

General Terms and Conditions

for the SaaS Solution advatra

as of January 1, 2022

The provisions of these General Terms and Conditions (hereafter referred to as the "GTCs") shall apply to all contracts for software as a service (SaaS Solution), maintenance and other consulting services between the supplier as stated on the corresponding proposal and the customer. The GTCs shall apply to the exclusion of all other terms and conditions. Any contractual terms and conditions of the customer which are contrary to or inconsistent with these GTCs shall not be recognized by the supplier, unless the supplier expressly agrees in writing that they shall apply. These GTCs shall remain in effect even if the supplier fully performs contractually agreed services in the knowledge that the customer's contractual terms and conditions are contrary to or inconsistent with these provisions. The GTCs shall also apply to future transactions, even if they are not expressly referred to.

Recital

(A)

The Supplier provides the Software as a Service solution advatra (the SaaS Solution).

(B)

The Customer is in the business of destination management (the Business).

(C)

The Customer intends to use the SaaS Solution for its Business and the Supplier is willing to provide the SaaS Solution under the terms subject to the terms and conditions of the GTCs.

1 Definitions and Interpretation

1.1 Definitions

Capitalised words and expressions used in the GTCs have the meaning set out below, unless the context requires otherwise.

Affiliate

means any person which is Controlled by, Controls or is under common Control with, such person, from time to time;

GTCs

has the meaning given in the introduction of the GTCs;

Applicable Plan

has the meaning given in Clause 2 of the GTCs;

Business

has the meaning given in Recital (B) of the GTCs;

Business Day

means a day (other than a Saturday, a Sunday or a public holiday) on which banks are open for business in [Lucerne], Switzerland, other than for internet banking services only;

Confidential Information

has the meaning given in Clause 14 of the GTCs;

Control

means, with respect to the relevant person, (i) the direct or indirect ownership or control of more than 50% (fifty per cent) of the (a) ownership interests or (b) voting power at the general meeting or a similar body, of that person, or (ii) the right or ability to (a) appoint or remove or (b) direct the appointment or removal of, such number of the members of the management board or a similar body of that person with decisive voting power in such body;

Customer

has the meaning given in Recital (B) of the GTCs;

Force Majeure Event

Force Majeure Event means any event beyond the reasonable control of the party affected by such event, including without limitation fire beyond the reasonable control of the party affected, storm, weather, earthquake, explosion, strike (other than the affected party's personnel), war, riot, civil disturbance, epidemics, pandemics, material change to any applicable state or national law, decree or ordinance, or any executive or judicial order, which event directly causes a party to delay or fail to perform under the GTCs;

Initial Term

has the meaning given in Clause 13 of the GTCs;

IP Rights

means all trademarks, service marks, logo's, trade and business names, rights in designs, patents, copyrights, database rights, moral rights and rights in know-how and other intellectual property rights in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world;

Price List

has the meaning given in Clause 2 of the GTCs;

Renewed Term

has the meaning given in Clause 13 of the GTCs;

SaaS Solution

has the meaning given in Recital (A) of the GTCs;

Service Fees

has the meaning given in Clause 3 of the GTCs;

Supplier

has the meaning given in Recital (A) of the GTCs;

User

has the meaning given in Clause 2 of the GTCs;

Web-App

has the meaning given in Clause 2 of the GTCs.

1.2 Interpretation

In the GTCs, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa, and each gender includes the other genders;
- (b) except as otherwise provided in the GTCs, references to any time of day are to the time on that day in Switzerland;
- (c) references to Recitals, Clauses, Schedules or Annexes are to recitals, clauses, schedules or annexes of the GTCs, and references to the GTCs include the Recitals, Schedules, Annexes and other attachments to the GTCs;
- (d) a reference to a person includes any natural person, corporate body, governmental entity or any other entity, whether or not having separate legal personality;
- (e) references to any Swiss legal term or concept shall in any jurisdiction other than Switzerland be construed as a reference to the term or concept which most nearly corresponds to it in that jurisdiction;
- (f) English terms to which another language translation has been added in italics shall be interpreted in accordance with such other language translation, disregarding the English term to which such other language translation relates;
- (g) the words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”.

Headings and sub-headings in the GTCs are inserted for convenience only and shall not affect the interpretation of the GTCs.

Except as otherwise provided in the GTCs, all periods of time set out in the GTCs shall start on the day following the day on which the event triggering the relevant period of time occurred. The expiration date shall be included in the period of time. If the expiration date is not a Business Day, the expiration date shall be the next Business Day.

All interest accruing under the GTCs is to be calculated on the basis of the actual number of days elapsed and a year of 360 (three hundred sixty) days.

All notices, demands, requests, statements, certificates and other documents and communications related to the GTCs shall be in English.

No provision of the GTCs shall be interpreted against a Party solely as a result of the fact that such Party was responsible for drafting such a provision.

2 Provision of Services

In accordance with the terms and conditions of the GTCs and the applicable plan as set forth in Schedule 1 (the **Applicable Plan**), the Supplier hereby agrees to provide the Customer with the SaaS Solution.

The SaaS Solution provided to the Customer by the Supplier shall be made available to the Customer via internet.

The Supplier shall grant the Customer access to the SaaS Solution through a web application (the **Web App**).

The Supplier shall provide the Customer with a Web App user management for a limited number of users (the **Users**) in accordance with the Applicable Plan.

The Customer shall assign a User to one specific Customer's employee only.

The Customer is responsible and shall ensure that the Users keep secure and confidential any user identification, password and any other confidential information provided by the Supplier to the Customer for the secure use of the Web App. The Customer shall immediately inform the Supplier in case of any unauthorized use of the Web App or the SaaS Solution or any other security attack.

The Customer shall immediately remove the access rights of any User that ceases to be an employee of the Customer.

3 Service Fees

For the provision of the SaaS Solution the Customer shall pay to the Supplier the service fees as set forth in the Applicable Plan (the **Service Fees**).

Unless otherwise specified the Service Fees are exclusive of any tariff, duty, or tax (including value added taxes or any similar taxes), however designate, levied, or based, that are charged over or applicable to the Service Fees and/or the payment thereof.

All payments to be made hereunder shall be made in Euro by way of electronic transfer in immediately available funds on or before the due date for payment and for the same day value.

If the Customer defaults in the payment, when due, of any sum payable under the GTCs, it shall pay interest at an interest rate of 5% (five per cent) per year on that sum from the date on which payment is due up to and including the date of actual payment, which interest shall accrue from day to day and be compounded monthly.

4 Warranties

4.1 General

The SaaS Solution is provided to the Customer “as is” without warranty of any kind, neither express nor implied.

The Supplier reserves its right to amend the SaaS Solution, the Web App, and the hosting solution from time to time.

The following warranties are expressly excluded from the GTCs: merchantability, fitness for a purpose, non-infringement of third party’s IP Rights, uninterrupted and error free service, accessibility, security, or any quality standard.

4.2 Availability of the SaaS Solution

The Supplier will use its commercially best efforts to make the SaaS Solution accessible to the Users 24-hours per day, 7 days per week, excluding downtime for ordinary and emergency maintenance and repair. However, the Supplier does not give any warranty in relation to the availability of the SaaS Solution and shall not be liable for any interruption of the SaaS Solution.

Downtime for ordinary maintenance and repair are usually scheduled outside of normal working hours and are communicated to the Customer reasonably in advance.

5 Support

5.1 Ticketing Portal

The Supplier shall provide support to the Customer via its ticketing portal on Business Days from 08:00 to 12:00 and from 13:30 to 17:00 CET or CEST (as the case may be). During these times the Supplier shall respond within 24 hours and take the necessary measures as soon as its current resources allow.

5.2 Scope

The Supplier’s support shall only cover issues in relation to non-functioning features of the SaaS Solution and shall explicitly exclude (without limitation) any issue created or caused by the use of the SaaS Solution by the Customer or the Users or by the hardware of the Customer.

5.3 Additional Support

The Parties may separately agree that the Supplier shall provide additional support to the Customer against additional compensation.

6 Intellectual Property

6.1 Ownership

All IP Rights subsisting in or relating to or arising out of the SaaS Solution including the Web App, the SaaS Solution and/or software of or provided by the Supplier in whole or in part are owned by the Supplier or its licensors (if any) and the Customer shall not be entitled thereto.

6.2 License

The Supplier grants to the Customer a non-exclusive, non-transferable, limited license to access the Web App and use the SaaS Solution solely for its Business.

6.3 Restrictions

The Customer may only exercise the license granted in Clause 6.2 through its Users. The Customer may not rent, lease, sell, transfer (by sublicense, assignment or otherwise, time share, modify, reproduce, copy (except to the limited extent that Customer is granted legal rights, which parties cannot deviate from, to perform such activities by applicable law), make derivative works from, distribute, publish, or publicly display the Web App, the SaaS Solution and/or software of or provided by the Supplier in whole or in part. Except to the limited extent that Customer is expressly granted legal rights, which parties cannot deviate from, to perform such activities by applicable law, Customer may only use the Web App, the SaaS Solution and/or software of or provided by the Supplier for its Business. Customer may not reverse engineer, decompile or otherwise attempt to discover the source code for the Web App, the SaaS Solution and/or software of or provided by the Supplier (except to the limited extent that Customer is granted legal rights, which parties cannot deviate from, to perform such activities by applicable law). Customer may not permit any person or entity to breach the restrictions in this Clause 6.3. Except to the limited extent that Customer is granted legal rights, which parties cannot deviate from, to perform such activities by applicable law, Customer may not copy or re-create for the Web App, the SaaS Solution and/or software of or provided by the Supplier without the Supplier’s prior express written consent. Except to the limited extent that Customer is granted legal rights, which parties cannot deviate from, to perform such activities by applicable law, Customer agrees that the Web App, the SaaS Solution and/or software of or provided by the Supplier must remain at all times in the Supplier’s servers, and may not be removed or copied to any other location at any time.

7 Implementation

The Customer is solely responsible for purchasing, installing, and maintaining, at the Customer's expense, any third party software and hardware necessary for the Users to access the Web App and the SaaS Solution. The Supplier shall not be liable for any such third party software or hardware.

8 Suspension of Services

The Supplier shall be entitled to suspend the provision of the SaaS Solution to Customer if Service Fees or other amounts due to the Supplier are not paid in accordance with the provisions of the GTCs.

9 Outsourcing

The Supplier reserves the right to locate the servers and other equipment needed to provide the SaaS Solution either at its facilities or at the facilities of independent, reliable and recognized service providers, provided the data centers are located within Switzerland or the European Union. The Supplier may change the location of the servers and other equipment needed to provide the SaaS Solution to Customer at any time during the term of the GTCs.

The Supplier shall be entitled to fulfill any of its obligations under the GTCs through subcontractors and/or service providers.

10 Data Protection

Each Party shall treat all personal data in accordance with all applicable laws, regulations, regulatory requirements and codes of practice in connection with the processing of personal data pursuant to the GTCs.

11 Indemnity

The Customer shall indemnify and hold harmless the Supplier and its officers, directors and employees for and against all actions, claims, demands, liabilities, losses, costs, fees (including reasonable and properly incurred fees of legal counsel and other external advisers) and other reasonable and properly incurred expenses suffered or incurred by or imposed upon or instituted against the Supplier by any party in connection with the use of the Web App and the SaaS Solution (including the processing of personal data) by the Customer, the Users and or third-parties through use of the access information of any User to the extent not caused or contributed by the Supplier by wilful intent (*rechtswidrige Absicht*) or gross negligence (*Grobfahrlässigkeit*).

12 Liability

Regardless of any other provision in the GTCs, and to the fullest extent allowed by applicable law, any liability of the Supplier towards the Customer or third parties shall be excluded. In any case, the Supplier shall not be liable in the aggregate for any amount

exceeding 15% of the Service Fees actually paid by the Customer under the GTCs.

13 Term and Termination

The agreement shall commence on the date of the GTCs and is concluded for a period of two (2) years (the **Initial Term**). Upon expiry of the Initial Term, the term of the agreement shall automatically be extended for subsequent periods of one (1) year (each a **Renewed Term**) unless terminated by either Party at the end of the Initial Term or a Renewed Term upon three months' notice to the other Party.

The Supplier shall not be under the obligation to support the Customer in any migration of the Customer's data.

Expiration or termination of the agreement for whatever reason shall not prejudice the provisions which by their nature must be deemed to survive termination.

The termination of the agreement does not affect a Party's rights in connection with any breach of the GTCs by the other Party which may have occurred prior to termination of the agreement.

14 Confidentiality

The Parties undertake to keep strictly confidential during the term of the agreement and for a period of five years following termination or expiration of the GTCs, the existence and contents of the GTCs as well as any and all documents and information in relation to the GTCs including the SaaS Solution that have become known to the Parties or to which they have obtained access (**Confidential Information**), and to not to disclose any Confidential Information to third parties, except:

- (a) if required by applicable laws or regulations or by any subpoena or similar legal process;
- (b) in connection with the exercise of any remedies or the enforcement of rights hereunder;
- (c) with prior written consent of the other Party;
- (d) is already known to one Party, other than under an obligation of confidentiality, at the time of disclosure by the other;
- (e) is subsequently disclosed to the recipient Party without any obligation of confidence by a third party who has not obtained it directly or indirectly from the other Party;
- (f) is or becomes generally available to the public or otherwise is or becomes part of the public domain after its disclosure other than through any act or omission of either Party or its agents, service suppliers or employees in breach of the GTCs;

(g) It is independently developed by employees of either Party without prior knowledge of the Confidential Information.

15 Miscellaneous

15.1 Force Majeure

Neither Party shall be liable under the GTCs for failure or delay in performance caused by a Force Majeure Event.

15.2 Assignment

The rights and obligations of a Party under the GTCs cannot be assigned, otherwise transferred (whether directly or indirectly) or encumbered, without the prior written consent of the other Party. Any purported assignment or transfer in breach of this Clause shall be null and void.

The Supplier is entitled to assign any and all rights and obligations under the GTCs to any of its Affiliates.

15.3 Entire GTCs

The GTCs represents the entire understanding, and constitutes the whole agreement, in relation to the SaaS Solution and replaces any prior agreement including undertakings, arrangements, offer letters, understandings or statements of any nature (whether or not in writing) between the Parties with respect thereto.

15.4 Waiver and Variation

Except as otherwise provided in the GTCs, no omission or delay on the part of any Party in exercising any right or remedy under the GTCs or by law shall be construed as a waiver thereof or of any other right or remedy, nor shall prejudice or impair any further exercise of such or any other right or remedy. Any single or partial exercise of any right or remedy under the GTCs or by law shall not preclude the further or any future exercise thereof or of any other right or remedy.

A waiver of any right or remedy under the GTCs shall only be effective if given in writing and executed by or on behalf of the Party giving the waiver, and shall not be deemed a waiver of any right or remedy in respect of any subsequent breach or default.

An amendment of or supplement to the GTCs shall only be valid if it is in writing or in e-mail form.

15.5 No third-party Beneficiaries

The GTCs is concluded for the benefit of the Parties and their respective successors and permitted assigns, and nothing in the GTCs is intended to or implicitly confers upon any other person any right, benefit or remedy of any nature whatsoever, except to the extent explicitly stated in the GTCs. In the event that any third party stipulation contained in the GTCs is

accepted by any third party, such third party will not become a party to the GTCs.

15.6 Severability

If any provision of the GTCs, or the application thereof to any Party or circumstance, is held to be illegal, invalid or unenforceable in whole or in part under any Law, then such provision shall to that extent be deemed not to form part of the GTCs and, to the extent reasonably possible, replaced by the Parties with a legal, valid and enforceable provision that, seen in the context of the GTCs as a whole, achieves as closely as possible the intention of the Parties under the GTCs, without affecting the legality, validity and enforceability of the remainder of the GTCs.

15.7 Notices

Any communication to be made under or in connection with the GTCs, including any notice to be given by a Party to the other Party or Parties, shall be in writing or per e-mail.

15.8 Counterparts

The GTCs may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

16 Governing Law and Jurisdiction

The GTCs and any non-contractual obligations arising out of or in connection with it shall be subject to and governed by Swiss substantive law, excluding its rules on conflict of laws and excluding international treaties (in particular the Vienna Convention on the International Sale of Goods dated 11 April 1980; CISG).

Any disputes arising out of or in connection with the GTCs, including disputes regarding its conclusion, binding effect, amendment and termination, shall be subject to the exclusive jurisdiction of the courts at the seat of the Supplier.

Nothing prevents a Party from requesting interim or protective measures from the relevant courts.