agrees to impose on its employees and consultants, in an appropriate manner, the obligations of confidentiality under this Clause 20. The Parties shall ensure that any subcontractors engaged, together with any of their employees involved in the assignment, sign a confidentiality undertaking containing equivalent provisions to the benefit of the other Party.

20.4 The Parties' obligations under this Clause 20 shall be valid during the term of the Subscription and continue for a period of five (5) years after expiration or termination of the Subscription, regardless of the reasons for such termination.

## **21. MONITORING AND AUDIT**

21.1 TARGIT may monitor Customer's account and usage of the Services in order to verify Customer's compliance with the Subscription Documents.

21.2 Upon TARGIT's request to fill-out a self-audit questionnaire regarding Customer's usage of the Services, Customer shall within 30 (thirty) days from receipt accurately complete and return the questionnaire duly signed by the authorized signatories of Customer confirming the accurateness of its responses.

21.3 If such monitoring or self-audits reveal non-compliance with the Subscription Documents in relation to User Subscriptions, Customer shall be deemed to have acquired additional Designer and/or Consumer Licenses as applicable, at the then-current standard prices retroactively from the commencement of the non-compliance (if determinable) with the addition of 100% of such prices.

## **22. LIMITATION OF LIABILITY**

### **22.1 TARGIT'S SOLE LIABILITY TO CUSTOMER OR ANY OTHER PARTY FOR ANY AND ALL CLAIMS IN**

**ANY MANNER RELATED TO THE SUBSCRIPTION DOCUMENTS WILL BE THE PAYMENT OF DIRECT DAMAGES ONLY.**

**22.2 TARGIT SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES OR INJURY INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, CONTRACTS, REVENUE, INTERNAL USE OF TIME, INCREASED CONSUMPTION OF RESOURCES, COMPUTER FAILURE OR MALFUNCTION, OR ANY LOSS OF DATA, INCLUDING LOSS OF CUSTOMER DATA, ARISING OUT OF, IN CONNECTION WITH OR AS A RESULT OF A BREACH OF THE SUBSCRIPTION DOCUMENTS.**

**22.3 TARGIT'S AGGREGATE LIABILITY FOR DAMAGES SHALL NOT EXCEED THE TOTAL SUBSCRIPTION FEE TO TARGIT PAID FOR THE SUBSCRIPTION YEAR IN WHICH THE BREACH OCCURS. THE PARTIES WOULD NOT HAVE AGREED TO THE SUBSCRIPTION DOCUMENTS WITHOUT THIS LIMITATION.**

**22.4 NOTHING IN THE SUBSCRIPTION DOCUMENTS EXCLUDES OR LIMITS EITHER PARTY'S LIABILITY TO THE OTHER FOR LIABILITY ARISING FROM A PARTY'S WILFUL MISCONDUCT OR GROSS NEGLIGENCE.**

**22.5 THE LIMITATIONS IN THIS CLAUSE 22 SHALL APPLY TO LIABILITY FOR NEGLIGENCE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, EQUITY, AT LAW, STRICT PRODUCT LIABILITY, OR OTHERWISE; AND EVEN IF TARGIT HAS BEEN ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES, IF SUCH DAMAGES WERE FORESEEABLE, AND EVEN IF CUSTOMERS' OTHER REMEDIES FAIL IN THEIR ESSENTIAL PURPOSE.**

**22.6 SAVE FOR AS SET OUT IN CLAUSE 10.3, TARGIT'S MAXIMUM LIABILITY PURSUANT TO CLAUSE 22.3, SHALL INCLUDE (I) ANY LIABILITY INCURRED BY TARGIT AS A DATA PROCESSOR OF CUSTOMER TO DATA SUBJECTS, FOR WHOSE DATA THE PARTIES HAVE AGREED IN A DATA PROCESSING AGREEMENT THAT TARGIT IS A DATA PROCESSOR, INCLUDING LIABILITY TO PAY DAMAGES AND COMPENSATION FOR TORT UNDER CLAIMS RAISED BY DATA SUBJECTS, AND (II) ANY CLAIMS FOR RECOURSE WHICH CUSTOMER MAY HAVE AGAINST TARGIT FOR LIABILITY INCURRED BY CUSTOMER TO DATA SUBJECTS ((I) AND (II) COLLECTIVELY "DATA SUBJECTS' CLAIMS").**

**22.7 CUSTOMER SHALL INDEMNIFY TARGIT FOR DATA SUBJECTS' CLAIMS EXCEEDING TARGIT'S MAXIMUM LIABILITY, AND FOR TARGIT'S COST FOR ANY LEGAL PROCEEDINGS, AND ANY OTHER REASONABLE INTERNAL AND EXTERNAL COSTS, PERTAINING TO THE HANDLING OF OR DEFENSE AGAINST THE DATA SUBJECTS' CLAIMS. FOR THE AVOIDANCE OF DOUBT, (I) TARGIT SHALL BE ENTITLED TO SUCH INDEMNIFICATION IRRESPECTIVE OF BEING LIABLE FOR THE DATA SUBJECTS' CLAIMS, AND (II) TARGIT SHALL HAVE**

## **RECOURSE AGAINST CUSTOMER FOR ALL LIABILITY INCURRED TOWARDS DATA SUBJECTS.**

### **23. TERM AND RENEWALS**

23.1 The Subscription shall commence on the Effective Date. By the expiry of a Subscription Term, the Subscription shall automatically be renewed for another Subscription Term of the same length as the previous, at the same price with the adjustments applicable pursuant to Clause 13, and subject to the then current version of the Legal Documents (cf. Clause 2), unless (i) Customer gives TARGIT a written notice of non-renewal of no less than 3 (three) months to the end of the Subscription Term, or (ii) TARGIT gives Customer a written notice of non-renewal of no less than 12 (twelve) months to the end of the Subscription Term.

### **24. TERMINATION FOR CAUSE**

24.1 Either Party may terminate the Subscription for cause by giving written notice of termination to the other Party (the "**Breaching Party**"), if the Breaching Party commits a breach or a series of breaches of these Cloud GTC that individually or collectively are deemed material and, provided such breach(es) are capable of remedy, the Breaching Party has failed to remedy it/them following receipt of a written notice from the other Party within 30 (thirty) days from the date of the written notice.

24.2 Any delay by Customer of its payment of due Subscription Fees shall be deemed a material breach.

24.3 The rights of either Party (to terminate or otherwise) under this Clause 24 are in addition (and without prejudice) to any other right or remedy which the Party may have under these Cloud GTC.

### **25. EFFECTS OF TERMINATION**

25.1 The Users' will be disconnected from the Services on the date of expiry (pursuant to the TARGIT Subscription Statement) or termination of the Subscription.

25.2 Within 60 (sixty) days from the expiry or termination of the Subscription, TARGIT shall delete all Customer Data stored on the Services, and, if applicable, irrevocably discontinue any hosting services provided, and Customer shall delete any client software or other material that are subject to TARGIT's Intellectual Property Rights.

### **26. FORCE MAJEURE**

26.1 Subject to the remaining provisions of this Clause 26, TARGIT may claim relief from liability for non-performance of its obligations to the extent this failure is due to any events happenings or non-happenings outside TARGIT's control, which TARGIT could not reasonably be expected to have taken into account at the time of the conclusion of the Cloud GTC, or to have avoided or overcome it or its consequences, including: fires, explosions, natural disasters, war, acts or threats of terrorism, riots, commotion, strikes, lock outs or disorder, or pandemics ("**Force Majeure Event**"). The Covid-19 pandemic of 2020 shall be considered a Force

Majeure Event if, due to governmental restrictions or logistical restrictions imposed by third parties, TARGIT is prevented from performing its obligations without using unreasonable commercial effort. The Affected Party is, however, always obligated to mitigate the effects of a Force-Majeure Event.

26.2 Upon the Force Majeure Event ending, these Cloud GTC shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event, unless otherwise agreed.

### **27. CONFLICT BETWEEN DOCUMENTS**

27.1 In the event of conflict between the Cloud GTC and the various documents referred to herein, the conflict shall be resolved in accordance with the following order of precedence: (1) Transaction Document if agreed directly with TARGIT only; (2) the Data Processing Agreement applicable between the Parties, if any; (3) these Cloud GTC; (4) any other documents referred to herein.

27.2 Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or in any other Customer order documentation shall be incorporated into or form any part of the Subscription Documents, and all such terms or conditions shall be null and void.

### **28. MISCELLANEOUS**

28.1 **Entire Agreement:** The Subscription Documents constitute the entire agreement between the Parties in relation to the Subscription and supersedes all previous written or oral agreements or representations regarding the Subscriptions.

28.2 **Assignment, Transfer, Novation and Change of Control:** Customer shall not be entitled to assign or transfer any of its rights and obligations under these Cloud GTC. TARGIT shall be entitled to assign its rights and obligations under these Cloud GTC to (i) a third party, provided that such assignment is done as part of TARGIT's divestment of a considerable part of its assets to such third party, or (ii) to an Affiliate.

28.3 **Severability:** If a provision of these Cloud GTC is held to be unenforceable in any respect by a court of competent jurisdiction, then that provision is, if permitted by law, to be construed by modifying it to the minimum extent necessary to make it enforceable, or if not permitted, to be disregarded. If disregarding a provision would result in a material failure of the essential purpose of these Cloud GTC the entirety of these Cloud GTC shall be held unenforceable, and Customer's rights to use the Services shall end immediately without TARGIT incurring liability.

28.4 **Notices:** Any notice to be given by a Party in writing shall be deemed effective when sent either (a) via e-mail to the e-mail addresses provided that the sending Party tracks delivery of the message and does not receive any error message and that the sending email account indicates that the email was sent to the correct address or (b) by registered courier service to the other Party's mailing address; as specified in the



Services for TARGIT and as registered by Customer on the TARGIT Portal.

**28.5 Publicity, References and Communications:**

Unless otherwise agreed, each Party shall be entitled to use the other Party's name or refer to the Parties' contractual relationship as established by the Subscription Documents, in any press announcements, on its website(s), in any promotions, in its marketing or any other announcements of it, whatsoever.

**28.6 Waiver and Cumulative Remedies:** The rights and remedies provided by these Cloud GTC may be waived only in writing by the appropriate level of authority of a Party in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to. Unless a right or remedy of a Party is expressed to be an exclusive right or remedy, the exercise of it by a Party is without prejudice to such Party's other rights and remedies. Any failure to exercise or any delay in exercising a right or remedy by either Party shall not constitute a waiver of that right or remedy or of any other rights or remedies. Unless otherwise provided in these Cloud GTC, the rights and remedies provided by these Cloud GTC are cumulative and are not exclusive of any right or remedies provided by applicable law or otherwise under these Cloud GTC.

**28.7 Survival of Provisions:** The provisions of these Cloud GTC that are intended to survive termination or expiration in order to achieve the fundamental purposes of these Cloud GTC shall so survive, including, without limitation, the provisions regarding Intellectual Property Rights, indemnifications, audit, disclaimer of warranties, and limitation of liability.

**29. GOVERNING LAW AND CHOICE OF FORUM**

**29.1 Choice of Law:** The Subscription Documents and all related documents, and all matters arising out of or relating thereto, including regarding the existence, validity, or termination thereof, whether sounding in contract, tort, or statute shall in all respects be governed by, and construed and interpreted, in accordance with, the laws of the State of Florida, United States of America, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Florida. The parties agree that the United Nations Convention on

Contracts for the International Sale of Goods (CISG, The Vienna Convention) does not apply to the Subscription Documents.

**29.2 Choice of Forum:** Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against any other Party in any way arising from or relating to the Subscription Documents and all contemplated transactions, including, but not limited to, contract, equity, tort, fraud, and statutory claims, in any forum other than the US District Court for the Southern District of Florida or, if such court does not have subject matter jurisdiction, the courts of the State of Florida sitting in Miami-Dade County, and any appellate court from any thereof. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation, or proceeding only in the US District Court for the Southern District of Florida. Each party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

**29.3 WAIVER OF JURY TRIAL: EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THE SUBSCRIPTION DOCUMENTS, INCLUDING ANY EXHIBITS, SCHEDULES, AND APPENDICES ATTACHED TO THE SUBSCRIPTION DOCUMENTS, OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (ii) IT HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) IT MAKES THIS WAIVER KNOWINGLY AND VOLUNTARILY, AND (iv) IT HAS DECIDED TO ENTER INTO THE AGREEMENT CONSISTING OF THE SUBSCRIPTION DOCUMENTS IN CONSIDERATION OF, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.**