

**Partner Terms and Conditions v2.1 Servoy BV (hereinafter: “Terms & Conditions”)**

Servoy BV (hereinafter: “Servoy”) develops and licenses certain business application platform software and provides support and several services for such application. The Terms & Conditions are applicable to the licensing, support, possible hosting and consultancy/development services of the software products being offered by Servoy to Partner.

**Article 1. Definitions.**

**1.1 Partner** shall mean the company appointed by Servoy to perform the Activities by means of the settlement of the Agreement.

**1.2 Product Order Form** shall mean a purchase order/sales order form of Servoy to be signed by Servoy and Partner, fully incorporating the Terms & Conditions for entering into a License/Support/Services agreement between Partner and Servoy and stating the relevant factual details of the same including attachments if and to the extent agreed upon in writing by Servoy and Partner.

**1.3 The Agreement** shall mean the combination of a by Partner and Servoy fully executed Product Order Form and the Terms & Conditions including all attachments, addenda, schedules, exhibits and documents referenced at URLs.

**1.4 Open Source Product** shall mean any present and future open source software which is subject to the relevant licensing terms; the list of this software and the text of the different applicable terms , as the same may be modified by Servoy from time to time, can be found at:  
<https://servoy.com/download/opensource>

**1.5 Third Party Application(-s)** shall mean applications, integrations and/or implementations owned by third parties, that can be used in connection with the Servoy Software; the list of these applications and the text of the different applicable terms, as the same may be modified by Servoy from time to time, can be found at: <https://servoy.com/download/3rdparties>  
Third Party Applications can be divided into two (2) types: add-ons or embedded. The different types of conditions relating to each of these types can be found at: <https://servoy.com/download/3rdparties>  
The factual description of Third Party Application(-s) as actually provided to Partner specified by release/version number, type, measuring units, fees, payment schedule etc. is indicated in the Product Order Form.

**1.6 Servoy Software** shall mean the present and future standard proprietary computer software which is generally commercially available and marketed under the name “SERVOY” and the subsequent Releases. The components of Servoy Software are the Servoy integrated development environment, the Servoy server and the Servoy client technology (smart-, web-, mobile-, NG-, and headless clients). Servoy Software is explicitly excluding any background/underlying technology, software, concepts, tools, expertise, knowhow, materials and/or information which are/will be used by Servoy to develop and to maintain the Servoy Software and is explicitly excluding all other software created by Servoy (e.g. products and services needed for hosting, cloud pipeline). The Servoy Software products as actually licensed to Partner are indicated in the Product Order Form.

**1.7 Software** shall mean the Servoy Software, the Open Source Product and, if ordered under the relevant Product Order Form, the Third Party Application.

**1.8 Software Product Description** shall mean the on-line help text/manual being part of the Servoy Software and/or the Servoy standard user manual related to the Release concerned - which texts may be modified by Servoy from time to time - can be found at: <https://wiki.servoy.com>

**1.9 Partner Product** shall mean the software product of Partner combined with the Software, either independently developed or procured by Partner to be offered to (potential) End-Users.

**1.10 License** shall mean the right as granted by Servoy to Partner to use the Servoy Software, which right is described in Article 2.

**1.11 Support** shall mean the provision by Servoy to Partner of 2<sup>nd</sup> line (helpdesk) assistance as to the Servoy Software in accordance with Article 4. The description of the possible support levels (A, B, C or D), related response times, details and support windows are indicated in the SULA (support level agreement) which can be found at: <https://servoy.com/download/sula>. The actually agreed level is indicated in the Product Order Form. Servoy reserves the right to reasonably modify its support policy set forth at <https://servoy.com/download/sula>, provided that Servoy agrees not to materially diminish the related scope or the Support level during the Term.

**1.12 Hosting** shall mean the acquiring, installation, maintenance and hosting of the hardware infrastructure for the account and risk of Servoy which infrastructure is required to provide Partner access to the Software under the Agreement. Contrary to any delivery terms stated in the Terms & Conditions, Partner obtains access only as part of the Hosting and shall not be provided with a copy of the Servoy Software.

Hosting can be provided during:

- the development hosting phase of the Partner Product under the name Servoy Cloud Pipeline - if so, the same will be indicated Product Order Form as well as the related hosting level, term and fee;
- the deployment hosting phase of the Partner Product under the name Server Cloud Production Hosting - if so, the same will be indicated Product Order Form as well as the related hosting level, term and fee.

If Hosting is agreed under the relevant Product Order Form, the Hosting Terms - as the same may be modified by Servoy from time to time - are applicable and can be found at:

<https://servoy.com/download/hosting>.

If and in so far as Hosting is also provided with respect to Third Party Application, this is indicated in the Product Order Form.

**1.13 Services** shall mean any consulting services provided by Servoy to Partner as to the Software - not being Support - including but not limited to: project management, implementation (consisting of e.g., installation, training, configuration and translation), change request, customization, development etc. The description of the possible service levels (platinum, gold, silver), related response times and service windows are indicated in the SLA (service level agreement) (contents of which can be found at: <https://servoy.com/download/sla>). The actually agreed Service level is indicated in the Product Order Form. Servoy reserves the right to reasonably modify its Services policy set forth at <https://servoy.com/download/sla> provided that Servoy agrees not to materially diminish the related scope or the Services during the Term.

**1.14 Appsurance Program** shall mean start up assistance; contents of which and the actually agreed Appsurance level are indicated in/as part of the Product Order Form and the Appsurance Program Addendum.

**1.15 Activities** shall mean the performance by Partner of the development, marketing, demonstration, distribution, sub-licensing, delivery/hosting, 1<sup>st</sup> line support and the provision of services of the Partner Product for the internal benefit of (potential) End-Users.

**1.16 End-User** shall mean an entity with which the Partner has settled a License Agreement for the distribution, sub-licensing, delivery/hosting, 1<sup>st</sup> line support and/or the provision of services of the Partner Product for its internal business.

**1.17 License Agreement** shall mean the written agreement which Partner must enter into with every End-User regarding the distribution, sub-licensing, delivery/hosting, 1<sup>st</sup> line support and/or the provision of services of the Partner Product in accordance with the Agreement.

**1.18 Measuring Unit** shall mean the unit of account in accordance with which the use of the Hosting,

Servoy Software and/or the Third Part Applications is measured. Such unit can be e.g.: concurrent user, named user, etc.

The licensed quantity and type of Measuring Units are indicated in the Product Order Form.

**1.19 Release** shall mean either a:

- Major Release (x.0.0): the annual (calendar year), generally commercially available release of the Servoy Software which primarily contains corrections and new functionality;
- Minor Release (0.x.0): the quarterly (calendar year = 03,06,09,12), generally commercially available release of the Servoy Software;
- Long Term Support Release (0.03.0LTS): the annual (calendar year) 03 Minor generally commercially available Release of the Servoy Software;
- Maintenance Release (0.0.x): the generally commercially available patch of the Servoy Software which is limited to bug fixing – Maintenance Releases are only released for the latest Minor Release and the Long Term Support Releases.

The timing of the provision by Servoy of the Releases shall be at its sole discretion.

**1.20 Bug** shall mean a defect in the Servoy Software that prevents it from functioning substantially in accordance with the specifications/functionalities as specified in the Software Product Description. Malfunctions are only considered as 'Bugs' in the event they are demonstrable/repeatable and can be duplicated.

**1.21 Software Key** shall mean an encrypted element or piece of software related to the Servoy Software provided by Servoy that enables ongoing functioning of the Servoy Software.

**1.22 Effective Date** shall mean the starting date of the Agreement as indicated in the Product Order Form.

**1.23 Term** shall mean the number of Contract Years as of the Effective Date for which the Agreement is in force which term is defined in the Product Order Form.

**1.24 Contract Year** shall mean each period of twelve (12) consecutive months from the Effective Date and each anniversary of the Effective Date.

**1.25 Contract party-/ies** shall mean any Servoy authorized distributor, system integrator, consulting firm or other third party operating under a written partner agreement with Servoy.

## **Article 2. Appointment of Partner.**

**2.1 License.** Upon acceptance by Servoy of the Product Order Form and in return for the applicable Partner fee paid and subject to the Agreement, Servoy grants Partner the non-transferable right solely to perform the Activities on a non-exclusive basis towards End-Users during the Term. Activities shall only be provided for the (internal business) benefit of the End-Users. This appointment/License contains a main license by Servoy to Partner to sub-license the Servoy Software to End-Users in accordance with the Agreement.

This Article 2.1 applies accordingly towards the sub-sub license of Third Party Application. The possible fee due for this right to sub-sub license is mentioned separately in the Product Order Form. Partner acknowledges and warrants that under the Agreement, it is only entitled to perform the Activities regarding the Servoy Software solely combined with the Partner Product and that its rights under the Agreement do not relate to the Servoy Software as 'stand-alone' product.

**2.2 Hosting.** If Hosting is agreed under the relevant Product Order Form and against reimbursement of the relevant Hosting fee, Servoy shall make the Hosting available. Hosting consists of Pipeline hosting and/or Deployment/Production Hosting. The related Hosting period/ Hosting fees are indicated in the Product Order Form.

**2.3 Software Key.** Partner acknowledges that an updated Software Key is required for continued operation of the Servoy Software. The Software Key may prevent the Servoy Software from operating outside the boundaries of the License granted and from operating in the event any Partner fee due to Servoy is more than fourteen (14) calendar days past due.

**2.4 Releases & Support level A.** The License includes the provision/delivery of all Releases and Support level A (contents of which can be found at: <https://servoy.com/download/sula>). Servoy shall have no obligation to provide Releases and Support level A until full payment of the Partner fee has been received.

**2.5 Test/Demo internal license Partner.** Servoy hereby grants to Partner during the Term a license to use and apply at specific location(s) of Partner, the number of copies of the Servoy Software as indicated in the Product Order Form at its location without charge (except for any third party fees) for the purpose only of supporting the performance of the Activities.

**2.6 Best Efforts.** Partner shall, during the Term, diligently and faithfully support Servoy in a professional manner and using sufficient and qualified personnel and shall use its best efforts to market and to promote actively the licensing of the Servoy Software and to increase the use of the Servoy Software as embedded in the Partner Product. Furthermore Partner shall safeguard all Servoy's interests, develop and maintain good relations with (potential) End-Users, and generally act in accordance with the instructions given by Servoy, in particular, Partner shall refrain from actions or be concerned in any transaction, which might bring discredit to the reputation or standing of Servoy and/or of the Servoy Software.

**2.7 License Agreement.** Partner is entitled to settle the License Agreements under local law and, if desired, drafted in the local language. Partner may only deliver the Partner Product to an End-User that has signed a License Agreement which is in accordance with this Article. Partner represents and warrants that the License Agreement shall contain no provision that contradicts or adversely affects Servoy's rights under the Agreement and that such License Agreement mirrors fully the rights and obligations of the Agreement. The term of the License Agreement shall not exceed the Term. Partner shall make it clear to End Users that the Open Source Product is subject to the relevant then-current licensing terms and shall refer to: <https://servoy.com/download/opensourcelist>. Partner shall make it clear to End Users that the Third Party Application is subject to the relevant then-current licensing terms and shall refer to: <https://servoy.com/download/3rdparties>. Partner shall make it very clear in writing to End-Users that the Activities are performed for the full and exclusive risk and account of Partner by excluding any and all responsibility and liability of Servoy. Partner indemnifies Servoy accordingly for all costs and damages in case of a non-compliance with the obligations under this Article 2.7.

**2.8 Ownership Rights.** Partner only acquires the right to use the Servoy Software subject to the Agreement. Partner confirms and acknowledges that all intellectual property rights used or embodied in the Servoy Software shall be and remain the sole property of Servoy. Partner shall maintain the copyright and proprietary notice on the Servoy Software and shall reproduce such copyright and proprietary notice on any copy of the Servoy Software. Partner remains liable for the protection and security of such copy(-ies). Partner recognizes and agrees that it obtains no rights in the Servoy Software or other materials provided by Servoy except for the limited rights specifically granted in the Agreement. This Article 2.8 applies accordingly towards Third Party Applications and towards the ownership rights of the relevant owners/licensors.

**2.9 Suitability.** Partner alone is responsible for determining which software best suits its needs and the needs of the End-Users. Partner alone is responsible for operating the Software and the results obtained. Servoy makes no representations that the Software conforms to or satisfies any applicable laws or regulations.

**2.10 Restrictions on Use.** Partner shall only use the Servoy Software for the purposes noted in the Agreement subject to the following restrictions:

- a. is allowed to copy the Servoy Software for the purpose of archive and back-up only;
- b. shall not modify and/or alter, improve, supplement or translate the Servoy Software not even to comply to any local standards and requirements;
- c. shall not, except as authorized by applicable law, attempt to (or permit others to) decipher, reverse translate, decompile, disassemble or otherwise reverse engineer the source code or underlying ideas or algorithms of the Servoy Software by any means whatsoever;
- d. agrees that it will not alter, disable, tamper with and/or inhibit any billing system components, technical measures such as the Software Key that protects misuse of the Servoy Software, or functionality included as part of the Servoy Software;
- e. is prohibited from using any product with the Servoy Software when such product is used to restrict, limit, reduce, or hide the number of Measuring Units using the Servoy Software.

**2.11 Compliance.** Partner shall comply with all laws and regulations for the time being in force which affect in any way the Activities and shall indemnify Servoy against any claim resulting from a breach of this Article 2.11.

**2.12 Insurance.** Partner agrees to procure at its own expense a satisfactory insurance in respect of liability to the public at large in relation to the performance of the Activities. The extent of such insurance shall be dependant of all applicable national laws, regulations and jurisprudence. On demand by Servoy, Partner shall produce a letter/certificate from its insurance brokers confirming that such satisfactory insurance is in force.

### **Article 3. Relationship parties.**

**3.1** Save as expressly authorized in advance and in writing by Servoy, Partner shall not without Servoy's prior written consent incur any liabilities on behalf of Servoy nor pledge the credit of Servoy nor make any representations nor give any warranty on behalf of Servoy. Partner has no authority to and shall not take part in any dispute or institute or defend any proceedings or settle or attempt to settle or make any admission concerning any dispute proceedings or any other claim relating to the Servoy Software. Each party is an independent contractor under the Agreement, and nothing herein shall be construed to create a partnership, joint venture, or agency relationship between the parties.

**3.2** Servoy shall maintain a sufficient staff to perform its obligations under the Agreement. Servoy's staff shall have the proper skill, training and background so as to enable them to perform the same in a competent and professional manner.

Parties acknowledge that all personnel of Partner remain in the service of Partner and consequently be on the payroll of Partner. Partner shall indemnify Servoy for all taxes, retrospective collections, insurances and penalties which may be due to the authorities concerned in the event the independence of business as claimed by the Partner is not correct and Servoy becomes liable for the same.

**3.3** It is expressly understood and agreed that Servoy is under no obligation or requirement to reimburse Partner for any expenses or costs incurred by Partner in performance of the Agreement. Any costs or expenses incurred by Partner shall be at Partner's sole risk and upon its independent business judgment that such costs and expenses are appropriate.

**3.4** Partner and Servoy may refer to each other by name under descriptive designations in their respective websites, in boilerplate text used in press releases, and in similar communications provided any such reference shall unambiguously be with reference to the actual relationship between parties. Parties may list each other in periodic newsletters and similar collateral prepared for (potential) End-Users, as well as in informational circulars which may be prepared and distributed from time to time. Partner consents to inclusion of its name and logo in such Servoy's publications. However, subject to Article 9.2, parties shall not use any trademarks of the other party in its own advertisement and promotional material without the prior written approval of such other party, which approval shall not unreasonably be withheld. Parties shall fully comply with all instructions, directions and



specifications as the other party may from time to time give in respect of the manners and styles according to which any trademark(s) may be used.

**3.5** Partner is entitled to appoint a sub-contractor to carry out any rights and obligations under the Agreement. Partner shall provide Servoy a list of names and other relevant details of any such the sub-contractors. Partner is and remains fully responsible and liable for the proper compliance by its sub-contractors to all rights and obligations of the Agreement.

**3.6** Partner shall not:

- (i) conduct business in a manner that reflects negatively on Servoy and/or on the Servoy Software;
- (ii) make any false or misleading representation with regard to Servoy and/or to the Servoy Software and/or use misleading or deceptive advertising material;
- (iii) make any representation, warranty or guarantee regarding Servoy and/or the Servoy Software with respect to specifications, features or capabilities of the Software that is inconsistent with the Software Product Description including all warranties, disclaimers and license terms contained in the Agreement; and
- (iv) export the Servoy Software in violation of any USA or other applicable export laws.

**3.7** Each party shall appoint in writing one contact manager. Any change to the appointment of the contact managers shall also be done in writing. The tasks of the contact manager shall be to act on the respective party's behalf to co-ordinate the day-to-day routine matters, to co-ordinate visits and to keep a complete file of documents. Provided that, a change of the Agreement shall be binding on either party if and to the extent agreed upon in accordance with Article 13.10.

**3.8** Any obligation/right under the Agreement of either party may be performed by an affiliate at its discretion. Any fee payable under the Agreement may be invoiced/paid to/by any affiliate at party's discretion. Affiliate means: a company to which now or hereafter a party directly holds fifty percent (50%) or more of the nominal value of the issued share capital. Each party shall upon request of the other party provide a written list of names and other relevant details of the affiliates. Each party is and remains fully responsible and liable for the proper compliance by its affiliates/franchisees with all rights and obligations of the Agreement.

**3.9** Depending on the situation, either Servoy or Partner can function as the sub-contractor of each other. The details of such arrangement (including terms and rates) will be agreed upon in a separate document.

#### **Article 4. Support.**

**4.1 Contents Support.** Subject to the Support level concerned as agreed as part of the Product Order Form, Servoy shall provide Partner either level A in return for the payment of the Partner Fee (see Article 2.4) and - if agreed - on top of level A also level B, C or D Support in return for the applicable Support fees in the English and/or Dutch language as of the starting date indicated in the Product Order Form.

**4.2 Product Life Cycle.** Servoy provides Support only for the then current latest Minor Release and for the latest Long Term Support Release respectively the Long Term Support Release of the foregoing calendar year.

**4.3 Subcontracting.** Servoy may subcontract Support to a Contract party. However, Servoy shall remain liable to provide Support as described in the Agreement.

**4.4 Modifications.** Servoy shall not be obligated under the Agreement to provide Support for any portion of the Servoy Software which is modified in whatever way. Similar assistance towards the Servoy Software as modified and/or supplemented by Servoy shall be provided as part of the Services; the reimbursement for the same shall be in accordance with the then Servoy's then current hourly fees for consultancy or in accordance with the related agreed upon fees being part of the Product Order

Form.

**4.5 Exclusions.** Support does not include:

- the installation and/or the implementation of Releases;
- providing remote assistance with the integration of Releases with any modified Servoy Software;
- the migration of any modified Servoy Software to a new Release;
- on-site visits to provide assistance;
- the possible requirement of change management/migration of the Servoy Software to any modified/updated/migrated version of the hardware/platform/servers/underlying technology etc.

Servoy is not obliged to provide Support regarding:

- Open Source Product nor a Third Party Application;
- altered, damaged or modified Servoy Software;
- problems/Bugs caused by negligence, or misuse or misapplication, use of Servoy Software other than as specified in the Software Product Description and/or caused by events beyond the control of Servoy;
- Servoy Software installed on any computer hardware that is not supported by Servoy - supported hardware is as among others described in the Software Product Description.

In the event that in the course of investigating a possible Bug, Servoy establishes that the problems concerned are not attributable directly to an inherent problem in the Servoy Software and/or Services, including without limitation problems caused by any software, accessories, network, hardware, system or other devices and/or equipment not supplied by Servoy and/or a Third Party Application and/or an Open Source Product, Partner shall reimburse Servoy at the Servoy's then current hourly fees for consultancy or in accordance with the agreed upon related fees being part of the Product Order Form plus reasonable travel and accommodation expenses.

ANY CLAIM BY PARTNER TO REMEDY DEFECTS REGARDING THE THIRD PARTY APPLICATION SHALL BE MADE SOLELY BETWEEN PARTNER AND THE RELEVANT PARTY THAT OWNS SUCH THIRD PARTY APPLICATION. Consequently the SULA as referred to in Article 1.11 is not applicable towards Third Party Applications. Unless explicitly provided to the contrary in the Product Order Form, the Third Party Applications are supported directly by the relevant third party in accordance with the conditions relating thereto which can be found at the URL mentioned in Article 1.5.

If despite this above provision, Servoy provides any kind of support with respect to the Third Party Application, such support shall be mutually agreed upon in writing and in advance and shall be reimbursed at the Servoy's then current hourly fees for consultancy (time and material base).

**4.6 Primary Contact.** Partner shall appoint an individual as the primary contact with Servoy for Support.

**4.7 Cooperation of Partner.** Partner shall provide to Servoy reasonable debugging information (such as memory dumps or log files) and shall cooperate in investigating Bugs including allowing access to the Servoy Software via remote dial-in facilities during normal business hours for test and debugging purposes. Partner shall certify that the Bug is directly related to the Servoy Software and verify that the Bug has been corrected. Partner shall at its expense acquire and maintain any products which permit Servoy to access Partner's software (such as dial-in and diagnostic software). If Partner fails to provide access as noted herein, Servoy shall on its own discretion decide, subject to its personnel availability, if and when it is required to provide on-site assistance. On site assistance falls outside the scope of Support (see also Article 4.5). If Servoy provides on-site assistance, Partner shall reimburse Servoy at the Servoy's then current hourly fees for consultancy or in accordance with the agreed upon related fees being part of the Product Order Form plus reasonable travel and accommodation expenses. Servoy shall not be obligated to provide Support for any malfunction or Bug resulting from improper use of the Servoy Software by Partner and/or by End-User.

Despite the fact that Partner has to provide said access to the Servoy Software, Partner is and remains

fully responsible and liable for the security and accessibility of the testing/disaster/recovery and the production environment where the Servoy Software runs and shall apply strict security procedures which avoid easy access by means of e.g. regular changing password policies.

**4.8 Assistance.** Telephone/internet assistance shall be provided by Servoy to Partner at the agreed Support level; this level is indicated in the Product Order Form. If the assistance provided to Partner exceeds this agreed level, Partner might be requested to upgrade to a higher Support level and/or to undergo, and pay for, additional training on the use of the Servoy Software and pay on a time and material basis for the extra hours based on Servoy's then current hourly fees for consultancy or in accordance with the related agreed upon fees being part of the Product Order Form.

## **Article 5. Services.**

**5.1 Services.** Subject to the service level concerned agreed as part of the Product Order Form, Servoy shall provide Partner in return for the applicable Services fees - in the English and/or Dutch language - the Services as of the starting date as indicated in the Product Order Form. Since Services as such may apply to great variation of activities, the scope/content/further details/the related time schedule of the Services shall be agreed every time in writing by parties. The reimbursement for the service level concerned is indicated in the Project Order Form.

Partner shall reimburse Servoy for documented and reasonable travel, administrative, and out-of-pocket expenses incurred in conjunction with any performance of the Services.

Parties agree that Servoy shall use all commercially reasonable efforts to perform the Services to the best possible result, provided that as part of the provision of Services Servoy does not guarantee in whatever way any results and/or deliverables but only provides services hours as such.

**5.2 Subcontracting.** Servoy may subcontract the performance of the Services to a Contract party. However, Servoy shall remain liable to provide Services as described in the Agreement. In the event Partner agrees directly with a Contract party the provision of services regarding the Servoy Software, Servoy shall - also subject to Article 10.3.c - not be responsible or liable for any damages and costs resulting in whatsoever way from the same.

**5.3 Cooperation.** Partner acknowledges that the timely provision of and access to office accommodations, facilities, equipment, assistance, cooperation, complete and accurate information and data from its officers, agents, and employees, and suitably configured computer products are essential to the performance of any Services and that Servoy's ability to complete any Services is dependent upon same. If the relevant requirement(s), project plan(s), schedule, scope, specifications(s), design(s), software, hardware product(s), or related system environments(s) or architecture are changed or delayed by Partner or any other person, Servoy shall not be responsible for the change or delay unless Partner and Servoy specifically consent to the change, scheduling, and additional charges, if any, in writing. The provision of the last paragraph of Article 4.7 fully applies.

## **Article 6. Delivery Terms.**

Unless otherwise agreed in the Product Order Form, delivery of the Servoy Software and Releases shall be made electronically through the download page of the website [servoy.com/download](http://servoy.com/download). Any provided delivery date as stated in the Product Order Form is an estimate only and Servoy is not liable for direct or indirect loss arising from late delivery as the case may be. However, Servoy may be liable for direct damages in the event late delivery is due to wilful intent of Servoy. Servoy shall inform Partner, as soon as reasonably practical, of the inability of Servoy to deliver the Servoy Software by any previously agreed delivery date.

## **Article 7. Payment terms and taxes.**

**7.1 Fees.** In consideration of the License granted under the Agreement, Partner will pay to Servoy:

a. An annual non-returnable (but recoupable from all income as mentioned in Article 7.1.b), minimum Partner fee which amount is indicated in the Product Order Form (net of all taxes, if any). The payment schedule of this annual minimum Partner fee is indicated in the Product Order Form.



b. As of the Effective Date, an annual amount due per Measuring Unit licensed by Partner to End-Users or the equivalent of a percentage of the annual license fee charged by Partner to End-Users for the Partner Product.

The amount respectively the percentage payable is indicated in the Product Order Form.

Any duty or tax other than VAT will not be deducted by Partner as far as calculation and payment of the minimum Partner fee is concerned.

Partner shall deliver to Servoy no later than fourteen (14) days after the period as indicated in the Product Order Form (e.g. calendar month/quarter/year) a statement of account specifying the Partner fee payment as indicated in Article 7.1.b. This statement of account shall be drafted according to the report as indicated at <https://servoy.com/download/statementofaccount>. The statement of account shall also be rendered if there are no Partner fee payments to be made in favour of Servoy.

Subsequently Servoy shall invoice Partner this Partner fee.

Acceptance by Servoy of any sums by way of the Partner fee shall not prevent Servoy at any later date disputing or demanding particulars with reference to the amounts finally due by way of Partner fee nor shall acceptance constitute waiver of any breach on any term hereof by the Partner if any shall occur.

Appsurance Program fee - the fee due and the applicable period are indicated in the Product Order Form.

Support fee - monthly fixed fee for a given number of monthly hours regardless the number of End-Users/ Measuring Units; such number of hours is indicated in the Product Order Form.

Services fee - monthly fixed fee for a given number of hours - such number of hours is indicated in the Product Order Form as well Servoy's hourly rate for consultancy.

Hosting fee for the pipeline phase respectively for the deployment/production phase - see Article 2.2. and the Product Order Form.

Third Party Application fee - amount due by Partner for the use/provision of sub-sub licenses to End-Users of Third Party Applications, the fees due, payment schedule and the applicable period are indicated in the Product Order Form.

**7.2 Pricing.** The agreed upon fees due by Partner to Servoy for the License are due as of the Effective Date. The agreed upon fees due by Partner to Servoy for the Appsurance Program, the Support, the Services and Hosting are due as of the relevant starting date indicated in the Product Order Form. The fees for Support, Services, Hosting and Servoy's hourly fees for consultancy are annually subject to a possible increase in accordance with the consumer index (CPI) as published by the CBS or of a maximum of five percent (5 %) whichever is higher.

**7.3 Payment term.** Unless otherwise agreed in the Product Order Form, all invoices are due and payable within thirty (30) calendar days of the date of the invoice. Partner's failure to pay any amount due, shall constitute a material breach of the Agreement. Any amounts due to Servoy hereunder which are not paid within fourteen (14) calendar days after they are due under the Agreement shall incur interest at the rate of one and one half percent (1 ½%) per month or any part of the month. The interest shall be calculated from the date payment is originally due hereunder until the date payment is made in full. Partner shall pay such interest and all payments shall first be applied to interest and then to principal. All legal/ collection costs and expenses (including related attorneys' fees) incurred by Servoy in enforcing its rights in relation to any overdue payment shall be paid by Partner to Servoy. Notwithstanding the foregoing, nothing in this Article 7.3 shall be construed as to limit any rights or remedies available to Servoy in the event Partner is delinquent in the payment of amounts due hereunder including but not limited to a penalty equal to an annual increase of the then current License fee with 18%.

Servoy shall have no obligation to provide the License/Releases, Appsurance, Support, Services, Hosting and/or consultancy until full payment of the relevant fees has been received. Servoy may terminate or suspend the provision of the same immediately upon written notice if any payment due to Servoy is more than fourteen (14) calendar days past due.

**7.4 Currency.** All payments shall be made in the currency as indicated in the Product Order Form.

**7.5 Taxes.** All indicated payments are exclusive of VAT, all federal, provincial and local sales, use, excise, privilege and similar taxes. Each party shall pay and is responsible for payment of any taxes it is due to the competent authority including any tax on its own net income. Partner shall make no deductions for taxes of any kind, including withholding taxes, any payment to Servoy under the Agreement. Partner shall pay directly, and shall indemnify Servoy against and repay to Servoy on demand, any and all taxes such as, but not limited to, sales, use, value added, customs duties, and import fees including any expenses, interest and penalties related thereto. If Partner is required by law to withhold taxes, then Partner shall pay Servoy a gross amount of money, such that the net amount received by Servoy (after deducting or withholding the required taxes) is equal to the amount of the fee originally owed before subtracting withholding taxes.

**7.6 Access to Computer Systems/Books and Records.** Partner agrees to keep accurate books of account and records covering all transactions relating to the Agreement at its principal offices. Partner agrees to use any licensing manager provided by Servoy (Software Key) to assist in auditing Partner's usage of the Servoy Software/Partner Product. Partner must keep complete and accurate records relating to the use, copying, modification, merging and disclosure of the Servoy Software/Partner Product. Partner must, upon reasonable notice, provide Servoy access to these records. The Provision of the last paragraph of Article 4.7 fully applies.

All systems, books of account and records shall be kept available for at least six (6) years after termination or expiration of the Agreement and parties agree to permit inspection thereof during such six (6) year period.

At its expense and with reasonable prior written notice to Partner, Servoy or a third party appointed by Servoy may audit the books, records, and if necessary, the systems of Partner for the sole purpose of ensuring compliance with the terms of the Agreement. Servoy shall have the right to conduct follow-up audits as necessary. All audits shall be conducted during regular business hours at Partner's offices and shall not interfere unreasonably with Partner's activities. Servoy shall treat all such records and books as confidential information. If any audit reveals that Partner has underpaid any fees due under the Agreement, Partner shall be invoiced for all such underpaid fees based on Servoy's list price in effect at the time the audit is completed as well as the interest described in Article 7.3 on the outstanding amount of the deficiency and a fine of 25% of the aforementioned deviation. If the underpaid fees are in excess of five percent (5%) of the fees previously paid by Partner for the period under audit, Partner shall also pay Servoy's reasonable costs of conducting the audit and enforcement of the Agreement and Servoy may, at its option and without limiting or foregoing any other rights or remedies available to Servoy, terminate the Agreement.

**7.7 Offset.** Fees and/or charges due under the Agreement may not be withheld or offset by Partner against amounts possibly owed by Servoy party under any circumstances.

## **Article 8. Confidentiality & Privacy.**

**8.1 Confidential Information.** Confidential information may include in any form, but is not limited to, the contents of the Agreement, processes, formulae, specifications, programs, instructions, technical know-how, methods and procedures of operation, benchmark test results, business or technical plans and proposals.

It is agreed that confidential information received by a party under the Agreement shall: (a) be kept confidential by the receiving party; (b) be treated by the receiving party in the same way as it treats confidential information generated by itself; (c) not be used by the receiving party other than in connection with the implementation of the Agreement; and (d) be divulged to the receiving party's personnel, or End-User's personnel, only if they have a need to know and have undertaken to keep confidential information secret.

**8.2 Extent of Confidentiality.** These commitments shall cease if, but only to the extent that, confidential information:

- i) is or becomes generally known or available to the public at large through no act or omission of the receiving party; or
- ii) can be demonstrated to be available lawfully to the receiving party prior to the disclosure or has thereafter been furnished to the receiving party without restrictions as to disclosure or use; or
- iii) can be demonstrated to be independently developed by the receiving party without use of any confidential information received under the Agreement.

**8.3 Employees.** Each party may disclose confidential information to any of its employees on the condition that the same shall be bound by similar commitments undertaken under this Article 8.

**8.4 Personal Data.** Servoy may process and use personal data only to perform its obligations under the Agreement and may disclose them only to its employees and agents that have a need to know them for the performance of such obligations and are bound by the confidentiality obligations contained in the Agreement. Servoy shall comply to the terms of the processor agreement; these terms can be found at [servoy.com/download/dataprivacyandprotection](https://servoy.com/download/dataprivacyandprotection) provided that the Data Pro Statement of the these terms is attached to the Product Order Form.

It is the responsibility of Partner, as the controller of the personal data, to observe all relevant personal data protection laws. Partner will indemnify Servoy against any claims based on a breach by Partner of applicable personal data protection laws and/or any conflict of an instruction by Partner with any applicable personal data protections laws.

## **Article 9. Intellectual Property Rights.**

**9.1.** Each party acknowledges that the trademarks, copyrights, patents, logo's, descriptions and other intellectual property rights belonging to, embedded in or associated with the business, (software) products and/or services of the other party are and remain exclusively owned by that party. Partner confirms and acknowledges that any and all of the trademark(s), tradenames, copyrights, patents and other intellectual property rights used or embodied in the Servoy Software (including any future additions, Releases, enhancements, updates, translations or modifications as provided by Servoy) shall be and remain the sole property of Servoy.

Partner confirms and acknowledges that any and all of the trademark(s), tradenames, copyrights, patents and other intellectual property rights used or embodied in the Third Party Application shall be and remain the sole property of the relevant owner/licensor.

**9.2** Servoy grants Partner a non-exclusive, non-transferable license solely during the Term, to use the trademark(s) either owned by Servoy or for which Servoy is permitted to license as necessary for the performance of the Activities. However Partner shall not use any such trademarks in its own advertisement and promotional material without the prior written approval of Servoy, which approval shall not unreasonably be withheld. Partner shall fully comply with all instructions, directions and specifications as Servoy may from time to time give to Partner in respect of the manners and styles according to which any trademark(s) may be used. In all cases where the trademarks are used by Partner, they shall be acknowledged as the property of the owner of such trademarks in the material issued.

**9.3** Subject to (the limitations of) Article 10, shall Servoy defend, at its expense, any action brought against Partner to the extent that it is based on a claim that the use of the Servoy Software when used within the scope of the Agreement infringes any third party's intellectual property right. Servoy shall indemnify Partner from any costs, damages and fees finally awarded or determined by irrevocable judgment by a court of law against Partner which are attributable to such claim, provided that Partner notifies Servoy promptly in writing of the claim. Partner shall permit Servoy at its sole discretion, to defend compromise or settle the claim and shall provide all available information, assistance and authority to enable Servoy to do so. Servoy shall reimburse Partner's reasonable costs for such activity. Partner shall have no authority to settle any claim on behalf of Servoy. Servoy will not

indemnify Partner for any action brought against Partner to the extent that it is based on a claim that the use of the Open Source Product/Third Party Application infringes any intellectual property right.

**9.4** Servoy shall have no liability for any claim of intellectual property right infringement based on the (i) use of other than the then latest Maintenance Release, if such infringement could have been avoided by the use of the latest Maintenance Release, or (ii) use of a modified version of the Servoy Software where the infringement would have been avoided by using the standard Servoy Software, or (iii) use of the Servoy Software in conjunction with Partner data where use with such data gave rise to the infringement claim, (iv) use of the Servoy Software with other software or hardware, where use with such other software or hardware gave rise to the infringement claim; (v) use of any Servoy Software in a manner inconsistent with its documentation, (vi) use of the Open Source Product/Third Party Application and/or (vii) use of the Software that breaches the Agreement.

**9.5** Should the Servoy Software become, or in Servoy's opinion, is likely to become the subject of a claim of infringement of any intellectual property right, Servoy may at its sole option substitute the Servoy Software or the relevant part thereof with non-infringing computer programs, and/or modify the Servoy Software or the relevant part thereof in such manner that such infringement is removed.

**Article 10. Warranty and Limitation of Liability.**

**10.1 Limited Warranty.** Servoy warrants that the Servoy Software shall be free from material program errors and material defects in material and workmanship and that the Servoy Software shall function substantially in accordance with the Software Product Description. However, Servoy does not warrant that the Servoy Software is completely error-free.

SERVVOY PROVIDES THE OPEN SOURCE PRODUCT AND THE THIRD PARTY APPLICATION "AS IS" AND MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND CONCERNING THE SAME. SERVVOY DISCLAIMS ALL LIABILITY AND RESPONSIBILITY FOR ANY THIRD PARTY APPLICATION (WHETHER RELATED TO SUPPORT, SERVICES, SUPPORT, HOSTING, AVAILABILITY, SECURITY, PRIVACY OR OTHERWISE) AND FOR THE ACTS OR OMISSIONS OF ANY THIRD PARTY PROVIDERS.

**10.2 Warranty Term.** This warranty in this Article 10 shall be valid only for one (1) year after the delivery by Servoy of the given Release to Partner. This warranty shall apply only to the then current Release for use on computer systems then recommended by Servoy as among others described in the Software Product Description.

**10.3 Warranty Limitations.** There are limits to the limited warranty described above. These are as follows:

- a. Partner must provide written notice of the Servoy Software malfunction in reasonable detail within the warranty period.
- b. Partner must have installed all Releases provided by Servoy.
- c. If Partner modifies the Servoy Software in any way, then the warranty applies only to the unmodified/standard Servoy Software as distributed by Servoy. Partner must maintain any modifications to the Servoy Software separately from the Servoy Software provided by Servoy.
- d. Partner must have installed and/or use the latest revision of all prerequisite underlying technology, operating system software, hardware, and configurations currently recommended by Servoy as among others described in the Software Product Description.
- e. Servoy shall not be obligated to remedy any Bug which Servoy cannot reproduce/repeat in a standard version of the Servoy Software on officially supported configurations.
- f. Servoy shall not be liable for any malfunction or error resulting from improper use by End-User/Partner of the Servoy Software.

**10.4 Modifications Not Warranted.** The warranty in this Article 10, shall be - subject to Article 10.3.c - limited in such a way that Servoy shall not be liable for any modification of the Servoy Software as made by Partner nor for any malfunction or error resulting from a modification made with or without the prior written explicit approval of Servoy.

**10.5 Waiver of Liability.** In no event shall Servoy be liable for any loss, direct and indirect damage or expense whatsoever including, without limitation, time, money or goodwill arising from or in connection with the use, performance or non-performance or inability to use, and operation of the Software by Partner and/or by End-Users.

PARTNER'S REMEDIES ARE LIMITED WHENEVER IT ALLEGES A CLAIM OF BREACH OF WARRANTY AGAINST SERVOY. PARTNER'S SOLE AND EXCLUSIVE REMEDY AND SERVOY'S SOLE AND EXCLUSIVE LIABILITY, IS TO PROVIDE PROGRAMMING SERVICES TO REPLACE OR CORRECT DEFECTS IN THE SERVOY SOFTWARE WHICH CAUSE THE SERVOY SOFTWARE TO FAIL TO CONFORM TO THE WARRANTY SET FORTH IN THE AGREEMENT.

**10.6** To the maximum extent permitted by applicable law, in no event shall Servoy be liable for any lost revenues or profits or other special, direct, indirect, incidental, exemplary, consequential or punitive damages however caused and regardless of theory of liability whether any claim for such recovery is based upon theories of contract, negligence or tort (including strict liability) even if Servoy has been advised of the possibility of such damages. Partner hereby waives for itself and its successors and assigns any and all claims for direct, special, indirect, incidental, exemplary, consequential or punitive damages.

**10.7** THE LIMITED WARRANTY EXPRESSED IN THE AGREEMENT IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NO OTHER WARRANTY IS MADE HEREUNDER BY SERVOY AND ALL OTHER CONDITIONS, WARRANTIES, AND REPRESENTATIONS, EITHER EXPRESS OR IMPLIED, ARE EXCLUDED, INCLUDING, BUT NOT LIMITED TO, CONDITIONS OR WARRANTIES RELATING TO THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**10.8 Alternative Limitation on Liability.** In the event that a limitation or a provision in this Article 10 and/or in the Agreement shall be held to be invalid for any reason and Servoy becomes liable for loss or damage that would otherwise have been excluded, such total liability shall never exceed the amount of ten thousand euro (€ 10.000,=). In any event, the maximum liability of Servoy for any claim arising from, or relating to, the Agreement shall be ten thousand euro (€ 10.000,=).

**10.9 Death or Personal Injury.** Nothing in the Agreement shall exclude or restrict the liability for death or personal injury caused by the negligence of a party.

**10.10 Loss/damage of Data.** Servoy shall not be responsible for any loss and/or damage of data. Partner is responsible to have adequate backup procedures to avoid any loss or damage of data.

**10.11 Warranty& liability Partner.** Partner warrants that the Activities shall be provided fully in accordance with the Agreement and shall be provided with professional competence and in accordance with the technical engineering practices and standards commensurate with those observed in the computer software industry. Partner indemnifies and holds Servoy harmless from and against any direct losses, damages, claims or liability (excluding indirect/consequential damages/costs) arising out of or related to the performance by Partner of the Activities and/or out of any breach of the Agreement by Partner.

## **Article 11. Termination.**

**11.1 Term.** The Agreement will commence on the Effective Date and, except as terminated in accordance with the Agreement, shall be valid for number of Contract Years as indicated in the Product Order Form.



**11.2 Termination for Breach.** Each party shall be entitled forthwith to terminate the Agreement by a two (2) months prior written notice to the other party if the other party commits a material breach of any of its obligations under the Agreement and in the case of a breach which is capable of remedy, fails to remedy the same within thirty (30) calendar days after the date of the written notice giving particulars of the breach.

**11.3 Termination for Insolvency.** Each party may terminate the Agreement immediately by notice in writing if the other party enters into liquidation, whether voluntary or compulsory, or enters into a settlement with its creditors or applies for suspension of payment or admits its inability to pay its debts as and when due or is declared bankrupt or takes or suffers any similar action in consequence of debt.

**11.4 Change of Ownership.** Servoy may terminate the Agreement immediately by notice in writing in the event Partner sells or disposes of substantially all its assets or in the event that the ownership of Partner's business passes into other hands other than those now exercising or entitled to the same either voluntarily or by law. Servoy will not unreasonably invoke its power to terminate the Agreement under this Article 11.4 provided that any such change does not transfers control to owners whose business mission is detrimental to the interests of Servoy.

## **Article 12. Consequences of expiry/termination.**

**12.1 Procedures.** In the event of expiration or termination of the Agreement, Partner shall:

- i) discontinue all use of the Servoy Software and the Third Party Application and its designation as partner of Servoy;
- ii) within fourteen (14) calendar days of termination return to Servoy and not keep any copies of the Servoy Software/Third Party Application and any other information supplied under the Agreement whether designated proprietary or not, together with all unused advertising and promotional material provided by Servoy and testify in writing that all and any copies of the Servoy Software, Third Party Application and mentioned material are returned to Servoy;
- (iii) immediately discontinue all use of any trademark(s); and
- (iv) pay Servoy all accrued and unpaid amounts then due and owing in accordance with the Agreement as and when the same would have in the normal course fallen due for payment and/or all future payments and other amounts as and when becoming due hereunder.

**12.2 No Indemnification/Goodwill Allowance Claim.** To the maximum extent permitted under applicable law, Partner shall under no circumstances be entitled to claim any indemnification and/or goodwill allowance as a result of the termination of the Agreement for whatever reason.

**12.3 General consequences of expiry/termination.** Expiry/termination, either voluntary or involuntary, shall not entitle Partner to any refund for any fees paid nor shall it relieve Partner of the obligation to pay any outstanding amounts due to Servoy. Termination of the same with retrospective effect (dissolution) is excluded.

## **Article 13. General.**

**13.1 Law.** The Agreement and all Product Order Forms shall be construed, interpreted, and applied in accordance with the laws of The Netherlands. Any dispute arising between the parties shall be settled by the relevant court of Amsterdam.

**13.2 Non-assignability.** The Agreement may not be assigned by Partner without the written consent of Servoy, which consent shall not unreasonably be withheld.

**13.3 Enforcement.** The failure of either party to enforce any provision of the Agreement shall not be construed to be a waiver of such provision or such party's right to thereafter enforce the same, and no waiver of any breach shall be construed as an agreement by such party to waive any subsequent breach of the same or other provisions.

**13.4 Force Majeure.** A party shall be excused for failures and delays in performance of its obligations under the Agreement caused by war, riots, or insurrections, laws and regulations, strikes, floods, fires, epidemics, explosions or other catastrophes beyond the control of such party. This provision shall not release such party from using its best efforts to avoid or remove such cause and such party shall continue performance hereunder with the utmost dispatch whenever such causes are removed. The party claiming force majeure shall give prompt written notice thereof to the other party.

**13.5 Notices.** Any notice required to be given under the Agreement shall be in writing and delivered in such a manner that proof of delivery can be verified and shall be sent to the party to be notified at the address specified in the Product Order Form.

**13.6 Severability.** To the extent that law, statute, treaty, or regulation by its terms as determined by court, tribunal, or other government authority or competent jurisdiction is in conflict with the Agreement, the conflicting terms of the Agreement shall be superseded only to the extent necessary by the terms required by law, statute, treaty, or regulation. If any portion of the Agreement shall be unlawful, void, or for any reason unenforceable, then that provision shall be enforced to the maximum extent permissible so as to effect the intent of the parties. In either case, the remainder of the Agreement shall continue in full force and effect.

**13.7 Survival.** The Articles 7.5, 7.6, 8, 9, 10, 12, 13.1, 13.9 and 13.11 of the Terms & Conditions shall survive the expiry or termination of the Agreement.

**13.8 English Language.** The original of the Agreement has been written in the English language. Partner hereby waives any right it may have under the laws of the Territory or the country in which the Software is licensed to have the Agreement written in the native language.

**13.9 International Transactions.** The parties hereby acknowledge and agree that the U.N. Convention on Contracts for the International Sale of Goods shall not apply to the Agreement.

**13.10 Entire Agreement.** Once the Agreement is executed, all previous agreements between the parties shall be inadmissible to explain, modify or contradict the Agreement. The Agreement replaces and supersedes all prior agreements between the parties in respect of the Activities and constitutes the final, complete and exclusive statement of the Agreement between the parties in respect of the subject matter hereof. The Agreement cannot be altered, enlarged, or abridged except in writing signed by Servoy and Partner and specified therein to be an amendment hereof, provided that Servoy is entitled to change the Terms & Conditions as well of the contents of all attachments, addenda, schedules, exhibits and documents referenced at URLs at any time. If such changes are material, Servoy shall inform the Partner by means of a posting a notice on <https://servoy.com/notices>. The notice will designate a reasonable amount of time after which the changes will go into effect.

**13.11 Personnel.** The parties recognize that the employees of each party, and such employees' loyalty and service to that other party, constitute a valuable asset of that party. Consequently no party shall, directly or indirectly, contract or hire any employee of the other party during the Term and for twelve (12) months thereafter.

**13.12 Escrow.** If agreed as such as part of the Product Order Form, Partner is entitled to a release of a copy of the source code of the Servoy Software and to continuation of use as described in Article 2 under the conditions of the escrow agreement as agreed between Servoy and the regional escrow agent and in the event Partner is subscribed as a participant with such escrow agent upon payment of an annual fee by Partner to Servoy. These conditions of this escrow agreement can be found at: <https://servoy.com/download/escrow>.