

# SERVICE TERMS

*Last Updated: 01.09.2023.*

The Service Terms contain the terms and conditions that govern Your access to and use of our Services and Professional Services and are an agreement between the applicable Contracting Party from which You purchase the Services or Professional Services (also referred to as “We,” “Us,” or “Our”) and You or the entity You represent (“You” or “Your”) ( We and You each a “Party” and jointly the “Parties”). These Service Terms shall apply to the use of the Services whether You have purchased the Services directly from Omnizon or through a Partner.

If You have subscribed to the Services on behalf of a business entity You represent that You have the authority to take those actions, and these Service Terms will be binding on that business entity.

## 1 Definitions

**“Affiliate”** means an entity, individual, firm or corporation that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control” for the purposes of this definition, means direct or indirect ownership or control of more than 50% of voting interests.

**“Availability”** (including the respective term **“Available”**) is calculated for each 15-minute interval as the percentage of requests successfully processed by Us. If you did not make any requests in a given 15-minute interval, that interval is assumed to be 100% Available.

**“Confidential Information”** means all code, inventions, know-how, business, technical and financial information and Personal Data that one Party (“Receiving Party”) obtains from the other Party (“Disclosing Party”); provided that such information is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be Confidential Information due to the nature of the information disclosed and the circumstances surrounding the disclosure; and provided further that any software, documentation or technical information provided by Omnizon (or its Partners), performance information relating to the Services, shall be deemed Confidential Information of Omnizon without any marking or further designation.

**“Customer”** means an entity that subscribes to the Services and with whom We have entered into an agreement regarding the use of the Services.

**“Customer Data”** means data and information that You input and update onto the Services and/or that We input, update, process, and store at Your request.

**“Documentation”** means all documentation and materials generally provided and made available by Omnizon in connection with the provision of Services.

**“Intellectual Property Rights”** or **“IP Rights”** means without limitation any patents and other rights to inventions, copyrights, trademarks, trade names, and service marks and any other intangible property rights and all related rights of use or commercialization.

**“Malicious Code”** means code, files, scripts, agents or programs intended to do harm, including but not limited to viruses, worms, time bombs and trojan horses.

**“Monthly Uptime Percentage”** is calculated as the average of the Availability for all 15-minute intervals within one month. Monthly Uptime Percentage measurements

exclude downtime resulting directly or indirectly from any SLA Exclusion (see Clause 6.5) or maintenance.

“**Omnizon**” means Omnizon Networks GmbH, a company established under the laws of Germany, registered with the commercial register of the local court of Munich under HRB 258921, with registered office at Lilienthalstrasse 1, 82178 Puchheim, Germany.

“**Omnizon Partner Agreement**” is a Marketing Partner Agreement or Technology Partner Agreement that the Partner signs with Omnizon.

“**Order Form**” means the relevant ordering document referencing or incorporating these Service Terms and reflecting the Services, Professional Services and Support purchased by You.

“**Partner**” means a legal entity who enters into an Omnizon Partner Agreement with Omnizon Networks GmbH which may act as a reseller – and may thus be Your contractual partner - with regard to Services provided by Omnizon.

“**Professional Services**” are any services agreed upon additional to the Services (including any training and implementation) indicated on any mutually agreed upon and executed SOW or other written document (such as a “Description of Professional Services” or Order Form) in exchange for the fees set forth therein.

“**Security Risk**” refers to a potential threat or vulnerability that could compromise the confidentiality, integrity, or availability of Our – or Our contractual partners’ - digital assets, systems, data, or operations. Security Risks may arise from various sources, including external attackers, internal negligence, software vulnerabilities, hardware failures and may lead to unauthorized access, data breaches, system disruptions, financial losses, and reputational damage.

“**Services**” means a cloud-based platform (software as a service) provided by Omnizon enabling You the development, execution and governance of integration flows connecting different combinations of on premises and cloud-based processes, services, applications and data within individual or across multiple organisations. Services are available in various levels of Service plans (also: Service packages), depending on the .

“**Service Credit**” is a EURO credit that we may credit back to an eligible account.

“**SOW**” means a Statement of Work between Omnizon or Partner and Customer with respect to the Services. SOW describes the scope, fees, nature and other relevant characteristics of any services being provided by Us or Our Partner to You as part of the Professional Services which shall be governed by the terms of the Agreement.

“**Subscription**” is Your right to use Our Services in line with these Service Terms (and as defined in more detail in Clause 2.1) by subscribing to certain plans of Services in exchange for the Subscription fee applicable to such Services for the entirety of the Subscription Term.

“**Subscription Term**” is a duration of a Subscription, an agreed time period that You can use and benefit from Our Services; the Subscription Term is determined by the individual duration that the Services are subscribed for by the Customer (e.g. monthly or annually).

“**Support**” means Our assistance to You while using Our Services. It also includes advisory, maintenance, upgrades, and troubleshooting.

“**Users**” means Your employees and contractors which are authorised by You to access and use Our Services.

## 2 Right of Use

2.1 **General.** Upon subscribing to Our Services and subject to these Service Terms, We grant You, and You accept, the nonexclusive, non-transferable and non-sublicensable right to access and use our Services solely to support the internal business operations of Yourself for the Subscription Term agreed upon (the “**Subscription**”), unless agreed

otherwise in writing. The individual Services to be provided to You and the duration of the Subscription Term are determined by the scope of the Services that You choose to subscribe to. The Subscription is subject to a Service fee.

**2.2 Evaluation Use.** If, due to a respective agreement, Our Services are to be used by You for evaluation purposes, or if access to Our Services is otherwise obtained from Us for evaluation purposes, such as a free trial or a proof of concept, You will be granted a right to use Our Services solely for Your own non-production, internal evaluation purposes (an "Evaluation Right"). Each Evaluation Right shall be valid for the period defined or agreed in the Service package which subject to the evaluation (subject to Our right to terminate the Evaluation Right in its sole discretion at any time) from the date of delivery of the credentials needed to access the applicable Services, plus any extensions We grant in writing (the "Evaluation Period"); in case no duration has been agreed or defined such Evaluation Period shall last up to 30 days at maximum. There is no fee for an Evaluation Right during the Evaluation Period, but You are liable for any fees associated with usage beyond the permitted scope. Notwithstanding anything otherwise set forth, You understand and agree that Evaluation Rights are provided "AS IS" and that We don't provide warranties or Support for Evaluation Rights unless explicitly agreed or determined otherwise with regard to the Evaluation Right.

**2.3 Use by Third Parties.** You may allow Your service vendors and contractors (each, a "Third Party User") to access and use Our Services made available to You hereunder solely for purposes of providing services to support the internal business operations, provided that You ensure that (a) the Third Party User's access to or use of Our Services is subject to the restrictions and limitations as per these Service Terms (b) the Third Party User cooperates with Us during any compliance review and (c) the Third Party User promptly removes any Software installed on its computer equipment, environment and the integrated system(s) upon completion of its need for access or use permitted by this section. You agree to be liable to Us for any acts and omissions of its Third-Party Users as if they were done or omitted by You.

### 3 Your Service Usage

**3.1 Limitation of use.** Except as otherwise permitted by an agreement or by mandatory law (meaning a law that the parties cannot change by contract), You must not, and must not allow Your Third Party Users (as defined in Clause 2.3), to do the following:

- i. Make (or permit to be made) Our Services available to or use the Services for the benefit of any person or entity aside from Your Users or authorised Third Party Users .
- ii. Sell, resell, licence, sublicense, distribute, rent, or lease the Services, or include the Services in a service bureau or outsourcing offering.
- iii. Use the Services to store or transmit infringing, libellous, or otherwise unlawful material, or store or transmit material in violation of third-party privacy rights.
- iv. Use the Services to store or transmit Malicious Code.
- v. Interfere with or disrupt the integrity or performance of the Services or third-party data contained within
- vi. Attempt to gain unauthorised access to the Services, its related systems and/or networks.
- vii. Permit direct or indirect access to or use of the Services or content therein in a way that circumvents a contractual usage limit.
- viii. Copy the Services or any part thereof, feature, function, or user interface.
- ix. Frame or mirror the Services or any part thereof, other than framing on Your own intranet or for own internal business purposes, or as permitted under these Service Terms
- x. Use the Services to create a competitive offering in a way that violates Omnizon 's IP-Rights.

- xi. Modify or create derivative works, or decompile, disassemble, reverse engineer, or otherwise attempt to derive source code from Our Services, in whole or in part, as long as and to the extent that such activities violate Omnizon's IP-Rights.
- xii. Reverse engineer the Services, as long as and to the extent that such activities violate Omnizon's IP-Rights.
- xiii. Use the Services for illegal activities including but not limited to fraud, money laundering, tax evasion or any other such illegal activity which is prohibited by the laws of the country where You and Your Third Party Users operate in and/or have an established business.
- xiv. Modify or remove any proprietary notices or markings on or in the Services.
- xv. Violate or circumvent any technological use restrictions in the Services.
- xvi. Share or publish the results of any benchmarking of the Services without Omnizon's prior written consent.
- xvii. Use the Services for high-risk activities, including without limitation online control systems, or use in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communications systems, air traffic control, life support, weapons systems or in any other device or system in which function or malfunction of the Services could result in death, personal injury or physical or environmental damage.
- xviii. Use the Services for activities related to weapons of mass destruction, including but not limited to, activities related to the design, development, production or use of nuclear materials, nuclear facilities, nuclear weapons, missiles, or support of missile projects, or chemical or biological weapons.

**3.2 Your responsibilities.** You are responsible for the following:

- i. Your Users' and Third Party Users' compliance with these Service Terms.
- ii. The accuracy, quality, and legality of Customer Data and how You acquired Customer Data. If you process personal data of Users or other identifiable individuals in your use of Our Service, you are responsible for providing legally adequate privacy notices and obtaining necessary consents for the processing of such data. You represent to us that you have provided all necessary privacy notices and obtained all necessary consents. You are responsible for processing such data in accordance with applicable law.
- iii. Using commercially reasonable efforts to prevent unauthorised use of the Services, providing immediate notice of any unauthorised third-party use of the Services and/or any event which might lead to unauthorised use of the Services.
- iv. Using the Services only according to the Service Terms and any other relevant Documentation that may apply, including all laws and government regulations that apply to You.
- v. Ensuring appropriate security measures are always in place to monitor, control, and prevent fraud in compliance with Your regulatory requirements.
- vi. Promptly notifying Us and Your relevant regulatory authority of any security breach, misuse, irregularity, suspected fraudulent transaction, or suspicious activities that may relate to attempts to commit fraud or other illegal activity through Your use of the Services.
- vii. Immediately notifying Us of any act, omission, or error which may adversely affect Your ability to perform Your obligations under the Agreement or cause loss or damage to Omnizon.

## 4 Our responsibilities

4.1 **General.** We will allow You to access and use the Services in accordance with these Service Terms. Additional Service Level Agreements may apply to certain Services.

4.2 **Security.** We will implement reasonable and appropriate measures designed to help you secure Customer Data against accidental or unlawful loss, access, or disclosure.

4.3 **Data Privacy.** We will not access or use Customer Data or content input by You except as necessary to maintain or provide the Services, or as necessary to comply with the law or a binding order of a governmental body. We will not (a) disclose Customer Data to any government or third party or (b) move Customer Data from our Services; except in each case as necessary to comply with the law or a binding order of a governmental body. Unless it would violate the law or a binding order of a governmental body, we will give you notice of any legal requirement or order.

4.4 **Notice of Changes to the Services.** We may decide to change or discontinue Our Services from time to time. In case We are materially altering or discontinuing a material functionality of a Service that You are using we shall provide you with a respective notice prior thereto. Such notice shall be sent at least 24 months prior to the planned changes or discontinuation becoming effective, but shall not be shorter than the remaining Subscription Term for the respective Service at the time of the notice.

Such notice period may be reduced to a reasonable shorter period – taking into account the reasonable factual and commercial interests of both Parties involved – in case the adherence to the above minimum notice period would (a) hinder Us to mitigate a security or intellectual property issue to Us or Our Services or (b) cause Us to violate legal requirements, or prolong such violation respectively. Such period We may change or discontinue Our Services from time to time. We will provide you at least 12 months' prior notice before discontinuing a material functionality of a Service that you are using, or materially altering except that this notice will not be required if the 12 shall not be shorter than the remaining Subscription Term for the respective Service at the time of the notice, unless Your consent is given.

4.5 **Our Personnel.** We are responsible for the performance of Our personnel (including Our employees and contractors) and their compliance with Our obligations under the Agreement and these Service Terms, except as otherwise specified. Nothing under these Service Terms shall be construed to establish employer-employee relationship between You and Our personnel.

4.6 **Service upgrades.** We reserve a permanent time window of 6 – 8 hours in every calendar week for regular maintenance and upgrades (the "Regular Maintenance Time"). The Regular Maintenance Time is currently scheduled for Sundays between 0:00 am and 6:00 am. The Regular Maintenance Time may be changed in duration (of up to 8 hours per calendar week) and point in time from time to time upon prior notice which will be published on Our website or by direct information to You. Apart from our regular maintenance to the Services, it may, from time to time, be necessary for Us to apply upgrades, patches, bug fixes, or other maintenance to the Services outside of the Regular Maintenance Time. We agree to use reasonable efforts to provide You with prior notice of any scheduled extraordinary maintenance (except for emergency maintenance which due to the severity of the incident does not allow for prior notice) via the communication channels regularly used for communication with You, and You agree to use reasonable efforts to comply with any maintenance requirements that We notify You about. Pre-notification of any maintenance shall be made at least 24 hours in advance.

## 5 Service Support

5.1 **Using support service.** We will provide support for the Services, depending on the level of support you have purchased. We do not provide support for any malfunction or difficulties in connection with Your use of any content or services You obtained from third parties.

In providing support, We will use reasonable efforts to:

- i. Respond within the response times set below for all properly submitted cases; and
- ii. Work to identify and resolve the cases submitted.

You may ask for support by sending an email to our Support via email to [support@omnizon.net](mailto:support@omnizon.net) to which You always have access.

When submitting a support case, We will classify the severity of the case based on Our reasonable opinion and as defined below.

5.2 **Response times.** All response times are measured from the point when a case has been properly submitted by You and We have confirmed that the case has been received. We will confirm that the case has been received within one hour of having received the relevant support request and according to Your level of support. We do not represent, warrant, or guarantee that:

- i. We will always be able to resolve a case fully.
- ii. You will no longer experience a problem; and
- iii. We will always be able to provide a bug fix, patch, or other workaround in connection with the identified problem.

The response time indicates the time in which we guarantee to start working to resolve the submitted case, after we have confirmed the receipt and confirmed the case.

We may change indicated response times, provided, however, that we shall provide an advance notice for any changes; such advance notice shall be sent at least 90 days in advance to such change, but shall not become valid before the end of the then current Subscription Term unless you give your consent to such change.

Our response times, according to the severity are as defined in the table below.

Severity	Description	Response time
<b>Urgent</b>	Production is down or there is a complete failure of the Services. Significant parts of the system are not accessible or are inoperable and there is no viable workaround.	1 hour
<b>High</b>	Functionality or performance of the Services is seriously degraded and impacting your daily operations. There is no viable workaround.	1 business day
<b>Medium</b>	Services are operational and a workaround for the issue is apparent. Functionality or performance of the system is not seriously degraded.	3 business days
<b>Low</b>	Your use of the Services is not affected but You have a proposal that would improve Your use of the Services that may be addressed in future releases at Our discretion	5 business days

## 6 Service level agreement ("SLA")

6.1 **Service levels.** We will use commercially reasonable efforts to make our Service Available to You with a Monthly Uptime Percentage of at least 99.99% (the "**Service Commitment**"). In the event We do not meet the Service Commitment, you will be eligible to receive a Service Credit as described below, provided that the services You provide to Your clients, customers or Users, or Your internal processes were affected by

such downtime of Our Services. Upon request We will provide You with a Monthly Uptime Percentage calculation statement in which the percentage of Availability for the applicable Service for a specific month is shown.

6.2 **Service Credits.** Service Credits are calculated as a percentage of the total charges paid by you for our Services for the monthly billing cycle in which the Service Commitment was not met, in accordance with the schedule below.

Monthly uptime percentage	Service Percentage	Credit
Less than 99.99% but greater than or equal to 99.0%	10%	
Less than 99.0% but greater than or equal to 95.0%	25%	
Less than 95.0%	50%	

6.3 **Credit Request.** To receive Service Credits, you will need to submit a claim by submitting a case to our Support, including the report on how Your service or processes was affected by the downtime of Our Services. To be eligible, the credit request must be received by Us within ten (10) business days after which the incident occurred. In order to be entitled to a Service Credit, respective claims must be made within ten (10) business days after the alleged service interruption or non-Availability. Such requests must be made in good faith and include details about the respective time and duration of the service interruption and how it affected You.

6.4 **Payment Procedure.** If the case submitted by You is generally eligible for a Service Credit, and the Monthly Uptime Percentage for the period to which such credit request refers shows to be below the Service Commitment, We will issue the Service Credit to You within one billing cycle following the month in which the credit request occurred. Your failure to provide the credit request within the respective period will disqualify You from receiving the respective Service Credit for that particular incident .

6.5 **SLA Exclusions.** The Service Commitment as defined in Clause 6.1 above does not apply in case the Availability of our Services to You was not affected; furthermore it does not apply to any unavailability, suspension, or termination of Services, or any other performance issues

- i. Caused by regular or pre-notified maintenance to the Services,
- ii. caused by factors outside of Our reasonable control, including any Force Majeure Event,
- iii. caused by problems with internet access or related problems beyond Our control,
- iv. that result from any actions or inactions by You (e.g., misconfigurations),
- v. that result from You not following the guidelines and best practices described in Our Documentation ,
- vi. that result from Your equipment, software, or other technology; or
- vii. arising from our Suspension or termination of Your right to use Our Service in accordance with the Service Terms.

If Our Availability is impacted by factors other than those explicitly quoted in our Monthly Uptime Percentage calculation statement, we may issue a Service Credit considering such factors at Our discretion and without any entitlement thereto.

6.6 **Notice of Changes.** We may change, discontinue, or add Service Level Agreements, provided, however, that we will provide advance notice for adverse changes to any Service Level Agreement; such advance notice shall be sent at least 90 days in advance to such change, but shall not become valid before the end of the then current Subscription Term unless You give your consent to such change.

## 7 Professional Services

7.1 **Scope and Retention.** We will provide Professional Services (including any training and implementation services) indicated on any mutually agreed upon and executed SOW or other written document (such as a “Description of Professional Services” on an Order Form) in exchange for the fees set forth therein (“Professional Services Fees”). Any SOW or other written document shall describe the scope, fees, nature, and other relevant characteristics of any Services being provided by Us to You as part of the Professional Services which shall be governed by the terms of the Service Terms, which shall apply *mutatis mutandis* also to Professional Services, unless agreed otherwise. We shall not be obligated to perform any Professional Services until both Parties have mutually agreed upon and executed a SOW or Order Form with respect to such Professional Services.

7.2 **Acceptance.** Both Parties agree to cooperate in good faith to achieve satisfactory completion of the Professional Services in a timely and professional manner. We will perform the Professional Services through qualified employees and/or non-employee contractors (“Subcontractors” and together with Our employees “Professional Services Personnel”).

You agree to provide, at no cost, timely and adequate assistance and other resources reasonably requested by Us to enable the performance of the Professional Services (collectively, “Assistance”). We, including Our Subcontractors, will not be liable for any deficiency in the performance of Professional Services to the extent such deficiency results from any acts or omissions of You, including, but not limited to, Your failure to provide Assistance as required hereunder.

In performing the Professional Services, We will utilize Professional Services Personnel as it deems necessary to perform the Professional Services or any portion thereof. You may object to Our use of a Subcontractor by specifying its reasonable objection to Us, in which case the Parties will cooperate in good faith to appoint another Professional Services Personnel to perform such Professional Services. We may replace Professional Services Personnel in its normal course of business, provided that We will be responsible for the performance of Professional Services by all Professional Services Personnel.

We will control the method and manner of performing all work necessary for completion of Professional Services, including but not limited to the supervision and control of any Professional Services Personnel performing Professional Services. We will maintain the number of qualified Professional Services Personnel and appropriate facilities and other resources sufficient to perform Our obligations under the Service Terms. Any Professional Services performed by us (“Deliverables”) shall be deemed accepted by You in accordance with the terms of the applicable SOW or Order Form unless you notify us of any defects within seven (7) business days after delivery in writing; in case of hidden defects such period shall be prolonged to a period of five (5) business days after detection of the hidden defect.



7.3 **Change Management.** After execution of a SOW or Order Form, the Professional Services to be provided under that SOW or Order Form may only be changed through a change order mutually executed by the Parties (“Change Order”).

7.4 **Warranties.**

We hereby represent that:

- i. Professional Services provided pursuant to the Service Terms will be performed in a professional manner by Us and Our Professional Services Personnel, consistent with generally-accepted industry standards; and
- ii. We are under no contractual or other restrictions or obligations which are inconsistent with the execution of the Service Terms, or, to Our best knowledge, which will interfere with Our performance of the Professional Services.

In case of any defect of the Deliverable we may, at Our option, re-perform the Professional Services at least twice in order to fix the defect.

7.5 **Ownership.** The Parties hereby agree that the specified Professional Services to be completed pursuant to any SOW or Order Form primarily involve the configuration of Your subscription to Services and integration of Your data with and into Our Services, and therefore the Deliverables are inoperative without an active subscription to Services. As between the Parties, We shall solely and exclusively own all right, title, and interest in the Deliverables, including all derivatives, enhancements and modifications thereof; and You hereby make all assignments necessary to accomplish the foregoing ownership. Subject to the terms and conditions hereof, We grant You a non-exclusive, non-transferable, non-sublicensable licence to use the Deliverables solely in connection with Your permitted use of the Services.

7.6 **Your Contribution.** Source code that is created by You in connection with the Professional Services and is specifically identified in a SOW is your contribution (“Contribution”). Parties agree that You retain title to Your Contributions, and You hereby grant Us a non-exclusive licence to use and exercise Your Contributions for the performance of the Professional Services and Services.

7.7 **Open Source.** We may incorporate open-source materials into any Deliverable. We will notify You that it is providing such open-source software upon or prior to delivery, and We will avoid providing any open-source materials that are governed by a so-called “copyleft licence” that would require You to permit any disclosure of, distribute or make available any of Your proprietary software if You use the Deliverables as permitted hereunder. Any open-source materials provided by Us are licensed to You pursuant to the terms of the applicable open-source licence and not these Service Terms.

## 8 Consent to use trademarks.

8.1 **Consent.** You hereby consent that we may identify You by name and logo (Trademarks) as Our customer in promotional materials or during promotional events. If You do not want your name and/or logo to be used in this way, please send an e-mail to support@omnizon.net.

8.2 **Grant of rights.** The Parties hereby grant each other the right to use and display each other’s Trademarks, as well as share and post articles, photos, videos, and advertisements related to the Services for promotional means on their respective websites, social media platforms and other promotional material, provided they are used in a positive and appreciative context. Any usage of Trademarks and other promotional material and articles may be subject to the proprietor Party’s guidelines as may be provided from time to time. The Parties may also notify each other by e-mail to discontinue the use of each other’s Trademarks with immediate effect. Neither Party shall use the other Party’s Trademarks in any manner that will disparage, harm or otherwise damage the other Party’s goodwill in its Trademarks. The Party using the Trademarks or

sharing any social media articles related to the Services shall not, at any time, misuse the same or misrepresent itself as an affiliate or other legal agent of the Party whose Trademarks are being used. Any rights relating to the usage of Trademarks or sharing of social media articles related to the Services shall be immediately discontinued in the event that the Subscription of Services is terminated or expires.

## 9 Fees and payment

9.1 **Service Fees.** The Subscription is subject to fees applicable to the individual scope of Services that You subscribe to. The applicable fees are the prices published for the respective Services on Omnizon's website on the day the Subscription is made, unless explicitly agreed otherwise by the Parties in writing. We may calculate and bill the applicable fees monthly or annually. We may bill You more frequently for fees accrued if we suspect that your account is fraudulent or at risk of non-payment. You shall pay us the applicable fees for use of the Services using one of the payment methods we support. All amounts payable by You shall be paid to us without setoff or counterclaim, and without any deduction or withholding.

9.2 **Changes to Fees.** We may increase or add new fees and charges for any existing Services You are using by giving You prior notice of such changes; such advance notice shall be sent at least thirty (30) days in advance to such change becoming effective, but shall not become valid before the end of the then current Subscription Term for the respective Service unless You give your consent to such change.

9.3 **Late payments.** We may charge you interest on all late payments in accordance with § 288 BGB (German Civil Code).

9.4 **Taxes.** All fees for Our Services and other purchases you make according to the Service Terms are net of 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. (Collectively, "Taxes"). Any payments You make to Us must be made without deduction or withholding of any Taxes.

You are not responsible for taxes based on Our net income, gross revenue, or employment obligations. If We are obligated by applicable law to collect and remit any taxes or fees, we will add the appropriate amount to Your Invoices as a separate line item.

## 10 Temporary Suspension

10.1 **General.** We may suspend Your right to access or use any portion or all of the Services immediately upon notice to You if We determine:

- i. that there is a serious likelihood that You, Your customer's or client's or a User's use of the Services
  - (a) could be fraudulent,
  - (b) poses a Security Risk to Us, the Services or any third party rightfully using the Services, or
  - (c) could adversely impact Our or Omnizon's systems, the Services or the systems or Data of any other third party rightfully using the Services,(b) or (c) additionally leading to a serious risk of Service disruptions or exposing Us, Omnizon, Our affiliates, or any third party rightfully using the Services to liability,
- ii. You are, or any User is, despite having been respectively warned and given a reasonable period to remedy such breach, in breach of the Service Terms or any other applicable agreement You may have with Us on this behalf.
- iii. You are in breach of your payment obligations despite having been respectively warned and given a reasonable period to remedy such breach; or
- iv. You have ceased to operate in the ordinary course, made an assignment for the

benefit of creditors or similar disposition of your assets, or become the subject of any insolvency, bankruptcy, reorganisation, liquidation, dissolution, or similar proceeding.

10.2 **Effect of Suspension.** If we suspend your right to access or use any portion or all of the Services:

- i. You remain responsible for all fees and charges payable for the Subscription during the period of suspension; and
- ii. You will not be entitled to any Service Credits under the Service Level Agreements for any period of suspension.

## 11 Term and Termination

11.1 **Term.** The term of this Subscription will commence on the effective date and will remain in effect until the date on which the Subscription expires at the end of the Subscription Term or is terminated under this Section ("Termination Date"). Any notice of termination by either Party to the other must include the Termination Date, on which the termination shall become effective.

11.2 **Termination.**

- i. **Termination for Convenience.** You may terminate the Subscription to the Services for any reason by providing us notice and closing your account.
- ii. **Termination for Cause.** Either Party may terminate the Subscription to the Services for good cause; a good cause shall particularly be deemed to exist if the other Party is in material breach of the Service Terms (or any other applicable agreement in this behalf) and the material breach remains uncured for a period of 30 days – or any other longer period the terminating Party may determine in its notice – from receipt of a respective warning notice by the other Party. In case we terminate Your Subscription with good cause, Your account will be closed no later than the Termination Date.
- iii. **Termination for Cause by Us.** We may also terminate the Subscription to our Services immediately upon notice to you for cause if we have the right to suspend the Subscription, or in order to comply with the law or requests of governmental entities.

11.3 **Effect of Termination/ Expiry.** Upon the Termination Date, all your rights under the Subscription shall immediately terminate. You shall immediately return or, if instructed by Us, destroy all Our content in Your possession. In case of a termination, all fees and charges for the Subscription to the Services shall remain payable by You up to the end of the (regular, unexpired) Subscription Term for the Services as originally agreed upon, unless the Subscription is validly terminated by You for good cause, in particular due to a material breach on Our side. You shall be liable for any fees and charges You incur during the post-termination period.

Clause 14.2 Confidentiality Agreement will continue to apply in accordance with its terms.

11.4 **Post-Termination/ Expiry.** Unless we terminate Your Subscription to the Services for Cause you may, for a period of 30 days following the Termination Date, retrieve Your Data from Us. We will not take action to remove from Our Services any of Your data as a result of the termination or expiry. However, we may decide to retrieve Your data from the Services only if you have paid all amounts due under the Subscription and the Service Terms.

For any use of the Services after the Termination Date, the respective terms of the Service Terms will apply *mutatis mutandis*, and You shall be obliged to pay the applicable fees, however, without being entitled to any rights thereunder.

## 12 Mutual indemnification

**12.1 Indemnification by Us.** We will defend You against any claim, demand, suit or proceeding made or brought against You by a third party alleging that the use of the Services infringes or misappropriates their third-party rights to intellectual property ("Third-Party Rights Claim"). We will indemnify You from any damages, reasonably incurred attorney fees and costs awarded against You as a result of the Third- Party Rights Claim and/or for amounts that You may have had to pay under a court-approved settlement in relation to a Third-Party Rights Claim, provided that You:

- i. Promptly give Us written notice of the Third-Party Rights Claim;
- ii. Give Us sole control of the defence and settlement of the Third-Party Rights Claim, except in cases where settlement of the Third-Party Rights Claim does not release You of all liability; and
- iii. Provide Us with reasonable assistance at Our expense.

If We receive information in relation to an infringement or misappropriation claim related to the Services, We may in Our discretion and at no cost to You:

- i. Modify the Services so that they no longer infringe or misappropriate, without breaching Our warranties.
- ii. Obtain a licence for Your continued use of the Services; and
- iii. Terminate the Subscriptions of the Services upon thirty (30) days' written notice and refund You any prepaid fees covering the remainder of the Subscription Term.

The above defence and indemnification obligations do not apply to the extent that a claim is made against Us in relation to use of third-party services or Your breach of the Service Terms.

**12.2 Indemnification by You.** You will defend Us against any claim, demand, suit or proceeding made or brought against Us by a third party alleging that Your data, or Your – or, if applicable, Your Customer´s – use of the Services is in breach of the Service Terms, infringes or misappropriation such third party's intellectual property rights or violates the applicable law (a "Third-Party Claim Against Us"), and You will indemnify Us from any damages, reasonably incurred attorney fees and costs finally awarded against Us as a result of, or for any amounts paid by Us under a court-approved settlement of, a Third-Party Claim Against Us, provided We:

- i. Promptly give You written notice of the Third-Party Claim Against Us;
- ii. Give You sole control of the defence and settlement of the Third-Party Claim Against Us (except that Partner may not settle any Claim Against Us unless it unconditionally releases Us not only of all liability but also of other negative consequences which may arise for Us, such as – but not limited to – damage to our good reputation); and
- iii. Provide You all reasonable assistance at Your expense.

## 13 Limitation of Liability.

- a. We shall only be liable for any damage incurred insofar as such damage is based on a breach of a material contractual obligation (as defined below) or on an intentional or grossly negligent conduct on the part of Us, Our legal representatives or vicarious agents.
- b. In the event of a slightly negligent breach of material contractual obligations, Our liability shall be limited to the foreseeable damage typical for the contract. An “*essential contractual obligation*” shall be deemed to exist in the case of obligations the fulfilment of which is a prerequisite for the proper performance of the contract and the observance of which Our contractual partner has regularly relied on and was entitled to rely on.
- c. Any further claims for damages are excluded, irrespective of the type of breach of obligation and on whatever legal grounds. However, the limitation of liability does not apply to damages resulting from culpable injury to life, limb or health, to claims under the Product Liability Act and insofar as a defect was fraudulently concealed or a guarantee for the quality of the respective good or service was assumed.
- d. We shall not be liable for the loss of data or any damages to the extent and insofar as the damage is based on the fact that You, Your customer or client, or the User failed to adhere to the regular standards common in Your/its industry safeguarding and mitigating risks, such as – but not limited to – identifying potential threats, assessing their potential impact, and implementing measures to prevent, detect, and respond to these threats in order to safeguard an organization's IT infrastructure and sensitive information, as well as carry out data backups and thereby to ensure that lost data can be restored with reasonable effort.

## 14 Additional Terms

14.1 **Notices.** The parties will provide all notices under these Service Terms in writing. All notices must be in the English language or the language rightfully used between the Parties when subscribing to the Services.

- i. We may provide any notice to you under these Service Terms by sending a message to the email address or address that is associated with Your account. It is Your responsibility to keep Your email address and other data up to date and current.
- ii. To give us notice under these Service Terms, You may contact Us through the communication channel used for Your Subscription or send Us a written notice via regular mail (registered letter or courier with delivery confirmation).

14.2 **Confidentiality Agreement.** Confidential Information must not be used or reproduced in any form except as required to accomplish the intent of these Service Terms. Any reproduction of any Confidential Information of a Party disclosing the information (“Disclosing Party”) remains the property of the Disclosing Party and must contain any and all confidential or proprietary notices or legends which appear on the original. The Receiving Party must:

- i. Take all Reasonable Steps (as defined below) to keep all Confidential Information strictly confidential.
- ii. Not disclose any Confidential Information to any person other than its Representatives.

iii. Not use Confidential Information for any purpose other than in connection with the Parties' performance under any part of these Terms; and  
"Reasonable Steps" means those steps the Receiving Party takes to protect its own similar proprietary and Confidential Information, which must not be less than a reasonable standard of care. The Receiving Party will be responsible for any breach of these Terms by it or its Representatives.

Confidential Information of either Party disclosed prior to execution of the Service Terms is subject to the protections afforded hereunder. The above restrictions on the use and disclosure of the Confidential Information do not apply to any Confidential Information that:

- i. Is independently developed by the Receiving Party without reference to or use of the Disclosing Party's Confidential information, or is lawfully received free of restriction from a third party having the right to furnish such Confidential Information.
- ii. Has become generally available to the public without breach of the Service Terms by the Receiving Party.
- iii. At the time of disclosure was known to the Receiving Party free of restriction; or
- iv. The Disclosing Party agrees in writing is free of such restrictions.

In the event that the Receiving Party or any of its Representatives are requested pursuant to, or required by, applicable law, regulation, unappealable court order or regulatory agency to disclose any Confidential information or any other information concerning the Disclosing Party, these Service Terms, or the Parties' performance hereunder, the Receiving Party must – to the extent legally permissible to such Party in the case at hand – provide the Disclosing Party with prompt notice of such request or requirement in order to enable the Disclosing Party

- ii. To seek an appropriate protective order or other remedy.
- iii. To consult with the Receiving Party with respect to the Disclosing Party's taking steps to resist or narrow the scope of such request or legal process; or
- iv. To waive compliance, in whole or in part, with the terms of the Service Terms.

In the event that such protective order or other remedy is not obtained in a timely manner, or the Disclosing Party waives compliance, in whole or in part, with the terms of the Service Terms, the Receiving Party or its Representative will use reasonable efforts to disclose only that portion of the Confidential information which is legally required to be disclosed and to require that all Confidential information that is so disclosed will be accorded confidential treatment.

Nothing in this Article (Confidentiality) will be deemed to grant any right, title or interest in or to:

- i. the Disclosing Party's Confidential information Service Terms and/or
- ii. Any Intellectual Property Right of the Disclosing Party.

**14.3 Waiver and Severability.** Failure to enforce a provision of these Service Terms will not constitute a waiver of that or any other provision of this Service Terms. If a court of competent jurisdiction determines that any part of these Service Terms or documents that incorporate these Service Terms by reference is unenforceable, that ruling will not affect the validity of all remaining parts.

**14.4 Modifications.** We may modify these Service Terms from time to time by notifying You in accordance with Section 14.1. The modified Service Terms will become effective after the Subscription Term current at the time of the notification has expired or upon your consent to such changed Service Terms, whichever is earlier. By continuing to use the Services after the effective date of any modifications to the Service Terms (e.g. upon renewal of a Subscription after having received a modification notice), You agree to be bound by the modified Service Terms.

**14.5 Governing Law and Jurisdiction.** These Service Terms and any dispute arising out of or related to the Service Terms ("Dispute") are governed by the laws of the Federal Republic of Germany (excluding the conflicts of law rules). Where both Parties are to be

classified as merchants (*Kaufleute*), legal persons or special assets (*Sondervermögen*) under German public law, or if at least one of the Parties has no general venue in Germany any Disputes shall be subject to the exclusive jurisdiction of the courts in Munich. In this case both Parties agree to submit to the personal jurisdiction of the courts in Munich and agree to waive any and all objections to the exercise of jurisdiction over the parties by those courts and to venue in those courts.

In any event, neither the U.N. Convention on Contracts for the International Sale of Goods, nor the Uniform Computer Information Transaction Act shall apply to these Service Terms or any Dispute.

**14.6 Third Party Rights.** Other than as expressly set out in these Service Terms, they do not create any rights for any person who is not a party to it, and no person who is not a party to these Service Terms may enforce any of its terms or rely on any exclusion or limitation contained in it.

**14.7 Force Majeure.** “Force Majeure” means the occurrence of an event or circumstance that prevents or impedes a Party from performing one or more of its contractual obligations under the contract, if and to the extent that that Party proves: [i] that such impediment is beyond its reasonable control; and [ii] that it could not reasonably have been foreseen at the time of the conclusion of the contract; and [iii] that the effects of the impediment could not reasonably have been avoided or overcome by the affected Party. In the absence of proof to the contrary, the following events affecting a Party shall be presumed to fulfil conditions [i] and [ii] above: Failures or breakdown of telecommunications, internet services, or service providers, labour disputes or strikes, inability to obtain labour or materials, pandemic, epidemic, earthquake, fire, natural disaster or other extreme action of the elements, accidents, act of authority whether lawful or unlawful, compliance with any law or governmental order, expropriation, seizure of works, requisition, nationalisation, war (whether declared or not), hostilities, invasion, act of foreign enemies, extensive military mobilisation; civil war, riot, rebellion and revolution, military or usurped power, insurrection, act of terrorism, sabotage or piracy, currency and trade restriction, embargo, sanction, act of God or other causes beyond the reasonable control of the Party.

In case of a Force Majeure event the affected Party shall be relieved from its duty to perform its obligations in whole or in part under the Service Terms and from any liability in damages or from any other contractual remedy for breach of contract, from the time at which the impediment causes inability to perform, provided that the notice thereof is given without delay. If notice thereof is not given without delay, the relief is effective from the time at which notice thereof reaches the other party. Where the effect of the impediment or event invoked is temporary, the above consequences shall apply only as long as the impediment invoked impedes performance by the affected party. Where the duration of the impediment invoked has the effect of substantially depriving the Parties of what they were reasonably entitled to expect under the Service Terms, either Party has the right to terminate the affected agreements between the Parties by notification within a reasonable period to the other Party. Unless otherwise agreed, the Parties expressly agree that the affected agreements between the Parties may be terminated by either Party if the duration of the impediment exceeds 120 days.

**14.8 Entire Agreement.** These Service Terms together with the relevant Subscription to Services and the order of Professional Services (if applicable, including all complementing documentation) form the entire agreement between the Parties relating to the subject matter hereof and supersedes all previous communications, representations, understandings, and agreements, either oral or written, between the Parties with respect to such subject matter. No waiver or modification of these Service Terms will be valid unless made in a writing signed by both Parties. The waiver of a breach of any term hereof will in no way be construed as a waiver of any term or other breach

hereof. If any provision of these Service Terms is found to be invalid or unenforceable, the remaining provisions will continue to be in full force and effect.