Application Programming Interface (API)

Terms of USE

1. Scope and acceptance

These API Terms of Use (the **API Terms**) apply to the API [alt1] accessible at [list here web addresses, app stores, or other means of access] **// OR //** [alt2] identified as follows:[name] developed and enabled by [Company] (**Company**, **we**, or **us**), any services available through the API (the **Services**) and any Data available through the API or the Services.

*[****Comment****: select Alt. 1. If the API is publicly accessible and specify how or select Alt. 2 if the API is only accessible on demand, in which case a name / reference should be specified.]*

By downloading, integrating or using the API, or accessing any Service or Data available through the API, you agree to be bound by these API terms, which form a legally binding agreement between you and us. Any use of the API on behalf of a legal entity is deemed acceptance of the API Terms also for this legal entity. By using the API on behalf of a legal entity, you confirm that you are duly authorized to do so and have the capacity to bind this legal entity. In this case, these API terms apply to you and your organization (both referred as "User" or "you" in these API Terms).

1. License and use Restrictions

Subject to your compliance with all terms and conditions of these API Terms, we grant you a worldwide, non-exclusive, non-transferable, non-sublicensable, revocable right and license to install, test, integrate and use the API for the purpose of integrating our Services and displaying the Data in your Application through the API and facilitate Interoperability.

[Alt.1] The use of Data and Services accessible through the API is subject to the terms of a separate data sharing agreement entered into between the Parties. [Alt.2] Unless specified otherwise, the use of Data and Services accessible through the API is subject to these Terms and to the conditions for use and restrictions expressly set forth in our terms of Services. No commercial use of the Data made accessible through the API is allowed unless expressly authorized by us.

*[****Comment****: Select Alt.1 if you are separately bound by a Data sharing agreement with the API user, select Alt.2 if the restriction of use are set forth in the platform / software to which the API allows access. By default, these terms do no allow commercial use of the Data made accessible through the API terms unless expressly allowed.]*

1. User duties
   1. **Compliance**. You must at all times comply with these API Terms and all laws and regulations applicable to your use of the API, the Data and the Services. Subject to mandatory law to the contrary, you are not allowed to:
      * + copy, reproduce, frame, mirror, crawl, republish, modify, create derivatives of, any part of the API or the Data, except as expressly authorized;
        + attempt to copy, modify, create derivative works from, republish, transmit, distribute, or otherwise make available or disclose to any third party all or any portion of the API, except as otherwise stipulated in these API Terms;
        + access the source code of the API, attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the API or its infrastructure;
        + make any alteration to the API, or insert any malicious software into the Application or its infrastructure;
        + access or use any part of the API for the purpose of building a competitive product or service or copying its features;
        + attempt to exceed or circumvent limitations on access, calls and use of API, or otherwise use the API in a manner that exceeds reasonable request volume, constitutes excessive or abusive usage, or otherwise fails to comply or is inconsistent with any part of this API Terms or the Documentation;
        + use the API in any activity that includes adult content, promotes gambling, involves the sale of tobacco or alcohol to persons under 18 years of age, or otherwise violates any applicable law or regulation;
        + submit or link to any content (through the API) that:
        + misappropriates or infringes intellectual property rights or other rights of any person or entity;
        + interferes or disrupt with the operation of the API, its purpose as described within the API documentation, or the Services;
        + violates anyone’s privacy or publicity rights;
        + breaches any duty of confidentiality or nondisclosure that you owe to anyone or any use restriction;
        + provides any confidential information about us, our customers or any other company or person without authorization;
        + is, as determined at our sole discretion, abusive or otherwise objectionable;
        + contains or installs any viruses, worms, bugs, Trojan horses, malware or other malicious code, or any items of destructive nature;
        + files or programs designed or having the capability to disrupt, damage or limit the functionality of any service, network, software or hardware.

Nothing in this Agreement shall restrict, limit or otherwise affect any rights or obligations that the Parties may have under any applicable laws or regulations, such as (without limitation) competition and antitrust laws, or in relation to data sharing or data access requests of users.

* 1. **Security measures**. Your Systems must be properly configured to securely operate your Application. Your Application must use reasonable security measures to protect your end-users’ information. You must not architect or select Your Systems in a manner to avoid the foregoing obligation. You must promptly report any security deficiencies in, or intrusions to, your Systems to us in writing via email or subsequent contact information provided to you. This includes any unauthorized access, use, disclosure or destruction of Data. You will work with us to immediately correct any security deficiency and will immediately disconnect any intrusions or intruder. **We** **shall not be held liable for any loss or any damage resulting from non-compliance with these Terms.** In the event of any security deficiency or intrusion involving the Application, API or Data, you will make no public statements regarding such deficiencies or intrusions (e.g., press, blogs, social media, bulletin boards, etc.) without prior written and express permission from us in each instance.
  2. **Confidentiality**. You shall (i) keep all our Confidential Information confidential at any time and not disclose Confidential Information, in whole or in part, to any third party; (ii) not publish, disclose or divulge our Confidential Information to any other third party; (iii) use Confidential Information solely for the purposes provided for in these Terms; (iv) not use Confidential Information for any other purposes whatsoever subject to the terms set forth in these Terms; and (v) not copy any of Confidential Information, the foregoing so long as otherwise not permitted by the purpose of these Terms.

1. Maintenance, availability and support
   1. **Maintenance and Availability**. [Alt. 1]We will continuously seek to identify and attempt to resolve problems which may negatively affect the proper functioning and availability of the API, the Services and the Data. Although we will use reasonable endeavours to maintain their availability, we do not guarantee it. [Alt. 2] The conditions for the maintenance and level of availability of the API, the Services and the Data shall be governed by a separate Maintenance and support agreement.

**[*Comment****: Select Alt. 1 if you do not offer specific maintenance terms and therefore do not wish to commit on maintenance and availability of the API; select Alt. 2 if you offer separate maintenance terms that the API user can subscribe to.]*

* 1. **Support**. [Alt. 1] No support services are provided along with the access to the API. [Alt. 2] If you encounter any problem regarding the API, you may submit a request to our support team by email at [email address] and we will revert as soon as possible or in accordance with the separate support terms entered into between you and us.

***[comment****: Select Alt. 1 if you wish to exclude the provision of support services in connection with the API; please note that minimum support would however be expected if access to the API is granted against payment of a fee (see below); select Alt. 2 if you wish to offer minimum support services, which can be governed by separate support terms.]*

1. Financial terms
   1. **Subscription Fee.** [Alt.1] Access to the API is provided against payment of the non-refundable subscription fee, payable in advance and at the frequency mentioned upon grant of access to the API. [Alt.2] No subscription fee shall be charged to provide access to the API and each party shall bear its own costs relating to the use of the API.

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

* 1. [**Fee Calculation.** The subscription fee shall not exceed the costs directly related to making the Data available to the User.]

[**Drafting** **comment**: *section 5.2 reflects the principle applicable under art. 9 of the Data Act. This provision states that when the data recipient is a SME, the agreed compensation shall not exceed the costs directly related to making the data available and that are attributable to the data request of the data recipient*.]

* 1. **Suspension**. We may temporarily suspend access to the Api if you are in default for payment of any Subscription Fee.

1. Data Protection
   1. **Principle**. The collection and processing of personal data relating to the use of the API is governed by our privacy notice, published on our Application or made available to you from time to time.
   2. **Additional obligation**. We offer no warranty that you shall not be granted access to Personal Data while using the API to access the Data and should it be the case, you acknowledge 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.
2. Intellectual Property
   1. Subject to any provision to the contrary in this agreement or a separate agreement binding upon the Parties, we own the copyright and all intellectual property rights in and to the API, the Services and the Data.
   2. The API and Services may contain Content and/or software components developed, distributed and/or licensed by third parties (**Third-Party Content**). Such Third-Party Content is licensed to you under the applicable terms and conditions of the respective third-party. We will use our best efforts to identify any Third-Party Content. Nothing in these API Terms restricts, limits or otherwise affects any rights or obligations that you may have, or conditions to which you may be subject, under any applicable open source licenses to any open source software which may be incorporated in and/or provided together with the API.
3. No warranty
   1. The API, Services and Data are provided “*as is*” and “*as available*”. We disclaim all warranties, express or implied, in connection therewith, including any warranties of merchantability, fitness for a particular purpose, quiet enjoyment and non-infringement of third-party rights, or availability, to the fullest extent permitted by applicable law. We neither represent nor warrant (i) that the API, the Data or the Services will meet your requirements or expectations; (ii) that the operation of the API or Services will be uninterrupted or error-free, or free from virus and malicious software ; (iii) that the API or Data will be accurate, truthful or exhaustive ; (iv) that the Services and results that can be obtained from the use of the API will be accurate or reliable ; and (v) that the API, Services and Data will be updated, error-free, that any errors will be corrected. **The use of the API and/or Services is entirely at your own risk and we disclaim any warranties regarding your use thereof and/or any decisions taken by you based on insights gained from your use of the API or Services.**
   2. Within the limits of applicable law, we 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 use of the API, the Services or the Data, even if advised of the possibility of such damages.
4. Duration and termination
   1. **Duration.** This Agreement enters into force on the date of access to the API and for the duration of the subscription specified at the time of access. 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 sent in writing.
   3. **Automatic Termination.** This Agreement shall automatically terminate in case of breach of any of the terms and conditions of this Agreement.
   4. **Effect of Termination.** Upon termination of this Agreement for any reason whatsoever, you shall no longer be granted access to the API, Services or Data unless provided otherwise in a separate agreement nor be authorized to make any use of the Data.
5. Miscellaneous
   1. **Form.** Any reference to the written form in these Terms, 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.
   2. **Severability.** If any provision of these Terms 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 these Terms shall remain valid and enforceable to the fullest extent possible.
   3. **No Waiver.** The failure of any of the parties to enforce any of the provisions of these Terms 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.
   4. **Governing Law.** These Terms shall be governed by and construed in accordance with Swiss substantive law, without reference to its conflict of laws provisions.
   5. **Jurisdiction.** [Alt.1] Any dispute, controversy or claim arising out of or in relation with these Terms shall be submitted to the ordinary courts at the domicile or the registered seat of the Company, subject to appeal to the competent superior authority. Alt.2] Any dispute, controversy or claim arising out of or in relation with these Terms shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Arbitration Centre and the ITDR - Institution for IT and Data Dispute Resolution Recommendations for Arbitration, both in force on the date on which the Notice of Arbitration is submitted in accordance with these Rules and Recommendations. The number of arbitrators shall be one or three. The seat of the arbitration shall be the seat of the Company. The arbitral proceedings shall be conducted in English. Notwithstanding the above, the parties may agree at any time to submit the dispute to mediation in accordance with the Swiss Rules of Mediation of the Swiss Arbitration Centre and the ITDR – Institution for IT and Data Dispute Resolution Recommendations for Mediation, both in force on the date on which the request for mediation is submitted in accordance with these Rules and Recommendations. Notwithstanding the above, the parties may agree at any time prior to submitting the dispute to arbitration or mediation to submit the dispute to assessment by an expert opinion in accordance with the ITDR – Institution for IT and Data Dispute Resolution Rules of Procedure for Expert Opinions in force on the date on which the request for assessment by an expert opinion is submitted in accordance with these Rules.

**[*Comment****: select Alt.1 if the parties wish to subject potential disputes relating to the agreement to ordinary Swiss courts, without a specific expertise in the field; this corresponds to the ordinary route in case of disputes; select Alt. 2 if the parties wish to subject potential disputes to arbitration by experts in the field, as well as benefit from the ability to ask an expert to intervene before initiating an arbitration or mediation*.**]**

1. definitions

The capitalized terms in this Agreement have the following meanings:

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| **API** | the Application Platform Interface [alt.1] accessible at [list here web addresses, app stores, or other means of access] // OR // [alt2] identified as follows:[name] |
| **Application** | any applications, software, system or database that shall be interfaced through the API. |
| **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. |
| **Data** | any digital representation of acts, facts or information and any  compilation of such acts, facts or information, to the exclusion of Personal Data, of any type and in any format made accessible through the API. |
| **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. |
| **Interoperability** | the ability of two or more data spaces or communication networks, systems, products, applications or components to exchange and use Data in order to perform their functions. |
| **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). |
| **Services** | the services made available by us through the API. |
| **Systems** | The network, operating system and software of a Party's web servers, databases, and computer systems. |