



## SAAS TERMS AND CONDITIONS OF KPMG ADVISORY N.V.

This is a translation of the official Dutch language KPMG SAAS Terms and Conditions. In the event of a conflict, the Dutch language version shall prevail.

### 1. DEFINITIONS

- In these SaaS Terms and Conditions the following definitions apply:  
General Terms and Conditions: KPMG's General Terms and Conditions entitled "General Terms and Conditions of KPMG Advisory N.V."  
Documentation: the description of the functionality and possible uses of the SaaS Service made available online by KPMG.  
Defect: a demonstrable and reproducible defect in the Software as a result of which the Software's functionality differs fundamentally from its description in the Documentation and/or the Engagement Letter.  
User: an employee of the Client or a person engaged by the Client who uses the SaaS Service.  
Hosting Environment: the servers (including the corresponding and additional facilities), belonging to the supplier referred to in the Engagement Letter, on which the Software is installed and which is accessible via the internet or another network.  
Incident: a malfunction, not caused by a Defect, as a result of which the SaaS Service is not available.  
Login Codes: the authentication data referred to in Article 5.1 of the SaaS Terms and Conditions, such as a user name and password that enable access to the SaaS Service.  
Office Hours: 8:00 a.m. to 5:00 p.m. (C.E.T.) on Monday to Friday, with the exception of generally recognised holidays and public holidays.  
Engagement Letter: a KPMG document which declares that the General Terms and Conditions and the SaaS Terms and Conditions apply and which describes the SaaS Service, the Documentation and the Work.  
Client: the party that purchases the SaaS Service from KPMG.  
SaaS Service: the service whereby KPMG makes and keeps Software and Client's data available to the Client and Users via the internet or another network.  
SaaS Terms and Conditions: these terms and conditions that apply to the use of the SaaS Service.  
Software: the computer software made available by KPMG to the Client via the internet or another network, as further specified in the Engagement Letter.

### 2. AMENDMENT TO THE SAAS TERMS AND CONDITIONS / FORMATION OF THE AGREEMENT

- KPMG may, within reason, make amendments to these SaaS Terms and Conditions at any time. Amendments will be notified to the Client in writing or by email. Amendments will only become effective 30 days after the Client has been notified of them or at a later date indicated in the notification. If the Client continues to use the SaaS Service after this date, the Client consents to the amended SaaS Terms and Conditions.
- In addition to Article 3.1 of the General Terms and Conditions, the Agreement will come into being at the moment that the Client and/or Users use the SaaS Service.

### 3. SAAS SERVICE

- KPMG will provide the SaaS Service to the Client as stated in the Engagement Letter. KPMG will carry out the following Work as part of the SaaS Service for the duration of the Agreement:
  - making and keeping the Software and Client's data available within the Hosting Environment. If the Engagement Letter states that the Hosting Environment will be hosted, maintained and/or managed by a KPMG supplier, availability will be dependent on that supplier;
  - taking appropriate technical and organisational measures in the Hosting Environment to protect the Software and the Client's data against loss and damage and against any unauthorised access or use;
  - providing User support to the Client, during Office Hours, for the use of the SaaS Service;
  - if and to the extent determined in the Engagement Letter, making a back-up of the Client's data that are processed using the SaaS Service;
  - if and to the extent determined in the Engagement Letter, providing workarounds if access to the Hosting Environment in which the Software is installed is temporarily or permanently impossible.

### 4. ACCESS TO AND EXTENT OF USE OF THE SAAS SERVICE

- KPMG grants the Client the non-exclusive and non-transferrable right to use the SaaS Service within the geographical area specified in the Engagement Letter for the duration stipulated in the Engagement Letter and under the terms of the Agreement.
- Unless agreed otherwise in the Engagement Letter, the Client may only use the SaaS Service for processing data from its own organisation. The Client will not use the SaaS Service for the benefit of any third party and/or enable a third party to use the SaaS Service unless agreed otherwise in the Engagement Letter. The Client may not transfer, issue or disclose the Login Codes or allow inspection by or make them available to a third party unless they are provided to third parties to whom the Client is entitled to provide the SaaS Service under the Engagement Letter.
- KPMG is authorised to take technical measures to protect the SaaS Service or with a view to agreed limitations to the duration or scope of the SaaS Service. The Client is not authorised to remove or bypass the technical measures in the SaaS Service.
- KPMG is entitled to alter the nature and the extent of the SaaS Service by, among other things, offering an altered or new version of the Software or by using an altered or different Hosting Environment. KPMG is entitled to maintain, alter or add to the functionalities or properties of the SaaS Service.
- KPMG is entitled to put the SaaS Service out of operation, either wholly or in part, for maintenance purposes or for security reasons. KPMG will not put the SaaS Service out of operation for longer than is necessary, and will render it inoperable outside Office Hours if possible and, to the extent possible in the given circumstances, it will do so after notifying the Client.
- In principle, KPMG provides the SaaS Service without restrictions in respect of demands made on the Hosting Environment. If the Client places excessive demands on and/or makes unauthorised use of the Hosting Environment, KPMG will notify the Client of this and the Client must then cease and desist from placing excessive demands on or making unauthorised use of the Hosting Environment. KPMG is entitled to suspend provision of the SaaS Service if the Client does not cease placing excessive demands on and/or making unauthorised use of the Hosting Environment after KPMG has notified the Client thereof as referred to in this paragraph.
- If and to the extent that the Client is entitled under the Engagement Letter to confer on third parties the user right to the SaaS Service referred to in this article, the Client will be fully responsible and liable to KPMG for those third parties' use of the SaaS Service and the Client will guarantee that those third parties use the SaaS Service in accordance with the applicable terms and conditions. The Client indemnifies KPMG against any claims by third parties relating to their use of the SaaS Service unless such claims are the result of intent or wilful recklessness on the part of KPMG's executive staff. This indemnity includes all loss suffered and legal and other costs incurred by KPMG in connection with such claims.

### 5. LOGIN CODES AND ONLINE USE OF SAAS SERVICE

- The Login Codes are personal, non-transferrable and secret. The Client guarantees that every User will take all reasonable measures to prevent the Login Codes from becoming known to unauthorised persons and that it will immediately notify KPMG if it discovers any form of

unauthorised use of the Login Codes or any other breach of the security measures with regard to the SaaS Service.

- Once a User has logged in using the Login Codes, the User gains access to those parts of the SaaS Service for which the User is authorised.
- If KPMG discovers or reasonably suspects that unauthorised persons are using or are able to use the Login Codes ("Unauthorised Use"), or if the Client notifies KPMG of such use by email, KPMG will immediately block such access to the SaaS Service by the Login Codes concerned. KPMG will immediately notify the Client about the Unauthorised Use and/or the blocking of the Login Codes and it will confirm this in writing or by email as soon as possible thereafter. After the Login Codes have been blocked, the User must request replacement Login Codes.
- If the Unauthorised Use of the Login Codes can be attributed to the User, the Client must reimburse KPMG with the reasonable administrative costs incurred in relation to the blocking and replacement of those Login Codes, and the Client will be liable for any damage suffered as a result of the Unauthorised Use.
- The Client will ensure that Users use the Login Codes carefully. The Client is responsible for the consequences of Users' use of the Login Codes and is liable to KPMG for any damage resulting from the use of the Login Codes in breach of the SaaS Terms and Conditions. The Client indemnifies KPMG against any claims in this regard by third parties, unless such claims are the result of intent or wilful recklessness on the part of KPMG's executive staff. This indemnity includes all loss suffered and legal and other costs incurred by KPMG in connection with such claims.
- KPMG is entitled to immediately terminate Users' access to and use of the SaaS Service temporarily or permanently, wholly or in part, if: (i) KPMG is obliged to do so pursuant to an applicable rule of law or judicial decision; (ii) the Client or a User acts in breach of the SaaS Terms and Conditions; and/or (iii) a third party acts in breach of the SaaS Terms and Conditions via a User's account.
- KPMG is entitled to remove data placed or stored by Clients and/or Users in the Software and/or the Hosting Environment either wholly or in part if: (i) in KPMG's opinion they are inappropriate, insulting, offensive or hurtful; (ii) they are based on untruths or are unlawful, (iii) they infringe the rights of third parties or KPMG, such as copyrights, trade mark rights or other intellectual property rights; or (iv) they infringe the privacy of third parties, e.g. the non-authorised publication of Personal Data or other data of other Users or third parties.
- If access to and the use of the SaaS Service is terminated pursuant to paragraph 6 of this article, KPMG will not owe any payment to the Client.
- Access to and the use of the SaaS Service will be terminated, as referred to in paragraph 6 of this Article, by sending an electronic notice of termination to the Client or by withdrawing the Login Codes as a result of which Users will no longer be able to access and use the SaaS Service.

### 6. HELPDESK

- Unless determined otherwise in the Engagement Letter, KPMG or a third party appointed by KPMG will maintain a helpdesk during Office Hours for providing, on Users' requests, information and advice about the use of the SaaS Service and support in resolving or remedying Incidents or Defects.
- Unless determined otherwise in the Engagement Letter, the Client will report Incidents and Defects electronically to KPMG's helpdesk or the third party appointed by KPMG, whose contact details are provided in the Engagement Letter; any report made by a Client must, where possible, be accompanied by a documented example of the Incident or Defect. If required, and at the request of KPMG or the third party appointed by KPMG, the Client will collect as much data as possible to enable the cause of the Incident or Defect to be established as soon and as clearly as possible.
- KPMG or the third party appointed by KPMG will handle any Incident or Defect reported as such if the Incident or Defect is demonstrable and reproducible.
- During Office Hours, KPMG or the third party appointed by KPMG will respond to a report and will start to remedy the Incident or the Defect as soon as is reasonably possible.
- Work carried out by KPMG for the Client as a result of Users' and/or the Client's (a) inexact use of the SaaS Service or non-compliance with KPMG's instructions; (b) use contrary to these SaaS Terms and Conditions; or (c) use of the SaaS Service other than that described in the Documentation, will be invoiced to the Client at KPMG's then applicable rates.
- The provisions of this article and the Engagement Letter regarding the level of the SaaS Service do not affect the Client's obligation to take appropriate measures itself and to maintain them to prevent and limit the consequences of: Incidents, Defects and/or the corruption or loss of data or other occurrences.

### 7. THE CLIENT'S OBLIGATIONS

- The Client has the following obligations in addition to those set out in Article 6 of the General Terms and Conditions.
- The Client itself is responsible for establishing and retaining a data communications connection with the internet or another network required to gain access to the Hosting Environment in which the Software is installed.
- The Client must take appropriate technical and organisational measures to protect its equipment, infrastructure and data communications connection against viruses, malware and similar threats, and to prevent use of the SaaS Service resulting in third persons gaining access to the SaaS Service and/or the Hosting Environment.
- The Client itself is responsible for the choice of the SaaS Service, the use and application of the SaaS Service, the data processed with the SaaS Service, and decisions taken on the basis thereof.
- The Client will ensure and guarantee that Users comply with the terms and conditions applicable to Users' use of the SaaS Service and that they adhere to procedures laid down and instructions for use issued by KPMG in providing the SaaS Service. The Client indemnifies KPMG against any claims by third parties relating to Users' use of the SaaS Service unless such claims are the result of intent or wilful recklessness on the part of KPMG's executive staff. This indemnity includes all loss suffered and legal and other costs incurred by KPMG in connection with such claims.

### 8. FEES / PAYMENT

- Notwithstanding Article 11.1 of the General Terms and Conditions, the fees for the SaaS Service will be charged in advance for each payment period referred to in the Engagement Letter. If the Client does not pay the fees owed within the agreed period, the Client will be in default without any notice of default being required, in which case (a) the Client will no longer be entitled to use the SaaS Service; (b) KPMG will be entitled to deactivate access to and the use of the SaaS Service remotely; and (c) KPMG will also be entitled to suspend its Work and other obligations without prejudice to its rights pursuant to Article 13 of the General Terms and Conditions.

### 9. INTELLECTUAL PROPERTY RIGHTS

- The following provisions on intellectual property rights apply in addition to Article 9 of the General Terms and Conditions.



2. All intellectual property rights in respect of the SaaS Service and the Documentation are vested in KPMG or its licensors and they will not be transferred to the Client on the basis of these SaaS Terms and Conditions. The Client acknowledges these rights and will refrain from infringing them, directly or indirectly, in any way.
3. All intellectual property rights to the Client's data are vested in the Client or its licensors. The Client indemnifies KPMG against action taken by third parties against KPMG for an (alleged) infringement of their intellectual property rights due to storage of the data in the Hosting Environment.
4. No statement of copyright, logo, figurative mark or any other reference to KPMG or its licensor(s) may be removed from the Documentation.
5. KPMG is entitled to post the name and logo of the Client or its clients, to which user rights to the SaaS Service have been granted, on its website and/or to post a reference list and to make this available, for information, to third parties.
6. KPMG is entitled to have an annual audit carried out on the Client's and Users' compliance with the Agreement regarding the use of the SaaS Service and the number of Users entitled to use the SaaS Service. This audit will be carried out by an independent third party. The costs of it will be borne by KPMG unless the report shows that the Client and/or its Users has/have acted contrary to the Agreement.

#### 10. LIABILITY

1. The limitations on liability set out in this article apply in addition to the limitations on liability contained in Article 14 of the General Terms and Conditions.
2. Notwithstanding Article 14.2 of the General Terms and Conditions, KPMG's liability will be limited to an amount equal to one (1) time the annual fee payable to KPMG for the SaaS Service pursuant to the provisions of the Engagement Letter, except in the event of intent or wilful recklessness on the part of KPMG's executive staff. This limitation on liability applies in full in the event of liability to a number of Clients; in that case the amount paid by KPMG to all Clients jointly will not exceed one (1) time the annual fee payable to KPMG for the SaaS Service pursuant to the provisions of the Engagement Letter.
3. KPMG is never liable for damage resulting in any way from inter alia: (a) in expert, careless use and/or the Client's use of the SaaS Service in breach of these SaaS Terms and Conditions, the Documentation and/or the Agreement; or (b) corrupt or lost data or other information of the Client.
4. KPMG does not guarantee that (a) the SaaS Service satisfies the Client's purposes with regard to its use of the SaaS Service; (b) the SaaS Service will be provided without interruption and without Incidents or Defects; or (c) all Incidents or Defects can be remedied.
5. KPMG is not responsible for Incidents or otherwise for malfunctions or faults in the access to or use of the SaaS Service or for non-availability of the SaaS Service due to malfunctions or faults in the computer equipment, software or data communications connections of the Client or third parties engaged by the Client. Nor is KPMG responsible for retrieving or recovering data affected by Incidents, Defects or any other occurrence whatsoever. The Client will bear financial responsibility for any damage suffered or costs incurred by it as a result of or in relation to the occurrences referred to in this paragraph 5.

#### 11. CONFIDENTIALITY

1. In addition to Article 8 of the General Terms and Conditions, the Client must keep information provided by or on behalf of KPMG and which is classified as confidential, and information and data that by their nature are confidential, secret from third parties, apart from parties involved with the Agreement. The same exceptions provided in Article 8.1 and Article 8.2 of the General Terms and Conditions apply to this obligation of confidentiality.
2. The Client will take all the measures required to safeguard the secrecy of the information and/or data and to prevent the information and/or data from being published or otherwise disclosed.
3. The Client is not entitled to use any information made available to it by KPMG for any purpose other than that for which it was obtained.
4. In line with Article 8.7 of the General Terms and Conditions, the Client will impose these obligations on third parties engaged by it.

#### 12. PROCESSING OF PERSONAL DATA

1. To the extent that KPMG processes personal data from the Client in the context of the SaaS Service, the Client determines the purpose and means of the processing, and will thus act as a controller and KPMG as a processor within the meaning of the GDPR. Paragraph 4 up to and including 7 of Article 16 of the General Terms and Conditions will not be applicable and the remaining paragraphs of article 16 of the General Terms and Conditions will be applicable along with the following determined in this Article 12.
2. The Annex personal data processing which is attached to this SaaS Terms and Conditions shall be filled out by the Client and be returned along with the acceptance of the Engagement Letter. The provisions in paragraph 3 of this Article 12, the Engagement Letter and the Annex personal data processing attached to the SaaS Terms and Conditions, together form the data processing agreement as referred to in the GDPR, which data processing agreement forms an integral part of the Agreement.
3. To the extent KPMG acts as a processor, the following applies:
  - a. KPMG will solely process personal data on the documented instructions of the Client and for the performance of the Services in conformity with the Agreement, unless KPMG is required by law to process personal data, in which case KPMG will inform the Client about this legal requirement, unless the provision of such information is prohibited by law.
  - b. KPMG will take appropriate technical and organisational measures to protect the personal data against destruction, loss, alteration or unauthorised disclosure of, or access thereto.

- c. KPMG is obliged to keep the personal data which the Client makes available or accessible to KPMG secret, and ensures that all persons authorised by KPMG to process the personal data are bound by this confidentiality requirement.
  - d. KPMG will reasonably assist the Client in complying with its obligations regarding (i) responding to requests of data subjects, wishing to exercise their rights and (ii) complying with its obligations as laid down in Articles 32 up to and including 36 of the GDPR. Costs that KPMG incurs for such assistance shall be for the Client's account.
  - e. KPMG informs the Client without undue delay upon becoming aware of a personal data breach within the meaning of the GDPR. The client informs KPMG prior to the use of the SaaS Service of an e-mail address which KPMG should use for such notification.
  - f. KPMG is entitled to engage third parties for the (support of the) performance of the Work. KPMG will subject these third parties to contractual agreements in order to safeguard the careful processing of personal data in conformity with the GDPR. KPMG will inform the Client on the addition or replacement of engaged third parties. KPMG will, upon request, inform the Client prior to the use of the SaaS Service about the engaged third parties.
  - g. KPMG is entitled to – in conformity with paragraph 3 sub f of this Article 12– (have) process(ed) the personal data outside the Netherlands if necessary for the (support of) performance of the Work. If KPMG transfers personal data – for which the Client is controller within the meaning of the GDPR – to a third party situated in a country outside the European Economic Area (EEA), without adequate level of protection for the processing of personal data, the following applies: the Client hereby grants KPMG the power of attorney to enter into model contracts in order to comply with the transfer requirements pursuant to the GDPR. To the extent that the before mentioned power of attorney is not sufficient or not valid, the Client will without delay fully cooperate with KPMG to ensure that such transfer meets the requirements of the GDPR.
  - h. The Client shall within two weeks upon termination of the Work, request KPMG to return or delete the personal data. In case of the absence of such request, KPMG is entitled to permanently delete the personal data.
  - i. KPMG enables the Client to, after prior consultation with KPMG, with reasonable intervals, demonstrate KPMG's compliance with the requirements as laid down in this paragraph 3, (i) by providing the – to be assessed by KPMG – necessary information and (ii) by allowing audits by the Client or a – after joint consultation – designated third party. KPMG reserves the right to set reasonable conditions to the audits and to charge the Client for costs incurred by KPMG due to the audit.
4. The Client ensures the lawful provision of the personal data to KPMG in the context of the SaaS Service, and will comply with all legal obligations which the Client is Subject to pursuant to the Applicable Privacy Legislation.

#### 13. COMMENCEMENT DATE, DURATION AND END

1. Unless stated otherwise in the Engagement Letter, the Agreement is entered into for an initial period of three (3) years. Notwithstanding Article 13.1 of the General Terms and Conditions, the Client may not terminate the Agreement during this initial period or during ensuing periods. After this initial period, the Agreement will be tacitly extended every year for one (1) year unless the Client has given notice to terminate the Agreement from the end of the then applicable period.
2. The Client gives notice by sending a registered letter to KPMG at least three (3) months before the end of the agreed period.
3. KPMG is also entitled to dissolve the Agreement in its entirety, extrajudicially and with immediate effect, without any demand or notice of default being required if KPMG cannot be expected to maintain the Agreement due to issues of independence in relation to KPMG. This also applies if dissolution of the Agreement is advised or required by a supervisory authority of KPMG or if maintaining the Agreement any longer could entail an infringement of applicable legislation and regulations by KPMG.
4. If the Agreement is terminated, the Client must cease using the SaaS Service immediately.
5. Article 13.4 of the General Terms and Conditions also applies to termination on the basis of paragraphs 2 or 3 of this article.
6. If the Agreement is terminated, the parties will discuss termination of the SaaS Service, the timetable for transferring the services to the Client or to another service provider, and the transfer of the Client's data. If the SaaS Service is terminated even though the Client's data have not yet been transferred, KPMG will be entitled to invoice the Client for the reasonable costs of storing the Client's data.
7. At the Client's request KPMG will provide support to the Client, to which KPMG's customary fees will apply, for transferring the services to the Client or to another service provider and for transferring the Client's data. KPMG is not liable for any damage resulting from such transfer.

11 mei 2018

## **ANNEX – Personal Data Processing**

### **Instructions**

Client hereby instructs Processor to carry out all Processing Activities as required for the provision of the Services.

Possible additional specific instructions should be recorded in writing.

### **Personal Data**

KPMG will receive, or be provided access or insight to, the following (categories of) data that directly or indirectly relate to a person:

- 1.
- 2.
- 3.
- 4.

### **Categories of Data Subjects**

The Personal Data as included above concern the following groups of persons:

- 1.
- 2.
- 3.
- 4.