subscription agreement for access to technical data (unilateral)

Cover sheet

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| --- | --- |
| **Date** | [*date*] |
| **Data Provider** | [*name / company name / address*]  Contact:  [*name*]  [*email address*] |
| **Data User** | [*name / company name / address*]  Contact:  [*name*]  [*email address*] |
| **Covered Data** | [*describe the Data to which Data User shall have access under this agreement, including documentation relating to such Data, their format, etc.*] |
| **Access** | [*specify the platform on which the Data User subscribes to obtain regular access to the Covered Data or the API made available to the Data User to allow access to the Covered Data, or any other technical mean by which access will be provided*] |
| **Subscription Term and Notice** | [*specify the duration of the initial term for which the Data User subscribes, e.g. 1 month, 1 year, etc*.]  Termination Notice: [*specify the duration of the advance notice that must be given to terminate the agreement, e.g. 1 week, 1 month, etc*. *– it must be shorter than the Term*] |
| **Subscription Fee** | [*select an option and insert the amount and recurrence of the Subscription Fee if access is granted against a fee*]  [Alt.1] CHF [*insert price*] [+ taxes] of [yearly] / [quarterly] / [monthly] Subscription Fee  [Alt.2] Free |
| **Use Restrictions** | [*specify the restrictions that will apply to the use of the Covered Data; multiple boxes may be checked*]   * No Commercial Use of the Covered Data * No Commercial Use of the Results * No Distribution of the Covered Data * No Distribution of the Results |

1. definitions

The capitalized terms in this Agreement have the following meanings:

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| --- | --- |
| **Commercial Use** | any use of the Covered Data and/or of the Results by the Data User or a Downward Recipient that is primarily intended towards a monetary compensation or commercial advantage. |
| **Confidential Information** | any proprietary and/or non-public information provided by either party, in particular but not limited to trade secrets or know-how or other related proprietary business information and data, whether such information is provided in tangible or intangible form, written, oral, graphic, pictorial or recorded form or stored on computer discs, hard drives, magnetic tape or digital or any other electronic medium. |
| **Covered Data** | any Data made available under this Agreement as defined on the cover sheet, to the exclusion of any communication Data automatically generated by the parties for the purpose of allowing the Data User to access the Covered Data. |
| **Data** | any data, to the exclusion of Personal Data, of any type and in any format. |
| **Distribute** | make all or part of the Covered Data available to third parties in unmodified form or in such modified form that would still allow such third party to retrieve the original Covered Data. |
| **Downward Recipient** | any person or entity to whom the Covered Data is made available by the Data User, directly or indirectly. |
| **Intellectual Property Rights** | all intellectual property rights, whether registered or not, and anchored in either national or international law, in and to the Covered Data, including without limitation copyright, trademark right, patent right and database right. |
| **Personal Data** | any data or information relating to an identified or identifiable person within the meaning of article 3 let. a of the Swiss Data Protection Act (DPA – RS 235.1). |
| **Results** | any results obtained, developed, created or improved by the Data User based on its use of the Covered Data. |

1. General Provisions
   1. **Access**. Subject to the terms of this Agreement, the Data Provider grants the Data User access to the Covered Data in accordance with the access modalities set forth on the cover sheet for the Term, in the format set forth on the cover sheet. Access to the Covered Data includes access to any updates of such Covered Data or newly collected Covered Data, if any.
   2. **Subscription Fee**. [Alt.1] Access to the Covered Data is provided against payment of the non-refundable Subscription Fee, payable in advance and at the frequency mentioned on the cover sheet. [Alt.2] No Subscription Fee shall be charged to provide access to the Covered Data and each party shall bear its own costs relating to implement and maintain the relevant tools allowing for such access.

**[*Comment****: select Alt.1 if the access is granted against payment of a fee and Alt.2 if access is granted for free.]*

* 1. **No-exclusivity**. The Covered Data is provided on a non-exclusive basis and the Data User acknowledges that the Data Provider may grant access to the Covered Data to third parties or may continue to use the Covered Date itself.
  2. **Restrictions on use**. The use of the Covered Data by the Data User and/or any Downward Recipient, if any, shall be limited by the restrictions on use set forth on the cover sheet.
  3. **Limited License**. This Agreement does not aim at addressing or governing possible ownership or property rights in or to the Covered Data. To the extent that the Covered Data shall however be subject to Intellectual Property Rights, the Data Provider hereby grants the Data User a non-exclusive license to the Data User to use the Covered Data in accordance with this Agreement, for the Term.
  4. **Confidentiality**. The Covered Data may contain Confidential Information of the Data Provider or third parties and the Data User agrees that this Agreement does not constitute permission to obtain or reveal Confidential Information, whether by way of reverse-engineering or decompiling, or any other technical or non-technical mean allowing access to such Confidential Information. The Data User shall treat as confidential any Confidential Information it may receive or be granted access to unwillingly or fortuitously by the Data Provider.
  5. **[Audit**. The Data User agrees that the Data Provider may, at any time during the Term, but no more than once a year, access the Data User’s books, records, infrastructures, databases and Results in order to ensure compliance with the present Agreement. Any Confidential Information of the Data User to which the Data Provider may have access in that context shall be treated as confidential.**]**

**[*Comment:*** *Section 2.7 is mainly relevant in case strict restrictions on use are selected, in order to allow the Data Provider to verify compliance with such restrictions. It can typically be removed in case no restrictions on use are selected by the parties*.]

1. additional services
   1. **Services**. [Alt.1] In addition to the access to the Covered Data, the Data Provider may provide additional services to the Data User. [Alt.2] The parties acknowledge that no additional services shall be rendered by the Data Provider, who offers no warranty of continuous availability nor of continuous access to the Covered Data and does not provide any support to the Data User.

**[*Comment****: Select Alt.1 if the Data Provider is also offering additional services (e.g. support, analysis, etc.) or Alt.2 if no additional services are contemplated.]*

* 1. **Additional Terms.** Any additional services or tools that may be offered to the Data User shall be governed by additional terms, whether in the form of an API license agreement, terms of use of a platform or any services agreement that may be entered into by the parties.

1. attribution

[Alt.1] The origin of the Covered Data and identity of the Data Provider shall systematically be made available to third parties to whom the Covered Data and/or the Results have been Distributed. [Alt.2] The Data User shall always seek prior written authorization from the Data Provider to mention the origin of the Covered Data and the identity of the Data Provider in case of authorized Distribution of the Covered Data and/or Results.

**[*Comment****: select Alt.1 if the Data Provider wishes that its identity and the origin of the data be automatically communicated when such data is being distributed to third parties; select Alt.2 if the Data Provider wishes to check and confirm prior to the distribution whether its identity should be mentioned or not*.**]**

1. Representations and warranties
   1. Each party represents that it will perform its obligations under this Agreement in compliance with applicable laws.
   2. The Data Provider offers no warranty that the Data User shall not be granted access to Personal Data in the performance of this Agreement and should the Data User be granted access to Personal Data in the framework of this Agreement, the Data User acknowledges that it may be subject to additional obligations to comply with privacy and data protection laws and commits to take the relevant measures to comply with such obligations, if any.
   3. The Covered Data is provided on an “as is” and “as available” basis, without warranties or conditions of any kind, either express or implied including, without limitation, any warranties or conditions of title, non-infringement, merchantability or fitness for a particular purpose.
   4. Within the limits of applicable law, the Data Provider shall have no liability for any direct or indirect damages (including without limitation lost profits), however caused and on any theory of liability, whether in contract, strict liability, or civil liability (including negligence or otherwise) arising in any way out of the covered data, even if advised of the possibility of such damages.
2. Duration and termination
   1. **Duration**. This Agreement enters into force on the date first written above and for the duration of the subscription term mentioned on the cover sheet. It shall be automatically renewed, at the same conditions, for additional terms of the same duration unless terminated in accordance with this Agreement. The initial subscription term and all renewal terms shall together constitute the Term.
   2. **Voluntary termination**. Each party may terminate this Agreement without cause with a Termination Notice as set forth on the cover sheet.
   3. **Automatic termination**. This Agreement shall automatically terminate in case of breach of any of the terms and conditions of this Agreement by the Data User or a Downward Recipient.
   4. **Effect of termination**. Upon termination of this Agreement for any reason whatsoever, the Data User shall no longer be granted access to the Covered Data nor be authorized to make any use of the Covered Data. The Data User shall remain entitled to use the Results and sections, 2.6, 4, 5.4 and 7.1 to 7.6 shall survive the termination of this Agreement.
3. Miscellaneous
   1. **Entire Agreement.** This Agreement contains all of the terms and conditions agreed upon by the parties relating to its subject matter and supersedes all prior agreements, negotiations, correspondence, undertakings and communications of the parties, whether oral or written, with respect to such subject matter.
   2. **Form**. Any reference to the written form in this Agreement, and any reference to any notice or document to be delivered in writing, shall be deemed to be satisfied by email or any form of electronic signature service such as PDF or DocuSign.
   3. **Severability.** If any provision of this Agreement is held to be unenforceable for any reason, it shall be adjusted rather than voided, if possible, in order to achieve the intent of the parties to the fullest extent possible. In any event, all other provisions of this Agreement shall remain valid and enforceable to the fullest extent possible.
   4. **No Waiver.** The failure of any of the parties to enforce any of the provisions of this Agreement or any rights with respect thereto shall in no way be considered as a waiver of such provisions or rights or in any way affect the validity of this Agreement. The waiver of any breach of this Agreement by any party shall not be construed as a waiver of any other prior or subsequent breach.
   5. **Governing Law.** This Agreement shall be governed by and construed in accordance with Swiss substantive law, without reference to its conflict of laws provisions.
   6. **Jurisdiction.** Any dispute, controversy or claim arising out of or in relation with this Agreement shall be submitted to the ordinary courts at the domicile or the registered seat of the Data Provider, subject to appeal to the competent superior authority.

**Data Provider** **Data User**