

# General Terms and Conditions for Cloud Services

## §1 Definitions

<b>“Affiliate”</b>	of a party means any legal entity in which a party, directly or indirectly, holds more than fifty percent (50%) of the entity’s shares or voting rights. Any legal entity will be considered an Affiliate as long as that interest is maintained.
<b>“Active Employees”</b>	means employees currently employed at the Customer, its Franchisees, parent company any Affiliates of Customer or its parent company.
<b>“Agreement”</b>	means the Service Schedule and documents incorporated into a Service Schedule.
<b>“Authorized User”</b>	means any individual to whom Customer grants access authorization to use the Cloud Service that is an employee, agent, contractor or representative of (a) Customer, (b) Customer's Affiliates, and/or (c) Customer’s and Customer’s Affiliates’ Business Partners
<b>“Bundle size”</b>	means the incremental increase of Usage Metric
<b>“Business Partner”</b>	means a legal entity that requires use of a Cloud Service in connection with Customer’s and its Affiliates’ internal business operations. These may include customers, distributors, service providers and/or suppliers of Customer.
<b>“Cloud Service”</b>	means any distinct, subscription-based, hosted, supported and operated on-demand solution provided by PXMSOFT under a Cloud Service Schedule.
<b>“Cloud Service Schedule”</b>	means the ordering document for a Cloud Service that references the GTC.
<b>“Cloud Materials”</b>	mean any materials provided or developed by PXMSOFT (independently or with Customer’s cooperation) in the course of performance under the Agreement, including in the delivery of any support or Consulting Services to Customer. Cloud Materials do not include the Customer Data, Customer Confidential Information or the Cloud Service.

<b>“Confidential Information”</b>	<p>means</p> <p>(a) with respect to Customer: (i) the Customer Data, (ii) Customer marketing and business requirements, (iii) Customer implementation plans, and/or (iv) Customer financial information, and</p> <p>(b) with respect to PXMSOFT: (i) the Cloud Service, Documentation, Cloud Materials and (ii) information regarding PXMSOFT research and development, product offerings, pricing and availability.</p> <p>(c) Confidential Information of either PXMSOFT or Customer also includes information which the disclosing party protects against unrestricted disclosure to others that (i) the disclosing party or its representatives designates as confidential at the time of disclosure, or (ii) should reasonably be understood to be confidential given the nature of the information and the circumstances surrounding its disclosure.</p>
<b>“Consulting Services”</b>	<p>means professional services, such as implementation, configuration, custom development and training, performed by PXMSOFT’s employees or subcontractors as described in any Service Schedule and which are governed by the Supplement for Consulting Services or similar agreement.</p>
<b>“Customer Data”</b>	<p>means any content, materials, data and information that Authorized Users enter into the production system of a Cloud Service or that Customer derives from its use of and stores in the Cloud Service (e.g. Customer-specific reports). Customer Data and its derivatives will not include PXMSOFT’s Confidential Information.</p>
<b>“Country”</b>	<p>means the country of the contracting PXMSOFT entity.</p>
<b>“Documentation”</b>	<p>means PXMSOFT’s then-current technical and functional documentation as well as any roles and responsibilities descriptions, if applicable, for the Cloud Service which is made available to Customer with the Cloud Service.</p>
<b>“Right of Use”</b>	<p>means for all purposes the right to use, run or benefit from the cloud service.</p>
<b>“Service Release”</b>	<p>means updates to the Cloud Service.</p>
<b>“Subscription Term”</b>	<p>means the term of a Cloud Service subscription identified in the applicable Cloud Service Schedule, including all renewals.</p>
<b>“Supplement”</b>	<p>means the supplemental terms and conditions that apply to the Cloud Service and that are incorporated in a Cloud Service Schedule.</p>
<b>“Usage Metric”</b>	<p>means the standard of measurement for determining the permitted use and calculating the fees due for a Cloud Service as set forth in a Cloud Service Schedule.</p>
<b>“Users”</b>	<p>means the number of employees accessing the Cloud Service.</p>
<b>“Workdays”</b>	<p>means normal workdays excluding weekends and national holidays under the laws of the Country.</p>
<b>“Working Hours”</b>	<p>means Workdays between 08.00 and 18.00.</p>

## **§2 Usage Rights and Restrictions**

### **2.1 Grant of Rights**

PXMSOFT grants to Customer a non-exclusive, non-transferable and world-wide right to use the Cloud Service (including its implementation and configuration), Cloud Materials and Documentation solely for Customer's and its Affiliates' internal business operations. Permitted uses and restrictions of the Cloud Service also apply to Cloud Materials and Documentation.

### **2.2 Authorized Users**

Customer may permit Authorized Users to use the Cloud Service. Usage is limited to the Usage Metrics and volumes stated in the Cloud Service Schedule. Access credentials for the Cloud Service may not be used by more than one individual but may be transferred from one individual to another if the original user is no longer permitted to use the Cloud Service. Customer is responsible for breaches of the Agreement caused by Authorized Users.

### **2.3 Acceptable Use Policy**

With respect to the Cloud Service, Customer will not:

- (a) disassemble, decompile, reverse-engineer, copy, translate or make derivative works,
- (b) transmit any content or data that is unlawful or infringes any intellectual property rights, or
- (c) circumvent or endanger its operation or security.

### **2.4 Verification of Use**

PXMSOFT will monitor use to verify compliance with Usage Metrics volume and the Agreement.

### **2.5 Suspension of Cloud Service**

PXMSOFT may suspend use of the Cloud Service if continued use may result in material harm to the Cloud Service or its users. PXMSOFT will promptly notify Customer of the suspension. PXMSOFT will limit the suspension in time and scope as reasonably possible under the circumstances.

### **2.6 Third Party Web Services**

The Cloud Service may include integrations with web services made available by third parties (other than PXMSOFT Group or its Affiliates) that are accessed through the Cloud Service and subject to terms and conditions with those third parties. These third-party web services are not part of the Cloud Service and the Agreement does not apply to them.

## **§3 Delivery of Services**

3.1 Delivery of Services at the Customer's address is based on full Working Days, eight (8) hours minimum.

3.2 Services delivered remotely to Customer are for a minimum period of at least four (4) consecutive hours, unless otherwise stated in the Statement of Work.

## **§4 PXMSOFT Responsibilities**

### **4.1 Provisioning**

PXMSOFT provides access to the Cloud Service as described in the Agreement.

### **4.2 Security**

PXMSOFT uses reasonable security technologies in providing the Cloud Service. As a data processor, PXMSOFT will implement technical and organizational measures referenced in the Cloud Service Schedule to secure personal data processed in the Cloud Service in accordance with applicable data protection law.

#### 4.3 Modifications

- (a) The Cloud Service and PXMSOFT Policies may be modified by PXMSOFT. PXMSOFT will inform Customer of modifications by email, the support portal, release notes, Documentation or the Cloud Service. The information will be delivered by email if the modification is not solely an enhancement. Modifications may include optional new features for the Cloud Service, which Customer may use subject to the then-current Supplement and Documentation.
- (b) If Customer establishes that a modification is not solely an enhancement and materially reduces the Cloud Service, Customer may terminate its subscriptions to the affected Cloud Service by providing written notice to PXMSOFT within thirty days after receipt of PXMSOFT's informational notice.

### §5 End User DPA

- 5.1 When providing the Cloud Service, PXMSOFT will process personal data on behalf of Customer. PXMSOFT will act as data processor and Customer will act as data controller.
- 5.2 Customer agrees that PXMSOFT will use SAP as provider (i.e. sub processor) of the included Cloud Services. PXMSOFT has entered into a Data Processing Agreement with SAP on the terms available at <https://www.sap.com/about/trust-center/agreements/cloud.html> (the SAP Data Processing Agreement).
- 5.3 The parties agree that all PXMSOFT's processing of personal data on behalf of Customer will be subject to the same terms and conditions of the SAP Data Processing Agreement, with the amendment that where the Data Processing Agreement refers to "SAP", it shall read "PXMSOFT".

### §6 Access to Customer Data

- (a) During the Subscription Term, Customer can access its Customer Data at any time. Customer may export and retrieve its Customer Data in a standard format. Export and retrieval may be subject to technical limitations, in which case PXMSOFT and Customer will find a reasonable method to allow Customer access to Customer Data.
- (b) Before the Subscription Term expires, Customer may use the exposed self-service export tools (as available) to perform a final export of Customer Data from the Cloud Service.
- (c) At the end of the Agreement, PXMSOFT will delete the Customer Data remaining on servers hosting the Cloud Service unless applicable law requires retention. Retained data is subject to the confidentiality provisions of the Agreement.
- (d) In the event of third-party legal proceedings relating to the Customer Data, PXMSOFT will cooperate with Customer and comply with applicable law (both at Customer's expense) with respect to handling of the Customer Data.

### §7 Fees and Taxes

- 7.1 Fees and Payment

Customer will pay fees as stated in the Cloud Service Schedule. After prior written notice, PXMSOFT may suspend Customer's use of the Cloud Service until payment is made. Customer cannot withhold, reduce or set-off fees owed nor reduce Usage Metrics during the Subscription Term. All Service Schedules are non-cancellable and fees non-refundable.

## 7.2 Increase of Hourly Rates

PXMSOFT reserve its right to adjust agreed Hourly Rates once every year on January 1st with an increase based on the Harmonised Index of Consumer prices (HICP), baseline Q3 of effective Year.

## 7.3 Taxes and VAT

Fees and other charges imposed under the Cloud Service Schedule will not include taxes, all of which will be for Customer's account. Customer is responsible for all taxes. Customer must provide to PXMSOFT any direct pay permits or valid tax-exempt certificates prior to signing a Service Schedule. If PXMSOFT is required to pay taxes (other than its income and payroll taxes), Customer will reimburse PXMSOFT for those amounts and indemnify PXMSOFT for any taxes and related costs paid or payable by PXMSOFT attributable to those taxes.

## 7.4 Services are delivered within Normal Working Hours based on the following principles:

- (a) Delivery of Services at the Customer's address is based on full Business Days.
- (b) Services delivered remotely to Customer are for a minimum period of at least four (4) consecutive hours, unless otherwise stated in the Statement of Work.

## 7.5 If, on the Customer's request and PXMSOFT's written agreement, the Services are to be delivered outside of Normal Working Hours, the following applies:

- (a) Weekdays outside of normal working hours is calculated at 1,5 time the cost of normal hours
- (b) Other timings, including Weekends and bank holidays, are calculated at 2 times the cost of normal hours.

## 7.6 Assignment-related costs and expenses, including fees, reasonable travel and accommodation expenses, larger copy and shipping expenses will be agreed up front and reimbursed by the Customer as per the PXMSOFT invoice. Mileage will be settled according to local State Rates and travel time billed as 50% of the hourly rate. Subsistence allowances will be settled according to local State Rates

## 7.7 The Customer is responsible for ordering flight tickets and hotels for agreed overseas trips.

# §8 Term and Termination

## 8.1 Term

The Subscription Term is as stated in the Service Schedule.

## 8.2 Termination

A party may terminate the Agreement:

- (a) upon thirty days written notice of the other party's material breach unless the breach is cured during that thirty-day period,
- (b) as permitted under Sections 9.3(b) or 10.1(c) with termination effective thirty days after receipt of notice in each of these cases, or

- (c) immediately if the other party files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors, or otherwise materially breaches Sections §12 or §13

### 8.3 Refund and Payments

For termination by Customer or an 8.2(c) termination, Customer will be entitled to:

- (a) a pro-rata refund in the amount of the unused portion of prepaid fees for the terminated subscription calculated as of the effective date of termination, and
- (b) a release from the obligation to pay fees due for periods after the effective date of termination.

### 8.4 Effect of Expiration or Termination

Upon the effective date of expiration or termination of the Agreement:

- (a) Customer's right to use the Cloud Service will end,
- (b) Confidential Information of the disclosing party will be returned or destroyed as required by the Agreement, and
- (c) termination or expiration of the Agreement does not affect other agreements between the Parties.

### 8.5 Survival

Sections §1, 8.3, 8.4, 8.5, §10, §11, §12, §13, and §14 will survive the expiration or termination of the Agreement.

## **§9 Warranties**

### 9.1 Compliance with Law

Each party warrants its current and continuing compliance with all laws and regulations applicable to it in connection with:

- (a) in the case of PXMSOFT, the operation of PXMSOFT's business as it relates to the Cloud Service, and
- (b) in the case of Customer, the Customer Data and Customer's use of the Cloud Service.

### 9.2 Good Industry Practices

PXMSOFT warrants that it will provide the Cloud Service:

- (a) in substantial conformance with the Documentation; and
- (b) with the degree of skill and care reasonably expected from a skilled and experienced global supplier of services substantially similar to the nature and complexity of the Cloud Service.

### 9.3 Remedy

Customer's sole and exclusive remedies and PXMSOFT's entire liability for breach of the warranty under Section 9.2 will be:

- (a) the re-performance of the deficient Cloud Service, and
- (b) if PXMSOFT fails to re-perform, Customer may terminate its subscription for the affected Cloud Service. Any termination must occur within three months of PXMSOFT's failure to re-perform.

### 9.4 System Availability

- (a) PXMSOFT warrants to maintain an average monthly system availability for the production system of the Cloud Service as defined in the applicable service level agreement (SLA).
- (b) Customer's sole and exclusive remedy for PXMSOFT's breach of the SLA is the issuance of a credit in the amount described in the SLA. Customer will follow PXMSOFT's posted credit claim procedure. When the validity of the service credit is confirmed by PXMSOFT in writing (email permitted), Customer may apply the credit to a future invoice for the Cloud Service or request a refund for the amount of the credit if no future invoice is due.

#### 9.5 End User SLA

- (a) PXMSOFT will use SAP as provider of the included Cloud Services.
- (b) SAP's current version of the Service Level Agreement for SAP Cloud Services can be found at:  
<https://www.sap.com/about/agreements/cloud-services.html?search=Service%20Level&sort=latest>

#### 9.6 Warranty Exclusions

The warranties in Sections 9.2 and 9.4 will not apply if:

- (a) the Cloud Service is not used in accordance with the Agreement or Documentation,
- (b) any non-conformity is caused by Customer, or by any product or service not provided by PXMSOFT, or
- (c) the Cloud Service was provided for no fee

### **§10 Third Party Claims**

#### 10.1 Claims Brought Against Customer

- (a) PXMSOFT will defend Customer against claims brought against Customer and its Affiliates by any third party alleging that Customer's and its Affiliates' use of the Cloud Service infringes or misappropriates a patent claim, copyright, or trade secret right. PXMSOFT will indemnify Customer against all damages finally awarded against Customer (or the amount of any settlement PXMSOFT enters into) with respect to these claims.
- (b) PXMSOFT's obligations under Section 9.1 will not apply if the claim results from (i) Customer's breach of Section §2, (ii) use of the Cloud Service in conjunction with any product or service not provided by PXMSOFT, or (iii) use of the Cloud Service provided for no fee.
- (c) In the event a claim is made or likely to be made, PXMSOFT may (i) procure for Customer the right to continue using the Cloud Service under the terms of the Agreement, or (ii) replace or modify the Cloud Service to be non-infringing without a material decrease in functionality. If these options are not reasonably available, PXMSOFT or Customer may terminate Customer's subscription to the affected Cloud Service upon written notice to the other.

#### 10.2 Claims Brought Against PXMSOFT

Customer will defend PXMSOFT against claims brought against PXMSOFT, its Affiliates and subcontractors by any third party related to Customer Data.

Customer will indemnify PXMSOFT against all damages finally awarded against PXMSOFT, its Affiliates and subcontractors (or the amount of any settlement Customer enters into) with respect to these claims.

### 10.3 Third Party Claim Procedure

- (a) The party against whom a third-party claim is brought will timely notify the other party in writing of any claim, reasonably cooperate in the defence and may appear (at its own expense) through counsel reasonably acceptable to the party providing the defence.
- (b) The party that is obligated to defend a claim will have the right to fully control the defence.
- (c) Any settlement of a claim will not include a financial or specific performance obligation on, or admission of liability by, the party against whom the claim is brought.

### 10.4 Exclusive Remedy

The provisions of Section §10 state the sole, exclusive, and entire liability of the parties, their Affiliates, Business Partners and subcontractors to the other party, and is the other party's sole remedy, with respect to covered third party claims and to the infringement or misappropriation of third party intellectual property rights.

## §11 Limitation of Liability

### 11.1 Unlimited Liability

Neither party will exclude or limit its liability for damages resulting from:

- (a) the parties' obligations under Section 10.1(a) and 10.2,
- (b) unauthorized use or disclosure of Confidential Information,
- (c) either party's breach of its data protection and security obligations that result in an unauthorized use or disclosure of personal data,
- (d) death or bodily injury arising from either party's gross negligence or wilful misconduct, or
- (e) any failure by Customer to pay any fees due under the Agreement.

### 11.2 Liability Cap.

Subject to Sections 11.1 and 11.3, the maximum aggregate liability of either party (or its respective Affiliates or PXMSOFT's subcontractors) to the other or any other person or entity for all events (or series of connected events) arising in any twelve month period will not exceed the annual subscription fees paid for the applicable Cloud Service directly causing the damage for that twelve month period. Any "twelve-month period" commences on the Subscription Term start date or any of its yearly anniversaries.

### 11.3 Exclusion of Damages

Subject to Section 11.1:

- (a) neither party (nor its respective Affiliates or PXMSOFT's subcontractors) will be liable to the other party for any special, incidental, consequential, or indirect damages, loss of good will or business profits, work stoppage or for exemplary or punitive damages, and
- (b) PXMSOFT will not be liable for any damages caused by any Cloud Service provided for no fee.

### 11.4 Risk Allocation

The Agreement allocates the risks between PXMSOFT and Customer. The fees for the Cloud Service and Consulting Services reflect this allocation of risk and limitations of liability.

## §12 Intellectual Property Rights

### 12.1 PXMSOFT Ownership

PXMSOFT and its Affiliates or licensors own all intellectual property rights in and related to the Cloud Service, Cloud Materials, Documentation, Consulting Services, design contributions, related knowledge or processes, and any derivative works of them. All rights not expressly granted to Customer are reserved to PXMSOFT and its licensors.

#### 12.2 Customer Ownership

Customer retains all rights in and related to the Customer Data. PXMSOFT may use Customer-provided trademarks solely to provide and support the Cloud Service.

#### 12.3 Non-Assertion of Rights

Customer covenants, on behalf of itself and its successors and assigns, not to assert against PXMSOFT and its Affiliates or licensors, any rights, or any claims of any rights, in any Cloud Service, Cloud Materials, Documentation, or Consulting Services.

### **§13 Confidentiality**

#### 13.1 Use of Confidential Information

- (a) The receiving party will protect all Confidential Information of the disclosing party as strictly confidential to the same extent it protects its own Confidential Information, and not less than a reasonable standard of care. Receiving party will not disclose any Confidential Information of the disclosing party to any person other than its personnel, representatives or Authorized Users whose access is necessary to enable it to exercise its rights or perform its obligations under the Agreement and who are under obligations of confidentiality substantially similar to those in Section §13. Customer will not disclose the Agreement or the pricing to any third party.
- (b) Confidential Information of either party disclosed prior to execution of the Agreement will be subject to Section §13.
- (c) In the event of legal proceedings relating to the Confidential Information, the receiving party will cooperate with the disclosing party and comply with applicable law (all at disclosing party's expense) with respect to handling of the Confidential Information.

#### 13.2 Exceptions

The restrictions on use or disclosure of Confidential Information will not apply to any Confidential Information that:

- (a) is independently developed by the receiving party without reference to the disclosing party's Confidential Information,
- (b) is generally available to the public without breach of the Agreement by the receiving party,
- (c) at the time of disclosure, was known to the receiving party free of confidentiality restrictions, or
- (d) the disclosing party agrees in writing is free of confidentiality restrictions.

#### 13.3 Publicity

Neither Party will use the name of the other party in publicity activities without the prior written consent of the other, except that Customer agrees that PXMSOFT may use Customer's name in customer listings or, at times mutually agreeable to the parties, as part of PXMSOFT's marketing efforts (including reference calls and stories, press testimonials, site visits, fair participation). Customer agrees that PXMSOFT may share information on Customer with its Affiliates for

marketing and other business purposes and that it has secured appropriate authorizations to share Customer employee contact information with PXMSOFT.

## **§14 Miscellaneous**

### **14.1 Severability**

If any provision of the Agreement is held to be invalid or unenforceable, the invalidity or unenforceability will not affect the other provisions of the Agreement.

### **14.2 No Waiver**

A waiver of any breach of the Agreement is not deemed a waiver of any other breach.

### **14.3 Electronic Signature**

Electronic signatures that comply with Applicable Law are deemed original signatures.

### **14.4 Regulatory Matters**

PXMSOFT Confidential Information is subject to export control laws of various countries. Customer will not submit PXMSOFT Confidential Information to any government agency for licensing consideration or other regulatory approval, and will not export PXMSOFT Confidential Information to countries, persons or entities if prohibited by export laws.

### **14.5 Notices**

All notices will be in writing and given when delivered to the address set forth in the Cloud Service Schedule with copy to the legal department. Notices by PXMSOFT relating to the operation or support of Cloud Service and those under Sections 3.4 and 5.1 may be in the form of an electronic notice to Customer's authorized representative or administrator identified in the Cloud Service Schedule.

### **14.6 Assignment**

Without PXMSOFT's prior written consent, Customer may not assign or transfer the Agreement (or any of its rights or obligations) to any party. PXMSOFT may assign the Agreement to any of its Affiliates.

### **14.7 Subcontracting**

PXMSOFT may subcontract parts of the Cloud Service or Consulting Services to third parties. PXMSOFT is responsible for breaches of the Agreement caused by its subcontractors.

### **14.8 Relationship of the Parties**

The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created by the Agreement.

### **14.9 Force Majeure.**

Any delay in performance (other than for the payment of amounts due) caused by conditions beyond the reasonable control of the performing party is not a breach of the Agreement. The time for performance will be extended for a period equal to the duration of the conditions preventing performance.

### **14.10 Governing Law**

The Agreement and any claims relating to its subject matter will be governed by and construed under the laws of the Country, without reference to its conflicts of law principles. All disputes will be subject to the exclusive jurisdiction of the courts of the Country. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act (where enacted) will not apply to the Agreement. Either Party must initiate a cause of action for any claim(s) relating to the Agreement and its subject matter within one year from the date when the party knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).

#### 14.11 Entire Agreement

The Agreement constitutes the complete and exclusive statement of the agreement between PXMSOFT and Customer in connection with the parties' business relationship related to the subject matter of the Agreement. All previous representations, discussions, and writings (including any confidentiality agreements) are merged in and superseded by the Agreement and the parties disclaim any reliance on them. The Agreement may be modified solely in writing signed by both parties, except as permitted under Section 4.3. An Agreement will prevail over terms and conditions of any Customer-issued purchase order, which will have no force and effect, even if PXMSOFT accepts or does not otherwise reject the purchase order.