# Hosted Services Conditions

This Hosted Services Conditions (the "Conditions") shall apply in addition to SKIDATA's General Conditions. In case of any conflict between the Conditions and the General Conditions, the Conditions shall prevail.

## 1. General Provisions

**1.1.** The Conditions govern the use of SKIDATA's Hosted Services (the "Hosted Services") by Principal.

**1.2.** The detailed functions and requirements of the Hosted Services are set out in the Documentation describing the respective Hosted Services (the "Documentation").

**1.3.** The Hosted Services will be made available to Principal either by SKIDATA itself or by a service provider commissioned by SKIDATA (the "Service Provider").

**1.4.** The current version of the Conditions shall also apply to all updates, upgrades and supplements.

## 2. Scope of Services

**2.1.** Principal is granted a non-exclusive, non-transferable, non-sublicensable, revocable, limited right to use the Hosted Services in connection with SKIDATA systems for Principal's business activities notified to SKIDATA at the time of conclusion of the Contract.

**2.2.** The Hosted Services shall be made available to Principal exclusively via a network, the Internet.

**2.3.** SKIDATA reserves the right to change the Hosted Services unless this is unreasonable for Principal. SKIDATA will notify Principal thereof if necessary.

**2.4.** SKIDATA reserves the right to modify or replace in particular but not limited to the following components of the Hosted Services at its sole discretion and without notice to Principal: (i) system configurations, (ii) designs, (iii) routing configurations or rearrangements thereof, (iv) technical specifications and (v) the equipment used to provide the Hosted Services.

**2.5.** The Contract does not cover (i) hardware and its integration or installation, (ii) software and its integration or installation, (iii) training courses, (iv) support and maintenance services and (v) services not expressly mentioned in the Documentation.

## 3. Usage Fee

**3.1.** Principal shall pay a recurring flat fee and/or a recurring usage-based fee (e.g. fee for the number of transactions) for the use of the Hosted Services. The type and amount of the fee is specified in SKIDATA's offer. SKIDATA is entitled to make a reasonable annual adjustment to the fees.

**3.2.** Unless otherwise agreed in writing, the following applies: A flat-rate fee shall be paid annually in advance on the 5th working day of each contractual year. A usage-based fee shall be paid monthly in arrears on the 5th working day of the following calendar month.

## 4. Responsibilities of Principal

**4.1.** Principal is obliged to establish and maintain the system requirements described in the Documentation.

**4.2.** Principal undertakes to accept updates or upgrades to the Hosted Services.

**4.3.** Updates and upgrades may change the system requirements and it may be necessary to install the respective updates/upgrades, third-party components and additional or modified hardware. Any resulting costs shall be borne by the Principal and are therefore not included in the usage fee. These Conditions do not oblige Principal to install updates or upgrades, but SKIDATA recommends their immediate installation. If updates or upgrades are not installed, Principal shall act at its own risk and may endanger the security and operability of the software and related systems and may violate third-party licenses, legal regulations or laws. Warranties/warranty claims relating to systems associated with the software may also become invalid as a result. SKIDATA shall not be liable for damages resulting from the non-installation of updates and upgrades.

**4.4.** Principal must always keep SKIDATA's system and Principal's computer infrastructure up to date and free of viruses by, for example, updating of the operating system, installing firewalls and anti-virus programs.

**4.5.** Principal is not permitted to carry out the following without the written consent of SKIDATA or to permit a third party to do so: (i) back-developing, decompiling, disassembling or otherwise reducing SKIDATA software, computer systems, servers or other SKIDATA products into a humanly perceptible form, (ii) copying, publishing, transmitting and/or distributing the Hosted Services and related content, (iii) making copies of the Hosted Services software, object code or source code or parts thereof, (iv) modifying, adapting, translating or creating derivative works based on the Hosted Services or other SKIDATA products or services, (v) combining the Hosted Services or other SKIDATA products with open source software, (vi) providing access to other SKIDATA systems, programs, features or data beyond the rights granted by the Conditions, (vii) disclosing passwords provided to Principal to third parties.

**4.6.** The provision of the Hosted Services by SKIDATA and compliance with the agreed performance dates depend on the cooperation of Principal. Principal therefore undertakes to provide SKIDATA with all necessary support to provide the Hosted Services and to achieve the agreed availability. In particular, Principal shall cooperate with SKIDATA in testing, determining and verifying the system with respect to potential errors of the Hosted Services. Principal is obliged to

reimburse SKIDATA for all costs arising from a breach of its duty to cooperate. SKIDATA shall not be liable for any delay if Principal is directly or indirectly responsible for such delay.

## 5. Service Level Agreement (SLA)

**5.1.** The following availability of the Hosted Services is agreed:

| Availability | 99.5 % during the observation period |
|---|---|

**5.2.** The observation period is one calendar month.

**5.3.** SKIDATA will use commercially reasonable efforts to achieve the agreed availability and to provide the Hosted Services in accordance with the standards of the hosting industry (the "Service Standards"). SKIDATA will also use commercially reasonable efforts, depending on the circumstances of the particular case and on Principal's technical environment, to remedy interruptions, disruptions or errors that result in a failure to meet the Service Standards and/or the agreed availability (collectively referred to as "Interruption") and to make the Hosted Services available again.

**5.4.** A period during which the Hosted Services are unavailable due to an Interruption (a "Downtime") shall be calculated from the time SKIDATA becomes aware of an Interruption. In case of doubt, this is the time at which the Principal informs SKIDATA of the interruption. The Downtime ends when SKIDATA determines availability.

**5.5.** SKIDATA will monitor the performance indicators for the availability of the Hosted Services in its own system or in the system of the Service Provider in order to measure the availability of the Hosted Services. The basis for determining the achieved availability of the Hosted Services is solely SKIDATA's documentation and data. Upon request, SKIDATA will provide Principal with the latest report on the availability achieved.

**5.6.** SKIDATA's liability for failure to achieve the agreed availability is excluded if this is due directly or indirectly and at least in part to the following: (i) Force Majeure Event; a Force Majeure Event is a natural disaster, fire, flood, industrial action, war, terrorism, riot, civil disturbance, rebellion or revolution, Internet breakdown or similar events beyond the reasonable control of SKIDATA, (ii) acts or omissions of Principal or any third party attributable to Principal (an "Agent"), (iii) access lines, cables or equipment of Principal or its Agents, (iv) SKIDATA or third parties commissioned by SKIDATA are not permitted access to the access lines of the Hosted Services or SKIDATA equipment, (v) a configuration, routing event or technology that is not under SKIDATA's control, (vi) failure to comply with the configurations recommended by SKIDATA, (vii) default in payment by Principal, (viii) disruptions lasting less than 5 (five) minutes, (ix) modifications to the Hosted Services requested by Principal or its Agents, (x) failure to comply with the measures recommended by SKIDATA to achieve the agreed availability, and/or (xi) any law, regulation or industry standard which makes the provision of the Hosted Services to the extent of the agreed availability inappropriate, prohibited or unreasonable, or otherwise alters the character and underlying terms and conditions of the Hosted Services to such an extent that there would be a material change in the terms and conditions of the Hosted Services and its availability.

**5.7.** Access to the Hosted Services may be temporarily unavailable for reasons beyond SKIDATA's control, such as but not limited to connection problems, server and/or network downtime. Such limitation of access to the Hosted Services does not constitute a Downtime and does not affect the availability of the Hosted Services.

**5.8.** SKIDATA is entitled to carry out maintenance work, updates and upgrades at its own discretion. Principal agrees that the Hosted Services are temporarily unavailable as a result. Such limitation of access to the Hosted Services do not constitute a Downtime and therefore do not affect the availability of the der Hosted Services.

**5.9.** SKIDATA is not obliged to notify Principal of maintenance work, updates or upgrades to the Hosted Services. However, SKIDATA will use commercially reasonable efforts to give reasonable advance notice of maintenance, updates or upgrades and to keep the duration of maintenance periods as short as possible. Security relevant maintenance can be carried out at any time, even at short notice.

**5.10.** SKIDATA is entitled to block access to Principal's Data, delete Principal's Data and restrict or terminate reports, batch jobs and/or processes if (i) Principal's Data violates these Conditions, in particular if Principal is in default of payment, (ii) Principal uses excessive computer resources that affect the performance of the Hosted Services for other participants, or (iii) Principal's Data constitutes a security risk or could cause other serious damage. SKIDATA will use commercially reasonable efforts to inform Principal thereof.

## 6. Acceptable Use

**6.1.** Principal agrees that it is independently responsible for complying with all applicable laws in all of its activities related to its use of the Hosted Services, regardless of the purpose of the use. Principal is prohibited from using the Hosted Services for activities that: (a) violate any law, statute, ordinance or regulation; (b) infringe or violate any copyright, trademark, right of publicity or privacy or any other proprietary right under the laws of any jurisdiction; (c) impose an unreasonable or disproportionately large load on SKIDATA's or its service providers' infrastructure; (d) facilitate any viruses, trojan horses, worms or other computer programming routines that may damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or information; (e) constitute use of any robot, spider, other automatic device, or manual process to monitor or copy the Hosted Services without SKIDATA's prior written permission; (f) constitute use of any device, software or routine to bypass technology protecting the Hosted Services, or interfere or attempt to interfere, with the Hosted Services; or (g) may cause SKIDATA or its service providers to lose any of their services from their internet service providers, payment processors, or other vendors. Principal is obligated to provide immediate notice to SKIDATA of any violations of this section. SKIDATA is entitled to monitor Principal's use of the Hosted Services for potential infringements of this section. If SKIDATA is notified of or detects an infringement of

this section, it may suspend Principal's use of the Hosted Services until Principal ceases its infringement and notifies SKIDATA thereof. SKIDATA will notify Principal of any suspension of the Hosted Services hereunder, if feasible, before such suspension takes place. In urgent cases, SKIDATA will notify Principal within a reasonable period after the beginning of the suspension of Hosted Services hereunder.

## 7. sweb Interfaces

**7.1.** Principal is granted a non-exclusive, non-transferable, non-sublicensable, revocable limited right to access, integrate and use SKIDATA's sweb® Interface suite of proprietary application programming interfaces in the sweb® cloud specified in SKIDATA's offer which may be used by Principal to interface with SKIDATA's products and services (the "sweb Interface(s)") under the terms and for the duration of this Contract, subject to the restrictions set out in this Contract.

**7.2.** Principal acknowledges that the sweb Interface(s), respectively its specifications, may expire and Principal agrees to implement new specifications in time, otherwise Principal accepts that its products may fail to work properly or even be damaged. Additionally, SKIDATA reserves the right to discontinue the sweb Interface(s) upon giving six months' notice to Principal. In its sole discretion, SKIDATA may or may not replace the sweb Interface(s) by another interface.

**7.3.** Principal shall not allow third parties to use the sweb Interface(s), whether directly nor indirectly, unless explicitly agreed by SKIDATA.

**7.4.** Notwithstanding the foregoing, Principal may use a third party to provide Principal with an integrated application subject to the following restrictions:

- the third party must enter or have entered into an agreement with SKIDATA which governs such third party's use of the Interface(s) and its provision of integrated services to Principals; or
- the third party must provide the integrated application exclusively to Principal and must be bound by confidentiality obligations no less stringent than provided in this Contract.

**7.5.** Principal acknowledges and agrees that SKIDATA is entitled to terminate the use of all or only certain sweb Interfaces with immediate effect upon justified reasons including, but not limited to, non-compliance by Principal with this section of the Contract.

**7.6.** SKIDATA retains all rights, title and interest in the intellectual property embodied in or associated with the sweb Interface(s).

**7.7.** Principal will defend, at its expense, indemnify and hold harmless SKIDATA (and its affiliates, officers, directors, employees and agents), from and against any losses, costs or damages arising from any claims alleging or arising out of (i) any combination by Principal, Principal's representatives, or distributors of the Interface(s) with one or more other applications, content, or processes which infringes the intellectual property rights of or has otherwise harmed a third party; or (ii) Principal's or its end users' use of the Interface(s) in violation of the Agreement; provided that SKIDATA will: (a) promptly give written notice of the claim to Principal; (b) give Principal sole control of the defense and settlement of the claim (provided that Principal may not settle or defend any claim unless it unconditionally releases SKIDATA of all liability); and (c) provide to Principal, at Principal's cost, reasonable assistance.

## 8. Principal's Data

**8.1.** Data created or transmitted by Principal and stored on SKIDATA's servers or on the servers of the Service Provider ("Principal's Data") shall remain the property of Principal.

**8.2.** The use of the Hosted Services and of access data is the sole responsibility of Principal and is at its own risk.

**8.3.** SKIDATA will not generally monitor Principal's Data but reserves the right to check it from time to time at SKIDATA's own discretion.

**8.4.** SKIDATA will make backup copies of Principal's Data, the transaction history and other relevant information at SKIDATA's own discretion. However, SKIDATA is not obliged to do so and is therefore not liable for any loss of or damage to Principal's Data.

**8.5.** SKIDATA shall store Principal's Data for the period agreed in the Documentation. The Storage of Principal's Data beyond the period stipulated in the Documentation requires a separate agreement between the Parties. Backup copies of Principal's Data serve exclusively to restore the Hosted Services and therefore not to extend the storage period stated in the Documentation. After expiry of the storage period stipulated in the Documentation, SKIDATA is entitled to delete Principal's Data without consulting Principal. Principal acknowledges and agrees that SKIDATA may take anonymization measures instead of deleting Principal's Data. In this occasion SKIDATA shall carefully anonymize Principal's Data so that it can no longer be associated with Principal and SKIDATA may use this anonymized information to improve its services.

**8.6.** Principal acknowledges and agrees, that SKIDATA is entitled to compile and retain Aggregate Data and Analytics Data for purposes of (i) operating, maintaining, analyzing and improving existing Hosted Services and (ii) researching and developing new Hosted Services. "Aggregate Data" means anonymized information and data collected or submitted in the course of accessing and using the Hosted Services by Principal. "Analytics Data" means the analysis of the use of Hosted Services by Principal. SKIDATA owns all rights in and to Aggregate Data and Analytics Data, provided that such Aggregate Data and Analytics Data are anonymized in such a manner that neither Principal nor any end user can be identified.

**8.7.** After termination of the Agreement, Customer may choose whether to have its customer, sales, access and revenue data (or in certain cases invoice data): (a) handed over in machine readable format; (b) remain stored with SKIDATA for a reasonable fee or (c) be irrevocably deleted or anonymized.

**8.8.** For the avoidance of doubt, sections 8.5. and 8.7. do not apply for certain types of data, where the storage period is stipulated by statutory retention obligations.

**8.9.** SKIDATA shall provide Principal with a data export of its sales, access and invoice data in a readable format free of charge upon request. The costs for data exports in excess of this shall be charged to Principal on a time and material basis.

**8.10.** The data centers used by SKIDATA are meeting the security standards of ISO/IEC 27001.

**8.11.** SKIDATA shall use commercially reasonable and state-of-the-art security precautions to ensure the security, confidentiality and integrity of Principal's Data. Despite these efforts, SKIDATA cannot guarantee that the confidentiality of Principal's Data will be maintained in connection with communication via the Internet or another public network.

**8.12.** Principal shall indemnify SKIDATA against all claims asserted by third parties based on an infringement of their rights due to Principal's Data.

**8.13.** Whether personal data in the sense of Regulation (EU) 2016/679 of the European Parliament and of the Council (GDPR) is processed is dependent on the goods and services purchased by Customer. In cases in which personal data within the scope of the GDPR are processed, Principal is the controller of such data and in cases in which SKIDATA is processing such data on behalf of Principal, SKIDATA is the processor of such data. In the latter case, the Parties shall conclude a data processing agreement governing the processing of personal data by SKIDATA on behalf of Customer.

**8.14.** Principal grants SKIDATA the right to provide Principal's Data to third parties to enhance end-user experience, such as but not limited to occupancy of a facility, services available in the facility, prices charged to end-users. For the avoidance of doubt, such right does not encompass personal data of end-users.

## 9. Warranty

**9.1.** SKIDATA warrants only the achievement of the agreed availability of the Hosted Services. Any other warranty, in particular for the design, functionality and usability of the Hosted Services and the suitability of the Hosted Services for a particular purpose, is excluded.

## 10. Term of the Contract

**10.1.** Unless otherwise agreed in writing, the Contract is initially concluded for a period of twelve (12) months and is automatically extended for a further twelve (12) months period if it is not terminated by either Party.

**10.2.** Principal is entitled to terminate the Contract in writing at the end of each contractual year subject to a notice period of three (3) months. SKIDATA is entitled to terminate the Contract at any time by giving three (3) months' written notice.

**10.3.** Each Party is entitled to terminate the Contract in writing without notice due to a material breach of contract by the other Party. In the notice of termination, the infringing Party shall be given the opportunity to remedy the precisely identifiable breach of Contract within a period of 30 (thirty) calendar days. Termination shall become effective if the breach is not remedied within such period. The Principal's default in payment shall constitute a material breach of contract.

**10.4.** The termination of the Contract does not entitle Principal to a refund of a fee already paid or to a reduction of a fee already due.

**10.5.** After termination of the Contract, Principal may choose whether to have its Principal, sales, access and invoice data (a) handed over in .csv format; (b) remain stored with SKIDATA for a reasonable fee or (c) be irrevocably deleted.