



# SaaS Agreement

Version 2

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BEFORE USING LUWARE'S ("**LUWARE**", "**OUR**", "**US**", "**WE**") HOSTING SERVICES PLEASE READ THIS AGREEMENT ("**SAAS**", "**AGREEMENT**") CAREFULLY. BY USING THE SERVICES, YOU ("**CUSTOMER**") AGREE TO ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT YOU MAY NOT SUBSCRIBE TO OR USE THE SERVICES DESCRIBED HEREIN.

YOU HEREBY ACKNOWLEDGE AND AGREE THAT IT IS YOUR SOLE RESPONSIBILITY TO COMPLY WITH ALL THE LEGAL REQUIREMENTS IN THE COUNTRIES IN WHICH YOU ARE USING THE SERVICES.

LUWARE AG AS WELL AS ALL IT'S WORLDWIDE AFFILIATES MAY EACH ISSUE OFFER DOCUMENTS TO CUSTOMERS. INDIVIDUAL AGREEMENTS IN AN OFFER SHALL GOVERN OVER THE RESPECTIVE PROVISIONS OF THIS AGREEMENT ONLY WITH RESPECT TO THE INDICATED CLAUSE(S).

This Agreement, including any specific amendments thereto in an offer, is entered into by and between Luware AG (Pfingstweidstrasse 102, 8005 Zurich, Switzerland, CHE-115.547.880) and the Customer (hereinafter together also referred to as "**Parties**" or individually as "**Party**"). The Parties agree to the following terms and conditions concerning the provision of services under this Agreement and any subscriptions issued hereunder.

## 1 Definitions

"**Account Data**" means information, other than Customer Content and Business Contact Information, that Customer provides to Luware to enable Customer's use of the Services or that Luware collects using tracking technologies, such as cookies and web beacons, regarding Customer's use of the Services.

"**Additional Services**" means any services not included in the Services pursuant to the respective Subscription Type such as Initial Set-Up, changes to configuration and workflows.

"**Authorized User**" means the Customer itself or those of its employees who are authorized to use the Services according to the selected Subscription Type.

"**Business Contact Information**" means information of Customer, its personnel and Authorized Users, e.g., name, business telephone, address, email and user IDs, which Luware and its affiliates, and their contractors and sub processors, may, wherever they do business, store and otherwise process for business dealings with them. Where notice to or consent by the individuals is required for such processing, Customer will notify and obtain such consent.

"**Customer Content**" means any information or data (including Personal Data and Customer Personal Data) Customer or Authorized Users of Customer provide when using our Services.

"**Data Protection Law(s)**" are all applicable laws and regulations regarding the protection of Personal Data including, in particular, the General Data Protection Regulation (GDPR) (EU) 2016/679 (<https://gdpr-info.eu/>) and the data protection laws of Switzerland.

"**Customer Data**" is any information of Customer or its Authorized Users which they give to us or which comes into our possession otherwise, in accordance with this Agreement, during the provision of the Services.

**"Customer Personal Data"** is any information of Customer or its Authorized Users, which is processed under this Agreement relating to an identified or identifiable natural person, whereas identifiable means any natural person who can be identified, directly or indirectly.

**"Data Controller"** means the Party that determines the purposes and means of the processing of personal data.

**"Data Processor"** means the Party that processes personal data on behalf of the Data Controller.

**"Data Subject"** shall have the meaning given to it by the applicable Data Protection Laws.

**"Documentation"** means any written information or instruction that is given to Customer in connection with the provision of the Services or the respective Subscription Type, including in particular any requirements of the customer environment for the proper use of the Services.

**"Help Desk"** means Luware's support to the Customer for errors in the Services during the support hours stated hereunder. This can be accessed under support@luware.com.

**"Intellectual Property (IP)"** means and includes, to the extent recognized under applicable law, rights in software, including in particular source code and all related documentation, patents, patent applications, copyrights, trademarks, service marks, trade names, internet domain names, e-mail address names, trade secrets, moral rights, database rights, customer lists, design rights, know-how, techniques, processes, methods, inventions (whether patentable or not), conceptions, discoveries, improvements, chip designs, mask works, proprietary information, technical information, specifications, and all other rights of authorship and intellectual and industrial property rights, and other equivalent or similar rights which may subsist anywhere in the world, whether registered or unregistered, including any form of application for any of the foregoing.

**"Personal Data"** shall have the meaning given to it by the applicable Data Protection Laws.

**"Services"** means Luware's hosting services as well as any thereto related Documentation offered to Customer under the respective Subscription Type and during the Subscription Term.

**"Initial Set-Up"** means the first configuration of the Services provided by Luware to the Customer upon request at the beginning of the first Subscription Term.

**"Software"** means any software used to provide the Services hereunder and includes in particular the source code, database elements and accompanying documentation (operating manuals, instructions for installation and administration, technical literature and other documentation on paper and/or in electronic form).

**"Subscription Term"** means the initial 36 month term (unless otherwise agreed in an offer) as well as any subsequent renewal term of 12 months.

**"Subscription Type"** means the different types of Services offered by us to Customer from time to time on the Web-App.

**"Web-App"** means our web-app stratus.emea.luware.cloud under which we offer the Services.

## 2 Services

2.1 The Services offered by Luware are described on the Web-App from time to time and made available via a network. The Services include the provision Help Desk services and error elimination in the Web-App.

2.2 Customer can choose between different Subscription Types for an annual fee. The individual Subscription Types and their respective Documentation shall form an integral part of this Agreement.

2.3 Customer shall receive a limited, revocable, non-exclusive, non-assignable, royalty free, worldwide right to access and use the Services according to the chosen Subscription Type during the Subscription Term in accordance with the terms and conditions of this Agreement.

2.4 Customer acknowledges and agrees that this Agreement is a service agreement and that Luware will not deliver any copies or licenses of the Software to Customer as part of the provision of the Services described herein.

2.5 Customer shall ensure that only Authorized Users access the Services and that these Authorized Users comply with the provisions of this Agreement. Details regarding the authorization process are described on the Web-App from time to time.

2.6 Luware may, at its own discretion, change or discontinue the Services at any time subject to statutory legal provisions of the laws of Switzerland.

2.7 The Services are designed to be available 24/7, subject to maintenance. Customer will be notified of scheduled maintenance.

### 3 Restrictions

3.1 Luware, or if applicable its third party licensors, shall own all right, title, and interest in, to and under the Software used to provide the Services and to the Services provided to Customer hereunder, including all Intellectual Property Rights throughout the world therein, and Customer, its Authorized Users and its affiliates shall acquire no rights herein whatsoever. Customer shall only be entitled to use the Services in accordance with this Agreement and the Documentation during the Subscription Term. For the avoidance of doubt, no professional services provided to Customer shall be considered as creating new IP for Customer and Luware reserves any and all such IP rights thereunder (if any).

3.2 Customer shall not, and shall not permit anyone to (i) copy or otherwise reproduce the Services or Software; (ii) make the Services or Software available to anyone other than Authorized Users; (iii) modify, adapt, create derivative works of, reverse engineer, decompile, disassemble or otherwise interfere with the Services or Software; (iv) attempt to derive the source code of the Software used to provide the Services; (v) access or use the Services or Software to provide services to third parties; (vi) access the Services or Software in order to build a similar product that would violate Luware's IP; or (vii) license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose or otherwise commercially exploit or make the Software or Services available to any third party.

### 4 Customer responsibilities

4.1 **Payment of subscription fees.** Customer is responsible for the timely payment of the subscription fees according to clause 5 of this Agreement.

4.2 **Compliance with Laws.** Customer shall ensure its compliance, as well as compliance of all its Authorized Users, with the applicable laws and regulations. The Services may not be used in any jurisdiction for unlawful, obscene, offensive or fraudulent content or activity, such as advocating or causing harm, interfering with or violating the integrity or security of a network or system, evading filters, sending unsolicited, abusive, or deceptive messages, viruses or harmful code, or violating third party rights. If there is a complaint or notice of violation, use may be suspended until resolved, and terminated if not resolved promptly. Customer shall hold Luware and all its Affiliates, directors and employees harmless from and against any claims that may arise out of Customer's violation of the applicable laws and regulations.

4.3 **No unauthorized users.** Customer may access the Services only to the extent of authorizations acquired by Customer and it shall ensure that only Authorized Users may access the Services. In any

case, Customer is responsible for use of the Services by any user who accesses the Services with Customer's account credentials.

4.4 **Customer Content.** Customer is solely responsible for ensuring the correctness, accuracy and lawfulness of Customer Content and its appropriate protection and backup. Customer is responsible for obtaining all necessary rights and permissions to enable, and grants such rights and permissions to, Luware, and its contractors and subprocessors to use, provide, store and process Customer Content in the Services. This includes Customer making necessary disclosures and obtaining consent, if required, before providing individuals' information, including personal or other regulated information in such Customer Content. If any Customer Content could be subject to governmental regulation or may require security measures beyond those specified by Luware for an offering, Customer will not input, provide, or allow such Customer Content unless specifically permitted or unless Luware has otherwise first agreed in writing to implement additional security and other measures. Customer shall indemnify and hold Luware and all its Affiliates, directors and employees harmless from and against any claims that may arise out of or in connection with incorrect, inaccurate or unlawful Customer Content.

4.5 **Customer Environment.** Customer will provide hardware, software and connectivity to access and use the Services, including any required Customer-specific URL addresses and associated certificates. The Documentation on the Web-App may have additional Customer responsibilities.

4.6 **No Reselling.** Customer may not resell direct access to the Services to a third party outside Customer's enterprise or combine the Services with Customer's value add to create a commercially available Customer branded solution for which Customer charges a fee.

## 5 Subscription and payment

5. **Subscription.** Luware offers different Subscription Types to Customer. Customer acknowledges and agrees that the chosen Subscription Type is offered to it as described on the Web-App from time to time. Any such description and its corresponding Documentation shall be an integral part of this Agreement. Customer is responsible to assess the suitability of the chosen Subscription Type for Customer's intended use and Customer Content. By using the chosen Subscription Type, Customer acknowledges that it meets Customer's requirements and processing instructions. Customer acknowledges that Luware may modify the description of the Subscription Type and Documentation on the Web-App from time to time at Luware's sole discretion and such modifications will supersede prior versions.

5.2 **Help Desk.** Customer may contact the Luware's Help Desk via webchat Monday to Friday between 7am and 7pm CET excluding any public holidays in Zürich, Switzerland. Luware shall use its commercially reasonable efforts to offer support to the Customer during these times but does not guarantee the Help Desk support to be uninterrupted or that Luware will correct all errors reported.

5.3 **Initial Set-Up.** Up on request, Luware provides to Customer an initial configuration of the Services. Luware will offer a quote for such Initial Set-Up to Customer in accordance with the fees set out on the Web-App for Additional Services.

5.4 **Additional Services.** Customer may ask Luware to provide Additional Services during the Subscription Term. Customer can purchase hours /days for these Additional Services at the then-current rate provided on the Web-App. All prices stated are exclusive of any VAT. The purchased number of hours/days are valid for 12 months as of date of purchase. No refund will be given for unused hours/days of Additional Services. Luware reserves the right to charge Customer for any reasonable expenses incurred by it during the provision of such Additional Services. Payment thereof is due within 30 days.

5.5 **Payment.** All payment under this Agreement is due within 30 days of date of invoice. Unless otherwise agreed in an offer, Luware takes all the payment due under the respective Subscription Type prior to the beginning of each Subscription Term and stores the payment information securely (fees may be invoiced if applicable for the respective Customer). Customer shall receive the log in details once cleared payment is received by Luware. Should Customer fail to pay any of the fees due, then Luware shall notify Customer giving it an extension period of 10 days after which Luware shall be entitled to suspend the provision of and access to the Services hereunder.

5.6 **Automatic renewal.** After the initial Subscription Term, the Subscription shall renew automatically every 12 months, unless either Party provides the other with no less than ninety (90) days' prior written notice of its intent not to renew. Payment is taken automatically before the beginning of a new Subscription Term (or invoiced to Customer if applicable). Luware will notify Customer should it not be able to take automatic payment and give to Customer an additional 10 days grace period after which the access to the Services will be withdrawn. Notwithstanding the foregoing, Customer shall remain liable for the payment of the applicable fees unless it has terminated the Subscription in accordance with the provisions of this Agreement.

5.7 **Taxes.** All fees payable under this Agreement are exclusive of any taxes and VAT. Each Party shall be responsible, as required by the applicable law, for identifying and paying all taxes, fees and charges that are imposed upon that Party or with respect to the transaction and payments under this Agreement.

5.8 **Fee Increase.** Upon expiration of the initial Subscription Term, the then-current list price for the chosen Subscription Type shall apply for each subsequent 12 month renewal term. Customer may request the then-current list price prior to the automatic renewal of the Subscription.

## 6 Warranties

6.1 Luware represents and warrants that it will provide the Services hereunder in a professional manner consistent with good industry practice and that the Services will perform substantially in accordance with the Documentation.

6.2 Other than in the scope of the agreed SLA between the Parties, Luware does not warrant or guarantee that the Services will be performing free of errors or uninterrupted or that Luware will correct all errors in the Services or that it will prevent third party disruptions or unauthorized third party access.

6.3 These warranties are the exclusive warranties from Luware and replace all other warranties, including implied warranties, if any, or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose. Luware warranties will not apply if there has been misuse, modification, damage not caused by Luware, Customer failure to comply applicable law and regulations or with instructions and Documentation provided by Luware, or if otherwise stated. Non-Luware services are sold under the Agreement as-is, without warranties of any kind. Third parties may provide their own warranties to Customer.

6.4 The warranty for a chosen Subscription Type ends when such Subscription Term ends.

## 7 Disclaimer

THE SERVICES HEREUNDER ARE PROVIDED "AS IS". EXCEPT TO THE EXTENT EXPRESSLY STATED HEREUNDER, PROHIBITED BY THE APPLICABLE LAW, OR TO THE EXTENT ANY STATUTORY RIGHTS APPLY THAT CANNOT BE EXCLUDED, LIMITED OR WAIVED, LUWARE AND ITS AFFILIATES (I) MAKE NO

REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE SERVICES OR ANY THIRD PARTY CONTENT; AND (II) EXCLUDE ALL WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF (a) MERCHANTABILITY, QUALITY OR FITNESS FOR A PARTICULAR PURPOSE; (b) THAT THE SERVICES WILL BE UNINTERRUPTED, FREE OF ERRORS OR HARMFUL COMPONENTS OR THAT LUWARE WILL CORRECT ALL ERRORS; AND (c) THAT THE CUSTOMER CONTENT WILL BE SECURE OR NOT OTHERWISE LOST OR ALTERED.

## 8 Limitations of Liability

EACH PARTY'S AND ITS AFFILIATES' TOTAL AGGREGATE LIABILITY FOR DIRECT DAMAGES RESULTING FROM IT'S FAILURE TO PERFORM ITS OBLIGATIONS HEREUNDER OVER THE TERM OF THE AGREEMENT SHALL BE LIMITED TO THE SUBSCRIPTION FEE ACTUALLY PAID FOR THE RESPECTIVE SUBSCRIPTION TERM DURING WHICH THE CLAIM AROSE. NEITHER PARTY OR IT'S AFFILIATES SHALL BE HELD LIABLE FOR ANY INDIRECT, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOST PROFIT, REVENUE, BUSINESS, VALUE, CUSTOMERS, OPPORTUNITIES, ANTICIPATED SAVINGS, GOODWILL, REPUTATION, USE OR DATA). LUWARE SHALL NOT BE RESPONSIBLE FOR ANY DAMAGES ARISING IN CONNECTION WITH CUSTOMER'S INABILITY TO USE THE SERVICES. THESE LIMITATIONS APPLY COLLECTIVELY TO EACH PARTY, ITS AFFILIATES, CONTRACTORS, SUBPROCESSORS, AND SUPPLIERS.

## 9 Indemnification

9.1 If indemnification claims are asserted against Customer in connection with the Services provided under this Agreement based on an alleged violation of third party patents or copyrights, Luware shall defend, at its own cost and expense, and hold Customer harmless against all direct losses, damages and expenses (including reasonable lawyer's fees) finally awarded to such third party by a court or agreed to in a written settlement, to the extent arising from the claim, provided Customer (i) has notified Luware in due course of the asserted claims; (ii) takes all reasonable and feasible actions to help defend against the claims; (iii) supplies information requested by Luware; (iv) allows Luware to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts; and (v) does not consent to entry of any judgement or settlement without the Indemnifying Parties' prior written consent.

9.2 Notwithstanding the foregoing, Luware shall have no liability for any claim resulting from (i) Customer Content, items not provided by Luware and/or use of non-Luware products and services; (ii) any modification of the Services or Software by Customer or its Authorized Users; (iii) the use of the Services or Software by Customer or its Authorized Users other than in accordance with the Documentation and this Agreement; or (iv) any violation of law or third party rights caused by Customer Content, materials, designs, or specifications.

9.3 If the Customer is legally prohibited from using the Services or Software, Luware can, at its own discretion, either (i) obtain a right of use in favor of Customer for the purposes of this Agreement; (ii) amend affected Services or Software appropriately and without unreasonable impact on Customer; (iii) exchange affected Services or Software with a different Services or Software that enables Customer a use within the means of this Agreement and without unreasonable impact on Customer; or (iv) reimburse Customer for payments already made, starting from the time where the affected Services or Software could no longer be used for reasons of infringement.

## 10 Confidentiality

10.1 **“Confidential Information”** is all information of any nature whatsoever (including, but not limited to, business, employee, client, customer or any other data, trade secrets, business and/or financial records and operations, products, processes, methodologies, specifications, know-how, technical information, intellectual property rights, opportunities, marketing and sales activities, software specifications, costs and prices, wage rates, content of discussions and negotiations), in whatever form, format or medium (including, but not limited to, written, oral, electronic, audio and video), that one Party (**“Disclosing Party”**) discloses to or otherwise comes into possession of the other Party (**“Receiving Party”**) whether directly or indirectly as a result of the provision of Services under this Agreement. Confidential Information does not need to be specifically identified as "confidential" or "secret" in order to be classified as Confidential Information. Information is also confidential if by its nature a reasonable person would believe it to be confidential. Confidential Information shall not include information that the Receiving Party can prove:

- (i) was disclosed to a person who is subject to a professional duty of confidentiality, such as lawyers or accountants, to the extent that such disclosure is reasonable and necessary for the regular course of business or for the purpose of this Agreement;
- (ii) to have been in the public domain on the date of disclosure to a third party;
- (iii) to have been lawfully and appropriately obtained by it from a third party that has no obligation of confidentiality;
- (iv) has come into the public domain otherwise and without any wrongdoing of the Receiving Party;
- (v) was independently created by it without reference to the Confidential Information of the Disclosing Party; or
- (vi) is required to be disclosed by mandatory applicable law.

10.2 In addition, Luware may disclose Customer Content to Luware employees, contractors, and subprocessors, to the extent necessary to deliver the Services.

10.3 Both Parties, their Affiliates and, if applicable, Authorized Users shall treat any Confidential Information in a strictly confidential manner and neither convey or disclose such Information to any third party nor use it for purposes other than the purposes of this Agreement or the proper provision of the Services. This duty shall survive the termination of this Agreement.

10.4 Both Parties shall procure that appropriate contractually binding confidentiality undertakings have been entered into between each party and its employees and, if applicable, its Authorized Users that are substantially equivalent to those set out in this Agreement. The confidentiality undertakings shall survive the termination of this Agreement.

10.5 The Receiving Party is prohibited from using the Confidential Information outside the purpose of this Agreement. It agrees to restrict disclosure of or access to the Confidential Information to those employees and, if applicable, third parties who need to know the Confidential Information for the purpose of this Agreement.

10.6 The Confidential Information is disclosed “as is”. No representations or warranties, express or implied, are made by either Party as to the accuracy, reliability, completeness or reasonableness of the Confidential Information.

10.7 Both Parties shall promptly delete permanently and securely any Confidential Information so that it is no longer retrievable or deliver it to the Disclosing Party together with all the copies in any form and in any media at the Receiving Party’s power, possession or control promptly upon termination



or expiration of this Agreement or upon request by the Disclosing Party unless such deletion is prohibited by the applicable laws.

## 11 Data protection

11.1 Luware ensures full data integrity of Customer Data and Customer Personal Data in accordance with the applicable Data Protection Laws from time to time. Some of Luware's data protection measures can be found under [https://luware.com/public/docs/TOM\\_EN.pdf](https://luware.com/public/docs/TOM_EN.pdf). Additionally, a Data Protection Whitepaper for some of the Services can be provided together with an offer.

11.2 If Customer includes, or authorizes others to include, Personal Data in the Customer Content, Customer represents that it is either the Data Controller or that it has, prior to agreeing to this Agreement or extending the benefit of the Services to any other Data Controller, been instructed by or obtained the consent of the relevant Data Controllers to enter into this Agreement. Customer appoints Luware as a Data Processor to process such Personal Data. Customer will not use the Services in conjunction with Personal Data to the extent that doing so would violate Data Protection Laws.

11.3 Both Parties agree to abide to, and Customer shall ensure that its Authorized Users abide to, the applicable Data Protection Laws. Customer shall be the Data Controller with regards to the Customer Personal Data it or its Authorized Users provide to Luware during the provision of the Services and Luware shall be the Data Processor in relation thereto.

11.4 Customer shall, if applicable, procure, and be able to demonstrate that it has obtained, a valid consent from the Data Subject and that the Data Subject has been informed of its right to withdraw such consent before the processing of its Personal Data.

11.5 Upon request by either party, Luware, Customer or their affiliates will enter into additional agreements as required by law in the prescribed form for the protection of Personal Data included in the Customer Content. The parties agree (and will ensure that their respective affiliates agree) that such additional agreements will be subject to the terms of this Agreement.

11.6 Customer acknowledges and agrees that Luware may require to process Customer Personal Data in connection with the Services. By submitting Customer Personal Data to Luware, Customer agrees that Luware and its Affiliates may process and store such Personal Data to the extent necessary to, and to the sole purpose of, enabling Luware to provide the Services in accordance with this Agreement and, if applicable, in accordance with the written instructions given by Customer from time to time. Luware shall in due course notify Customer if it considers that it is required by law to act other than in accordance with the instructions of Customer.

11.7 Luware shall only process Customer Personal Data for the purposes of this Agreement and the proper provision of the Services hereunder. Luware arranges for, and is able to demonstrate, that any system on which it keeps Customer Personal Data, including back up data, is secure and ensures full data integrity in accordance with the data security requirements and good industry practice.

11.8 The Parties arrange for that their internal organization is set up in a way that enables them to comply with the applicable Data Protection Laws and good industry practice and that the technical and organizational measures taken provide appropriate protection regarding confidentiality, integrity, availability and capacity of the respective systems. Both Parties ensure that Personal Data and, if applicable, Customer Personal Data are only disclosed to or accessible by those employees or third parties who need to have access to it for the proper use or performance of the Services.

11.9 Luware shall be entitled to make back-up copies of the Customer Personal Data where this is required for the proper performance of the Services or by the applicable laws and regulations.

11.10 Luware shall not transfer Customer Personal Data to third parties save where authorized or instructed by the Customer in writing or where required by the applicable Data Protection Laws or requested by competent governmental authorities.

11.11 Luware shall in due course, and in any event within twenty-four (24) hours, notify Customer in the event that it becomes aware of any breach of the applicable Data Protection Laws which may impact the safety of the Customer Personal Data in its possession.

11.12 Customer agrees that Luware may transfer Customer Personal Data across a country border, including outside the European Economic Area (EEA). In such a case, Luware shall, wherever possible, anonymize that Personal Data so it is no longer classified as Personal Data. Should such an anonymization not be possible, the parties or their relevant affiliates shall enter into separate standard unmodified EU Model Clause agreements in their corresponding roles pursuant to EC Decision 2010/87/EU (as amended or replaced, from time to time) with optional clauses removed.

## 12 Term and termination

12.1 This Agreement shall be valid for the time during which Customer is using the Services. Customer subscribes to the Services for the duration of the initial Subscription Term of 36 months (or as otherwise agreed in an offer) after which the subscription shall renew automatically according to the provisions of clause 5 of this Agreement unless terminated by either Party giving the other no less than ninety (90) days' prior written notice. Customer is not entitled to terminate the subscription during a Subscription Term and shall be liable for the timely payment of the fees applicable to it.

12.2 Luware may suspend, revoke or limit Customer's use of the Services if Luware determines there is a material breach of Customer's obligations, a security breach, or violation of law. If the cause of the suspension can reasonably be remedied, Luware will provide notice of the actions Customer must take to reinstate the Services. If Customer fails to take such actions within a reasonable time, Luware may terminate the Services.

12.3 The right to terminate the Subscription to the Services immediately according to the applicable statutory law shall not be affected.

## 13 Miscellaneous

13.1 **Assignment.** Neither Party may assign this Agreement or any rights resulting from this Agreement, without the prior written consent of the other Party. Either Party may however assign this Agreement to a successor of all or substantially all of the business of such Party whether by merger, asset sale or otherwise. This Agreement shall be binding upon and inure to the benefit of the Parties' successors. Assignment of Luware's rights to receive payments or assignment by Luware in conjunction with the sale of the portion of Luware's business that includes the Services is not restricted.

13.2 **Notices.** Luware shall send notices of amendments under this Agreement via Email to Customer and Customer shall be required to consent to the new terms by ticking the box provided.

13.3 **Severability.** If individual clauses of this Agreement are either fully or partially unlawful, invalid, or for any other reason unenforceable, the validity of the remaining clauses of the Agreement shall not be affected. The Parties are obliged to cooperate in good faith to replace such invalid clauses with clauses which the Parties would have wanted at the time of conclusion of the Agreement and which come as close to the invalid clause as possible.

13.4 **Agreement.** This Agreement, including its Annexes and Web-App links (as amended or replaced, from time to time), shall be deemed the entire agreement between the Parties and shall supersede any previous agreements or communications (whether oral or in writing) by the Parties concerning the subject matter of this Agreement.

13.5 **Independence of the Parties.** Nothing in this Agreement shall be deemed an agency, partnership or any other corporate or fiduciary relationship between the Parties. Both Parties are independent and neither Party shall be responsible of the acts or omissions of the other Party or its personnel except as provided otherwise in this Agreement.

## 14 **Applicable law and jurisdiction**

This Agreement and its annexes shall be subject to the laws of Switzerland under the exclusion of the UN Convention on Contracts for the International Sale of Goods. Place of jurisdiction is Zurich subject to mandatory legal provisions.