

Terms and Conditions

Software-as-a-Service (SaaS)-Vertrag

This SaaS Agreement (the "Agreement") is entered into the date of the date stated in the Order Form (the Effective Date"), between the entity using our application ("Subscriber", "Your", or "You"), and CL Sales & Management Ltd. with a place of business at 900 Chapel Street, New Haven, CT 06510 ("CloudLab", "Company", "We", "Us", or "Our"). For purposes of this Agreement, Subscriber and Company each will be referred to individually as a "Party" and together as the "Parties." For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Engagement; Services.

a) Grant. Company hereby grants the Subscriber identified on the Order Form attached hereto a limited, non-exclusive and non-transferable right to use and access, with the right of sublicense to its customers, during the Term, the Service, and to permit Authorized Users to use the Service, subject to the terms and conditions of this Agreement. All rights in the Service not expressly granted hereunder are reserved to Company.

b) Scope. Unless otherwise provided for in the Order Form, the right to use and access the Service granted to Subscriber hereunder is limited to a single, authorized Application for the display and retrieval of the Service on an Authorized User's desktop. The right to use and access the Service does not extend to multiple applications for the display or retrieval of content within the Services. Subscriber shall have no right pursuant to this Agreement to distribute the Service in whole or in part over the Internet, or via email or instant messaging, via an Intranet, personal digital assistant, wireless application protocol, short message service or radio system. An enhanced right encompassing such applications is available as a supplement to this Agreement. Nothing in this Agreement shall obligate Company to continue providing use or access to any Service beyond the date when Company ceases providing such Service to subscribers generally.

c) Restrictions Use. Unless otherwise provided for in the Order Form, Subscriber shall not edit, alter, abridge or otherwise change in any manner the content of the Service, including, without limitation, all copyright and proprietary rights notices. Subscriber may not, and may not permit others to:

(i) reverse engineer, decompile, decode, decrypt, disassemble, or in any way derive source code from, the software or Service;

(ii) modify, translate, adapt, alter, or create derivative works from the Service;

(iii) use the Service in an unlawful manner;

(iv) copy (other than one back-up copy), distribute, publicly display, transmit, sell, rent, lease or otherwise exploit the Service; or

(v) distribute, sublicense, rent, lease, loan [or grant any third party access to or use of] the Service to any third party.

2. Definitions.

- (a) “Agreement” shall mean these terms and conditions, the Order Form, and any written amendments signed by both parties;
- (b) “Application” shall mean the application used by Subscriber for the Service hereunder;
- (c) “Authorized Users” shall mean Subscriber’s employees and independent contractors working for Subscriber in the ordinary course of Subscriber’s business who: (i) agree to be bound by the terms of this Agreement; and (ii) are specifically authorized by Subscriber to use and access the Service;
- (d) “Billing Start Date” shall mean the date identified on the Order Form as the date from which billing shall be calculated (which under no circumstances shall be later than the Service Start Date, as defined below);
- (e) “Service(s)” shall mean information applications, products, or software subscribed to by Subscriber hereunder and as identified on an Order Form or Task Order;
- (f) “Service Start Date” shall mean the date from which Subscriber receives the applicable Service;
- (g) “Fees” shall mean the fees payable pursuant to Section 3 hereof;
- (h) “Order Form” shall mean the attached Order Form that sets out certain commercial terms and is executed by the parties;
- (i) “Term” shall mean the period identified in the Order Form, or any renewal term, as applicable;

3. Fees and Payment.

- a) Fees. In exchange for the access and usage rights granted herein, commencing on the Billing Start Date, Subscriber shall pay Company for the Term hereof the Fees, payable in advance, based on the Services and the number of Stores identified in the Order Form, and on any other commercial terms contained in this Agreement. Subscriber shall inform Company of any increases in the number of Stores no later than seven (7) days after the date of such increase and the Order Form will be deemed amended accordingly.
- b) Late Payments. If Subscriber fails to pay the Fees by the due date specified on the invoice, Company shall be entitled to interest from the day on which the Fees are due. Both parties agree that the rate of interest on overdue invoices shall be the lesser of the highest rate of interest permitted by law or 1.5 percent per month. Additionally, Company may suspend Services until all Fees, including interest on overdue invoices, have been paid by Subscriber.
- c) Taxes. Subscriber will be responsible for, and will promptly pay or reimburse Company for, the payment of all sales, use, excise, value-added or similar taxes, assessments, or duties (or other similar charges) imposed by any governmental agency (including any interest and penalty imposed thereon as a result of any act or omission of Company that is in accordance with the direction or request of Subscriber) that are based on or with respect to any Services or goods provided by Company to Subscriber, or the amounts payable to Company therefore.
- d) Currency. All Fees payable under this Agreement are payable in United States Dollars (USD) and are exclusive of taxes Subscriber is responsible for under Section 3(c).

4. Professional Services.

During the term of this Agreement, Subscriber may request Company to perform professional services in the nature of software development, customization add-in, modifications, documentation and/or integration services (hereinafter, "Professional Services"). Upon receipt of a request, Company may provide Subscriber with a written proposal, and when the parties agree to all requirements of the proposed Professional Services, a Task Order for the Professional Services, shall be executed by the parties. All Task Orders shall be subject to the terms and conditions of this Agreement. Services performed by Company are not exclusive to Subscriber, and Company may perform services of any type or nature for any other person or entity at any time.

5. Access.

- a) Access to Services. Subscriber is responsible for each of its Authorized Users' acts and omissions and remains liable to Company for any Authorized User's (including an authorized third party acting as a Authorized User on Customer's behalf) breach of the Agreement. Subscriber is responsible for generating a "User ID" and password to access the Services and must keep such User ID and password secret and not make it available to any third party.
- b) Network/System Compatibility. Subscriber is solely responsible for ensuring that its network and computer systems comply with all specifications required to connect to the Services.

6. Audits and Inspections.

For the purpose of verifying compliance with this Agreement, Company (and Company's authorized representatives) shall have the right, during normal business hours upon reasonable advance notice and without material disruption to Subscriber's business, to audit and inspect from time to time Subscriber's offices, books and records relevant to the Service and to observe the use made of the Service. If Company's records pursuant to this Section or otherwise indicate that (i) more Stores are accessing the Service than Subscriber has paid for, or (ii) more Services are being accessed than Subscriber has been billed for, Subscriber shall pay Company the shortfall in Fees retrospectively to the date of the applicable increase. If such underpayment exceeds five (5) percent of the Fees due during the relevant period, Subscriber shall reimburse Company for Company's reasonable costs associated with such audit or inspection.

7. Mergers and Acquisitions.

For the purpose of verifying compliance with this Agreement, Company (and Company's authorized representatives) shall have the right, during normal business hours upon reasonable advance notice and without material disruption to Subscriber's business, to audit and inspect from time to time Subscriber's offices, books and records relevant to the Service and to observe the use made of the Service. If Company's records pursuant to this Section or otherwise indicate that (i) more Stores are accessing the Service than Subscriber has paid for, or (ii) more Services are being accessed than Subscriber has been billed for, Subscriber shall pay Company the shortfall in Fees retrospectively to the date of the applicable increase. If such underpayment exceeds five (5) percent

of the Fees due during the relevant period, Subscriber shall reimburse Company for Company's reasonable costs associated with such audit or inspection.

8. Copyright Protection; Use Restrictions; Security.

Subscriber agrees that the Service, including without limitation the editorial coding and metadata contained therein, are the property of Company, its affiliates, or its licensors. *The software, images, text, designs, and all other works and databases included in the content of the Service are owned by Company, its affiliates, or its licensors and are protected by applicable copyright laws.* Subscriber agrees that only Authorized Users shall be permitted access to the Service. Except as set forth herein, no clients or other persons or entities who are not legal employees of Subscriber or independent contractors consulting for Subscriber in the ordinary course of Subscriber's business may be Authorized Users. Subscriber shall not reverse engineer, decompile or disassemble any part of the Service. Subscriber further agrees that neither Subscriber nor any Authorized User shall store (except solely as may be permitted under this Agreement), copy, reproduce, retransmit, disseminate, sublicense, sell, distribute, publish, broadcast, circulate, create derivative works (including, without limitation, trading algorithms), test algorithms in conjunction with, or distribute by any means the Service in whole or in part to anyone, including, but not limited to, other employees of Subscriber, without Company's express prior written consent; provided, however, that Authorized Users may on an occasional basis in the normal course of business include limited portions of the Service (a) in oral and (with proper attribution to the respective Service) non-electronic written communications with clients and other employees, and (b) in email and instant messaging communications with other employees and/or securities professionals. Without limiting the foregoing, under no circumstances shall distribution under this Section by Subscriber be permitted if such distribution may be viewed as a substitute for a subscription to the Service itself. Subscriber agrees that when using the Service in this way, the facts, content and intent of the Service will not be changed in form or in spirit or otherwise in any way be prejudicial to the integrity of the Service or Company.

9. Disclaimer.

SUBSCRIBER ACKNOWLEDGES AND AGREES THAT THE SERVICE(S), THE CONTENTS THEREIN, AND ANY ACCOMPANYING DOCUMENTATION ARE PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS AND COMPANY DOES NOT MAKE ANY AND HEREBY SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS, ENDORSEMENTS, GUARANTEES, OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

10. Indemnification.

a) Subscriber Infringement Indemnity. Subscriber, at its expense, will defend, indemnify, and hold Company, its affiliates, directors, officers, licensors, employees, agents, contractors, successors and assigns ("Company Indemnitees") harmless from and against any and all third party claims for damages (whether ordinary, direct, indirect, incidental, special, consequential, or exemplary), judgments, liabilities, fines, penalties, losses, claims, costs, and expenses including, without

limitation, reasonable attorneys' fees, finally awarded by a court of competent jurisdiction, after all rights of appeal are exhausted, against Company or Company Indemnitees which relate to a claim, action, lawsuit, or proceeding made or brought against Company or Company Indemnitees by a third party alleging the infringement or violation of such third party's intellectual property rights (each a "Company Claim") by way of Subscriber's, sub-licensees, or Authorized Users' unauthorized or misuse of any Service.

b) Company Infringement Indemnity. Company, at its expense, will defend, indemnify, and hold Subscriber harmless from and against any and all third party claims for damages (whether ordinary, direct, indirect, incidental, special, consequential, or exemplary), judgments, liabilities, fines, penalties, losses, claims, costs, and expenses including, without limitation, reasonable attorneys' fees, finally awarded by a court of competent jurisdiction, after all rights of appeal are exhausted, against Subscriber which directly relate to a claim, action, lawsuit, or proceeding made or brought against Subscriber by a third party alleging the infringement or violation of such third party's intellectual property rights (each a "Subscriber Claim") by way of Subscriber's authorized use of the Service that Company provides to Subscriber.

11. Limitation of Liability.

COMPANY AND ITS SUBSIDIARIES, AFFILIATES, SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES AND LICENSORS ("THE PARTIES") WILL NOT BE LIABLE (JOINTLY OR SEVERALLY) TO SUBSCRIBER, AUTHORIZED USERS, OR ANY THIRD PARTY, FOR INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST SAVINGS AND LOST REVENUES (COLLECTIVELY, THE "EXCLUDED DAMAGES"), WHETHER OR NOT CHARACTERIZED IN NEGLIGENCE, TORT, CONTRACT, OR OTHER THEORY OF LIABILITY, EVEN IF ANY OF THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN ANY OF THE EXCLUDED DAMAGES, AND IRRESPECTIVE OF ANY FAILURE OF AN ESSENTIAL PURPOSE OF A LIMITED REMEDY. IN NO EVENT WILL THE LIABILITY OF THE COMPANY ARISING OUT OF ANY CLAIM RELATED TO THIS AGREEMENT EXCEED THE AGGREGATE AMOUNT PAID BY SUBSCRIBER HEREUNDER IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IF ANY APPLICABLE AUTHORITY HOLDS ANY PORTION OF THIS SECTION TO BE UNENFORCEABLE, THEN THE COMPANY'S LIABILITY WILL BE LIMITED TO THE FULLEST POSSIBLE EXTENT PERMITTED BY APPLICABLE LAW. SUBSCRIBER WILL INDEMNIFY, DEFEND AND HOLD HARMLESS COMPANY FOR ANY LOSS, DAMAGE OR COST IN CONNECTION WITH ANY CLAIM OR ACTION WHICH MAY BE BROUGHT BY ANY THIRD PARTY AGAINST COMPANY RELATING TO ANY BREACH OF THIS AGREEMENT BY SUBSCRIBER.

12. Term; Early Termination.

This Agreement shall become effective when Subscriber signs the Order Form and, unless terminated earlier in accordance herewith, shall continue from the Billing Start Date for the period specified in the Order Form. This Agreement shall automatically renew for subsequent like terms unless either party gives the other written notice of its intention not to renew no later than thirty (30)

days prior to the end of the then-current term. For the avoidance of doubt: (i) in the event Subscriber executes the Order Form after the Billing Start Date then this Agreement will be deemed effective from the Billing Start Date, and (ii) in the event Subscriber receives the Service before the Order Form is executed, then this Agreement shall be deemed effective from the Service Start Date. Modifications in any ongoing Fees in connection with direct access to a Feed shall be communicated to Subscriber no later than ninety (90) days prior to their effective date, and such modified Fees shall be deemed to replace those previously stated in the Order Form. This Agreement may be terminated as follows: (a) if either party commits a material breach of any provision of this Agreement, including nonpayment of Fees, and fails to remedy such breach within thirty (30) days of receiving written notice thereof by the non-breaching party ("Notice of Breach"), the party giving such notice may then deliver a second written notice to the breaching party terminating this Agreement, in which event this Agreement, and the rights granted hereunder, will terminate on the date specified in such second notice; (b) by Company for convenience by providing Subscriber with thirty (30) days written notice; (c) by Company without prior notice if Company has reason to believe that its intellectual property rights (or the intellectual property rights of its licensors or a third party) have been or are being infringed; or (d) if a receiver is appointed over any assets of either party or if either party makes any arrangement with its creditors or becomes subject to an administration order or goes into liquidation or anything equivalent to the foregoing under any jurisdiction or ceases to carry on business, the other may terminate by giving written notice with immediate effect. If this Agreement is terminated before the end of its then current term for any reason other than by Subscriber under Clause 12 (a) or (d), or Company under Clause 12(b), then Subscriber will pay to Company as liquidated damages the amount due by Subscriber for the previous calendar month times the number of months remaining in such Term ("Liquidated Damages") within 30 days after such termination. The parties agree that the Liquidated Damages under this clause are not intended to be and will not be punitive in effect and that the Liquidated Damages are a genuine pre-estimate of loss (which may be difficult to ascertain) resulting from early termination of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, if Subscriber receives any notice of late payment under this Agreement in any form, written or electronic, from Company including any business division (*e.g.*, Company' Credit Department), such notice will be deemed to be a Notice of Breach.

13. Confidentiality.

Subscriber and Company understand and agree that in the performance of this Agreement each party may have access to private or confidential information of the other party which either is marked as "confidential" or the receiving party should reasonably know under the circumstances that such information is confidential and/or proprietary information of the other party. Each of us shall hold such information in confidence and not, without the consent of the other, disclose it to a third party or use it for any purpose other than in performance of this Agreement. This obligation of confidentiality shall not apply to information that is generally available to the public through no act or omission of the receiving party or becomes known to the receiving party through a third party with no obligation of confidentiality, or is required to be disclosed by law, court or by any government or regulatory authority. If any Confidential Information is required to be disclosed by statute, rule, regulation or order of any court of competent jurisdiction, before any such disclosure the receiving party will provide notice to the disclosing party reasonably sufficient to allow the

disclosing party the opportunity to apply for a protective order or other restriction regarding such disclosure. If either party elects to file this Agreement with the U.S. Securities and Exchange Commission or any other securities exchange or market, regulatory authority or other body, the filing party will provide the non-filing party, no less than five (5) business days before the expected date of the filing (the “Filing Date”), a copy of the Agreement marked to show the sections for which the filing party plans to seek confidential treatment. The filing party agrees to expand its confidential treatment request to include those provisions of this Agreement reasonably indicated by the non-filing party before the Filing Date as provisions for which the non-filing party requests confidential treatment. All confidential information will remain the exclusive property of the owner. No public announcement, press release or communication concerning this Agreement shall be made without the prior consent of the other party.

14. Miscellaneous.

a) Notice. All notices to a party hereunder shall be in writing, and delivered by certified mail, return receipt requested, overnight courier service, or by facsimile with confirmation by the above described mailing methods to the address(es) set forth on the Order Form, or to a different address which a party may give written notice of pursuant to this Section from time to time. Notice will be deemed delivered and received on the date it is actually received.

b) Customer List. Subscriber consents to Company listing Subscriber as a customer and using Subscriber’s logo on its websites and portals in connection with the Services.

c) Amendment. This Agreement may not be amended except in a writing executed by authorized representatives of Subscriber and Company.

d) Assignment. This Agreement is not transferable, assignable, delegable, or sublicenseable by Subscriber in whole or in part, without the prior written permission of Company. This Agreement will be binding upon and inure to the benefit of the parties and their respective successors, trustees, administrators, and assigns.

e) Survival. All Subscriber payment obligations and Sections 6 – 14 shall survive the termination or expiration of this Agreement.

f) Independent Contractor. Company is acting in performance of this Agreement as an independent contractor. Neither Party, nor any of their respective affiliates, is an agent of the other for any purpose or has the authority to bind the other.

g) Binding Effect and Third-Party Beneficiary. Except if specifically stated in this Agreement, neither party, nor any of their respective employees or agents, will have the power or authority to bind or obligate the other party. Our suppliers, affiliates, and third party agents are express third party beneficiaries and may enforce their rights with respect to their intellectual property or confidential information which You may possess or use and with respect to limitations of liability, disclaimers, and indemnification related obligations set forth in this Agreement benefiting them with respect to You.

h) Compliance with Laws. Subscriber’s and its Authorized Users’ access to the Services will comply with applicable local, state, federal and international law, regulations and conventions,

including without limitation those related to data privacy, international communications and the exportation of technical or personal data.

i) Waiver of Rights. Except where specifically stated to the contrary, all remedies available to either party for breach of this Agreement under this Agreement, at law, or in equity, are cumulative and nonexclusive. A waiver or failure of either party at any time to require performance by the other party of any provision hereof will not affect the full right to require such performance at any time thereafter. All waivers by Us must be in writing to be effective.

j) Injunctive Relief. If Subscriber breaches any term of this Agreement, Company will be entitled, in addition to any other rights available under this Agreement or at law or in equity, to apply for immediate injunctive relief without any requirement to post a bond or other security and Subscriber acknowledges and agrees to not contest such application.

k) Severability. If any provision or portion thereof of this Agreement or its application in a particular circumstance is held to be invalid or unenforceable to any extent in any jurisdiction, such provision or portion thereof will, as to such jurisdiction only, be ineffective to the extent of such unenforceability, all other provisions and portions thereof of this Agreement will not be affected thereby and will be valid and enforced to the fullest extent permitted by law.

l) Choice of Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio without giving effect to the principles of conflict of laws. Any action brought by any party shall hereto shall be brought in Franklin County, Ohio.

m) Force Majeure. Any failure or delay by Company in the performance of its obligations pursuant to this Agreement will not be deemed a default or breach of the Agreement or a ground for termination to the extent such failure or delay is due to computer or Internet or telecommunications breakdowns, denial of service attacks, fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, pandemic, civil unrest, rebellions or revolutions in the United States or any nation where the obligations under this Agreement are to be executed, strikes, supplier and third party failure, lockouts, or labor difficulties, or any similar cause beyond the reasonable control of Company.

n) Electronic Signatures. This Agreement, any Work Order and other applicable agreements between the Parties are signed when a Party's signature is delivered by facsimile, email, or other electronic medium. These signatures shall be treated in all respects as having the same force and effect as original signatures.

o) Notices. Notices required or permitted to be given under this Agreement shall be addressed to the party identified as follows:

CloudLab Sales & Management GmbH

Gerberstrasse 1
44135 Dortmund
Deutschland (Germany)

p) Entire Agreement. This Agreement contains the final and entire agreement of the parties and supersedes all previous and contemporaneous verbal or written negotiations, understandings, or agreements regarding the Agreement's subject matter.

q) Exhibits. The following Exhibits are attached hereto and incorporated herein by this reference WHEREFORE, an authorized representative of each Party agrees to the terms of this Agreement.

Service Level and Support Services Agreement

Company will provide the Service to Subscriber, not including scheduled maintenance time. Scheduled maintenance time will not exceed five (5) hours a month. The Service and Work Products will function and be available as provided in this Agreement with the Uptime specified below. Measurement of CloudLab's actual performance under this Service Level and Support Services Agreement ("SLA") will exclude scheduled downtime, including, but not limited to, scheduled preventive maintenance, servicing of hardware, hardware upgrades, and software upgrades. Scheduled preventive maintenance will be at times designed to minimize or avoid disruption. Measurement of CloudLab's actual performance under this SLA will also exclude: (a) any matter beyond CloudLab's reasonable control, including, but not limited to matters constituting Force Majeure under the Agreement or by an excessive number of accesses by Subscriber; (b) failure by Subscriber's, its sub-licensees', or its third-party providers' to perform under the Agreement or this SLA; (c) failure of the data communications carrier lines between Subscriber and CloudLab; (d) unavailability of Subscriber's systems because of issue with Subscriber's local or wide area network or otherwise, including failure to have appropriate network redundant connectivity which adversely impacts CloudLab's ability to fulfill a service level; and (e) processing which occurs at a recovery facility as a result of a disaster. If one (1) or more of the above situations occur which causes CloudLab to miss a service level, CloudLab shall not be deemed to have not met a service level under this SLA. "Uptime" will mean that the Services will be available to Subscriber 99.5% of the time, subject to the exclusions herein. Company will provide the Appropriate Response Time for the Service as set forth herein. "Appropriate Response Time" will mean responding to an inquiry from Subscriber within eight (8) business hours from contact by Subscriber. Technical Contacts. During the Term and any renewal term of the Agreement, Company will make available a technical point of contact for Subscriber technical support inquiries. Deductions from Monthly Fees as a result of Service Level Non-Performance. If Company has failed to meet any of the Service Levels set forth herein, Subscriber will be entitled to receive deductions from its monthly fee as set forth below. Deductions are expressed as a percentage of Company's total monthly charges during the month in which the service deduction applies, with each section being applied separately against the total monthly charges and then the totals of each chart aggregated. Uptime. Company will provide an Uptime of 99.5% or better as provided herein. If Company's noncompliance is from 1% to 2%, Subscriber will be credited five (5) percent (5%) of its monthly fee. If noncompliance is above 2% the credit will be ten percent (10%) of the monthly fee.