GENERAL TERMS OF USE
FOR MIRAKL CLOUD SERVICES

1. PURPOSE

These General Terms of Use govern the access to and use of Mirakl's Cloud Services by Customer as identified in the applicable Order Form.

2. CLOUD SERVICES

2.1) <u>Right to Access and Use</u>. Subject to the terms and conditions of the Agreement, Mirakl grants Customer a non-sublicensable, non-exclusive and non-transferable right to access and use the Cloud Services, Mirakl Resources, and the Documentation for Customer internal business operations during the Term of the Agreement.

2.2) <u>Authorized Users</u>. Customer may permit Authorized Users to access and use the Cloud Services, provided that: (i) the Authorized Users have agreed with Customer in writing to comply with the Customer's obligations under this Agreement; and (ii) an act or omission by an Authorized User shall be considered an act or omission by Customer, and a breach of the Agreement by an Authorized User shall be considered a breach by Customer hereunder.

2.3) <u>Services Providers</u>. Subject to Mirakl's prior written consent (email permitted), Customer may permit services providers to access the Cloud Services, Mirakl Resources and/or the Documentation solely for the purpose of providing implementation or systems/application management services to Customer in connection with a Cloud Services (each, a "Services Provider"), provided that:

(i) Customer and Services Providers have in place a written agreement that includes provisions requiring the Services Providers' compliance with Customer's obligations under this Agreement prior to being provided access to the Cloud Services, including, without limitation, non-disclosure of Mirakl Confidential Information and protection of Mirakl's intellectual property rights;

(ii) Services Providers shall be permitted to access and use the Cloud Services, Mirakl Resources and/or the Documentation solely to support Customer with the implementation, configuration or management of Customer's access to and use of the Cloud Services;

(iii) Under no circumstances may Services Providers access and use the Cloud Services, Mirakl Resources and/or the Documentation to operate or provide services to any third party, in connection with such Services Providers' own business operations, or for any purpose other than the purposes authorized under the Agreement; and

(iv) Customer shall indemnify Mirakl, its Affiliates, officers, employees, agents and subcontractors from and against all claims, liabilities, losses, damages and costs (including reasonable attorneys' fees) suffered by Mirakl or its Affiliates, officers, employees, agents and subcontractors resulting from any act or omission by a Services Provider which, if such act or omission were by Customer, would be a breach by Customer of the terms and conditions of this Agreement.

Upon Mirakl's request, Customer shall demonstrate its compliance with this Section 2.3 (i)-(iii). In addition, Mirakl reserves the right to suspend any Services Providers' access to the Cloud Services, Mirakl Resources and/or the Documentation if Mirakl suspects any unauthorized use of the Cloud Services and/or Mirakl Resources and/or the Documentation.

2.4) <u>Cloud Services Usage Policy.</u> Customer warrants that it will use, and will ensure that all Authorized Users use, the Cloud Services in accordance with the Agreement and all laws and regulations applicable to Customer and to the Customer Data. Customer agrees to comply with the Documentation and acknowledges that any use of the Cloud Services that does not comply with the Documentation or the terms of this Agreement may jeopardize the availability, security, and operation of the Cloud Service. Customer shall maintain appropriate security standards for its Authorized Users' use of the Cloud Services and shall not interfere with the Cloud Services' operation and security. In particular, Customer agrees not to perform or authorize penetration testing of the Cloud Services. Customer shall not attempt to circumvent the rules and restrictions for using the Cloud Services, including attempting to reduce the amounts owed to Mirakl by Customer for using the Cloud Services.

2.5) <u>Third-Party Services</u>. Mirakl Cloud Services may include integrations with services made available by third parties (other than Mirakl SAS or its Affiliates) that are accessed through the Cloud Service and subject to terms and conditions with those third parties. These third-party services are not part of the Cloud Services and the Agreement does not apply to them. Mirakl is not responsible for the content and provision of third-party services.

3. MIRAKL'S OBLIGATIONS

3.1) <u>Provision of Cloud Services</u>. Mirakl agrees to make the Cloud Services available to Customer in accordance with the Agreement and all laws and regulations applicable to Mirakl's provision of the Cloud Services.

3.2) <u>Support & Availability.</u> Mirakl will make the Support Service available to Customer as set forth in the applicable schedule of the Agreement and agrees to maintain an average monthly Cloud Services Availability Service Level for the production environment of the applicable Cloud Services in accordance with such schedule. The remedies stated therein, including the issuance of applicable service credits, are final and constitutes Customer's sole and exclusive remedy and Mirakl's sole liability for any failure by Mirakl to meet the Cloud Services Availability Service Level.

3.3) <u>Security.</u> Mirakl will apply and maintain appropriate technical and organizational security measures for the Cloud Services, which are set forth in Mirakl's Trust Center or, as applicable, a schedule to this Agreement. Mirakl will not reduce the overall level of security when updating its technical and organizational security measures. Customer's access requires the use of a login and password or API key. Except as otherwise authorized herein, Customer shall not communicate the information enabling access to the Cloud Services (API key, login, password) to third parties. Any actions performed using the API key or the login and associated password shall be deemed to have been performed by Customer.

4. CUSTOMER AND PERSONAL DATA

4.1) <u>Customer Data.</u> Customer is and shall remain the owner of the Customer Data and the rights attached thereto. Customer represents and warrants that it has all necessary rights and consents in and to the Customer Data such that its use hereunder is lawful and does not violate the rights of any third party, including intellectual property and privacy rights.

4.2) <u>Personal Data</u>. Customer represents and warrants that the personal data contained in the Customer Data is collected and processed in accordance with the laws and regulations applicable to Customer and to such personal data, including applicable Data Protection Laws. As required by law or as otherwise agreed by the Parties, the rights and obligations relating to personal data protection may be described in a Data Processing Agreement supplement to this Agreement.

4.3) <u>Customer Data Backup</u>. Customer Data is kept by Mirakl during the Term of the Agreement and is periodically backed up by Mirakl for the sole purpose of providing the Cloud Services and, if necessary, its timely recovery. Customer shall be responsible for backing up its data, files, programs, documentation, and information of any kind that it may have made available to/or the Consulting Services.

4.4) <u>Returning and/or Destroying Customer Data.</u> Upon termination or expiration of the Agreement, subject to Customer's written request, Mirakl shall return the Customer Data to Customer in an intelligible form within thirty (30) days of receipt of said request, provided that (i) Customer has made all payments in full and (ii) the request is made within thirty (30) days of termination or expiration of the Agreement. In any event, Customer hereby instructs Mirakl to destroy the Customer Data no later than ninety (90) days after termination or expiration of the Agreement.

5. FINANCIAL TERMS

5.1) <u>Prices and Payment</u>. Customer agrees to pay all amounts due under the Agreement in accordance with the provisions of the Order Form. Except as provided in Section 6.2 and 7.1, payments made by Customer are non-refundable, and Customer may not withhold, deduct, or offset any amount owed to Mirakl. If any costs are necessary to collect amounts due under the Agreement, the Customer will reimburse Mirakl for such costs, including reasonable attorneys' fees. All invoices will be issued in accordance with the applicable Order Form, regardless of the issuance of a purchase order by Customer. Purchase orders, communications, or other documents issued by Customer for its internal administrative procedures shall not add to or alter this Agreement.

5.2) <u>Fees Dispute Resolution</u>. If Customer reasonably believes, in good faith, that Mirakl has incorrectly billed Customer, Customer must contact Mirakl in writing within thirty (30) days of the invoice date, specifying the error. Mirakl and Customer will then meet to resolve the matter within thirty (30) days of the Customer notice. A dispute shall not release Customer from its obligation to pay all amounts not subject to a reasonable, good-faith dispute, in accordance with Section 5.1.

5.3) <u>Suspension for Late Payments</u>. Without prejudice to its other rights and remedies, Mirakl may suspend Customer and its Authorized Users' access to the Cloud Services for non-payment of undisputed invoices or amounts in accordance with the applicable Order and this Agreement. Such suspension will not reduce the fees owed by Customer under the applicable Order Form. In addition, Mirakl may also terminate the Agreement, should Customer fail to pay the fees due under the Agreement within thirty (30) days of a late-payment reminder notice by Mirakl. All fees committed by Customer under the Agreement until the end of the then-current Term that are not invoiced/paid by the date of termination or expiration of the Agreement shall become immediately due and payable and will be invoiced accordingly by Mirakl.

6. TERM – TERMINATION

6.1) <u>Term and Renewal.</u> The Agreement shall take effect on the Effective Date and will remain in force for so long as an applicable Order Form remains in force. Renewal of each Order Form will be in accordance with the terms set forth therein.

6.2) <u>Termination.</u>

(i) <u>Termination for Breach</u>. Either Party may terminate the Agreement upon written notice if the other Party materially breaches the Agreement and such breach (i) has not be cured within 30 days of the breaching Party's receipt of notice of the breach, or (b) is incapable of cure.
(ii) <u>Termination and Fees.</u> Where the Agreement is terminated due to Mirakl's breach under this Section 6.2, Mirakl will refund to Customer on a pro-rata basis, all fees paid by Customer to Mirakl for the Cloud Services for the period postdating such termination. Where the Agreement is terminated due to Customer's breach under this Section 6.2, Customer will pay to Mirakl all fees agreed under the Agreement that it has not yet paid.

6.3) <u>Effects of Termination</u>. Upon the termination or expiration of the Agreement:

(i) Mirakl shall cease to provide the Cloud Services;
(ii) Customer shall no longer have the right to access or use the Cloud Services; and
(iii) Subject to Section 4.4, each Party shall return and/or destroy all items, data and Confidential Information provided by the other Party during the Term of the Agreement within thirty (30) days, including but not limited to software, software packages, and documents of any kind, provided that a Party may only retain the other Party's Confidential Information that has been archived in accordance with such Party's own record-keeping and backup procedures, so long as no further use is made of such information the confidentiality obligations of this agreement are observed for such period.
(iv) Sections 4.4, 5, 6.4, 8, 9, 10, 11, 12 and 13 will survive the expiration or termination of the Agreement.

7.   WARRANTIES

7.1) <u>Cloud Services Warranty</u>. Mirakl will provide the Cloud Service in all material respects in accordance Agreement and the Documentation.. If Mirakl fails to comply with this commitment, Customer may request that Mirakl modify the deficient Cloud Service in a compliant manner. If Mirakl is unable to do so, Customer may then request within three (3) months of Mirakl's failure to correct the deficient Cloud Service, as its sole and exclusive remedy, that the Customer's subscription to the deficient Cloud Service be terminated and that Customer be refunded, on a pro rata basis, any Subscription Fees paid for the deficient Cloud Service for the period postdating termination of the Agreement.

7.2) <u>Exclusions.</u> Mirakl's obligations under this section do not apply (i) if the impacted Cloud Service has not been used in accordance with the Agreement or the Documentation; (ii) if the impacted Cloud Service's non-compliance is caused by Customer or by any products or services not provided by Mirakl; or (iii) if the impacted Cloud Service is provided free of charge (including beta program and free trial products).

7.3) <u>DISCLAIMER</u>. **EXCEPT AS EXPRESSLY INDICATED IN THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MIRAKL PROVIDES THE CLOUD SERVICES AND AND ANY OTHER SERVICES PROVIDED UNDER THE AGREEMENT ON AN "AS-IS" AND "AS AVAILABLE" BASIS AND MIRAKL, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS DISCLAIM ANY AND ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING REPRESENTATIONS, GUARANTEES OR WARRANTIES OF SATISFACTORY QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OR ACCURACY.** MIRAKL ALSO EXPRESSLY DOES NOT WARRANT OR REPRESENT THAT THE CLOUD SERVICES WILL OPERATE SECURELY, CONTINUOUSLY, OR WITHOUT ERRORS, AND MAKES NO REPRESENTATION OR PROMISE THAT THE CLOUD SERVICES WILL MEET THE NEEDS OF CUSTOMER OR ANY THIRD PARTY OR THAT ANY FUTURE FEATURE WILL BE MADE AVAILABLE, EVEN IF IT IS INCLUDED IN ANY OF MIRAKL'S COMMUNICATIONS OR IN ITS ROADMAP, WHICH CUSTOMER ACKNOWLEDGES AND AGREES TO.

8.   THIRD-PARTY CLAIMS

8.1) <u>Claims brought against Customer.</u> Subject to the provisions of this section, Mirakl agrees to:

(i)   Defend Customer against any legal action or claim brought against Customer by a third party alleging that Customer's use of the Cloud Services in accordance with this Agreement infringes such third party's patent, trademark, or copyright, and

(ii)   Indemnify Customer against all damages finally awarded against Customer (or the amount of any settlement Mirakl enters into) with respect to these claims.

If a Cloud Service is or, in Mirakl's reasonable opinion, may be subject to a legal action or claim, Mirakl may at its discretion and expense (a) obtain the right to permit Customer to continue to use the Cloud Services; (b) modify the relevant Cloud Service so that it is non-infringing while remaining substantially functionally equivalent; or (c) if Mirakl finds that Section 8.1(a) and (b) are not commercially reasonable, Mirakl may terminate the Agreement upon written notice and refund Subscription Fees (if any) which were prepaid by Customer for its subscription to the Cloud Services for the period postdating termination of the Agreement.

Mirakl's obligations under this section will not apply if the legal action or claim results from (A) the combination, operation, or use of the affected Cloud Services with other products, services, or materials not provided by Mirakl; (B) the affected Cloud Service is used otherwise than in compliance with the Agreement, Mirakl Resources, or the Documentation; or (C) if the affected Cloud Service is provided for no fee (including beta program and free trial product).

The provisions of this section state the sole, exclusive, and entire liability of Mirakl, its Affiliates, licensors, and subcontractors to Customer; and is Customer's sole remedy with respect to covered third-party claims alleging infringement or misappropriation of third-party intellectual property rights.

8.2) <u>Claims brought against Mirakl.</u> Customer will defend Mirakl against any claims brought against Mirakl, its Affiliates, officers, employees, agents and subcontractors by any third party related to the Customer Data. Customer will indemnify Mirakl, its Affiliates, officers, employees, agents and subcontractors from and against all legal actions, claims, liabilities, losses, damages and costs (including reasonable attorneys' fees) suffered by Mirakl with respect to these claims.

8.3) <u>Applicable Procedure.</u> The Party against whom a third-party claim is brought (the "Indemnified Party") will: i) promptly notify the other Party (the "Indemnifying Party") in writing of any claim; ii) reasonably cooperate and provide the Indemnifying Party with all information and assistance necessary in the defense. The Indemnified Party may participate in the defense, at its own expense. The Indemnifying Party will have sole control of the defense and potential settlement, provided that any such settlement will not include a financial or specific performance obligation on, or constitute an admission of liability by the Indemnified Party.

9.   LIABILITY

9.1) <u>Limitation of Liability.</u> To the maximum extent permitted by applicable law, the total liability of Mirakl (and its Affiliates, officers, employees, agents, and subcontractors) for any and all causes of action arising out of or relating to this Agreement shall be limited to total amount of Subscription Fees (excluding taxes) paid for the applicable Cloud Service associated with the damages during the six (6) months prior to the first event out of which the liability arose.

9.2) <u>Excluded Damages.</u> To the maximum extent permitted by applicable law, in no event shall Mirakl (and its Affiliates, officers, employees, agents, and subcontractors), whether in contract, extra-contractual liability, tort (including negligence), breach of statutory duty, or otherwise, be liable for (A) any special, incidental, exemplary, punitive, consequential or indirect damages, (B) loss of profits, (C) loss of use or corruption of software, data or information, (D) loss of data, (E) loss of sales or business, (F) loss of or damage to goodwill or reputation, (G) the cost of replacing the Cloud Services, even if Mirakl has been notified of the possibility of such damages.

9.3) <u>Exclusions.</u> Nothing in this Agreement excludes or limits either Party's liability resulting from (i) the Parties' obligations pursuant to Sections 8.1 and 8.2; (ii) gross negligence or willful misconduct, (iii) Customer's failure to pay any amounts due under the Agreement, or (iv) where liability cannot be limited by applicable law.

9.4) <u>Liability and Third Parties.</u> Mirakl only makes a contractual commitment to Customer and makes no commitments or guarantees of any kind to any third party under this Agreement. The access to and use of the Cloud Services by a third party or the direct or indirect use by a third party of all or part of the Cloud Services shall be Customer's exclusive liability. It is therefore Customer's exclusive responsibility to manage its risks with respect to third parties.

9.5) <u>Limitation of Time to File Claims.</u> Customer must initiate a cause of action for any claim(s) relating to the Agreement and its subject matter within one (1) year from the date when Customer knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).

10.   INTELLECTUAL PROPERTY RIGHTS; RESTRICTIONS

10.1) <u>Cloud Services.</u> All intellectual property rights in the Cloud Services (including its underlying software), Mirakl Resources, and the Documentation, and all improvements, modifications, adaptations, corrections, enhancements, and/or derivations of all or any part thereof, including any resulting from operation of the Cloud Services under this Agreement, are and shall remain the exclusive property of Mirakl and/or its licensors.

10.2) <u>Restrictions.</u> Except to the extent that Customer is expressly permitted to and Mirakl is not allowed to restrict it under applicable law, Customer shall not, nor permit or encourage any third party to, directly or indirectly:

(i)   use the Cloud Services, Mirakl Resources, and/or the Documentation to design, develop, distribute, or market similar, equivalent, or substitute services;
(ii)   adapt, modify, transform, or change the Cloud Services, Mirakl Resources, or the Documentation in any way, for any reason whatsoever, including to correct malfunctions;
(iii)   decompile, reverse engineer, or disassemble all or part of the Cloud Services;

(iv) transcribe or translate the Cloud Services, Mirakl Resources, or the Documentation into other languages;

(v) change or circumvent the security measures such as access codes or usernames; and

(vi) sell, transfer, or rent all or part of the Cloud Service(s), Mirakl Resources, or the Documentation, or right to use it whether for payment or free of charge, by any process or derivative work unless otherwise stipulated in this Agreement.

11. CONFIDENTIALITY

The Party receiving Confidential Information agrees that, for the duration of the Agreement and five (5) years after its termination or expiration for any reason, the Confidential Information provided by the disclosing Party shall:

(i) be protected and kept strictly confidential and be handled by the receiving Party with the same level of care and protection as it uses to protect its own Confidential Information provided that it is at least a reasonable degree of care and protection;

(ii) be disclosed only to the receiving Party's employees, agents, and subcontractors who need to access it and shall only be used by them for performing the Agreement;

(iii) not be used in whole or in part by the receiving Party for any purpose other than performing its contractual obligations herein without the disclosing Party's prior, written consent. In particular, Confidential Information shall not be sold, transferred, rented, or commercially exploited; and

(iv) not be copied, reproduced, or duplicated, in whole or in part, except (i) for the purpose of performing its contractual obligations herein; and/or (ii) if expressly approved in writing by the disclosing Party.

In case of disclosure to a Party's employee, agent, or subcontractor, such Party shall have its employee, agent, or subcontractor sign a confidentiality agreement containing obligations at least as protective as those stipulated in this Agreement or otherwise ensure that it is bound by any similar obligations.

Each Party shall ensure that its employees, agents, and subcontractors comply with the obligations set out in this section and shall be liable for any disclosure made in breach hereof by them. If Confidential Information is disclosed in breach of this section, the Party who has knowledge of it must immediately notify the other Party in writing.

The confidentiality obligations stipulated in this section shall not apply to Confidential Information that:

a) is or becomes publicly disclosed through no fault or breach of confidentiality provisions protecting the Confidentiality Information;

b) was already known by the receiving Party prior to its disclosure, which can be demonstrated by the existence of documents pre-existing the disclosure;

c) was lawfully received from a third party without restrictions and not in breach of confidentiality provisions protecting the Confidentiality Information;

d) was independently developed by the receiving Party without using and/or relying on any of the disclosing Party's Confidential Information, which can be demonstrated by the existence of written records; and

e) whose use or disclosure has been authorized in writing by the disclosing Party.

In addition, on a strictly confidential basis, each Party may disclose the Confidential Information of the other Party to:

A. For Mirakl: Affiliates of Mirakl SAS (parent company of Mirakl); and

B. For each Party: I) to its advisers, investors, insurance broker and insurers, statutory auditors, tax and social security agencies in the event of an audit; or II) when ordered to do so by a court of law; or III) when such disclosure is necessary to enable enforcement or prove the existence of rights under the Agreement. In the case of Sections 11(B)(I) and (II), the disclosing Party will provide reasonable advance notice to the other Party and provide reasonable assistance to limit the scope of the disclosure, unless prohibited by applicable law or regulation.

12. AGGREGATED DATA

Mirakl may use anonymized and aggregated Customer Data and information derived from Customer's and its Authorized Users' use of the Cloud Services to a) improve its products and services (including product features and functionalities, workflows, and user interfaces) and develop new products and services; b) maximize resource and support allocation; c) develop learning algorithms; and d) identify industry trends and developments, indexing, and anonymous benchmarking. Unless expressly agreed by Customer, the personal data contained in the Customer Data shall only be used to provide the Cloud Services.

13. GENERAL PROVISIONS

13.1) Relationship of the Parties. Each Party shall be deemed to be an independent contractor. Nothing in this Agreement shall be deemed to create a partnership, joint venture, or agency relationship between the Parties. In addition, each Party shall retain its status as an employer with respect to its own personnel.

13.2) No Third-party Beneficiaries. This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

13.3 Non-solicitation of Personnel. Unless Mirakl has given its prior, written consent, Customer shall refrain from directly or indirectly inducing, or attempting to induce, Mirakl's employees to terminate their employment with Mirakl by actively soliciting them. In particular, Customer is prohibited from inducing, or attempting to induce, Mirakl's employees to breach their employment contract. This non-solicitation obligation shall remain valid during the Term of the Agreement and for a period of twelve (12) months after the expiration or termination of this Agreement for any reason whatsoever. If Customer breaches this obligation, Customer shall compensate Mirakl by paying an amount equal to two times the gross salary received by the employee who was hired during the twelve (12) months prior to such employee's departure.

13.4) Sub-contracting. Mirakl may subcontract all or part of its obligations under this Agreement to any subcontractor (for example, cloud hosting providers), provided that Mirakl will be responsible to Customer for any breach of the Agreement by its subcontractors.

13.5) Assignment. Neither Party may assign the Agreement without the other Party's prior written consent. Notwithstanding the foregoing, Mirakl may assign this Agreement in its entirety without Customer's consent to an Affiliate or in connection with a merger, acquisition, or sale of all or substantially all of its assets. Notwithstanding the foregoing, Customer may not assign the Agreement to a company that competes with Mirakl.

13.6) Entire Agreement. The Agreement expresses all of the Parties' obligations with respect to its subject matter and supersedes and replaces any and all prior declarations, negotiations, undertakings, verbal or written communications, acceptances, agreements and understandings, having the same subject matter as this Agreement, including any confidentiality agreement signed by the Parties prior to this Agreement. No other general or specific condition communicated by either Party may be enforced against the other Party.

13.7) Notifications. Any business notifications in connection with this Agreement may be sent by email. Any legal notices sent pursuant to the Agreement must be made in writing and (i) delivered by hand, or (ii) sent by registered letter with acknowledgment of receipt to the address indicated in the Agreement, or to any other address communicated by either Party for this purpose. Notification sent by registered letter with acknowledgment of receipt shall be deemed to be received on the date it was delivered. However, Mirakl's notifications regarding the Cloud Services' operation may be made electronically.

13.8) Force Majeure. Neither Party will be liable for any delay in performance or failure to perform its obligations under this Agreement (except for payment obligations) due to any cause or event outside its reasonable control, including acts of God, civil or military authority, acts of war, accidents, third-party communication or computer failures, epidemic or pandemic, natural disasters or catastrophes, strikes or other work stoppages, interruption or failure of utility services, or any other cause beyond the reasonable control of the affected Party.

13.9) <u>Miscellaneous.</u>

13.9.1) A delay or failure by either Party to assert any of its rights under the Agreement shall not operate as a waiver of any such right and shall not release the other Party from its obligations under the Agreement.

13.9.2) Any modifications to the Agreement must be made in writing and signed by an authorized representative of each Party. Any terms or conditions in Customer's purchase order or any other related documentation submitted by or on behalf of Customer to Mirakl do not form part of this Agreement and are void, unless otherwise expressly agreed in writing and signed by both Customer and Mirakl.

13.9.3) If one or more of the provisions of the Agreement is or becomes null, void, illegal, unenforceable or inapplicable in any manner whatsoever, the validity, legality, or enforceability of the remaining provisions of the Agreement shall not be affected or impaired in any way. However, in such case, the Parties agree to consult each other and to make every effort to include a new clause in the Agreement that restores the intent of the Parties as expressed in the initial clause, in compliance with the applicable law.

13.10) <u>Electronic Records and signature</u> The Parties agree that the records stored by Mirakl (for example transaction logs) as well as the electronic communications between the Parties shall be admissible as evidence between the Parties in accordance with applicable law. For this purpose, it is expressly agreed that all technical information concerning Customer and any electronic communications of any nature whatsoever with Customer (including, but not limited to, email, internal messages from the Cloud Services, etc.) may be stored and archived by Mirakl for evidentiary purposes. Both parties agree that their signature can be established in electronic form sending by facsimile, scanned copy sent via e-mail, or electronic signature by using means implemented by Mirakl (e.g. Adobe Sign or Docusign) and that, when in electronic form, this Agreement shall be deemed original.

13.10<u>) Governing Law and Jurisdiction.</u>

Each party agrees to the applicable governing law as defined in the table below without regard to choice or conflicts of law principles, in particular the application of the United Nations Convention on Contracts for the International Sale of Goods, all national laws intended to apply this Convention and any other applicable conflict of law rules, for any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Agreement. If the Parties fail to reach an amicable agreement for any dispute (including non-contractual disputes or claims) arising between them concerning the interpretation or performance of this Agreement, its formation, conclusion or termination, each party agrees to the exclusive jurisdiction of the applicable courts as defined in the table below which shall have exclusive jurisdiction, notwithstanding multiple defendants or introduction of third parties, even for protective, summary or motion proceedings

If Customer is contracting with:	Address	Governing law	Courts with exclusive jurisdiction based in
Mirakl Pty Ltd ACN: 657 285 866 ABN: 34 657 285 866 Tax: 609 905 737	C/- Expandys Consulting Pty Ltd, Unit 2, 50 Yeo Street, Neutral Bay NSW 2089, AUSTRALIA	New South Wales (Australia)	New South Wales, Australia
Mirakl do Brasil Desenvolvimiente de Software Limitada ID: 35236647210 Tax: 40.051.913/0001-51	Avenida Nove de Julho, n°5966 Conj. 71 Sala A - CEP 01406-902, Jardim Paulista - Cidade de São Paulo - Estado de São Paulo, BRAZIL	Brazil	São Paulo, Brazil
Mirakl SAS Paris Trade Registry: 530 897 990 VAT: FR57 530 897 990	10-12 rue de Lübeck, 75116 Paris, FRANCE	France	Paris, France
Target2Sell SAS Paris Trade Registry: 753 096 031 VAT: FR92753096031	10-12 rue de Lübeck, 75116 Paris, FRANCE	France	Paris, France

Mirakl GmbH Handelsregister B München: HRB 265556 Tax: 143 / 162 / 71589 VAT: DE 34 29 33 252	Dachauer Straße 65, 80335 München, GERMANY	Germany	Munich, Germany
Mirakl S.r.L. REA: MI-2657989 VAT: IT12386490960	Corso Matteotti n 1, 20121 Milano, ITALY	Italy	Milan, Italy
Mirakl KK Registration: 0104-01-164347	〒107-6218, 東京都港区赤坂9-7-1, ミッドタウンタワー18 JAPAN	Japan	Tokyo District Court at the first instance
Mirakl Pte Ltd Tax/Registration: 202143543K	5 Shenton Way #22-04 UIC Building, Singapore 068808	Singapore	Singapore
Mirakl Platform S.L. Tax ID: B67639849 DUNS: 470991740 VAT: ESN2501627J	Calle Serrano 90, 6ª planta, 28006 Madrid, SPAIN	Spain	Madrid, Spain
Mirakl Ltd Registration: 08594160 VAT: 219367981 EU VAT: GB219367981	82 Dean Street, London, W1D 2SP, UNITED KINGDOM	England and Wales	London, England
Mirakl Inc. Business code: 541511	100 Summer Street, 5th floor, Suite 550, Boston, MA 02144	Delaware (USA)	Delaware, USA

13.11) <u>Local Requirements: Laws of France</u>
With respect to agreements under French Laws, the following provisions shall be applicable :

1) a new section 9.6 "Risk Allocation" is added as follows:
   These provisions establish a distribution of risk between Customer and Mirakl. The price agreed upon by the Parties reflects this allocation of risk as well as the limitation of liability described above.

2) a new section 9.7 "Obligation to Mitigate" is added as follows:
   Each Party shall make its best efforts to mitigate any damages that may be incurred hereunder.

3) a new section 13.9.4 is added as follows:
   Throughout the Term of the Agreement and any successive extensions and/or renewals thereof, each Party irrevocably waives their right to invoke the provisions of Article 1195 of the French Civil Code and shall refrain from requesting the enforcement thereof and/or filing any claim or legal action for revising the Agreement (including its appendices and the Order Form attached thereto) and/or its consequences (in particular each successive renewal or extension of the Agreement) based on said Article 1195.

4) Section 13.10 "Governing Law and Jurisdiction" is replaced by the following:
   THIS AGREEMENT WILL BE GOVERNED BY THE LAWS OF FRANCE. THE PARTIES EXPRESSLY EXCLUDE THE APPLICATION OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS, ALL NATIONAL LAWS INTENDED TO APPLY THIS CONVENTION AND ANY APPLICABLE CONFLICT OF LAW RULES. IF THE PARTIES FAIL TO REACH AN AMICABLE AGREEMENT FOR ANY DISPUTE ARISING BETWEEN THEM CONCERNING THE INTERPRETATION OR PERFORMANCE OF THIS AGREEMENT, THE COURTS OF PARIS SHALL HAVE JURISDICTION, NOTWITHSTANDING MULTIPLE DEFENDANTS OR INTRODUCTION OF THIRD PARTIES, EVEN FOR PROTECTIVE, SUMMARY OR MOTION PROCEEDINGS.

13.12) <u>Local Requirements: Laws of Germany</u>
With respect to agreements under German Laws, the following provisions shall be applicable:

1) a new Section 7.4 "Warranty Period" is added as follows:
   Customer's remedies for breach of warranty, if any, shall be subject to a limitation period of one (1) year. However, all remedies based on gross negligence, willful misconduct, fraudulent behavior, a guarantee of properties or the death of a natural person or personal injury to the latter, shall be subject to the applicable statutory limitation periods. The limitation periods shall begin on the dates specified by the statute.

2) Section 9.1 "Limitation of Liability" is replaced by the following:
   Mirakl shall only be liable for damages, whether based on contract or any other legal theory, only to the extent that the damages were caused by gross negligence or willful misconduct imputable to Mirakl. In addition, Mirakl shall also be liable in accordance with statutory law for a slightly negligent violation of a fundamental duty under the Agreement, but such liability shall be limited to damages which Mirakl could have reasonably foreseen at the time of execution of the Agreement. With respect to a slightly negligent violation of a fundamental duty under the Agreement, the total liability of Mirakl shall be limited to the total amount of Subscription Fees paid (excluding tax) by Customer to Mirakl for the applicable Cloud Service associated with the damages during the six (6) months prior to the first event out of which the liability arose. Fundamental duties as used herein comprise all duties which must be fulfilled by Mirakl in order to enable consummation of the Agreement and the achievement of its purposes and fulfillment of which the Customer may reasonably expect in view of the content and purposes of the Agreement. In addition, any liability of Mirakl based on slight negligence shall be subject to a limitation period of one (1) year; the limitation period shall begin on the dates specified by the statute.

3) Section 9.2 "Excluded Damages" is replaced by the following:
   In no event shall Mirakl be liable for damages caused by the loss of data to the extent such loss could have been avoided by reasonable regular back-up.

4) a new section 9.6 "Personal Liability" is added as follows:
   Limitations of Mirakl's liability agreed above shall also apply to the personal liability of Mirakl's officers, employees, or agents.

5) a new section 9.7) "Product Liability, Guarantees, Death, Personal Injury" is added as follows:
   Any mandatory liability under the Product Liability Act and/or arising from a guarantee of properties as well as any liability under statutory law for the death of a natural person or personal injury to the latter shall remain unaffected by the limitations provided for in Sections 9.1 – 9.3 above.

13.13) <u>Local Requirements: Laws of England and Wales</u>

With respect to agreements under England and Wales laws, the following provisions shall be applicable:

1) the following provision is added to section 13.9.4:

   Unless otherwise expressly agreed, this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

2) the following provision is added to section 13.6 "Entire Agreement":

   The words "including", "include", "in particular", "for example" or similar expressions shall be construed as illustrative and will not limit the meaning of the preceding words. Headings shall not affect the interpretation of the Agreement and are for convenience only.

3) the following provision is added to section 13.10 "Governing Law and Jurisdiction":

Without prejudice to any other rights or remedies that the Parties may have, the Parties acknowledge that actual or threatened breach of certain sections of this Agreement (e.g. sections on intellectual property rights, confidentiality and data protection, etc.) may cause immediate, irreparable harm that is difficult to calculate and cannot be remedied by the payment of damages alone. Accordingly, either Party will be entitled to seek the remedies of injunction, specific performance or other equitable relief for any such actual or threatened breach.

13.14) <u>Local Requirement: Laws of Delaware (USA)</u>

With respect to agreements under the laws of the state of Delaware, USA, the following provision shall be applicable:

1) the following provision is added to section 13.10) "Governing Law and Jurisdiction":

Each party hereby waives its respective rights to a jury trial of any claim or cause of action relating to or arising out of this Agreement. This waiver is intended to encompass any and all disputes that may be filed in any court and that relate to the subject matter of this Agreement, including contract claims, tort claims, breach of duty claims and all other common law and statutory claims.

13.15) <u>Local Requirements: Law of Kingdom of Spain</u>

With respect to agreements under the laws of the Kingdom of Spain the following provision shall be applicable:

1) a new section 13.9.4 is added as follows:

Throughout the Term of the Agreement and any successive extensions and/or renewals thereof, each Party irrevocably waives their right to invoke the "rebus sic stantibus" doctrine in order to renegotiate the Agreement and shall refrain from requesting the enforcement thereof and/or filing any claim or legal action for revising the Agreement (including its appendices and the Order Form attached thereto) and/or its consequences (in particular each successive renewal or extension of the Agreement) based on said doctrine.

13.16) <u>Local Requirements: Laws of Singapore</u>

With respect to agreements under the laws of Singapore, the following provisions shall be applicable:

1) the following provision is added to section 13.9.4:

Unless otherwise expressly agreed, this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 2001 of Singapore to enforce any term of this Agreement.

14.   DEFINITIONS

The terms defined in this section apply to capitalized words in the Agreement.

<u>Affiliate</u>:	means any legal entity in which Customer or Mirakl SAS (Mirakl's parent company) directly or indirectly, holds more than fifty percent (50%) of such entity's shares or voting rights. Any legal entity will be considered an Affiliate as long as that interest is maintained.
<u>Agreement</u>	means by order of precedence i) each Order Form(s) and the version in effect as of the Effective Date located at legal.mirakl.com of ii) the Cloud Services Terms and description and Supplemental Terms applicable to the Cloud Services subscribed by Customer under an Order Form, iii) the Service Levels and Support Schedule for Mirakl Cloud Services, iv) the Data Processing Agreement, and v) these General Terms of Use.
<u>Authorized User</u>:	means any legal or natural person, including but not limited to Customer's employees Service Providers and Sellers, to whom Customer grants authorization to use the Cloud Services.

<u>Cloud Service:</u>	means each of the hosted services that are provided by Mirakl that have been subscribed to by Customer in the Order Form, as further described in the Service Description.
<u>Confidential Information:</u>	means any information from a disclosing Party communicated to, entrusted to, or obtained in any form whatsoever, verbally or in writing, by the receiving Party, including but not limited to: (i) any technical, operational, or commercial information relating to the Cloud Services, including Mirakl Resources and the Documentation; (ii) solutions, products, technologies, software, know-how, tangible or intangible research results, information about customers and/or prospects, business strategies; (iii) any information identified as "confidential"; and (iv) any information that is confidential in nature or the receiving Party knows, or ought reasonably to know, is confidential.
<u>Customer Data:</u>	means all data entered into a Production Environment of the Cloud Services by Customer and/or its Authorized Users.
<u>Customer:</u>	means the legal entity identified as the customer in the Order Form.
<u>Documentation:</u>	means the latest updated version of Mirakl's online documentation for the Cloud Services covering its technical, functional, and operational aspects. The Documentation is accessible via the Cloud Services.
<u>Mirakl Resources:</u>	means any item developed and/or provided by Mirakl in connection with the performance of the Agreement.
<u>Mirakl:</u>	means the Mirakl entity identified in the Order Form.
<u>Order Form:</u>	means a contractual document containing all of the specific terms of the Agreement including Customer's identity, the Cloud Services subscribed to by Customer, as well as any specific commercial or legal terms agreed upon between the Parties.
<u>Party/Parties:</u>	means Customer and Mirakl, either collectively or individually.
<u>Production Environment</u>	means the only environment that can be used to process real transactions, i.e. for example generate revenue using the Cloud Service
<u>Service Description:</u>	means the document describing the Cloud Services' features, located at: https://help.mirakl.net/Customers/topics/Mirakl/features/list-of-features.htm. The Service Description is included in the Documentation.
<u>Term:</u>	means the Initial Term or any then-current subsequent Renewal Term.