

# Xovis Cloud General Terms & Conditions (GTCs)

## NOTICE

THIS IS AN AGREEMENT BETWEEN YOU ("THE CUSTOMER") AND XOVIS AG, INDUSTRIESTRASSE 1, 3052 ZOLLIKOFEN, SWITZER-LAND ("XOVIS"). YOU AND XOVIS EACH ARE A "PARTY" AND TOGETHER ARE REFERRED TO AS THE "PARTIES".

YOU MUST READ AND AGREE TO THESE GENERAL TERMS AND CONDITIONS ("THE GTCs") BEFORE THE XOVIS CLOUD SERVICES CAN BE ACCESSED AND USED. BY ISSUING A WRITTEN SUBSCRIPTION ORDER, BY CLICKING ON THE "ACCEPT" BUTTON OF THESE GTCs AND/OR OF THE ONLINE SUBSCRIPTION ORDER, AND/OR ACCESSING AND USING THE XOVIS CLOUD SERVICES, YOU ARE AGREEING TO BE BOUND BY THE TERMS AND CONDITIONS OF THESE GTCs. IF YOU DO NOT AGREE TO THESE GTCs, THEN YOU SHOULD EXIT THIS PAGE AND REFRAIN FROM ISSUING A WRITTEN OR ONLINE SUBSCRIPTION ORDER, AND/OR ACCESSING OR USING THE XOVIS CLOUD SERVICES.

IF YOU ARE ACCEPTING THESE GTCs ON BEHALF OF ANOTHER PERSON, COMPANY, OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT PERSON, COMPANY, OR LEGAL ENTITY TO THESE GTCs.

## A) SCOPE

### 1. Customer's Subscription

1.1. These General Terms and Conditions ("the GTCs") governs and shall apply to all Customer Subscriptions to the Xovis Cloud Services ("the Cloud Services") as provided by Xovis. No Customer standard agreements, general terms or similar documents provided by Customer shall be applicable to the Cloud Services or other services provided by Xovis, even if referenced to in order confirmation, purchase order and similar documents.

1.2. The rights and obligations of the Parties under these GTCs are governed by the following documents:

- a. these **General Terms & Conditions**;
- b. the **Subscription Order**, with which Customer orders its specific Subscription by issuing a written purchase order or (if so available) by submitting an online-order on XOVIS'S product website;
- c. the then-current version of the **System Requirements** for the Cloud Services.
- d. the then-current Product **Documentation & Support Terms** which does include the description of the features and functionalities made available to Customer via the Cloud Services;
- e. the then current **Official Price List** which serves as the basis for the calculation of the fees relevant to Customer's subscription.
- f. the **Terms of Use/the Acceptable Use Policy** which in the future may contain terms regarding the proper usage of the Cloud Services in addition to the terms of these GTCs

with regard to the Cloud Services in their then-current version.

The documents specified in subsections c) to f) will be handed out to Customer along with the subscription order and these GTCs and may also be published on-line on the Cloud Service's landing page or other repositories available to Customer.

All of the documents mentioned above form an integral part of the GTCs and are hereby included by reference. The term "GTCs" hence does also include the aforementioned documents.

### 2. Definitions

- a. **Affiliate** means, with respect to an entity, any other entity that, directly or indirectly, Controls, is Controlled by, or is under common Control with such entity from time to time but only for so long as such Control exists. "Control" and its grammatical variants for the purpose of this definition means, (i) a general partnership or interest in a partnership, (ii) the beneficial ownership of a majority of the outstanding equity entitled to vote for directors, or (iii) the power to direct or cause the direction of the management and policies of such entity whether by contract or otherwise.
- b. **Account Set-Up Fee** means the one-time fee specified in section 14.
- c. **Assets** means all of Customer's XOVIS sensors and/or other XOVIS devices (such as XOVIS SPIDER) Customer as per Customers Subscription is entitled to manage by using the Cloud Solution.

- d. **Cloud Services** shall mean the services specified in these GTCs, which XOVIS will provide to Customer.
- e. **Confidential Information** means all information, documents, records and/or data which the disclosing Party at the time of disclosure has designated to be confidential or which, given its nature and circumstances of disclosure, ought to reasonably be considered confidential. Information is not considered Confidential Information in the event the information in question
- is approved for public release by written agreement of the discloser;
  - is already rightfully known to the recipient free of any restriction at the time it is obtained from the disclosing Party;
  - is subsequently disclosed to the recipient lawfully by a third party without imposing any restrictions whatsoever;
  - is or becomes public knowledge; or
  - is developed independently by one Party without referring to Confidential Information belonging to the other Party.
- f. **Customer's Subscription** means the individual contract between the Parties regarding Customer's subscription to the Cloud Services which contract does consist of (i) Customer's order in written or online form; and (ii) these GTCs.
- g. **End User** means an individual person which Customer or Customer's sub-licensees authorizes to access and use the Cloud Services.
- h. **GTCs** means these General Terms and Conditions regarding XOVIS Cloud Services, which terms also include the System Requirements, Product Documentation & Support Terms and the Terms of Use/Acceptable Use Policy.
- i. **Minimum Term** means the initial term of Customer's Subscription as specified in section 20.1, which term is, unless specified or agreed otherwise, twelve (12) months.
- j. **Normal Business Hours** means the hours XOVIS is open for business, which hours are from 8.00am until 5.00pm CET on official working days excluding public holidays at XOVIS's offices in Zollikofen, Switzerland.
- k. **Official Price List** means the then-current list of per asset and other prices for the Cloud Services that XOVIS does officially communicate and publish.
- l. **Subscription Fee** means the recurring fee Customer will pay to XOVIS for using the Cloud Services as specified in section 15, which fee consists of a (a) base fee (XOVIS Cloud Account) or, at Customer's option, XOVIS Cloud Dedicated Instance) and (b) a variable fee (XOVIS Cloud Device Control).
- m. **Subscription Term** means the total period of time Customer's Subscription to the Cloud Services remains effective.

## B) XOVIS CLOUD SERVICES

### 3. Features and Functionality

3.1. During the Subscription Term and provided all fees relating to Customer's Subscription have been paid, Customer shall be entitled to access and use the Cloud Services as specified herein.

3.2. The features, functionalities and specifications of the Cloud Services are documented and described in the Pro-

duct Documentation & Support Terms.

3.3. Customer hereby acknowledges and agrees that due to the constant and on-going development and enhancement of the Cloud Services in order to maintain quality standards, but also in light of technical or business developments, XOVIS may at its sole discretion at any point in time change, update, expand and/or modify the Cloud Services and its features and functionalities, change or modify the support terms related to the Cloud Services, and/or discontinue the distribution, subscription or availability of certain parts, modules, editions of or the entire Cloud Service. As a consequence, XOVIS shall, upon prior notification to Customer but at its sole discretion, be entitled to unilaterally modify the System Requirements, Product Documentation & Support Terms and the Terms of Use/Acceptable Use Policy. In any such event Customer may under certain circumstances be entitled to terminate its Customer Subscription as per section 20.4 b.

### 4. Service Warranty and Availability

4.1. XOVIS undertakes to perform all services related to or part of the Cloud Services faithfully and with due care and in accordance with customary industry standards.

4.2. XOVIS warrants that during the Subscription Term the Cloud Services will perform in substantial conformance with the Documentation & Support Terms. However, XOVIS shall not be liable under this warranty, (a) if its testing and examination disclose that the alleged error or malfunction of the Cloud Services does not exist or was caused by Customer's or any third person's misuse, negligence, unauthorized access to user accounts, inappropriate use of access credentials by Customer's employees or any other users Customer has authorized, of or any other cause beyond the range of the intended use and/or XOVIS's reasonable control; (b) if an alleged defect in or malfunction of the Cloud Services was not primarily caused by an error, bug, defect, non-availability or failure of other software and/or hardware used in conjunction with the Cloud Services, or by its interaction or use in conjunction with products, technology, software, hardware, equipment or systems not expressly identified in the Documentation & Support Terms; (c) for any defect in or malfunction of the Cloud Services which is caused by Customer's breach of any provision of these GTCs, or use of the Cloud Services contrary to the Documentation & Support Terms or other instructions issued or published by XOVIS, and/or (d) for any modification or alteration of the Cloud Services by any other party than XOVIS or any of its subcontractors, agents or other authorized third parties; (e) for planned or unscheduled maintenance, and/or (f) for a suspension due to Customer's non- or partial payment as per section 21.1.

4.3. During the Subscription Term, XOVIS shall use commercially reasonable endeavours to, based on its capabilities and its actual resource situation, on a "best effort" basis (a) continuously update and maintain the usefulness of the software application that is basis to the Cloud Services Cloud Services; and (b) correct or at least circumvent errors and malfunctions of the software application that is basis to the Cloud Services either detected by XOVIS or otherwise reported by Customer. With regard to errors and malfunctions, which from an objective point of view only have a minor impact on the functionalities of the Cloud Services, XOVIS

shall be entirely free to at its option address any such issue in one of the later releases of the software application that is basis to the Cloud Services.

4.4. Customer notes that it is technically not possible to guarantee that the Cloud Services shall be uninterrupted and/or free of errors and malfunctions. However, XOVIS shall use commercially reasonable endeavours to on a "best effort" ensure an availability of the Cloud Services of 97%.

4.5. XOVIS reserves the right, to temporarily limit the availability of and the access to the Cloud Services in part or in whole for servicing and maintenance purposes. Whenever reasonably possible, XOVIS shall give Customer advance notice regarding planned and also unscheduled maintenance windows and other circumstances that may have an impact on the availability of the Cloud Services as is reasonably practicable (e-mail notification shall suffice). XOVIS will to the extent reasonably practicable schedule planned maintenance and service interventions in a manner that minimizes the effect on Customer's normal business operations to the maximum extent possible (for instance interventions will be scheduled on week-ends). However, no such planned and scheduled maintenance and service windows shall be counted against the availability specified above.

## 5. Helpdesk Service

5.1. XOVIS shall operate a Helpdesk, which will (a) provide assistance with regard to queries Customer may have with regard to the use of the Cloud Services; (b) be the entry point with regard to errors and malfunctions of the Cloud Services Customer wishes to report.

5.2. Unless specified otherwise in the then-current Product Documentation & Support Terms, XOVIS shall operate its Helpdesk during Normal Business Hours only. The Helpdesk can be reached via the XOVIS ticketing system or by e-mail.

5.3. The relevant contact details of the Helpdesk are specified on the Cloud Services's landing page.

## 6. Subproviders

6.1. XOVIS is entitled to, with regard to the fulfilment of its obligations under these GTCs and Customer's Subscription, use subcontractors.

6.2. XOVIS agrees that the Cloud Services it provides shall, as per the default level and unless otherwise agreed with Customer, be hosted by XOVIS and/or its subcontractors exclusively in Switzerland and/or within a Member State of the European Union (EU) and/or within a Member State of the European Economic Area (EEA). In the event XOVIS intends to host the Cloud Services in a state outside Switzerland, the EU and/or the EEA the prior consent of Customer is required and shall only occur if and to the extent the specific conditions of the relevant data protection legislation have been fulfilled.

## 7. Trial Subscriptions

7.1. XOVIS may from time to time offer to its customer basis trial subscriptions to the Cloud Services or, as the case may be, to new service functionality or module in an alpha or beta development stage. Such trial subscriptions are provided by XOVIS under these GTCs (whereby the special terms of this section 7 shall prevail) and are, under normal circumstances, free of any charge.

7.2. Customer notes that all trial subscriptions are provided to Customer on an 'as is' and 'as available' basis with no warranties whatsoever (i.e. none of the warranty provisions as per these GTCs shall apply to any trial subscriptions, including but not limited to the warranty re: availability) and XOVIS liability with regard to such trial subscriptions shall be excluded or limited to the fullest extent permissible by applicable law. In addition, XOVIS shall be entirely free to, at its sole discretion and at any given point in time, suspend or terminate Customer's trial subscription to alpha or beta functionalities or modules without stating any reason for doing so.

7.3. The primary purpose of any trial subscription to service functionality or modules in an alpha or beta development stage is to obtain feedback on the customer experience, the overall performance and service operation along with the identification of potential malfunctions and defects. As a consequence, Customer is advised to use alpha and beta functionalities or modules as provided by XOVIS with caution and safeguard important data in an appropriate manner and not to rely in any way on the correct processing of service requests or overall performance and/or the adequacy of any accompanying documentation.

7.4. XOVIS shall be entirely free to use any feedback or suggestions Customer may be providing (in whatever form or format) with regard to alpha or beta functionality or modules provided by XOVIS during a trial subscription, regardless of whether or not Customer has formally been invited to provide such feedback. If Customer provides such feedback to XOVIS, Customer shall grant XOVIS the following worldwide, non-exclusive, perpetual, irrevocable, royalty free, fully paid up license to (a) make, use, copy, modify, sell, distribute, sub-license, and create derivative works of, the feedback as part of any XOVIS product, technology, service, specification or other documentation; (b) publicly perform or display, import, broadcast, transmit, distribute, license, offer to sell, and sell, rent, lease or lend copies of the feedback (and derivative works thereof) as part of any XOVIS product, technology, service, specification or other documentation; (c) sublicense to third parties the foregoing rights, including the right to sublicense to further third parties.

## 8. Other Services

Additional services which are not covered by these GTCs shall be subject to separate agreements between the Parties.

## C) CUSTOMER USE RIGHTS & ACCESS

### 9. Customer Use Rights

9.1. For the duration of the Subscription Term, XOVIS grants to the Customer a worldwide non-exclusive right to use the Cloud Services solely for its and its Affiliates' business purposes and as specified in the Documentation & Support Terms. Customer's use rights are limited to the number of Assets (which license metrics may be subject to adjustment during the Subscription Term) and are, unless specified otherwise herein (for instance with regard to the XOVIS Cloud Dedicated Instance option as specified in section 9.2), non-transferable and may not be sublicensed or used for the benefit of third parties other than Customer's Affiliates.

9.2. If Customer elects to subscribe to the XOVIS Cloud Dedicated Instance option, Customer shall, in addition to the use rights specified under section 9.1 have the right to during the Subscription Term sublicense the Cloud Services to its own client base and shall permit sub-licensees to use the Cloud Services as specified in these GTCs, provided however that (a) Customer's sub-licensees are subject to and will adhere to the obligations specified in these GTCs; (b) Customer shall be responsible for the administration of its sub-licensee's access rights; (c) Customer shall remain fully liable for any acts or omissions of its sub-licensees using the Cloud Services as if it were its own acts or omissions; (d) Customer shall remain liable for all fees accrued hereunder, which are in relation to the Assets managed by its sub-licensees irrespective of whether or not such sub-licensees have paid any fee to the Customer.

9.3. Except as otherwise agreed, these GTCs include the entire set of use rights Customer and/or any of its sub-licensee have with regard to the Cloud Services and any other usage of the Cloud Services is not permitted.

#### 10. Access to the Cloud Services

10.1. XOVIS provides Customer or End Users respectively password protected access to the Cloud Services via the Internet. XOVIS uses a secure transmission protocol (Secure Sockets Layer, SSL / Transport Layer Security, TLS) to encrypt transmitted data in order to protect the security of such data during transmission.

10.2. Customer and End Users are obligated to not disclose access credentials to unauthorized parties. Customer is responsible to urge End Users to carefully store access credentials and protect it against access by third parties.

10.3. XOVIS does reject any and all liability for damage Customer may suffer due to the misuse, disclosure or loss of any access credentials (such as user IDs, passwords).

#### 11. Intellectual Property Rights

11.1. Customer hereby acknowledges that the Cloud Services may contain open source and/or other third party software. With regard to any such are, along with the relevant copyright notices, made available to Customer and can be reviewed on the Web-GUI of the Cloud Services.

11.2. The Customer hereby acknowledges that software application which is basis for the Cloud Services and other items related to the Cloud Services are subject to intellectual property rights which are and shall remain in their entirety with XOVIS, its Affiliates and/or its suppliers (if and to the extent third party components are integrated). Unauthorized copying, use or modification of any portion of the Cloud Services, or violation of the terms of these GTCs may be subject to legal prosecution.

### D) CUSTOMER OBLIGATIONS

#### 12. General Obligations

12.1. Customer will take all actions, preparations and/or precautions which can reasonably be expected from Customer in order to enable XOVIS to meet its obligations related to Customer's subscription to the Cloud Services – this will include (but not be limited to) the Customer being respon-

sible for and preparing all information, data and necessary access to such information or data as may be required by XOVIS.

12.2. Customer is responsible to ensure in its sphere of influence that all technical pre-requisites, which will allow a proper use of the Cloud Services, are met. In particular, Customer shall comply with XOVIS' System Requirement with regard to the Cloud Services in their then-current version.

12.3. As a pre-condition for the proper use of the Cloud Services, Customer needs to ensure that its system will accept cookies submitted by XOVIS. Customer will advise its End Users accordingly.

12.4. It is Customer's sole responsibility to ensure the security of its own IT facilities and systems (specifically security settings on the browsers used, installing a firewall, up-to-date anti-virus protection, regular data backups, access protection etc.).

#### 13. Acceptable Use

13.1. Customer will ensure (a) that the Cloud Services are not being used by its End Users and/or its other authorized users for illegal purposes; (b) that none of the data entered, stored or otherwise processed by such individuals on behalf of Customer contains illegal or inappropriate content or any such content or data that may infringe the rights of third parties; and (c) that End Users do not cause other damages to the Cloud Services. Hence, Customer is responsible to ensure that End Users will comply with these GTCs and all applicable laws and regulations.

13.2. XOVIS' then-current Acceptable Use Policy (if so available) may contain further provisions regarding the proper use of the Cloud Services, with which the Customer agrees to comply with.

13.3. Customer will not to use the access to the Cloud Services and/or any of the user accounts to modify, copy, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit or distribute all or any portion of the Cloud Services, unless permitted by these GTCs or a separate agreement between the Parties.

13.4. Unless permitted by applicable law, Customer will not attempt to reverse compile or engineer, disassemble or otherwise reduce or extract to human-readable code for all or any part of the Cloud Services or the software applications related thereto.

13.5. XOVIS shall be entitled to take all reasonable measures in order to prevent, monitor, prosecute and address any non-acceptable or potentially harmful use of the Cloud, it being understood though that XOVIS does not have a general duty to monitor and assess the use of the Cloud Services.

### E) SERVICE FEES

#### 14. Account Set-Up Fee

14.1. If applicable as per the then-current Official Price List or if so agreed under special circumstances, Customer shall pay to XOVIS a one-time Account Set-up Fee, which fee is compensation for preparing and setting up the Customer's Cloud Services account.

14.2. The Account Set-Up Fee (if any) shall be invoiced to

Customer immediately upon acceptance of Customer's Subscription.

### 15. Subscription Fee

15.1. Customer shall pay to XOVIS a recurring Subscription Fee, which fee is compensation for Customer's ongoing use of the Cloud Services. The Subscription Fee consists of (a) fixed base fee as identified in XOVIS' Official Price List (XOVIS Cloud Account or XOVIS Cloud Dedicated Instance, if Customer wishes to subscribe to the multiuser option); and (b) a variable fee (XOVIS Cloud Device Control), which is calculated on the basis of the applicable fee per Asset Customer qualifies for as per XOVIS' Official Price List and the number of Customer's Assets managed with the Cloud Services (see calculation mechanism in section 15.2).

15.2. XOVIS shall on a daily basis scan and evaluate the number of Assets Customer is managing by using the Cloud Services. Based on such daily scans, XOVIS shall, as per the end of an invoicing period, calculate the total consumption of the Cloud Services, i.e. the pro rata total number of Assets managed during the invoicing period, which shall be the basis for the variable part of the Subscription Fee to be invoiced to Customer for such invoicing period.

15.3. The Subscription Fees (base fee plus the variable fee based on the number of Assets as calculated in accordance with section 15.2) shall be invoiced to Customer in arrears for the relevant invoicing period. Unless agreed otherwise, the invoicing period shall be one (1) or three (3) months, as indicated in XOVIS' confirmation of Customer's Subscription Order (components additional licenses may apply, which terms Order).

### 16. Invoicing

16.1. Unless specified otherwise, all fees indicated in the Official Price List, a written or other subscription order or any other documents are exclusive of applicable VAT.

16.2. All fees invoiced by XOVIS shall, unless agreed otherwise, become due for payment within thirty (30) days as from the date of receipt of the relevant invoice.

16.3. If Customer fails to pay any amount invoiced and not subject to a good faith dispute within the period of time specified above, Customer shall be considered in default without further payment reminder from XOVIS. In any such case, XOVIS shall be entitled to charge late payment interest in accordance with applicable law. Any payment reminders submitted to Customer do not operate to extend the payment period and will be charged to Customer at CHF 20.00 per payment reminder.

### 17. Adjustment of Fees

17.1. Customer acknowledges and agrees that XOVIS may, at its sole discretion and at any point in time, change and alter the applicable Official Price List, which serve as the basis for the calculation of Customer's Subscription Fees. Any such modification will be communicated by XOVIS at least three (3) months prior to the date such update shall become effective. As from the date the modifications become effective, the so revised Official Price List will operate as the basis for any calculation of the Subscription Fees as specified in section 15. In the event Customer is not willing to agree to price modifications based on this section 17, Customer shall be entitled to terminate its Customer Sub-

scription as per section 20.4 a.

17.2. For the avoidance of doubt, no modification of the Official Price List shall become effective for Customer's Subscription before the expiry of the Minimum Term, i.e. the price level established as per the date Customer's Subscription becomes effective shall be fixed for the Minimum Term.

### F) DATA

#### 18. Personal Data in the Cloud Services

18.1. In the context of providing the Cloud Services to the Customer, XOVIS will only to a very limited extent process or collect personal data entered and submitted by Customer. Such data relate to the specific accounts XOVIS or Customer create on Customer's or, as the case may be, Customer's sub-licensee's behalf and are limited to (a) first name, surname; (b) company contact details (such as company phone number, company e-mail, office address, position etc.); and (c) specific user credentials and audit trail. With regard to any such data, Customer, Customer's sub-licensees and/or XOVIS, each in their specific roles, shall comply with applicable data protection legislation.

18.2. XOVIS shall be entitled to collect statistic and system information regarding the usage of the Cloud Services, which data may include configuration entries (static/set by End User), use of particular services, error messages and other system events and logs relating to End Users usage of the Cloud Services (which logs are generated in order to establish an adequate audit trail for Customer).

XOVIS shall only be entitled to provide such information or access thereto to third parties if and to the extent such data population has been anonymized prior to its disclosure.

#### 19. Storage and Deletion of Data

19.1. XOVIS shall with reasonable efforts maintain, in accordance with industry standards and applicable data protection legislation, appropriate administrative, organizational, physical and technical safeguards to ensure the protection of the security, confidentiality and integrity of Customer's data, but XOVIS Cloud does not provide or warrant archiving or storage of Customer's data. Customer must safeguard its own back-up of any data Customer wishes to store and shall remain responsible for the storage, back-up and security of all data in its sphere of influence.

19.2. If Customer does issue a deletion order with regard to any data stored in the Cloud Services, such data will permanently be deleted by XOVIS, with the exception of any automatically generated backup copies, which will remain subject to the confidentiality obligations under these GTCs and/or applicable law.

19.3. XOVIS shall be entitled to without additional notice permanently delete all of Customer's data stored in the Cloud Services, if any, within ninety (90) days as from the date Customer's Subscription expires or terminates.

19.4. Customer owns all rights, title and interest in and to all of its data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of such data provided by Customer and to whom Customer wishes to grant access to such data via the Cloud Services. Customer

may demand XOVIS to extract such data from its systems and provide to Customer a copy of the whole set of data in a mutually agreed format via download or on a mutually agreed media as specified in the Product Documentation and Support Terms or any other XOVIS terms and policies.

## G) TERM, TERMINATION AND SUSPENSION OF SERVICES

### 20. Term and Termination

20.1. Customer's Subscription does enter into force on the date XOVIS confirms Customer's Subscription order or Customer commences to use the Cloud Services and will unless agreed otherwise continue in effect for a Minimum Term of twelve (12) months.

20.2. Upon expiry of the Minimum Term, either Party may terminate Customer's Subscription for convenience as per the end of any given month upon serving one (1) month prior written notice thereof to the other Party.

20.3. Notwithstanding any of the provisions of these GTCs, Customer's Subscription may be terminated by either Party at any time and with immediate effect by issuing a written notice to the other Party

a. upon any material and persistent breach of these GTC in such manner, that the terminating Party may not reasonably be expected to continue to be bound to the Customer's Subscription, provided however that the Party in breach has failed to remedy such breach within a reasonable period of time after receipt of a written notice specifying the nature of the breach. A Party may refrain from granting a reasonable period of time for remedy if and to the extent such breach from an objective point of view is not reasonably to be considered capable of remedy;

b. in the event of insolvency of the other Party as well as the initiation of bankruptcy proceedings, a moratorium on debt enforcement or similar proceedings (including rejection thereof due to lack of assets) against the other Party.

20.4. Notwithstanding any of the provisions of these GTCs, Customer shall be entitled to terminate Customer's Subscription by issuing a written notice to XOVIS

a. if XOVIS has unilaterally altered or modified its Official Price List (as specified in section 17) in disfavor of the Customer;

b. if XOVIS has unilaterally altered or modified either the System Requirements, Product Documentation & Support Terms and/or the Terms of Use/Acceptable Use Policy (as specified in section 3.3) in disfavor of the Customer and in such manner, that Customer may not reasonably be expected to continue to be bound to the Customer's Subscription.

In the cases specified above, Customer's termination shall become effective as per the date a modification of the Official Price List or a modification of either the System Requirements, Product Documentation & Support Terms and/or the Terms of Use/Acceptable Use Policy shall become effective as per XOVIS' communication.

### 21. Suspension of Services

21.1. XOVIS may, without incurring any liability, suspend Customer's access to the Cloud Services and any related services

a. in the event of Customer's non-payment of any undispu-

ted amount of the Account Set-Up Fee and/or Subscription Fees;

b. in the event of Customer's continuous non-compliance with the terms of these GTCs by Customer or End Users respectively;

c. if and to the extent the operability of the Cloud Services as a whole or certain parts thereof is likely to be endangered or impaired by circumstances in Customer's reasonable sphere of influence; or

d. in all events that would also entitle XOVIS to a termination for cause as per section 20.3.

21.2. XOVIS is entitled to temporarily suspend or disable certain End User's access to the Cloud Services if such End User fails to comply with these GTCs.

21.3. Customer is not entitled to any refund of any fees as a result of a suspension as per this section 21.

21.4. XOVIS's termination rights as per section 20.3 remain reserved even if XOVIS has already suspended access to the Cloud Services as per this section 21.

## H) GENERAL TERMS

### 22. Confidentiality

22.1. Each Party shall keep Confidential Information of the disclosing Party in strict confidence and shall safeguard such Confidential Information from unauthorized disclosure, reproduction or use no less rigorously than the stricter of the standards that would apply to its own Confidential Information of similar nature and the standards required by applicable law and regulatory requirements.

22.2. Both Parties agree not to disclose Confidential Information to any third parties without either Party's prior written consent. However, both Parties shall be entitled to on a „need-to-know“ basis share Confidential Information with its employees, subcontractors, agents and/or other authorized third parties to the extent such entities or individuals need to know such information in connection with Customer's Subscription.

22.3. Notwithstanding section 22.2, each Party may make available Confidential Information to a third party, provided such third party is subject to confidentiality obligations at least as stringent as those applicable to the Parties hereunder and for the purpose and to the extent necessary (a) for the performance of the receiving Party's rights and obligations under the Customer's Subscription; or (b) to permit a third party to perform legal, accounting or audit services for or in relation to a Party in assessing its business operations.

22.4. A Party may disclose the Confidential Information of the other Party to the extent, but only to the extent, required by law, regulation, rule, act, order, or request of any court, governmental authority or agency, self-regulatory organization or exchange, including but not limited to any subpoena, civil investigative demand, or discovery request or demand, provided such Party gives the other Party (to the extent not prohibited from doing so) prompt written notice and cooperation in seeking to limit the disclosure to the greatest extent possible, consistent with the legal obligations of the Party required to disclose the Confidential Information,

and in obtaining confidential treatment for such information, if available.

22.5. Each Party shall immediately notify the other Party if it becomes aware of

- a. any potential disclosure, access to or use of any Confidential Information in breach of these GTCs;
- b. any unauthorized intrusion into systems containing Confidential Information; and
- c. any disclosure of any Confidential Information where the purpose of such disclosure does not have any apparent correlation with the execution of Customer's Subscription.

Both Parties will give reasonable assistance to the other in order to prevent such breach of confidentiality and/or limit the consequences thereof.

22.6. The confidentiality obligations specified in this section 22 will continue to apply even after termination or expiration of Customer's Subscription.

### 23. Legal Warranty

23.1. XOVIS represents and warrants that it has all necessary rights and full authority to enter into Customer's Subscription and to provide the Cloud Services without violating or infringing any third party intellectual property rights.

23.2. Should a third party claim that its intellectual property rights are infringed through the use of the Cloud Services, XOVIS shall, at its own expense, defend or settle any suit or proceeding that is instituted against Customer and shall pay all reasonable costs awarded therein against Customer or agreed upon in settlement by XOVIS; provided that Customer (a) gives XOVIS immediate notice in writing of any such suit, proceeding or threat thereof, (b) permits XOVIS sole control to defend and/or settle such suit and (c) gives XOVIS all the needed information, assistance and authority, at XOVIS's expense, to enable XOVIS to defend or settle such suit.

23.3. The above provision shall not apply to and XOVIS shall have no liability or obligation for any infringement arising from: (a) any modification, servicing or addition made to the Cloud Services anyone other than XOVIS or third parties authorized to do so,

(b) any use of the Cloud Services not in compliance with these GTCs. 9The above exclusions apply to the extent that the infringement would have been avoided if Customer would not have acted in any manner as specified above.

23.4. In the event that the use of the Cloud Services subscribed to by the Customer becomes enjoined or, in XOVIS' reasonable opinion is likely to become, the subject of a claim that it infringes the intellectual property rights of any third party, or in the event XOVIS wishes to minimize its potential liability hereunder, XOVIS may at its sole option and expense, either: (a) procure the right for the Customer to continue using the Cloud Services, (b) replace or modify the Cloud Services or any part thereof such that it becomes non-infringing, or (c) terminate Customer's rights and obligations with respect to the allegedly infringing part of the Cloud Services and refund to Customer the amount which Customer has paid for such part of the solution.

### 24. Liability

24.1. Irrespective of the legal grounds for such claim, XOVIS'S liability and its liability for any act or omission of its auxiliary persons for damages caused in relation to the performance of the Cloud Services shall be excluded. This exclusion of liability however shall not apply in the event of XOVIS' wilful misconduct and/or gross negligence.

24.2. For the avoidance of doubt, XOVIS shall have no direct liability under these GTCs to sub-licensees of Customer as per section 9.2. 24.3. XOVIS'S liability shall be excluded or limited to the maximum extent permissible under applicable law for

a. any indirect or consequential, exemplary, punitive or special damages or other damages (such as loss of profit, savings not realized, foregone earning, loss of or recovery of data, or any damages caused by corrupt or inadequate data, defects, viruses, poor data quality, omissions or inaccuracies in data);

b. damages resulting from any acts or omissions of the Customer, Customer's sub-licensees, End Users or other third parties and/or Customer's, Customer's sub-licensees' or End User's in-compliance with its obligations under these GTCs;

c. damages occurring beyond XOVIS'S reasonable control and sphere of influence.

### 25. Miscellaneous

25.1. Except in cases of a universal succession pursuant a merger or sale of business, neither Party may assign a Customer's Subscription or delegate any of its rights or obligations thereunder without the prior written consent of the other Party, which consent shall not unreasonably be withheld or delayed. Any assignment in violation of this provision shall be void. Subject to the

foregoing, the Customer Subscription shall be binding upon and shall inure to the benefit of the Parties' respective successors and permitted assigns.

25.2. If any provision of these GTCs and/or Customer's Subscription is for any reason held to be invalid, illegal or unenforceable, the remaining provisions shall be unimpaired, and the invalid, illegal or unenforceable provision shall be replaced by a valid, legal and enforceable provision that to the highest extent reasonably possible achieves the original intention of the Parties. This section shall apply accordingly if the GTCs remain silent on an issue to be resolved.

25.3. Additions, modifications, supplements and/or amendments to these GTCs and Customer's Subscription and/or any of its Annexes (including this section) cannot be made except if made in writing and if authorized by both Parties. Notwithstanding any of the foregoing, XOVIS shall be entitled to, upon prior notification to Customer but at its sole discretion unilaterally modify the Support Terms and related information or documentation (see section 3.3) and/or its Official Price List (see section 17).

25.4. The Parties agree that as a general rule and unless specified or agreed otherwise, neither Party shall have the right to set-off any of its claims without the prior written consent of the other Party.

**26. Applicable Law**

These GTCs and Customer's Subscription thereunder shall exclusively be governed and construed in accordance with the substantive laws of Switzerland, whereby (a) international conventions, including the United Nations Convention on Contracts for the International Sale of Goods of 11.04.1980 (CISG) and/or (b) standard conflict of law rules are hereby excluded from application to these GTCs and Customer's Subscription.

**27. Forum**

The ordinary courts of the Canton of Bern shall have exclusive jurisdiction with regard to all disputes arising from or in connection with these GTCs and Customer's Subscription. **The place of jurisdiction is Bern/Switzerland.**