

# SIGNAVIO

## SOFTWARE AS A SERVICE MASTER SUBSCRIPTION AGREEMENT

This Signavio Software as a Service Master Subscription Agreement governs access to and use of the Software by Customer. By using the Software, you accept the terms and conditions set forth herein (whether on behalf of yourself or the organization/legal entity you represent).

If you or your organization is bound by an individual agreement with Signavio (“**Individual Agreement**”), then this Master Subscription Agreement will apply, if at all, only to use of the Software to the extent such use is not already governed by the Individual Agreement.

BY ACCESSING OR USING THE SOFTWARE, YOU AGREE TO FOLLOW AND BE BOUND BY THIS MASTER SUBSCRIPTION AGREEMENT. IF YOU DO NOT AGREE TO THESE TERMS, YOU MUST NOT USE THE SOFTWARE.

### 1. Definitions

“**Affiliate**”: An entity which is controlled by, is in control of or under common control with a Party. For purposes of this definition, “control” means the direct or indirect beneficial ownership of over 50 % (fifty percent) of the voting interests (representing the right to vote for the election of directors or other managing authority) in an entity.

“**Agreement**”: This Signavio Master Subscription Agreement, including one or multiple corresponding Order Form(s).

“**Availability**”: Users technical ability to login and use the Software at the router exit of Signavio’s data center, subject to the restrictions set out in this Agreement (e.g. Scheduled Downtime).

“**Beta Features**”: Any features, functionality or services (i) which Signavio may make available to Customer to try at no additional cost, and which is clearly designated as beta, non-production or another similar designation in the case of a General Beta Testing; or (ii) regardless of whether or not any of these features, functionality or services are designated as beta, non-production or similar in the case of a Limited Beta Testing.

“**General Beta Testing**” is a testing program made available to Users, either in designated testing environments or in the course of User’s operation of the Software.

“**Limited Beta Testing**” is an individual testing program to which certain Users may receive invitations.

“**Customer**”: An individual or an organization who has purchased a license or other right to use the Software or uses the Trial Version.

**“Customer Data”**: All data (i) submitted by Customer to the Software; and (ii) created by Customer in the course of using the Software.

**“Derived Data”**: Aggregation of Customer Data with data from other Signavio customers or other sources, provided that such data (i) is not identifiable as Customer Data; (ii) cannot be used to identify Customer as its source; and (iii) cannot be considered as Personal Data.

**“Effective Date”**: The day Signavio receives Customer’s Order Form, unless otherwise agreed; or in the case of Customer’s registration for the Trial Version, the day of Customer’s registration for such Trial Version.

**“Fault”**: A reproducible functional or code error in the Software that affects

- (i) the Software in a way that its use is impossible or severely restricted due to malfunctions causing false work results, or unreasonable server response times, and none of these restrictions can be circumvented through an Alternative Solution (**“Blocking Faults”**);
- (ii) the Software in a way that its use is not impossible, however, malfunctions restrict the Software’s functionality in a way that has to be considered significant and these restrictions cannot be circumvented through an Alternative Solution (**“Impeding Faults”**);
- (iii) minor functionality and any restrictions caused can be circumvented through an Alternative Solution (**“Minor Faults”**).

An **“Alternative Solution”** as used in the definition of “Fault” above is a workaround or solution to an issue that allows the use of the Software substantially in accordance with the Software Features.

**“Force Majeure”**: Any event or cause beyond a Party’s reasonable control, including acts of God, labor disputes or other business disturbances, electrical or power outage, utilities or telecommunications failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of any governmental authority, acts of terrorism or war; or pandemic or other public health crises.

**“Full Creator License”**: A license that enables a User to actively create content (e.g. to create process models or workflows) in the Software, and explicitly excluding licenses which only allow Users to (i) view content; or (ii) provide comments. Licenses for Signavio’s software component currently known as “Collaboration Hub” are not Full Creator Licenses.

**“Intellectual Property Rights”**: Patents, rights to inventions, copyright and related rights, moral rights, trademarks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world.

**“Malicious Data”**: Harmful or illegal content (including but not limited to computer viruses, worms, trojan horses, time bombs, or any other harmful programs or components), either (i) submitted by Customer to the Software; or (ii) created by Customer in the course of using the Software.

**“Order Form”**: Customer’s written expression of its consent to the terms and conditions of a quote for Software licenses which has been previously provided by Signavio.

**“Party”**: Signavio or/and Customer either separately (“Party”) or collectively (“Parties”).

**“Personal Data”**: Any information relating to an identified or identifiable individual or as otherwise defined by applicable data protection laws.

**“Scheduled Downtime”**: Planned time of the Software’s unavailability, during which Signavio is entitled to perform maintenance work, Software updates, backups or other work necessary to provide the Software.

**“Signavio”**: The applicable legal entity from within Signavio’s group of companies named on this Agreement’s underlying quote or in the Individual Agreement between the Parties, or in the absence of such named entity: Signavio GmbH, Kurfürstenstrasse 111, 10787 Berlin, Germany.

**“Software”**: Any software offered by Signavio as a software as a service (“SaaS”) solution and any and all documentation, instructions and services provided or offered by Signavio which are related to such software, excluding Beta Features.

**“Software Features”**: The Software’s description of functionalities set out on Signavio’s website under

<https://www.signavio.com/products/business-transformation-suite/>.

**“Support”**: Signavio’s technical support services regarding Customer’s technical issues in the course of using of the Software.

**“Term”, “Initial Term”, “Renewal Term”**: have the meaning ascribed to these terms in the section “Term and Termination”.

**“Trial Version”**: A free of charge, limited in time, evaluation version of the Software.

**“User”**: An individual who is either (i) an employee of Customer; or (ii) an employee of an Affiliate of Customer; or (iii) an independent contractor working under direction of Customer or Customer’s Affiliate solely for Customer’s or Customer’s Affiliate’s business purposes (e.g. external consultant); and who has been equipped with a license for the use of the Software.

**“Workspace”**: Usually, Signavio’s websites detect the geographic location of a user automatically and redirect them to the website version suitable for their country. Under certain circumstances, this might not be the case. Therefore, regardless of Customer’s actual place of business, the following definitions apply for the location of the workspace which hosts its Customer Data.

**“European Workspace”**: A Customer’s workspace is defined as a European Workspace if Customer (i) initially registers for the Software under the URLs “editor.signavio.com” or “workflow.signavio.com”, or explicitly requests storage of its Customer Data within the EU; and (ii) does not explicitly request storage of its Customer Data within a U.S. Workspace or within an APAC Workspace, after its initial registration for the Software.

**“U.S. Workspace”**: A Customer’s workspace is defined as an U.S. Workspace if Customer (i) initially registers for the Software under the URLs “app-us.signavio.com” or “workflow-us.signavio.com”, or explicitly requests storage of its Customer Data within the U.S.; and (ii) does not explicitly request storage of its Customer Data within a European Workspace or within an APAC Workspace, after its initial registration for the Software.

**“APAC Workspace”**: A Customer’s workspace is defined as an APAC Workspace if Customer (i) initially registers for the Software under the URLs “app-au.signavio.com” or “workflow-au.signavio.com”, or explicitly requests storage of its Customer Data within Australia; and (ii) does not explicitly request storage of its Customer Data within a European Workspace or within a U.S. Workspace, after its initial registration for the Software.

## **2. Term and Termination**

2.1. Unless otherwise agreed in an Order Form, this Agreement shall commence as of the Effective Date and shall continue in effect for an initial term of twelve (12) months (**“Initial Term”**). Thereafter, the term of the Agreement shall be automatically renewed on the anniversary of the Effective Date for subsequent twelve (12) months renewal terms (collectively **“Renewal Terms”**), unless cancelled by either Party with a notice period of ninety (90) days prior to the end of the Initial Term or any Renewal Term. Collectively, the Initial Term and any subsequent Renewal Terms shall constitute the **“Term”**.

2.2. Order Forms issued after the Effective Date shall not affect the Initial Term and the Renewal Terms of any previously ordered license.

2.3. Without affecting any other right or remedy available to it, either Party may terminate this Agreement for the other Party's material breach of this Agreement, provided such material breach has not been cured within thirty (30) days of the non-breaching Party's written notice thereof.

2.4. Without affecting any other right or remedy available to it, Signavio may terminate this Agreement without notice if Customer has caused, or tolerates, the use of the Software by a third party not being a User in accordance with this Agreement. This also applies if Customer tolerates multiple use of single licenses ("account sharing").

2.5. Without affecting any other right or remedy available to it, Signavio reserves the right to temporarily suspend Customer's access to the Software without further notice if Customer fails to fulfill its obligation to pay the contractually owed fees within five (5) days after receiving Signavio's second payment reminder. This suspension affects all active licenses to any Signavio software product Customer has subscribed to.

2.6. In order to be formally valid, any termination of Customer shall be sent via email to cancellations@signavio.com, or via registered letter to Signavio.

2.7. After termination of this Agreement, upon Customer's request, Signavio shall provide the Customer Data in a format supported by the Software. Should Signavio not receive such a request within fourteen (14) days following the end of the Term, Signavio is entitled to delete the Customer Data.

2.8. On termination or expiry of this Agreement for any reason, (i) all rights and licenses granted under this Agreement shall immediately terminate and the Customer must cease using the Software; and (ii) Customer shall return, and make no further use of, any equipment, property, and other items (and all copies of them) belonging to Signavio.

2.9. Termination or expiry of this Agreement (howsoever occurring) shall be without prejudice to any rights or liabilities which may have accrued up to the date of such termination or expiry and it shall not affect the coming into force or the continuance in force of any of its provisions which are expressly or by implication intended to come into or continue in force on or after such termination or expiry.

### **3. Fees and Payment**

3.1. In return for Signavio's provision of the Software, Customer shall pay the fees as set out in a quote and agreed between the Parties. Fees will be invoiced in advance on an annual basis and all amounts and fees are due net thirty (30) days from the invoice date.

3.2. Customer is responsible for maintaining complete and accurate billing and contact information with Signavio. Any changes shall be sent via email to [billing@signavio.com](mailto:billing@signavio.com). If the delivery of an invoice is already completed by the time Signavio is notified of such change, Customer's payment obligation at the original due date shall remain unaffected by the requirement of a new invoice and the associated delay.

3.3. Unless otherwise stated, Signavio's fees do not include any direct or indirect local, state, provincial, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, sales, goods and services, harmonized, use or withholding taxes (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with its order hereunder, excluding taxes based on Signavio's net income or property. If Signavio has the legal obligation to pay or collect Taxes for which Customer is responsible under this Agreement, the appropriate amount shall be invoiced to and paid by Customer.

#### **4. Confidentiality**

4.1. "**Confidential Information**" means all information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally, in writing, or by means of electronic data transfer, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Customer's Confidential Information includes Customer Data; Signavio's Confidential Information includes, but is not limited to, know-how, methodologies, financial information (including without limitation quotes and pricing), any information to its clients and client base, non-public technical information, APIs, the Software and documentation. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of this Agreement by the Receiving Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) is received from a third party that was legally entitled to disclose this information without any restriction; or (iv) was independently developed by the Receiving Party without the use of any Confidential Information.

4.2. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but which shall at least be a reasonable standard of care and correspond to general business and industry standards) to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement; and (ii) limit access to Confidential Information of the Disclosing Party, on a strict need-to-know basis, to those of its and its Affiliates' employees and contractors who need to access the Confidential Information for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those set forth herein.

4.3. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

4.4. The Receiving Party will indemnify the Disclosing Party and hold it harmless against all losses, expenses, costs, liabilities or damages that may arise directly or indirectly from any breach by the Receiving Party or its representatives or Affiliates of any of its confidentiality obligations under this Agreement. Each Party further acknowledges and agrees that in the event of a breach or threatened breach of the confidentiality obligations, the Disclosing Party will have no adequate remedy in money or damages and accordingly shall be entitled to seek an injunction against such breach or threatened breach. However, no specification in this Agreement of a specific legal or equitable remedy shall be construed as a waiver or prohibition of any legal or equitable remedies in the event of a breach or threatened breach of this Agreement.

4.5. For the duration of the Term, Signavio is explicitly allowed to use Customer's name and logo to name Customer as a reference in publications on the Internet, or other electronic or print media. After the Term has expired, Customer may object to Signavio's future use of those references by giving written notice. Customer shall provide for this purpose the advertising materials as well as logos, and agrees to grant all the necessary rights to use them. Customer will inform Signavio if specific policies (e.g. corporate identity) for the use of logos or reference naming exist. Any references shall be used by Signavio in an appropriate way and take account of Customer's interests.

## **5. Licenses and Intellectual Property**

5.1. Subject to the limited rights expressly granted hereunder, Signavio reserves all right, title and interest in and to the Software and any content provided as part of the Software, including all related Intellectual Property Rights. No rights are granted to Customer hereunder other than as expressly set forth herein.

5.2. Subject to Customer's payment of the fees payable as agreed between the Parties, Signavio grants Customer a non-exclusive, limited, non-sublicensable and non-transferable right to use the Software, for the Term and limited to the number of fully paid User licenses, in accordance with the restrictions set forth in this Agreement.

5.3. Each User license, in accordance with the contractually agreed number and types of Users, is for use by its designated User only and must not be shared or used by another person but may be reassigned to a new User. A User must be registered with a personalized email address (e.g. firstname.lastname@customer.com).

5.4. If Customer's Affiliates use the Software, Customer shall cause its Affiliates to comply with this Agreement to the full extent as if such Affiliate were a party hereto, and any act or omission relating to this Agreement by such Affiliate shall be deemed an act or omission of Customer.

5.5. Signavio is allowed to change functionalities of the Software through updates (e.g. due to technical progress or performance optimization) as long as these changes do not lead to a significant reduction in the Software Features in effect before such update was implemented.

5.6. Customer must not (and must not allow any third party to):

- (i) modify, translate, reverse engineer, decompile, disassemble, or create derivative works based on the Software except to the extent that enforcement is prohibited by applicable law notwithstanding a contractual provision to the contrary;
- (ii) probe or penetrate data networks of Signavio;
- (iii) circumvent any user limits or other use restrictions that are contractually agreed or built into the Software;
- (iv) remove any proprietary notices, labels, or marks from the Software or related materials, including any documentation;
- (v) frame or mirror any content forming part of the Software;
- (vi) access the Software in order to (a) build a competitive product or service, or (b) copy any ideas, features, functions or graphics of the Software.
- (vii) use the Software for any purpose other than its own commercial activities; and/or
- (viii) use the Software for any illegal purposes, or upload illegal content (including by introducing Malicious Data to the Signavio information technology environment).

Without prejudice to Signavio's rights and remedies at law and without liability to the Customer, Customer's breach (or suspected breach in the reasonable opinion of Signavio) of aforementioned rights under this clause shall entitle Signavio to (a) disable the Customer's access to all or part of the Software; (b) suspend the performance of any service ordered under this Agreement; (c) terminate the Agreement for cause without notice; and/or (d) immediately delete Malicious Data, provided this can prevent damage to Signavio, Signavio's information technology environment, the Software, other customers' data, or any third party's property.

5.7. As between Signavio and Customer, Customer exclusively owns all rights, title and interest in and to all Customer Data. Customer hereby grants Signavio a non-exclusive license for the Term (and for the time thereafter, until backup erasure cycles have been completed) to use and otherwise exploit the Customer Data as reasonably required to provide the Software.



5.8. During and after the Term, Signavio may create, use, reproduce, display, modify, create derivative works of and otherwise exploit Derived Data for analysis, improving Signavio's products and services, and other purposes that might serve the development of Signavio's products, as well as marketing purposes. Signavio owns and retains all rights, title and interest in Derived Data.

5.9. Signavio shall have a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual, unrestricted license to use or incorporate into the Software any suggestions, enhancement requests, recommendations or other feedback provided by Customer or its Users relating to the operation of the Software.

### **Third-Party Services**

5.10. The Parties agree that the Software may provide the possibility to integrate additional services from third parties. If Signavio provides the possibility to activate third-party services and Customer decides to make use thereof, any such services will be provided "as-is" and Signavio MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES REGARDING THE CONTENT, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, COMPATIBILITY, SECURITY, ACCURACY OR COMPLETENESS. Third-party services are subject to change or discontinuation without notice. The contractual partner of Customer for such services is exclusively the respective third party and IN NO CASE WILL SIGNAVIO BE LIABLE FOR ANY DAMAGES ARISING FROM CUSTOMER'S USE OF SUCH THIRD-PARTY SERVICES.

### **API**

5.11. If Signavio provides Customer with access to a Signavio API (application programming interface), Signavio grants Customer a non-exclusive, worldwide, non-transferable, limited license to access a Signavio API and its related documentation only as necessary to develop, test and support Customer's own application based on that Signavio API. Customer must not sell, rent, lease, sublicense, redistribute, or syndicate access to any Signavio API. Any use of a Signavio API is additionally governed by the relevant API terms at <https://documentation.signavio.com> which are subject to change from time to time, without prior notification.

5.12. Signavio owns and will continue to own its APIs and documentation, including all related Intellectual Property Rights therein. All of Signavio's rights not expressly granted by this Agreement are hereby retained.

5.13. Customer's utilization of the API is subject to the fair use policies set forth in this section. If any of the limits are exceeded on more than 10 (ten) days during a span of 60 (sixty) days, Signavio reserves the right to temporarily suspend Customer's access to the API. Any other abuse of the API may also result, in Signavio's reasonable discretion, in the temporary or permanent suspension of Customer's access to the API, whereas Signavio shall use reasonable efforts to notify Customer and allow its remediation prior to any such suspension.

API calls are limited by a maximum of

- (i) 1 (one) million rows per upload of each dataset into the Software;
- (ii) 100 (one hundred) million rows per dataset; and
- (iii) 100 (one hundred) API calls per day.

The maximum number of queries allowed for all Users in total is limited by 8,000 (eight thousand) queries per day. Upon termination of Customer's access to a Signavio API, Customer must destroy all copies of that API's documentation.

5.14. Upon termination of Customer's access to a Signavio API, Customer must destroy all copies of that API's documentation.

5.15. SAVE AS EXPRESSLY PROVIDED IN THIS AGREEMENT, TO THE FULLEST EXTENT ALLOWABLE BY APPLICABLE LAW SIGNAVIO APIS, DOCUMENTATION AND ALL RELATED COMPONENTS AND INFORMATION ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT ANY WARRANTIES (EXPRESS OR IMPLIED), CONDITIONS, REPRESENTATIONS OR UNDERTAKINGS, MADE BY SIGNAVIO INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, OR ARISING BY COURSE OF DEALING OR PERFORMANCE, OR BY CUSTOM OR USAGE IN THE TRADE, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED.

5.16. Certain legislation in Australia provides consumer guarantees or impose obligations on Signavio which cannot be excluded, restricted or modified, or only to a limited extent. This Agreement is subject to such legislation, including without limitation the Australian Consumer Law, as set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth).

## **6. Service Levels and Support**

### **Availability**

6.1. Signavio commits to provide an average Availability per annum of no less than ninety-nine point six percent (99.6 %), based on twenty-four (24) hours a day, seven (7) days a week.

6.2. Scheduled Downtime, as well as technical or other issues which do not lie within the direct control of Signavio, including Force Majeure and third-party fault, do not count against aforementioned average Availability.

Scheduled Downtime is specified for

- (i) European Workspaces: Fridays to Sundays, in each case from 10:00 p.m. to 2:00 a.m. (CET);
- (ii) U.S. Workspaces: Saturdays and Sundays, in each case from 5:00 a.m. to 9:00 a.m. (EST) and Mondays from 3:00 a.m. to 7:00 a.m. (EST);
- (iii) APAC Workspaces: Fridays from 2:00 a.m. to 6:00 a.m. (AEST) and Saturdays to Sundays, in each case from 10:00 p.m. to 2:00 a.m. (AEST).

All time frames set out in this Agreement apply regardless of time changes from standard to daylight savings time and vice versa, e.g. 12:00 p.m. AEST will equal 12:00 p.m. AEDT after change from standard to daylight savings time.

In exceptional cases, Signavio may plan additional Scheduled Downtime beyond the time frames specified above by giving fourteen (14) days' prior notice to Customer.

6.3. If the Software, or parts of the Software happen to be available during Scheduled Downtime, and Customer makes use of the Software during these time periods, Signavio shall not be liable for any reduction in performance, loss of data, malfunctions, defects, wrong work results, or any other damages related thereto.

6.4. Customer acknowledges and understands that the transmission of Customer Data over the Internet, and over various networks, which are not owned and/or operated by Signavio is fundamentally necessary to use the Software. Customer is responsible for securing high speed internet connection and using an up-to-date general industry standard internet browser program in order to utilize the Software. Without limiting Signavio's applicable obligations regarding data protection and confidentiality under this Agreement, Signavio is not responsible for any Customer Data which are delayed, lost, altered, intercepted or stored during the transmission of any data whatsoever across networks not owned and/or operated by Signavio, including, but not limited to, the internet and Customer's local network.

### **Faults**

6.5. Signavio shall use commercially reasonable efforts to eliminate any Faults in the Software in accordance within the following time frames.

- (i) Blocking Faults: Twelve (12) hours reaction time, twenty-four (24) hours resolution time;
- (ii) Impeding Faults: Twenty-four (24) hours reaction time, two (2) days resolution time;
- (iii) Minor Faults: Resolution time within Signavio's sole discretion.

For each classification of a Fault, above reaction times and resolution times shall not be exceeded, whereby the reaction time is calculated in hours from Signavio's reception of Customer's report during the Support service hours, Mo-Fr 9 a.m. – 5 p.m. (AEST), except public holidays in Victoria, Australia.

If the Parties fail to reach an agreement regarding the classification of a Fault, Signavio shall decide about the classification in its sole discretion, with reasonable consideration of Customer's interests.

No Fault within the meaning of this Agreement is present if any functional limitation of the Software only has an insignificant effect on the use of the Software, or the failure was caused by Customer's (or its Affiliate's) improper use of the Software.

## **Support**

6.6. Customer shall be entitled to name two (2) administrators who are eligible to receive Support through Signavio's online customer service portal which can be accessed via Signavio's website. These administrators are required to have advanced knowledge of the Software and Signavio shall be entitled to refuse the provision of Support to individuals other than administrators.

6.7. The consumption of Support services by Customer is measured in incident units ("IUs"), with one (1) IU equaling ten (10) minutes of time. IUs are calculated in total as one single quota across all Full Creator Licenses subscribed. For the avoidance of doubt, the usage of IUs is not tracked individually per single Full Creator License but for all Full Creator Licenses collectively. Unused IUs of a calendar month are not transferable to the following month. Customer's report of Faults shall not be deemed a consumption of IUs.

6.8. Customer receives two (2) IUs for each fully paid Full Creator License per calendar month. For each additional IU, Signavio will charge a fee of AUD 49.00 (forty-nine).

## **7. Limitation of Liability**

7.1. SUBJECT TO CLAUSE 7.4 AND TO THE FULLEST EXTENT ALLOWABLE BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE LESSER OF (i) THE AMOUNTS ACTUALLY PAID OR PAYABLE BY CUSTOMER HEREUNDER IN THE TWELVE MONTHS PRECEDING THE INCIDENT GIVING RISE TO LIABILITY, OR (ii) EIGHT HUNDRED THOUSAND DOLLARS (AUD 800,000.00).

7.2. TO THE FULLEST EXTENT ALLOWABLE BY APPLICABLE LAW, NEITHER PARTY SHALL HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF REVENUE OR BUSINESS, LOSS OF GOODWILL, LOSS OF PROFITS, BUSINESS INTERRUPTION, LOST SAVINGS OR OTHER SIMILAR FINANCIAL LOSS) HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7.3. NOTWITHSTANDING, NO LIMITATION OF EITHER PARTY'S LIABILITY SET FORTH IN THIS AGREEMENT SHALL APPLY TO (i) THE LIABILITY OF ANY PARTY FOR DEATH OR PERSONAL INJURY CAUSED BY NEGLIGENCE; (ii) FRAUD OR FRAUDULENT MISREPRESENTATION; (iii) ANY LIABILITY WHICH CANNOT BE LIMITED OR EXCLUDED UNDER APPLICABLE LAW; (iv) DAMAGES ARISING FROM A PARTY'S DELIBERATE INTENT, WILLFUL MISCONDUCT OR GROSS NEGLIGENCE; (v) DAMAGES ARISING FROM A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS; (vi) DAMAGES ARISING FROM ANY INFRINGEMENT AND/OR MISAPPROPRIATION OF A PARTY'S INTELLECTUAL PROPERTY RIGHTS; OR (vii) ANY CLAIMS FOR NON-PAYMENT.

7.4. IN NO EVENT SHALL SIGNAVIO'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE USE OF THE TRIAL VERSION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNT OF EIGHT HUNDRED DOLLARS (AUD 800.00) (WHICH THE PARTIES AGREE IS A FAIR AND REASONABLE SUM).

## **8. Indemnification**

8.1. Subject to this Agreement, Customer shall to the fullest extent permitted by law, defend, indemnify and hold Signavio and its Affiliates harmless against any loss, penalties, damage or costs (including reasonable attorneys' fees) incurred in connection with any actions, lawsuits, or proceedings made or brought against Signavio (and Signavio's officers, directors, employees, agents, service providers, licensors, and Affiliates) by a third party having a valid claim that the Customer Data, or Customer's use of the Software, infringes a third party's (i) Intellectual Property Rights; (ii) data privacy rights; or has otherwise harmed, a third party (collectively "Customer Claims").

8.2. In the event of a Customer Claim, Signavio will take all reasonable steps to (a) promptly give Customer written notice of each Customer Claim; (b) give Customer sole control of the defense and settlement of each Customer Claim (provided that Customer may not settle or defend any Customer Claim unless it unconditionally releases Signavio of all liability); and (c) provide to Customer, at Customer's cost, all reasonable assistance in respect to each Customer Claim.

8.3. Customer Claims as defined above shall also include valid claims resulting from Customer's analysis of records or log data monitoring Users' behavior in operating the Software, if such analysis is not allowed under applicable laws.

## **9. Data Protection**

9.1. Both Signavio and Customer shall observe all applicable data protection laws and impose an obligation on those employees and/or Users assigned in connection with the Agreement and its implementation to preserve data security in accordance with such provisions in so far as they have not already generally been placed under a corresponding obligation.

9.2. Signavio shall take technical and organizational security precautions and measures in accordance with applicable data protection regulations. Signavio shall in particular protect the Software and systems lying within the sphere of its control, as well as the Customer Data, against any unauthorized access, storage, modification or other non-authorized access or attacks - whether through technical measures, through viruses or other harmful programs or data, or through physical access - by employees of Signavio or third parties. Signavio shall in this respect take the appropriate and usual measures which are necessary, in particular to provide virus protection and protection against similar harmful programs as well as other measures necessary in securing its facilities, including protection against burglary, fire or natural disasters according to current industry standards.

9.3. Signavio shall only collect and use Personal Data as required for the implementation and support of this Agreement. Customer consents to the collection and use of such data solely for these purposes.

9.4. If Customer intends to have Personal Data processed by Signavio in a way that would require the Parties to enter into a separate data processing agreement (substantially on the same terms as those set out in Signavio's standard Data Processing Agreement) under applicable laws (e.g. Art. 28 GDPR if EU data protection laws apply), Customer shall notify Signavio thereof in advance of uploading any Personal Data to the Software.

## **10. Trial Version and Beta Features**

10.1. The agreement for the use of the Trial Version commences once Customer has completed the Trial Version's registration details on Signavio's website and has declared its acceptance of this Agreement by clicking on the designated check box or button.

10.2. The Trial Version is provided for evaluation purposes only and must not be used for production purposes. It is neither subject to the service levels nor the Support terms set out in this Agreement.

10.3. Either Party may at any time terminate the agreement for the Trial Version. Unless otherwise agreed between Customer and Signavio, the free trial period expires automatically after thirty (30) days.

10.4. SAVE AS EXPRESSLY PROVIDED IN THIS AGREEMENT, TO THE FULLEST EXTENT ALLOWABLE BY APPLICABLE LAW, THE TRIAL VERSION IS PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND. SIGNAVIO HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, CONDITIONS, REPRESENTATIONS OR UNDERTAKINGS WITH REGARD TO THE TRIAL VERSION, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, ACCURACY OR COMPLETENESS AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.

10.5. Apart from the aforementioned provisions regarding the Trial Version in this section, all other provisions of this Agreement shall not be affected and remain applicable for the use of the Trial Version.

10.6. Signavio may, in its sole discretion, make Beta Features available to Customer who may individually decide to use such Beta Features, however, Customer may only use Beta Features for testing purposes and refrain from using them for production purposes. Beta Features are neither subject to the service levels nor the Support terms set out in this Agreement and additional terms may apply. Beta Features are not considered "Software" under this Agreement, however, all restrictions, Signavio's reservation of rights and Customer's obligations concerning Software shall apply equally to the use of Beta Features. Signavio may never make Beta Features generally available, and may immediately and without notice remove them for any reason. To the fullest extent permitted by applicable law, all Beta Features are provided "AS IS" without warranty of any kind, and all warranties (direct or indirect), conditions, representations, undertakings of any kind are expressly excluded and SIGNAVIO WILL HAVE NO LIABILITY FOR ANY HARM OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH A BETA FEATURE.

## **11. General Provisions**

11.1. This Agreement is the entire and only agreement and understanding between Customer and Signavio regarding Customer's use of the Software and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. Each Party acknowledges that in entering into this Agreement it has not relied on or been induced to enter into this Agreement by any statement, representation, warranty or understanding of any person (whether a party to this Agreement or not) which is not set out in this Agreement. The Parties agree that damages shall be the only remedy for any misrepresentation (other than a fraudulent misrepresentation).

11.2. Any of Customer's general terms and conditions contained in any invoice, Order Form, or other document issued or transmitted by Customer are expressly excluded.

11.3. Except as otherwise provided herein, no modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by both Parties.

11.4. In the event of any conflict or inconsistency between this Master Subscription Agreement and any other contractual component, the order of precedence shall be: (1) the applicable Order Form, (2) the Individual Agreement (if any), and (3) this Master Subscription Agreement. Notwithstanding the aforementioned, the Parties agree that any terms and conditions of Customer which deviate from Signavio's quote or this Agreement and which Signavio not expressly agreed to in writing shall be deemed null and void, even if Signavio does not expressly contest them. This applies in particular to, but is not limited to, Customer's pre-printed terms and conditions on Order Forms.

11.5. In this Agreement, headings are inserted for convenience of reference only and shall have no effect in interpreting the Agreement. References to clauses are to clauses of this Agreement and references to the singular include the plural and vice versa. Any words following the terms "including", "include", "in particular", "for example" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

11.6. Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) the fourth business day after mailing via registered letter; (iii) the second business day after sending by confirmed facsimile; or (iv) the first business day after sending by email. Signavio may give electronic notices to Customer by email to the email address(es) on record in Signavio's account information for Customer (e.g. bill-to email address, or tenant owner's email address).

11.7. Each Party represents and warrants to the other that it has full power and authority to enter into this Agreement and that it is binding upon such Party and enforceable in accordance with its terms.

11.8. Customer warrants and represents that it has the authority to procure its Affiliates' compliance (and shall ensure their compliance) with the terms of this Agreement. By entering into this Agreement, Customer confirms that it is acting either as a corporation or entrepreneur, that is a legal entity or natural person or a non-incorporated firm having legal capacity and is acting in the line of their industrial or commercial or independent professional activity when concluding the Agreement.

11.9. Customer shall comply with all applicable laws with respect to its activities under this Agreement.



11.10. Customer will not assign or transfer this Agreement without Signavio's prior written consent, except that Customer may assign this Agreement to a successor by reason of merger, reorganization, sale of all or substantially all of Customer's assets, change of control or operation of law, provided such successor is not a competitor of Signavio. Signavio may assign this Agreement to any Affiliate or in the event of merger, reorganization, sale of all or substantially all of Signavio's assets, or change of control.

11.11. No joint venture, partnership, employment, or agency relationship exists between Customer and Signavio as a result of this Agreement or use of the Software.

11.12. Nothing in this Agreement, express or implied, is intended to or shall confer upon any third party any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

11.13. No failure or delay by a Party to exercise any right or remedy or failure to object will be a waiver of such right or remedy or any other right or remedy. A waiver on one occasion will not be a waiver of any right or remedy on any future occasion.

11.14. Except for payment obligations, neither Party shall be liable for any delay or failure to perform any obligation under this Agreement where the delay or failure results from Force Majeure. However, each Party will use reasonable efforts to mitigate the effect of a Force Majeure event.

11.15. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

11.16. This Agreement is a contract for the provision of services and not a contract for the sale of goods. If Customer is located outside of the territory of the United States, the Parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not govern this Agreement or the rights and obligations of the Parties under this Agreement.

11.17. This Agreement shall be governed by the laws of Australia, without reference to conflict of laws principles. The federal and state courts sitting in Melbourne will have proper and exclusive jurisdiction and venue with respect to any disputes arising from or related to the subject matter of this Agreement.