

*If you would like to discuss the terms of this agreement, please reach out to your Mirakl representative. **Please do not download and redline from this PDF version.***

GENERAL TERMS AND CONDITIONS FOR CUSTOMER SUPPORT SERVICES



1. PURPOSE

These Terms and Conditions govern Customer's access to, and use of the Mirakl Customer Support Services identified in an Order Form.

2. CUSTOMER SUPPORT SERVICES

2.1) Right to Access and Use. 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 Customer Support Services, Mirakl Resources, and the Documentation, solely for Customer's internal business operations during the term of the Agreement.

2.2) Cooperation. Mirakl agrees to perform the Customer Support Services ordered by Customer in an Order Form. Customer shall reasonably cooperate with Mirakl and ensure that all stakeholders (employees, subcontractors, contractors, etc.) will also cooperate and provide the information necessary for Mirakl to perform the Customer Support Services. This may include providing Mirakl with information relevant to the applicable Order Form, as may be reasonably required by Mirakl from time to time. Customer shall also notify Mirakl in writing of any issue that may affect the performance of the Agreement.

2.3) Unused Man Days. Unless otherwise specified, any Man Days set forth in an applicable Order Form that are unused by Customer within twelve (12) months from their order are forfeited and Customer shall not be entitled to any refund for such unused Man Days. Any additional Man Days shall be subject to an additional Order Form and billed accordingly by Mirakl.

2.4) Delay and Cancellation. Mirakl shall not be deemed to be in breach of its obligations regarding the Customer Support Services to the extent that Mirakl is delayed or prevented from performing due to an act or omission of Customer or a third party. If the Customer Support Services are delayed or postponed by or due to by Customer (including its officers, employees, agents, or subcontractors), then Customer shall reimburse Mirakl for any additional costs incurred.

3. PERSONAL DATA

In the context of their contractual relationship, it is understood that the Parties act in their respective capacity as data controllers of the personal data they process and undertake to comply with the regulations in force applicable to the processing of personal data, including, if applicable, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (hereinafter the "GDPR").

The personal data communicated, transmitted, or received during the performance and execution of the Agreement will be processed by each Party in compliance with applicable law.

As data controller, each Party is responsible for ensuring its own compliance with applicable legal obligations, in particular related to the GDPR, such as, but not limited to, the maintenance of a data processing register, the conduct of an impact assessment (if applicable), and the implementation of appropriate technical and organizational measures to secure the processing operations performed under the Agreement.

The Parties will undertake to communicate the appropriate information to the data subjects, to collect only the personal data strictly necessary for the proper performance of their obligations under the Agreement, and to keep it only for the period necessary for the purposes of the processing.

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4. FINANCIAL TERMS

4.1) Prices and Payment. Customer shall pay all amounts due under the Agreement in accordance with the applicable Order Form. Payments made by Customer are non-refundable, and Customer may not withhold, deduct, or offset any amounts owed to Mirakl. If any costs are necessary to collect amounts due under the Agreement, 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, and other documents issued by Customer for its internal administrative procedures shall not add to or alter the Agreement.

4.2) Fees Dispute Resolution. 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 Customer's notice. Notwithstanding the foregoing, Customer will not be released from its obligation to pay all amounts not subject to a reasonable, good-faith dispute, in accordance with Section 4.1.

4.3) Suspension for Late Payments. Without prejudice to its other rights and remedies, Mirakl may suspend the provision of Customer Support Services due to the non-payment of undisputed invoices or amounts in accordance with the provisions of the applicable Order Form and the Agreement, if such payment failure has not been cured within fourteen (14) days of Mirakl's notice. Such suspension will not reduce the fees owed by Customer under any Order Form. In addition, Mirakl may also terminate the Agreement in accordance with Section 5.2 (i) below should Customer fail to pay the fees due under the Agreement within thirty (30) days of Mirakl's notice.

4.4) Travel Expenses. If applicable and pre-approved by Customer, appropriately documented travel, subsistence, and accommodation expenses incurred by Mirakl in connection with the provision of the Customer Support Services shall be reimbursed by Customer upon provision of supporting documents.

4.5) Taxes. The fees set forth in an Order Form exclude taxes. Taxes shall be paid by Customer at the rate in force on the day of invoicing. If, as a result of any tax or levy, Customer is required to withhold any amount on any payment to Mirakl, then the amount of the payment to Mirakl shall be automatically increased to totally offset that tax, so that the amount actually remitted to Mirakl, net of all taxes, equals the amount invoiced or otherwise due. Customer shall promptly provide Mirakl with an official receipt for the payment of these taxes to the relevant tax authorities. Customer may provide Mirakl with an exemption certificate that is deemed acceptable by the tax authorities.

5. TERM – TERMINATION

5.1) Term and Renewal. The Agreement shall take effect on the Order Form's effective date and will remain in force for so long as an Order Form remains in force, including any renewals thereof.

5.2) Termination.

- (i) Termination for Breach. Either Party may terminate the Agreement upon written notice if the other Party materially breaches the Agreement and such breach (i) has not been cured within thirty (30) days of the breaching Party's receipt of notice of the breach, or (ii) is incapable of cure.
- (ii) Termination and Fees. Where the Agreement is terminated due to Mirakl's breach under this Section 5.2, Mirakl will refund to Customer, on a pro rata basis, any fees paid by Customer to Mirakl for the Customer Support Services for the period postdating such termination. Where the Agreement is terminated due to Customer's breach under this Section 5.2, all fees committed by Customer that it has not yet paid will become immediately due and payable and will be invoiced accordingly by Mirakl.

5.3) Effect of Termination. Upon termination or expiration of the Agreement:

- (i) Mirakl shall cease to provide the Customer Support Services;
- (ii) each Party shall return and/or delete all Confidential Information provided by the other Party during the term of the Agreement within ninety (90) days from the date of termination or expiration of the Agreement.

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Notwithstanding the foregoing, each Party may retain the other Party's Confidential Information that has been archived in accordance with such Party's record-keeping and backup procedures, so long as no further use is made of such information and the confidentiality obligations of the Agreement shall continue to apply to any such retained Confidential Information.

(iii) Sections 4, 5.3, 7, 8, 9, 10, and 11 will survive the expiration or termination of the Agreement.

6. DISCLAIMERS

6.1) THE CUSTOMER SUPPORT SERVICES ARE INFORMATIONAL ONLY AND ARE NOT A PROFESSIONAL CONSULTANCY. THE CUSTOMER SUPPORT SERVICES ARE NOT INTENDED FOR AND SHALL NOT BE USED AS A REPLACEMENT OF CUSTOMER'S OWN BUSINESS DECISIONS, ACTIVITIES, RESEARCH, OR OPERATIONS. CUSTOMER AT ALL TIMES IS AND REMAINS SOLELY AND EXCLUSIVELY RESPONSIBLE FOR ITS ACTIONS, DECISIONS, ACTIVITIES, AND OPERATIONS. THE CUSTOMER SUPPORT SERVICES ARE PROVIDED ON AN AS-IS BASIS, AND MIRAKL, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS MAKE NO GUARANTEES WITH RESPECT THERETO, NOR ANY WARRANTY AS TO THE ACCURACY OR COMPLETENESS OF ANY INFORMATION CONTAINED OR COMMUNICATED BY, IN, OR THROUGH THE CUSTOMER SUPPORT SERVICES. MIRAKL, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS DISCLAIM ANY AND ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, ACCURACY, OR ANY RESULTS OF ANY NATURE WHATSOEVER. MIRAKL, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS DISCLAIM ALL RESPONSIBILITY AND LIABILITY OF ANY KIND AND NATURE WITH RESPECT TO ANY ACTIONS, INACTIONS, OR DECISIONS THAT CUSTOMER MAY CHOOSE TO TAKE OR REFRAIN FROM TAKING AS A RESULT OF ITS ACCESS TO OR USE OF THE CUSTOMER SUPPORT SERVICES, INCLUDING ANY MIRAKL SUPPORT MATERIALS.

6.2) CUSTOMER ACKNOWLEDGES THAT ALL DOCUMENTS, STUDIES, AND ANALYSES MADE BY MIRAKL ("MIRAKL SUPPORT MATERIALS") DURING OR AS A RESULT OF THE CUSTOMER SUPPORT SERVICES ARE BASED ON INFORMATION PROVIDED BY CUSTOMER. THE MIRAKL SUPPORT MATERIALS ARE SUBJECT TO CUSTOMER'S REVIEW, ALL DISCLAIMERS ABOVE IN SECTION 6.1, AND ARE NOT IN ANY WAY INTENDED TO BE A BINDING GUIDELINE ON HOW TO OPERATE CUSTOMER'S BUSINESS. THE MIRAKL SUPPORT MATERIALS ARE INFORMATIONAL ONLY AND MAY INCLUDE GENERALIZED PERFORMANCE AND BEST PRACTICES INFORMATION. THE MIRAKL SUPPORT MATERIALS DO NOT CONSTITUTE (NOR SHALL THEY BE CONSTRUED IN ANY WAY AS) ADVICE, DIRECTION, INSTRUCTION, OR REQUIREMENTS BY MIRAKL AS TO ANY ASPECT OF CUSTOMER'S BUSINESS. MIRAKL MAKES NO RECOMMENDATION THAT CUSTOMER RELY ON THE MIRAKL SUPPORT MATERIALS TO MAKE ITS BUSINESS DECISIONS, AND MIRAKL, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS SPECIFICALLY DISCLAIM ANY LIABILITY WITH RESPECT TO THE CONTENT OF THE MIRAKL SUPPORT MATERIALS AND NO CONTRACTUAL OBLIGATIONS OR COMMITMENTS OF ANY KIND ARE FORMED EITHER DIRECTLY OR INDIRECTLY BY THEM.

7. LIABILITY

7.1) Limitation of Liability. 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 the Agreement shall be limited to the total amount of fees (excluding tax) paid by Customer under the relevant Order Form during the twelve (12) months prior to the first event out of which the liability arose.

7.2) Excluded Damages. 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 (i) any special, incidental, exemplary, punitive, consequential, or indirect damages; (ii) loss of profits; (iii) loss of use or corruption of software, data, or information; (iv) loss of data; (v) loss of sales or business; (vi) loss of or damage to goodwill or reputation; or (vii) the cost of replacing the Customer Support Services, even if Mirakl has been notified of the possibility of such damages.

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7.3) Exclusions. Nothing in the Agreement excludes or limits either Party's liability resulting from (i) gross negligence or willful misconduct; (ii) Customer's failure to pay any amounts due under the Agreement; and (iii) breaches for which liability cannot be limited by applicable law.

7.4) Liability and Third Parties. Mirakl only makes a contractual commitment to Customer and makes no commitments or guarantees of any kind to any third party under the Agreement. Any access to and use of the Customer Support Services by a third party shall be Customer's exclusive liability.

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

8. INTELLECTUAL PROPERTY RIGHTS; RESTRICTIONS

8.1) Customer Support Services Intellectual Property. All intellectual property rights in the Customer Support Services, 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 the provision of Customer Support Services under the Agreement, are and shall remain the exclusive property of Mirakl and/or its licensors.

8.2) Restrictions. 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 Mirakl Resources or the Documentation to design, develop, distribute, or market similar, equivalent, or substitute services;
- (ii) adapt, modify, transform, or change Mirakl Resources or the Documentation in any way and for any reason whatsoever;
- (iii) transcribe or translate Mirakl Resources or the Documentation into other languages;
- (iv) change or circumvent the security measures such as access codes or usernames; and
- (v) sell, transfer, or rent all or part of Mirakl Resources or the Documentation, or right to use them, whether for payment or free of charge, by any process or derivative work, unless otherwise stipulated in the Agreement.

The Mirakl Support Materials are for Customer's internal use only and shall not be distributed outside of Customer's company. Their content is confidential and remains the property of Mirakl.

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8.3) Feedback. If Customer provides any opinions, suggestions, or recommendations to Mirakl (“Feedback”) concerning the Customer Support Services, or the functionalities and performance of Mirakl’s services (including identifying potential errors and improvements), Customer hereby assigns to Mirakl all right, title, and interest in and to the Feedback, and Mirakl is free to use and incorporate the Feedback, at its sole discretion, without payment or restriction.

9. 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 cause whatsoever, 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 degree of care it uses to protect its own Confidential Information, but no less than with a reasonable degree of care;
- (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 to perform the Agreement;
- (iii) not be used in whole or in part by the receiving Party for any purpose other than performing its contractual obligations hereunder. 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) as needed for the receiving Party’s performance of its contractual obligations herein and/or (ii) if expressly approved in writing by the disclosing Party.

The receiving Party shall ensure that its employees, agents, and subcontractors to whom the disclosing Party’s Confidential Information is disclosed are bound in writing by confidentiality obligations no less restrictive than those set forth herein.

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 Confidential 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 Confidential 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/or
- 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:

- A. for Mirakl: to the Affiliates of Mirakl SAS (parent company of Mirakl); and
- B. for each Party: (I) to its advisers, investors, insurance broker and insurers, statutory auditors, and tax and social security agencies in the event of an audit; (II) when ordered to do so by a court of law; or (III) when such disclosure is necessary to enforce or prove the existence of rights under the Agreement. In the case of Section 9 (B)(I) and (II), the receiving Party will provide reasonable advance notice to the disclosing Party and provide reasonable assistance to limit the scope of disclosure, unless prohibited by applicable laws or regulations.

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10. GENERAL PROVISIONS

10.1) Relationship of the Parties. Each Party shall be deemed to be an independent contractor. Nothing in the 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.

When the Customer Support Services are provided at Customer's premises, Mirakl's personnel shall comply with the health and safety regulations in effect at said premises as communicated to Mirakl in advance and in writing by Customer.

10.2) No Third-Party Beneficiaries. The Agreement is concluded 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 the Agreement.

10.3) 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 or to breach their employment contract with Mirakl. 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 the Agreement for any cause whatsoever. If Customer breaches this obligation, Customer shall compensate Mirakl by paying an amount equal to two (2) times the gross salary received by the employee who was hired during the twelve (12) months preceding such employee's departure.

10.4) Sub-Contracting. Mirakl may subcontract all or part of its obligations under the Agreement to any subcontractor, provided that Mirakl remains responsible to Customer for any breach of the Agreement by its subcontractors.

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

10.6) Entire Agreement. The Agreement constitutes the full and exclusive understanding between the Parties with respect to its subject matter and supersedes and replaces all prior declarations, negotiations, undertakings, verbal or written communications, acceptances, agreements, and understandings, having the same subject matter as the Agreement, including, but not limited to any terms and conditions contained in an agreement for the subscription to Mirakl's cloud services.

Any modification to the Agreement must be made in writing and signed by an authorized representative of each Party.

No other general or specific terms and conditions communicated by either Party may be enforced against the other Party, including those contained in Customer's purchase orders or any other documentation submitted by or on behalf of Customer.

10.7) Notifications. Any business notifications in connection with the 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. Notifications sent by registered letter with acknowledgment of receipt shall be deemed to be received on the date it was delivered.

10.8) Force Majeure. Neither Party will be liable for any delay in performing or failing to perform its obligations under the 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.

10.9) Miscellaneous.

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10.9.1) Non-Waiver. A delay or failure by either Party to assert any of its rights under the Agreement shall not be construed as a waiver of any such right and shall not release the other Party from its obligations under the Agreement.

10.9.2) Severability. 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 applicable law.

10.10) Electronic Records and Signature. The Parties agree that 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) may be stored and archived by Mirakl for evidentiary purposes. Both Parties agree that their signature can be established in electronic form and sent 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, the Agreement shall be deemed original.

10.11) Governing Law and Jurisdiction.

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 the Agreement, its formation, conclusion, or termination, each Party agrees to the exclusive jurisdiction of the applicable courts as defined in the table below, 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 TFN: 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 Desenvolvimento de Software Limitada ID: 35236647210 CNPJ: 40.051.913/0001-51	Avenida Nove de Julho, nº5966 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: FR92 753 096 031	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	Design Offices München Nove, Luise-Ullrich-Straße 14, 80636 München, GERMANY	Germany	Munich, Germany
Mirakl S.r.L. REA: MI-2657989	Corso Matteotti n 1, 20121 Milano, ITALY	Italy	Milan, Italy

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VAT: 12386490960			
Mirakl KK Registration: 0104-01-164347	18F Midtown Tower, 9-7-1 Akasaka, Minato-ku, Tokyo, JAPAN	Japan	Tokyo District Court at the first instance
Mirakl Pte Ltd Tax/Registration: 202143543K	5 Shenton Way #22-04 UIC Building, 068808 SINGAPORE	Singapore	Singapore
Mirakl Platform S.L. Tax ID: B67639849 VAT: N2501627J	C/ Pasaje Simón, Num. 16, Planta Baj, 80825 Madrid, SPAIN	Spain	Madrid, Spain
Mirakl Ltd Registration: 08594160 VAT: 219367981 EU VAT: GB219367981	82 Dean Street, London, W1D 3SP, UNITED KINGDOM	England and Wales	London, England
Mirakl, Inc. TIN/EIN: 47-1926329 Business code: 541511	100 Summer Street, 5 th floor, Suite 550, Boston, MA 02110, USA	Delaware (USA)	Delaware, USA

10.12) Local Requirements: Laws of France.

Should the Agreement be subject to the laws of France in accordance with the table set forth in Section 10.11, the following provisions shall be applicable:

- 1) A new section 7.6 "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 7.7 "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 provision is added within section 10.1 with the following:

Pursuant to Articles L. 8221-1 et seq. and R. 8221-1 et seq. of the French Labor Code, Mirakl expressly declares that it shall comply with all obligations under the French Labor Code and warrants that it does not resort to undeclared labor.

- 4) A new section 10.9.3 "Unpredictability" is added as follows:

Throughout the term of the Agreement and any successive extensions and/or renewals thereof, each Party irrevocably waives its 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 schedules 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.

- 5) Section 10.11 "Governing Law and Jurisdiction" is replaced by the following:

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THE AGREEMENT IS 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 THE AGREEMENT, THE COURTS OF PARIS SHALL HAVE JURISDICTION, NOTWITHSTANDING MULTIPLE DEFENDANTS OR INTRODUCTION OF THIRD PARTIES, EVEN FOR PROTECTIVE, SUMMARY OR MOTION PROCEEDINGS.

10.13) Local Requirements: Laws of Germany.

Should the Agreement be subject to the laws of Germany in accordance with the table set forth in Section 10.11, the following provisions shall be applicable:

- 1) Section 7.1 "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 fees (excluding tax) paid by Customer under the relevant Order Form during the twelve (12) 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.

- 2) Section 7.2 "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.

- 3) A new section 7.6 "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.

10.14) Local Requirements: Laws of England and Wales.

Should the Agreement be subject to the laws of England and Wales in accordance with the table set forth in Section 10.11, the following provisions shall be applicable:

- 1) The following provision is added to section 10.2 "No Third-Party Beneficiaries":

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

- 2) The following provision is added to section 10.6 "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 10.11 "Governing Law and Jurisdiction":

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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 the Agreement (e.g., sections on intellectual property rights, confidentiality, 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.

10.15) Local Requirement: Laws of Delaware (USA).

Should the Agreement be subject to the laws of Delaware in accordance with the table set forth in Section 10.11, the following provisions shall be applicable:

1) The following provision is added to section 10.11 "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 the 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 the Agreement, including contract claims, tort claims, breach of duty claims and all other common law and statutory claims.

10.16) Local Requirements: Law of the Kingdom of Spain.

Should the Agreement be subject to the laws of the Kingdom of Spain in accordance with the table set forth in Section 10.11, the following provisions shall be applicable:

1) A new section 10.9.3 "Unpredictability" is added as follows:

Throughout the term of the Agreement and any successive extensions and/or renewals thereof, each Party irrevocably waives its 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 schedules and the Order Form attached thereto) and/or its consequences (in particular each successive renewal or extension of the Agreement) based on said doctrine.

10.17) Local Requirements: Laws of Singapore

Should the Agreement be subject to the laws of Singapore in accordance with the table set forth in Section 10.11, the following provisions shall be applicable:

1) The following provision is added to section 10.2 "No Third-Party Beneficiaries":

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

11. DEFINITIONS

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

Affiliate means any legal entity in which Customer or Mirakl SAS (Mirakl's parent company) directly or indirectly, holds more than fifty percent (50%) of the shares or voting rights. Any legal entity will be considered an Affiliate as long as that interest is maintained.

Agreement means, in order of precedence: (i) the applicable Order Form; and the following documents located at legal.mirakl.com in effect as of the effective date of such Order Form; (ii) the Supplemental Terms applicable to the Customer Support Services subscribed by Customer in an Order Form; and (iii) these General Terms and Conditions for Customer Support Services.

GENERAL TERMS AND CONDITIONS FOR CUSTOMER SUPPORT SERVICES



<u>Confidential Information</u>	means any information from a disclosing Party communicated to, entrusted to, or obtained by the receiving Party, in any form whatsoever, verbally or in writing, including but not limited to: (i) any technical, operational, or commercial information relating to Mirakl cloud services or the Customer Support 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</u>	means the legal entity identified as the customer in the Order Form.
<u>Customer Support Services</u>	means technical or business customer support ordered by Customer in the Order Form.
<u>Documentation</u>	means the latest updated version of Mirakl's online documentation for the cloud services commercialized by Mirakl covering their technical, functional, and operational aspects.
<u>Man Day</u>	means a period of eight (8) hours. Hours are accumulated based on meetings and time spent preparing guidance to Customer, including planned meetings, their preparation, and any follow-up to address Customer's additional questions.
<u>Mirakl</u>	means the Mirakl entity identified in the Order Form.
<u>Mirakl Resources</u>	means any item developed and/or provided by Mirakl in connection with the performance of the Agreement, including in connection with providing the Customer Support Services. Mirakl Resources include Mirakl Support Materials.
<u>Order Form</u>	means a contractual document containing all of the specific terms of the Agreement including Customer's identity, the Customer Support 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