

# MASTER SERVICES AGREEMENT

This Master Services Agreement sets forth the terms and conditions governing the use of our Services. Additional terms and conditions specific to an applicable Service you have purchased may also apply and are available at <https://milkman.it/general-terms-and-conditions.pdf>. You agree to review such additional Service specific terms and conditions, and that such additional terms and conditions are binding and incorporated herein by reference. As used herein, the term “**Agreement**” means this Master Services Agreement, the Purchase Order and such additional Service specific terms and conditions.

By executing a Purchase Order that references this Agreement you agree to be bound by the terms of this Agreement. If you are entering into this Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity and its affiliates to this Agreement, in which case the terms “**you**” or “**your**” or “**Users**” or “**Licence**” shall refer to such entity and its affiliates. If you do not have such authority, or if you do not agree with the terms and conditions of this Agreement, you must not accept this Agreement and you may not use the Services. In addition, you may not access the Services if you are our competitor, except with our prior written consent.

## 1. Definitions

“**Consulting Services**” shall mean the consulting services that may be provided by us pursuant to an applicable Purchase Order, including, without limitation, data conversions, customizations, program modifications, training, or other related consulting services.

“**EU Data Protection Legislation**” or “**GDPR**” shall mean the General Data Protection Regulation (EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended from time to time and any other data protection, data security and privacy laws.

**“Purchase Order”** shall mean the applicable purchase order agreement entered into with respect to the Service to be provided by us to you.

**“Service”** shall mean the service to be provided by us to you pursuant to an applicable Purchase Order, including, without limitation, the service of providing you with access to and the ability to use our Software Milkman, and any Consulting or Marketing Services to be provided by us to you.

**“Hardware”**: means the physical and material part of a computer, that is all the magnetic, optical, mechanical and electronic parts that constitute it and allow it to function, as well as the relative documentation that may allow, even potentially, its realisation;

**“Software”** means an expression of an organised and structured set of instructions or symbols capable of directly or indirectly having a predefined function, a task or a result executed or obtained by means of an electronic information processing system, be it performed represented in the expressive form of source code or executable. Under the License, the term Software identifies any computer program (regardless of version or release), firmware, protocol, development kit, library, documentation, standard, format, architecture, language, Data Bank;

**“Database”**: indicates data collections or other independent elements, even if not systematically or methodically arranged and individually accessible by electronic or other means;

**“Software Milkman”** shall mean the Milkman’ Software , as describe at <https://milkman.it/milkmansoftwaredescription.pdf>

**“Subscription Term”** shall mean the term of Service set forth in the applicable Purchase Order.

**“Work Product”** shall mean any works (copyrightable or not, patentable or not), products, discoveries, developments, designs, work product, deliverables, improvements, inventions, processes, techniques, modifications and know-how made, conceived, reduced to practice or learned by us (either alone or jointly with

you or others) that result from or arise out of any Consulting Services performed by us, or our designee, and provided to you pursuant to any applicable Purchase Order.

**“Your Content”** means all text, files, images, graphics, illustrations, information, data, audio, video, photographs and other content and material (other than Your Applications), in any format, provided by you or your Users that reside in, or run on or through, the Services.

**“Proposal”** shall mean the first document previously undersigned in which is contained the logistic implementation project for your company and/or business.

**“LDA”** means the Italian Copyright Law, L. n. 633/1941.

**“End Users”** or **“Final User”**: your clients, who may indirectly benefit from the License or the Services.

**“Your User”** shall mean all employees, contractors, and other people authorized by you or on your behalf to use the Software Milkman.

**“Owner”** or **“Licensor”** shall mean Milkman S.p.A.

**“License”** shall mean the part of the Agreement in which the Owner licenses the Software Milkman to the User.

## **2. Use of Services.**

**2.1. Subscriptions.** Subject to performance of your obligations hereunder and the applicable Purchase Order, (a) we will provide the Services specified in the Purchase Order in accordance with the terms hereof for the applicable Subscription Term set forth in such Purchase Order, and (b) you have the non-exclusive, non-assignable, royalty free, worldwide limited right to access and use the Services solely for your internal business operations during such Subscription Term. You may allow Your Users to use the Services for this purpose and you are responsible for Your Users' compliance with this Agreement, in which the License is held, and the Purchase

Order. Your usage of Services is limited by the usage basis specified in the Purchase Order. The usage basis may vary by the applicable Service, and may include, but is not limited to, usage of the Software Milkman limited by number of concurrent Users, number of unique Users, unique office locations, office branches, technicians, unique hardware devices or other unique identifiers as described in the applicable Purchase Order. If the usage basis is limited by the number of concurrent Users, only that number of concurrent subscriptions purchased in the applicable Purchase Order may be logged in to such Software at any one time. If the usage basis is limited by the number of unique Users, such unique Users shall include only individual persons employed by you who possess a valid username and password with which to access the Software. Usernames and passwords assigned to each User shall only be used by one individual named User at any time and shall not be shared or used by other personnel. You acknowledge and agree that we have the right to modify access right credential requirements from time to time upon reasonable notice to you. Your Services may include training and/or support if set forth in the additional terms and conditions relating to the specific Service and/or in an applicable Purchase Order.

**2.2.1. License to Software Milkman.** You are granted a limited right to use the Software Milkman designated in the Purchase Order or accessed following input of a “License Key” in object code for business purposes only. This License is for the number of, and / or size of, and / or scope of any or all of the components specified in the Purchase Order. The license to use the Software Milkman is limited in time to the terms provided for in the Purchase Order.

Unless otherwise agreed, you are prohibited from sharing the Software Milkman with a third party who is not subject to the terms of License provided.

Minor or major product releases to the Software Milkman may be provided during the term set forth in the Purchase Order. You may refuse to accept the installation of these releases. However, this may impact the ability to provide the agreed level of support. The License applies to any and all minor and major releases. After a successful upgrade (i.e. deployment of any new release), you may no longer use the product version that formed the basis for User’s upgrade. Nothing in the License will be deemed to grant the User any further proprietary rights in the computer

programs or in any other work embodied in the Software Milkman or related materials supplied to you and the User.

You may, at any time, make a backup copy of the Software, if such copy is necessary for its use.

**2.2.2. Allowed operation.** You are granted, in any case, the right to perform the following operations on the Software:

- the reproduction, permanent or temporary, total or partial, of the Software by any means or in any form. To the extent that operations such as loading, display, execution, transmission or storage require reproduction, these operations are to be considered authorized. This activity is strictly necessary for the fulfilment of the License and for the use of the Software, including the error correction procedures and the generation of business continuity copies, is expressly authorised;

- the translation, adaptation, transformation and any other modification of the Software, as well as the reproduction of the work, without prejudice to the Owner's rights, exclusively with the prior written consent of the same. This activity is strictly necessary for the fulfilment of the License and for the use of the Software, including the error correction procedures and the generation of business continuity copies, is expressly authorised.

**2.2.3. Installation of the Software Milkman on End User.** In the event that, in the execution of the License, you were required to distribute Software to Final User, to ensure the correct functioning of the Software, it shall be sublicensed to the Final User in accordance with this License, by means of a specific agreement that:

- does not attribute, in any case, to the End User higher rights than those contained in this License;

- attributes a set of rights to the End User for what is strictly necessary for the execution of the License.

**2.2.4. Derivative Works.** Should, during the execution of the Contract, works derived from the Licensed Software Milkman be created, then these shall remain the Owner's property, and you shall renounce any and all possible rights in relation to his

contribution. The sending of any Database provided by the User to the Owner will determine the non-exclusive attribution of each relative right, subject to the limits of unavailability relating to the individual components.

**2.2.5. Interoperability.** If you wish to make the Software Milkman chosen in the Purchase Order interoperable with third-party Software, or with documents or third-party document standards, you shall communicate this intention to Milkman, by means of a detailed communication, which shall contain every element suitable for defining an application or documentary interoperability framework. The Owner, following the request, will be entitled - but not obliged - to provide you with information necessary to achieve this interoperability, and may request, if deemed necessary, further information that you are obliged to provide.

**2.2. Additional Subscriptions.** Unless otherwise provided in the applicable Purchase Order, (a) Services are purchased as subscriptions, (b) additional subscriptions to a Service may be added during a Subscription Term at the same pricing as the underlying subscription pricing (subject to any applicable tiered pricing), prorated for the portion of the Subscription Term remaining at the time the subscriptions are added, and (c) any subscriptions added to a Service will terminate on the same date as the underlying subscriptions to such Service. In addition, we reserve the option to require that any Services added pursuant to subsequent Purchase Orders under this Agreement shall end on the same date as the first Service acquired under this Agreement, and to prorate fees through such end date for any subsequent Service.

**2.3. License to Host Your Content and Your Applications.** To enable us to provide you with the Services and the correct use of Software Milkman, you grant us the right to use, process, store, and transmit, in accordance with this Agreement, Your Content for the duration of the Subscription Term plus any applicable post-termination period in accordance with Section 8.5. If Your Applications include third-party programs, you acknowledge that we may allow providers of those third-party programs to access the Services, including Your Content, as required for

the interoperation of such third-party programs with the Services. We will not be responsible for any use, disclosure, modification or deletion of Your Content resulting from any such access by third-party program providers or for the interoperability of such third-party programs with the Services.

**2.4. Third-Party Technology and Third-Party Content.** The Software Milkman may contain separate third-party technology and content. You agree that your subscription allows you to use such third-party technology and content only in connection with Software Milkman. If when using the Software Milkman, you are not required to enter into a separate license for such third-party technology and content, then we have obtained the right to provide you with such third-party technology and content. If you are required to enter into a separate license for such third-party technology or content, then you are responsible for complying with such license. The third-party owner, author or provider of such third-party technology or content retains all ownership and intellectual property rights in, to and under such third-party technology or content. We cannot guarantee the continued availability of third-party Software features and may cease providing them without any liability to you. You acknowledge that we may make payments to or receive payments from such third-party providers. The Software Milkman may enable you to add links to websites and access to content, products and services of third parties, including users, advertisers, affiliates and sponsors of such third parties. If we are notified that any third-party content provided to you may violate applicable law or third-party rights, you agree to promptly remove such content upon notice from us, and you agree that we may remove such content if you fail to do so. We are not responsible for any third-party websites or third-party content provided on or through the Software Milkman and you bear all risks associated with the access and use of such websites and third-party content, products and services. You acknowledge that we may utilize third-party partners or our affiliates to process Your Content, and you hereby consent to such third-party processing. Our contracts with third parties outline the appropriate use and handling of Your Content and prohibit them from using any of Your Content for purposes unrelated to the service they are providing. These third parties are authorized to use Your Content only as necessary to provide the Service. We require vendors to maintain the confidentiality of the information we

provide to them. In case of data processing by third parties, Milkman will appoint the third party as data controller, with a separate agreement, in accordance with GDPR.

**2.4.1 FOSS.** During the execution of the Services, free software or open source software could be used, as well as be made available to you and Your Users, to improve Software Milkman's functions. You acknowledge to accept the license conditions indicated in the FOSS, including, in particular, the warranty limitations. If you purchase a product that uses Google Maps, you are further are bound by the [Google Maps/Google Earth Additional Terms of Service](#) (including the [Google Privacy Policy](#)).

## **2.5. Your Responsibilities.**

2.5.1. You will (a) be responsible for Your Users' and your End Users' compliance with this Agreement and applicable Purchase Orders, (b) provide Your Users with computer equipment, telecommunications, data connections, and other equipment necessary to access the internet and use the Software Milkman and the Services, (c) maintain confidentiality of user names, passwords, and account information, and use commercially reasonable efforts to prevent unauthorized use of the Services through your equipment, (d) notify us promptly after becoming aware of any unauthorized use of the Services, (e) use the Services and th Software Milkman in accordance with this Agreement and applicable Purchase Orders, (f) comply with terms of service of any third-party applications you may use with the Services and Software Milkman, (g) be responsible for the accuracy, quality and legality of Your Content and the means by which you acquired and use Your Content within the Service and Software Milkman, and (h) timely provide any notices and obtain any consents required to be provided or obtained by you under applicable law, and otherwise comply with all laws applicable to you, related to your use of the Services and the Software Milkman, including, without limitation, to the collection, processing, and storage of Your Content.



2.5.2. You will not (a) make any Service and the Software Milkman available to, or use any Service or the Software Milkman for the benefit of, anyone other than you or Your Users and, eventually, the End User, (b) sell, resell, license, sublicense (except in case of Final User), distribute, rent or lease any Service or the Software Milkman, or include in a service bureau or outsourcing offering, or otherwise attempt to market the Services for your own benefit or the benefit of any third-party, (c) use a Service or Software Milkman to store or transmit code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses, or other malicious code, (d) interfere with or disrupt the integrity or performance of any Service or Software Milkman data contained therein, (e) attempt to gain unauthorized access to any Service or Software Milkman or its related systems or networks, (f) permit direct or indirect access to or use of any Service or the Software Milkman in a way that circumvents a contractual usage limit, (g) remove or modify any program markings or any notice of our or any third-party's proprietary rights, or (h) without our prior written consent, perform or disclose any benchmark or performance tests of the Services, or perform or disclose any of the following security testing of the Services: network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing, or penetration testing.

2.5.3. You agree not to use the Services and the Software Milkman, including by uploading, emailing, posting, publishing or otherwise transmitting any material, for any purpose that (a) involves the publication of any material that is false, defamatory, harassing or obscene, or that promotes bigotry, racism, hatred or harm, (b) violates privacy rights, (c) constitutes unsolicited bulk e-mail, "junk mail", "spam", chain letters, or other form of prohibited solicitation or advertising; (d) constitutes an infringement of any intellectual property or other proprietary rights.

**2.6. Additional Usage Limits.** You acknowledge that we may establish certain practices and limits concerning your use of the Services or the Software Milkman (or part thereof), including the maximum number of days that Your Content will be actively retained by or made available via the Services (in any case, not less than three months), the maximum number of uploads, posts, or transmissions that may be sent from or received by you via the Services or the Software Milkman, the maximum size of any data, individually or collectively, that may be sent from or

received by you via the Services or the Software Milkman, the maximum storage space that will be allotted to you, the length of time before an inactive User is automatically logged off of the subscription, and the maximum number of times (and the maximum duration for which) you may access the Services or the Software Milkman in a given period of time. Such usage limits will be set forth in an applicable Purchase Order. If additional usage charges apply with respect to exceeding any such limitation, you pledge to pay such additional charges and acknowledge to be aware that the additional costs will be charged to your credit card during the next payment cycle or requested by separate invoice without further authorization required from you.

**2.7. Service Availability.** You acknowledge that the Service or the Software Milkman may be interrupted from time to time for both scheduled and emergency updates and maintenance. Whenever possible, we will notify you in advance through the Service or the Software Milkman of the time, date and expected length of time when the Service will be unavailable. It is anticipated that the Software Milkman or the Service will be brought down once a week for a period of up to two (2) hours, for regular maintenance. Whenever possible, in the event that the Service or the Software Milkman become unavailable for an extended period of time due to technical difficulties, we will notify you by email or other available means of the status and expected time of resolution.

**2.8. Consulting Services.** Consulting Services may be provided in accordance with an applicable Purchase Order or with a Proposal. Consulting Services may be delivered remotely or at your site. If Consulting Services are delivered at your site, in addition to the payment of applicable Consulting Services fees, you shall reimburse us for all reasonable travel and out-of-pocket expenses incurred in connection with the provision of such Consulting Services. We shall retain all ownership rights to any and all Work Product resulting from or arising out of Consulting Service excluding, any pre-existing technology or materials supplied by you for incorporation into such Work Product. We grant you a non-exclusive, non-transferable, non-assignable license to use such Work Product, solely to the extent necessary to permit you to use

the Work Product in connection with the Services for the applicable Subscription Term. You acknowledge that nothing in this Agreement shall restrict or limit us from performing similar services for any third-party. You agree to cooperate and work in good faith with us to enable us to timely perform Consulting Services, including, without limitation, by timely responding to our inquiries, providing reasonably requested materials, and providing access to facilities, equipment, and personnel as shall be reasonably required.

**2.9. Marketing Services.** Marketing Services may be provided in accordance with an applicable Purchase Order or with a Proposal. You acknowledge that nothing in this Agreement shall restrict or limit us from performing similar services for any third-party. You agree to cooperate and work in good faith with us to enable us to timely perform marketing Services, including, without limitation, by timely responding to our inquiries, providing reasonably requested materials, and providing access to personnel as shall be reasonably required.

**2.10. Reviews.** If you subscribe for a Service that enables the collection of reviews, you acknowledge that the reviewer retains ownership of the review, and has granted us a license to use and display such review through the applicable Service with right to sublicense to you. For the Term of an applicable Service for reviews, we hereby grant you a limited, non-exclusive, non-transferrable, and non-sublicensable, worldwide license to access and publicly display such review (a) on your website through our Service, (b) on other social media sites or print advertising material provided that you identify us as the collecting service. You acknowledge that your license to use and display such reviews terminates upon termination of the applicable reviews Service, therefore, you agree to immediately cease using or displaying such reviews upon termination of the applicable Service. You also acknowledge and agree that we may remove a review upon request of a reviewer at any time, and that we have the right, but not the obligation, to remove any review if we believe it violates our reviewer terms of use or the law. We may also remove your

response to any review if we believe that it is in violation of the usage restrictions set forth in this Agreement or against the law.

**2.11. Non-solicit.** Both Parties undertake, one with respect to the other, not to propose, directly and / or indirectly, the employment of the personnel of the other Party in the company or in companies associated with them, parent companies or subsidiaries during the term of the License and if at least 12 (twelve) months have not elapsed from the end date of the relationship regulated by the License.

**2.12. Bundled Services.** You agree that in the event you are provided with any bundled services from Milkman SPA, unless otherwise specified in an applicable Purchase Order, the terms and limitations of this Agreement apply to all products or services included in the bundle, including any free products or services, if applicable.

### **3. Content.**

**3.1. Your Content.** Except as specified in this Agreement or an applicable Purchase Order or in the Proposal, we acknowledge and agree you own all right, title and interest in, to and under Your Content. You grant to us a non-exclusive, royalty free, worldwide limited right to access, copy, store, record, process, transmit, display, view, print or otherwise use Your Content only to the extent necessary to provide the Services to you. We may access your accounts, including Your Content, to provide the benefit of the Services, respond to service or technical problems, confirm or enforce compliance with or resolve disputes relating to the terms of this Agreement, or comply with applicable law. You have sole responsibility for the accuracy, quality, integrity, reliability, legality, and ownership of Your Content. Notwithstanding any other provision in this Agreement, you agree that we may collect certain user registration and other statistical data for benchmarking, transactional, usage, or performance information purposes, such as user traffic, usage patterns, page impressions, activity levels, and other analytics for internal use or to be shared with third parties, provided that such information shall be in aggregate form, will not

include personally identifiable information, or otherwise individually identify you. You agree that all such aggregate, anonymized, analytical data is owned by us.

**3.2. Control of Your Content.** You control the inclusion and amount of Your Content that is stored in our Software Milkman through the use of the Services. You may access Your Content at any time through the use of the Software Milkman. You may correct, amend, add to or delete any part of Your Content by making any required changes directly through use of the Software Milkman. You acknowledge and agree that we are not responsible for the loss of Your Content. If you request the removal of any part of Your Content, we will assist you within a reasonable timeframe. In the event you request customer support which requires us to access your database, you acknowledge and agree that by making such a request, you are authorizing us to access your login credentials and database in order to effectuate such customer support. In addition, you understand and acknowledge that we may disclose Your Content and your contact and account information, to courts or law enforcement authorities, if such disclosure is required to respond to a court order, bring legal action or pursue other relief if you or a third party are or may be: (i) violating our terms and conditions of use; (ii) causing injury or other harm to, or otherwise violating our property or other legal rights, or those of other users or third parties; or (iii) violating any applicable law. Upon your request during any applicable Subscription Term and provided all fees due and payable have been paid, we will provide you with a backup of Your Content, at the then-current fee and in such medium or format as offered by us at that time.

**3.3. Sensitive or Special Categories of Personally Identifiable Information.** You understand that the Services and the Software Milkman are not designed or intended to store any regulated sensitive or special categories of personally identifiable information, such as credit card numbers, bank account information, social security or other personal tax identification numbers, medical or health related information, or personal information which reveals racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, sex life or sexual orientation,

genetic information or biometric data for the purpose of uniquely identifying a natural person. You agree not to enter any such sensitive or special categories of personally identifiable information into our Software Milkman, unless permitted to do so by applicable law. You further agree to remove any such sensitive or special categories of personally identifiable information if requested to do so by us, and we reserve the right to remove such sensitive or special categories of personally identifiable information if we become aware it is being stored with or without notice to you.

**3.4. Feedback.** Should, during the Subscription Term, works derived from the Licensed Software be created, then these shall remain the Milkman's property, and you shall renounce any and all possible rights in relation to his contribution. The sending of any Database provided by you to us will determine the non-exclusive attribution of each relative right, subject to the limits of unavailability relating to the individual components.

#### **4. Trademarks**

**4.1. Your Marks.** During the Subscription Term, you agree that we may refer to you as our customer and you hereby grant us the right to use your trademarks, trade names, trade symbols, and logos (collectively, "Your Marks") in connection with the marketing and promotion of the Services, or part thereof, on our website or otherwise. We will use Your Marks consistent with any published guidelines with respect to such use that you provide to us. Any and all goodwill associated with our right to use Your Marks hereunder automatically vests in you.

#### **5. Fees and Invoicing.**

**5.1. Fees.** You agree to pay all fees specified in your Purchase Order(s) and in the Proposal. Except as otherwise specified herein or in an applicable Purchase Order or

in the Proposal, (a) fees are based on Services purchased and not actual usage or on the amounts indicated in the Proposal, (b) payment obligations are non-cancelable and fees paid are non-refundable regardless of whether you have prepaid for any portion of the Service, and (c) quantities purchased cannot be decreased during the relevant Subscription Term.

## **6. Invoicing and Payment.**

6.1. You will provide us with valid and updated credit card information (or other payment arrangements acceptable to us). If you provide credit card information to us, you authorize us to charge such credit card for all Services listed in the Purchase Order or in the Proposal for the applicable Subscription Term, including any additional costs. Unless otherwise stated in the Purchase Order, such charges shall be made in advance in accordance with the billing frequency stated in the Purchase Order. If we have accepted payment by a method other than a credit card, we will invoice you in advance or otherwise in accordance with the relevant Purchase Order or Proposal. If we have accepted payment by a method other than credit card or other automatic payment method, we reserve the right to invoice you, and you agree to pay a handling fee of \$25.00 per transaction. You are responsible for providing complete and accurate billing and contact information to us and notifying us of any changes to such information. All fees or other amounts payable to us shall be paid in Euro currency, unless otherwise agreed to in writing or set forth in an applicable Purchase Order or Proposal.

6.2. Fees foreseen in the Proposal shall be paid within the terms set out therein. Unless otherwise stated in the Purchase Order, invoiced charges are due upon receipt. Unless otherwise stated in the Purchase Order, upfront billing consists of any one-time initial fees and/or the initial month of recurring billing for Services. Any one-time initial fees and/or the initial month of recurring billing will be invoiced and charged upon execution of an applicable Purchase Order. If the Purchase Order affects pricing related to any orders under any agreements or orders between the

parties entered into prior to the date of such Purchase Order, such adjustment will be taken into account upon execution of such Purchase Order.

6.3. If you are receiving a data conversion in connection with your Service, recurring billing (following the upfront billing) will start on the shorter of 30 days after the delivery date of the final data conversion or 60 days following the date of execution of the applicable Purchase Order. The start date of recurring billing will not be delayed by any post-conversion cleanup efforts.

6.4. If you purchase two or more Services that comprise a bundle and that bundle is priced as a bundle and not as individual Services, should you decide not to use any one or more of such Services in the bundle, or if you fail to provide content or anything else necessary to permit one or more Services in the bundle to be activated or performed as described, we may either charge for the payment of the full bundle price or charge for the individual Services on a non-discounted individual basis.

6.5. You authorize us to review your credit history and to obtain your credit report, and you agree that we may report to credit reporting agencies your failure to make payments as required by this Agreement.

## **7. Overdue Payments.**

7.1. If any invoiced amount is not received within thirty (30) days following the due date, then, without limiting our rights or remedies, we may (a) charge interest at the rate of one and a half percent (1.5%) of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, (b) suspend the Services to you until such amounts are paid in full and charge a one-hundred dollar (\$100.00) reactivation fee, (c) accelerate your unpaid fee obligations under the remainder of the Subscription Term for the applicable Service so that all such obligations become



immediately due and payable, and/or (d) condition future subscription renewals, increases in service levels or quantities, or Purchase Orders on receipt of all outstanding amounts. You agree that we may collect any amounts due pursuant to this paragraph by charging your credit card or by separate invoice without further authorization required from you.

**7.2.** You agree to bear any and all costs of collection incurred by us as a result of your late payment or nonpayment, including, without limitation, all reasonable attorneys' fees and expenses, insufficient funds charges, and any collection agency fees which we may incur, unless prohibited by law. In addition, if you dispute a credit card charge with your bank or credit card company and we receive a "chargeback" or other penalty fee, you agree to reimburse us for such chargeback or fee. You agree that we may collect any such costs of collection, chargeback, or other penalty fees by charging your credit card during the next payment cycle or by separate invoice without further authorization required from you. You will not be required to reimburse such chargeback or penalty fee if we have materially breached the terms of the Purchase Order to which the disputed payment relates or the terms of this Agreement, or if we have made an error in invoicing with respect to such disputed payment; provided, however, if you assert that we have materially breached such Purchase Order or this Agreement or the Proposal, you shall have provided us with written notice of such alleged breach at least ten days prior to the applicable charge date, stating the basis for such breach in reasonable detail to provide us the opportunity to cure such breach prior to such charge date.

**7.3. Taxes.** Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). You are responsible for paying all Taxes associated with your purchases hereunder. If we have the legal obligation to pay or collect Taxes for which you are responsible under this Section 7.4, we will invoice you and you will pay that amount unless you provide us with a valid tax exemption certificate authorized by the appropriate taxing

authority. For clarity, we are solely responsible for taxes assessable against us based on our income, property and employees.

## **8. Term and Termination.**

**8.1. Term of Agreement.** This Agreement and the related License commence on the date you first accept it and continues until all subscriptions for Services under all Purchase Orders under this Agreement have expired or terminated.

**8.2. Subscription Term and Renewals.** The Subscription Term shall be as specified in the applicable Purchase Order. Except as otherwise specified in a Purchase Order, subscriptions will automatically renew for twelve (12) months, unless either party gives the other written notice of non-renewal at least six (6) months before the end of the relevant Subscription Term. In any case, the contract shall not be terminated before 12 months have elapsed since the last Purchase Order was signed. Pricing during any renewal term is subject to increase at our discretion in an amount of up to five percent (5%) above the applicable pricing in the prior term, unless we provide you notice of different pricing at least sixty (60) days prior to the applicable renewal term. With respect to month-to-month terms, such increase will go into effect only on an annual basis. Except as expressly provided in the applicable Purchase Order, renewal of promotional or one-time priced subscriptions will be at our applicable list price in effect at the time of the applicable renewal. You hereby authorize us to charge your credit card or bank account, as applicable, the contract amount reflecting any such increase during each such renewal term.

**8.3. Termination.** We may suspend or terminate the use of a Service and/or terminate this Agreement upon written notice at least thirty (30) days before if: (a) you become the subject of a petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors, or (b) you breach any of your obligations under this Agreement or a Purchase Order related

to such Service and fail to cure such breach (if curable) within ten (10) days following our written notice of such breach to you, or (c) you fail to pay any amounts due to us with respect to a Service within thirty (30) days of due date. Upon any termination or expiration of this Agreement, you shall immediately pay all amounts due and payable to us through the effective date of termination or expiration.

As foreseen below, in case of denial of amendments you are entitled to terminate the contract early, in accordance with Section 11. 5 hereinafter. In this case, you still have to pay the Early Termination Fee reduced by half.

**8.4. Early Termination Fee.** As specified in the applicable Purchase Order, the Services are provided for a specified Subscription Term on noncancelable basis for the duration of the Subscription Term. You understand and acknowledge that in the event we terminate the use of any Service or this Agreement pursuant to section 8.3 above, early termination fees shall apply. Early termination fees are in addition to any other fees or amounts owed by you for any other Services. Early termination fees shall be computed based on the monthly fees due multiplied by the number of months remaining in the then current Subscription Term. Such early termination fees will be invoiced to you in one lump sum and will be due within thirty (30) days from the date of invoice. Early termination fees shall be deemed to be liquidated damages and not a penalty.

**8.5. Your Content Portability and Deletion.** Upon request by you made within thirty (30) days after the effective date of termination or expiration of any Service or this Agreement, and provided all fees due and payable have been paid, we will provide you with a backup of Your Content, at the then-current fee, in such medium or format as we determine. You agree that after such 30-day period we have no obligation to maintain or provide any of Your Content. We will retain Your Content only for as long as needed to provide the Services and satisfy other reasonable business purposes, such as complying with legal obligations, resolving disputes, or enforcing our agreements.

**8.6. Survival.** Provisions which by their terms are to survive expiration or termination of this Agreement, as well as the following sections, will survive the expiration or termination of this Agreement: Section 1 (Definitions), Section 3 (Content), Section 5 (Reservation of Rights), Section 6 (Trademarks), Section 7 (Fees and Invoicing), Section 8 (Term and Termination), Section 9 (Confidentiality), Section 10 (Warranties and limitation of liability), Section 10.3 (Exclusive Remedy) and Section 11 (General Provisions).

**8.7 Solve or repete.** Under no circumstances You may deny or delay payments at the agreed deadlines or default on the obligations set forth in the Agreement, alleging or raising any disputes relating to the correct fulfilment of the obligations provided by the Agreement itself, even in the event that the dispute has been timely and valid. In any case, the alleged failure to comply with the obligations indicated in the Agreement must be made known to the other Party within 48 hours of its discovery

## **9. Confidentiality.**

**9.1. Definition of Confidential Information.** “Confidential Information” means all information disclosed by a party (“Disclosing Party”) to the other party (“Receiving Party”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. For avoidance of doubt, your Confidential Information includes Your Content; our Confidential Information includes the Services; and Confidential Information of each party includes the terms and conditions of this Agreement and all Purchase Orders (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (b) was

known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (c) is received from a third party without breach of any obligation owed to the Disclosing Party, or (d) was independently developed by the Receiving Party.

**9.2. Use of Confidential Information.** The Confidential Information constitutes valuable trade secrets and proprietary information of the Owner. You agree that it shall use the Confidential Information solely in accordance with the Agreement. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (a) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (b) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement or any Purchase Order to any third party other than its affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its affiliate, legal counsel or accountants will remain responsible for such affiliate's, legal counsel's or accountant's compliance with this "Confidentiality" section. Notwithstanding the foregoing, we may disclose the terms of this Agreement and any applicable Purchase Order to a subcontractor or third-party to the extent necessary to perform our obligations to you under this Agreement, under terms of confidentiality materially as protective as set forth herein.

**9.3. Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance. If the Receiving Party is

compelled by law to disclose the Disclosing Party's Confidential Information, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

**9.4. Remedies for breaches.** In addition to any and all remedies provided herein and by applicable law, the User agrees that a suspected or perceived breach of the whole Section 9 could cause irreparable harm to the Disclosing Party and the Receiving Party accordingly agrees that the Disclosing Party is entitled to all legal and equitable relief, including but not limited to injunctive relief.

## **10. Warranty and Limitations of Liability.**

There is no warranty for the Service and the Software Milkman to the extent permitted by applicable law, except when otherwise stated in writing the copyright holders and/or other parties provide Software "as is" without warranty of any kind, either expressed or implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose. the entire risk as to the quality and performance of the program is with the User. Should the Service and the Software Milkman prove defective, the User will assume the cost of all necessary servicing, repair or correction. In no event unless required by applicable law or agreed to in writing will any copyright holder, or any other party who modifies and/or conveys the program as permitted above, be liable to you for damages, including any general, special, incidental or consequential damages arising out of the use or inability to use the program (including but not limited to loss of data or data being rendered inaccurate or losses sustained by you or third parties or a failure of the program to operate with any other programs), even if such holder or other party has been advised of the possibility of such damages. If the disclaimer of warranty and limitation of liability provided above cannot be given local legal effect according to their terms, reviewing courts shall apply local law that most closely approximates an absolute waiver of all civil liability in connection with the program, unless a warranty or assumption of liability accompanies a copy of the program in return for a fee. This clause is not implemented in cases of wilful misconduct or gross negligence. By

licensing the Service and the Software Milkman does so at his own risk and recognizes that it has been chosen due to his own preferences and guidelines.

## **10.1. Indemnification.**

**10.1.1. Indemnification.** You will defend us against any claim, demand, suit or proceeding made or brought against us by a third party alleging that any of Your Content infringes or misappropriates such third party's intellectual property rights, or that your use of the Services or of the Software Milkman or Your Content violates any third-party agreement or applicable law (each a "Claim Against Us"), and you will indemnify us from all costs, damages, settlements, liabilities, obligations, penalties, fines and other expenses (including, without limitation, reasonable attorney's fees and expenses) incurred by or awarded against us, arising out of, relating to, or as a result of, a Claim Against Us, provided we (a) promptly give you written notice of the Claim Against Us (provided any delay shall not relieve your indemnification obligation hereunder except to the extent such delay materially prejudices your ability to defend such Claim Against Us), (b) give you sole control of the defense and settlement of the Claim Against Us (provided that you may not settle any Claim Against Us unless such settlement consists solely of the payment of money damages by you and unconditionally releases us of all liability, and provided further that we shall have the right to control the defense of such Claim Against Us if such Claim Against Us seeks injunctive action or other non-monetary damages), and (c) provide you with reasonable cooperation and assistance (with any out of pocket expenses to be borne by you). You agree that we may, at our sole expense, engage one outside counsel to participate in a consultative capacity in any Claim Against Us in which you control the defense.

**10.1.2. Exclusive Remedy.** This Section 10.1. states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section 10.1.

## **11. General Provisions.**

**11.1. Export Compliance.** Export laws and regulations of the European Union and any other relevant local export laws and regulations apply to the Services. You agree that such export laws govern your use of the Services (including technical data) and of the Software Milkman and any Services deliverables provided under this Agreement, and you agree to comply with all such export laws and regulations. You agree that no data, information, software programs and/or materials constituting or resulting from Services (or direct product thereof, such as Software Milkman) will be exported or made available to, directly or indirectly, any EU government denied or not approved party or otherwise in violation of these laws.

**11.2. Anti-Corruption.** You represent and warrant that you have never been subject to any disciplinary action relating to fraud or corruption by any governmental authority, and that you have never been the subject of litigation alleging any violation of the Criminal Code, Book II, Title II, Articles 314-360, either alone or in conjunction with applicable Articles from D.Lgs. 231/2001 or any other anti-corruption applicable law. Should the User is U.S. Citizen, it shall be compliant also with Foreign Corrupt Practices Act of 1977 (the "FCPA"). You will not, in violation of any applicable anti-corruption laws, offer or give any gratuity to induce any person or entity to enter into or perform under this Agreement. You will not, in the conduct of your performance under this Agreement, and with regard to any funds, assets or records relating thereto, offer, pay, give or promise to pay or give, directly or indirectly, any payment or gift of any money or thing of value to (i) any public official to influence any acts or decisions of such official or to induce such official to use his or her influence with the public administration to effect or influence the decision of such public official in order to assist a party in its performance of its obligations under the Agreement or to otherwise benefit a party under this agreement; (ii) any political party or candidate for public office for such purpose; or (iii) any person, if you know or have reason to know that such money or thing of value shall be offered, promised, paid or given,



directly or indirectly, to any official, political party or candidate for such purpose. You agree that you have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of our employees or agents in connection with this Agreement or any Purchase Order or previous Proposal. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If you learn of any violation of the above restriction, you shall promptly notify us at [generalcounsel@milkman.it](mailto:generalcounsel@milkman.it).

**11.3. Entire Agreement and Order of Precedence.** This Agreement, the eventually previous Proposal and all related Purchase Orders represent the entire agreement between you and us regarding your use of the Services and the Software Milkman's License, and supersede all prior and contemporaneous agreements, proposals or representations, written or oral, concerning the subject matter thereof. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (a) the applicable Purchase Order (including any supplemental amendments, addendums, schedules, exhibits, or appendices attached thereto or executed in connection therewith), (b) any product-specific additional terms and conditions (with any more product-specific additional terms and conditions superseding any more general additional terms and conditions), (c) this Agreement, and (d) any published documentation or service descriptions.

**11.4. Severability and Waivers.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect. No failure or delay by either party in exercising any right under any provision of this Agreement or any Purchase Order will constitute a waiver of that right.

**11.5. Amendments.** You acknowledge that the software-as-a-service and internet-related industries are continually evolving and changing, and you agree that we have the right to establish terms for the continued use of the Services and the Software Milkman. Accordingly, we reserve the right to modify the terms of this

Agreement from time to time with notice to you. If you will continue to use the Services and the Software Milkman without objecting to the new terms notified, it constitutes agreement to any such modification. In order to refuse the changes, you are required to give notice to Milkman within 10 days. In this case, you earn the right to terminate the Agreement immediately, but you still have to pay the Early Termination Fee reduced by half.

On your part, you may not modify or amend this Agreement without our prior written consent.

**11.6. Assignment and No Third-Party Beneficiaries.** You may not assign this Agreement, by operation of law or otherwise, without our prior express written consent. This Agreement inures to the benefit of and is binding upon the parties, and their permitted successors, assigns, and legal representatives. No other person has any right, interest, or claim or is entitled to any benefits under this Agreement as a third-party beneficiary or otherwise.

**11.7. Relationship of the Parties.** The Parties are independent contractors, and this Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties.

**11.8 Governing Law and Exclusive Jurisdiction.** The Agreement shall be interpreted and construed according to and governed by the Italian law without giving effect to any conflicts of laws and principles that would require the application of the laws of a different jurisdiction. The Parties agree that the exclusive jurisdiction of such suits shall be the Courts of Milan, Italy. Each Party consents to and submits to the personal jurisdiction and venue of such courts.

**11.9. Force Majeure.** Neither of us shall be responsible for failure or delay of performance if caused by an act of war, act of terrorism, sabotage, act of God, electrical, internet, or telecommunication outage, government restrictions (including

the denial or cancellation of any export, import or other license), or other event outside the reasonable control of the obligated party provided that such failure or delay shall be excused only for so long as the affected party is using reasonable efforts to cure, correct, and/or mitigate the effect of a force majeure event.

**11.10. Notice.** Except as otherwise specifically authorized herein, all notices required to be sent hereunder shall be in writing and may be delivered by email, overnight courier, or certified mail, and shall be deemed to have been given (a) on the date sent by email, (b) on the date it was delivered by courier, or (c) five (5) business days following posting in the case of delivery by certified mail return receipt requested. Notices to you shall be sent to the attention of those persons you have designated in an applicable Purchase Order, through the Service, or otherwise. Notices to us shall be sent to the attention of the General Counsel at our address as listed from time to time on our website or to [generalcounsel@milkman.it](mailto:generalcounsel@milkman.it). For notices that are directed to you as part of our general customer base, we may give notice by means of a general notice on the Service or by email to your e- mail address on record in our account information.

The Agreement will be available on the website [completare] and will be transmitted to you before the Purchase Order subscription.

[Rev Date: 31/03/2020]