

ROOMZ Terms and Conditions

Valid from 15.07.2021

Part I – Hardware Terms and Conditions (RHTC) - Applicable to Sales and Delivery of ROOMZ Hardware.

ROOMZ SA, a Swiss company incorporated and registered in Passage du Cardinal 11, 1700 Fribourg, Switzerland (hereinafter "**Provider**" or individually "**Party**" and together with the Customer "**Parties**") and the customer or end-user client (hereinafter "**Customer**" or individually "**Party**" and together with the Provider "**Parties**") agree to be bound, without reservation, to the following ROOMZ Hardware Terms and Conditions (hereinafter "**RHTC**"). The Customer thereby desires to obtain from the Provider the right to use the Product and therefore the Hardware as defined below in Section 1.1. of these RHTC. The Customer is always a company (only B2B).

These RHTC and the annexes mentioned herein are all an integral part of the agreement between the Provider and the Customer (hereinafter "**Agreement**"). By referencing to these RHTC or using the Product (as defined below in Section 1.1. of these RHTC), the Parties agree to be bound by these RHTC. If the Customer does not agree to the terms of these RHTC, he has to de-install all copies of the Software and return all Product materials.

The RHTC are always attached, if an agreement refers to them. In addition, the actual version of the RHTC is available at any time on the website of the Provider and replaces all prior versions of the RHTC.

1. General

1.1. The ROOMZ product and solutions consists of a hardware product (ROOMZ Displays and Sensors; hereinafter "**Hardware**") as well as of a software (hereinafter "**Software**")

and together with the Hardware the "**Product**"). The purpose of the Product is the efficient management of the rooms and workspaces of the End User. It offers powerful and simple features to optimize the use of the shared workspaces. In connection therewith the Provider provides to the Customer certain Software-as-a-Service services as specified in "[Part II - ROOMZ SaaS Terms and Conditions \(RSTC\)](#)".

- 1.2. These RHTC apply to the sale and Delivery of the Hardware. Any exceptions must be in writing. The general conditions of contractual partners, if contradictory, are of no validity unless the Provider has expressly acknowledged them in writing.
- 1.3. The Software is offered to the Customer for an initial one-year term and automatically renews every year. The Customer has the possibility to benefit of a special bundle, which includes the Hardware including a one-year subscription of the Software (so-called "**Bundle**").

2. Offers

Offers by the Provider with regard to the Product remain valid for thirty (30) days from the offer date and are made on a strictly confidential basis.

3. Customer Rights and Obligations

The use of the Hardware by the Customer shall be subject to the following provisions:

- a) the Customer may only use the Hardware for his own purposes;
- b) the Customer must not and agrees not to:
 - (i) reverse engineer the Hardware or any part of it (except as mandated by applicable law);

- (ii) use the Hardware other than in accordance with the Provider's instructions;
 - (iii) use the Hardware in any way that is unlawful, illegal, fraudulent or harmful or use it in connection with any unlawful, illegal, fraudulent or harmful purpose or activity; or
 - (iv) circumvent or remove or attempt to circumvent or remove the technological measures applied to the Hardware for the purposes of preventing unauthorised use.
- c) the Hardware may only be used by the employees, agents and sub-contractors of the Customer.

4. Prices

- 4.1. The prices with regard to the Hardware (hereinafter "**Prices**") are payable in Swiss Francs (CHF) plus VAT, if applicable, or in the currency indicated for Delivery and have to be made by bank transfer to the bank or postal account of the Provider indicated on each invoice. Unless otherwise agreed, the Prices shall be deemed to be net ex Provider, Fribourg (Incoterms 1990), excluding external packaging and without any price deductions.
- 4.2. If not otherwise stated, the Hardware will be invoiced upon Delivery and all Prices have to be paid within thirty (30) days of the invoice date or within the indicated deadlines of the invoice and are only deemed to have occurred, when they have been credited to the bank or postal accounts of the Provider. Software subscriptions will be renewed and invoiced annually (in advance), starting with an invoice for an initial one-year term as specified in the ROOMZ SaaS Terms and Conditions.

- 4.3. If the Customer does not timely pay any amount properly due to the Provider, the Provider may charge the Customer interest on the overdue amount at the rate of 5% per year from time to time (which interest will accrue daily and be compounded quarterly).

5. Additional Charges

- 5.1. Any and all additional charges, such as, but not limited to, freight charges, insurance premiums, fees for export, transit, import and other permits as well as for certifications, shall be borne by the Customer.
- 5.2. The Customer shall bear any and all taxes, fees, levies, custom duties and similar charges that are levied out of or in connection with the sale and delivery of the Hardware.

6. Retention of title

The Provider reserves the right to retain title to all components of the Hardware sold until receipt of the full invoiced Prices. Where provided for by local legislation, the Customer explicitly authorizes the Provider to register such retention of title and/or to enter into and remove the Hardware from the premises where they are located if any payments are overdue.

7. Risk of Delivery and Transport

- 7.1. The benefits and the risk of the Hardware shall pass to the Customer at the latest on the date that they leave the Provider's premises in Fribourg, Switzerland.
- 7.2. The transport of the Hardware shall be at the Customer's expense and risk.

8. Insurance

The Customer shall be responsible for taking insurance against risks of any kind.

9. Delivery Claims

Promptly upon receipt of the Hardware (heretofore and hereinafter "**Delivery**"), the Customer undertakes to duly inspect the Hardware for their conditions and to promptly notify in writing any visible physical defects or deficiencies, including claims for shortage (in accordance with Section 13 of these RHTC).

10. Intellectual Property Rights

10.1. All intellectual property rights pertaining to the Hardware shall, as between the Parties, be the exclusive property of the Provider.

10.2. The Customer expressly recognizes that the Provider owns IP rights in the Hardware bought, including but not limited to copyrights on the printed circuit board schematics and design as well as the ROOMZ trademark.

10.3. The Customer commits to omit any actions that would conflict with these protected rights of the Provider. In particular, he commits to not reverse engineer any of the Hardware.

11. Warranties

11.1. The Customer warrants to the Provider that:

- a) it has the legal right and authority to enter into and perform its obligations under the Agreement;
- b) it will use the Hardware strictly in compliance with any law and the conditions set forth in the Agreement.

11.2. The Provider warrants to the Customer that:

- a) it has the legal right and authority to enter into and perform its obligations under the Agreement;
- b) it is the owner of the Hardware and, to the Provider's present knowledge, the Hardware does not infringe upon any third-party patent, copyright, trademark, trade secret or other intellectual property right;
- c) it will perform its obligations under the Agreement with reasonable care and skill.

11.3. The Provider warrants that, for a period of twenty-four (24) months from the date of acceptance, the Hardware shall be free from defects or deficiencies in material or workmanship under the normal and proper use for which the Hardware was supplied (unless stated otherwise).

11.4. The Customer must notify the Provider of any defects or deficiencies being subject to this warranty in accordance with Section 13 of these RHTC.

11.5. All of the Parties' warranties and representations in respect of the subject matter of the Agreement are expressly set out in the provisions of the Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of the Agreement will be made or implied into the Agreement.

12. Limitations and exclusions of liability and warranty

12.1. Nothing in the Agreement will:

- a) limit or exclude the liability of a Party for death or personal injury resulting from negligence;
- b) limit or exclude the liability of a Party for fraud or fraudulent misrepresentation by that Party;
- c) limit any liability of a Party in any way that is not permitted under applicable law; or
- d) exclude any liability of a Party that may not be excluded under applicable law.

12.2. The Provider will not be liable:

- a) in respect of any loss of profits, income, revenue, use, production or anticipated savings;
- b) for any loss of business, contracts or commercial opportunities;
- c) for any loss of or damage to goodwill or reputation;
- d) in respect of any special, indirect or consequential loss or damage; and
- e) for any losses arising out of a Force Majeure Event, a "**Force Majeure Event**" meaning an event, or a series of related events, that is outside the reasonable control of the Party affected (including for instance failures of or problems with the Internet, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks, wars etc.) and which by the exercise of reasonable diligence the Party affected was unable to prevent.

12.3. The warranty of the Provider shall not apply or extend to any defect or

deficiency caused by or resulting from:

- a) unauthorized or improper repairs, service, maintenance, alterations or modifications to the Hardware or its components;
- b) the use of a software not developed specifically by the Provider for use with the Hardware;
- c) negligence of the Customer or any third party, accidents (including, but not limited to traffic accidents), abuse, misuse, or improper, unsuitable or abnormal usage or unsuitable transport cases;
- d) ordinary wear and tear;
- e) disregard of operating instructions;
- f) the use of the Hardware in ways not compliant with local spectrum regulations; or
- g) any other reasons beyond the control of the Provider.

12.4. Under no circumstances will the Customer be entitled to indemnification for direct or indirect damages such as loss of use, loss of order or loss of profit. This limitation does not apply, however, to unlawful intent or gross negligence by the Provider.

13. Claims and Complaints

13.1. Any hidden defects must be notified to the Provider in writing promptly upon detection and in any case within three (3) months of the date of the Delivery.

13.2. The obligations of the Provider with respect to any defective components of the Hardware shall be limited, at the sole discretion of the Provider, to

the replacement or repair of the defective components or the parts thereof or to the reimbursement of the aggregate invoice amount of the components or parts thereof not replaced. All replaced components or parts thereof become the sole property of the Provider.

- 13.3. Any further claims of the Customer not explicitly allowed under these RHTC, such as claims for damages, reduction of price or withdrawal from contract, are excluded if the Provider, at its sole discretion, replaces or repairs defective components or parts thereof or reimburses the aggregate invoice amount.

14. Assignment

- 14.1. The Provider may assign any and all claims arising from Deliveries of the Hardware to third parties, including for cashing and factoring.
- 14.2. The Customer may not assign any or all of its contractual rights and/or obligation without the prior written consent of the Provider.

15. Data protection

- 15.1. The Provider and the Customer shall comply with the applicable data protection legislation in relation to the processing of personal data.
- 15.2. The Customer warrants that it has the legal right to disclose all data protected by any applicable data protection legislation (hereinafter "**Personal Data**") that it does in fact disclose to the Provider under or in connection with the Agreement.
- 15.3. The Provider warrants that:
- a) it will act only on instructions from the Customer in relation to

the processing of any Personal Data performed by the Provider on behalf of the Customer; and

- b) it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of Personal Data and against loss or corruption of Personal Data processed by the Provider on behalf of the Customer.

- 15.4. The ROOMZ Sensors measure the occupancy of the rooms and workspaces by using a passive infrared detection in combination with patented algorithms for accurate detection. Using this detection method, the measured movements are completely anonymous and respect the Personal Data and privacy of the employees of the Customer.

16. Technical Specification

Information on performance, functionality and technical specifications, including illustrations in brochures is published at the best knowledge of the Provider at the time of printing and are, therefore, only binding if and to the extent expressly indicated as such. Technical changes re-main reserved.

17. Confidentiality and publicity

- 17.1. The Provider covenants to keep confidential and not disclose the Customer information that is marked confidential (hereinafter "**Customer Confidential Information**") to any person save as expressly permitted by the Agreement. For the sake of clarity, nothing in this Section 17 shall restrict the Provider in engaging third party providers.

17.2. The Customer covenants to keep confidential and not disclose any information disclosed (whether in writing, orally or otherwise) by the Provider to the Customer (hereinafter "**Provider Confidential Information**") save as expressly permitted by the Agreement.

17.3. Confidential information of a Party may be disclosed by the other Party to that other Party's officers, employees, agents, insurers and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the confidential information disclosed.

17.4. The obligations set out in this Section 17 shall not apply to:

- a) confidential information that is publicly known (other than through a breach of an obligation of confidence);
- b) Customer Confidential Information that is in possession of the Provider prior to disclosure by the Customer, and Provider Confidential Information that is in possession of the Customer prior to disclosure by the Provider;
- c) Customer Confidential Information that is received by the Provider, and Provider Confidential Information that is received by the Customer, from an independent third party who has a right to disclose the relevant confidential information; or
- d) confidential information that is required to be disclosed by law, or by a governmental authority, stock exchange or regulatory

body, provided that the Party subject to such disclosure requirement must where permitted by law give to the other Party prompt written notice of the disclosure requirement.

17.5. Neither Party will make any public disclosure relating to the conditions of the Agreement (including press releases, public announcements and marketing materials) without the prior written consent of the other Party. Notwithstanding the aforesaid, the Provider shall be entitled to identify and name the Customer in any public disclosure for Customer reference purposes.

18. Force Majeure Event

18.1. Where a Force Majeure Event gives rise to a failure or delay in either Party performing its obligations under the Agreement (other than obligations to make payment), those obligations will be suspended for the duration of the Force Majeure Event.

18.2. Neither Party shall be liable for any delay or non-performance under this Agreement caused by any event beyond its reasonable control provided that the Party affected gives prompt notice in writing to the other Party of such Force Majeure Event and uses all reasonable endeavours to continue to perform its obligations under this Agreement.

18.3. A Party who becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under the Agreement, will:

- a) immediately notify the other Party; and

- b) will inform the other Party of the period for which it is estimated that such failure or delay will continue.
- 18.4. If the Force Majeure Event continues for at least twenty (20) days, the Party not subject to the Force Majeure Event may terminate this Agreement by notice in writing to the other.
- 18.5. The affected Party will take reasonable steps to mitigate the effects of the Force Majeure Event.

19. Miscellaneous

- 19.1. Unless specifically provided otherwise, any notice required or permitted to be given by either Party under this Agreement shall be in writing and shall only be deemed to have been duly served if hand delivered or sent by email (with the original to be forwarded by registered mail) to the other Party.
- 19.2. If a provision of the Agreement is determined by any court or other competent authority to be unlawful, invalid and/or unenforceable, the other provision of the Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the Parties, in which case the entirety of the relevant provision will be deemed to be deleted). The Parties commit themselves to substitute the ineffective provision with one that most closely reflects the economic intention of the ineffective provision. The same applies to unintentional gaps in the Agreement.
- 19.3. Nothing in the Agreement will constitute a partnership, agency relationship or contract of employment between the Parties.
- 19.4. This Agreement may not be varied except by a written document signed by or on behalf of each of the Parties.
- 19.5. Each Party agrees to execute (and arrange for the execution of) any documents and do (and arrange for the doing of) any things reasonably within that Party's power, which are necessary to enable the Parties to exercise their rights and fulfil their obligations under the Agreement.
- 19.6. This Agreement is made for the benefit of the Parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the Parties under or relating to the Agreement are not subject to the consent of any third party.
- 19.7. This Agreement will be governed by and construed in accordance with the substantive laws of Switzerland excluding its conflict of law provisions and excluding the United Nations Convention on the International Sale of Goods (CISG); and the exclusive place of jurisdiction and fulfilment is Fribourg, Switzerland. The Provider may choose as alternative place of jurisdiction any competent court of justice worldwide.

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Part II – SaaS Terms and Conditions (RSTC) - Applicable to ROOMZ Software

ROOMZ SA, a Swiss company incorporated and registered in Passage du Cardinal 11, 1700 Fribourg, Switzerland (hereinafter "**Provider**" or individually "**Party**" and together with the End User "**Parties**") and the end-user client (hereinafter "**End User**" or individually "**Party**" and together with the Provider "**Parties**") agree to be bound, without reservation, to the following ROOMZ SaaS Terms and Conditions (hereinafter "**RSTC**"). The End User thereby desires to obtain from the Provider the right to use the Product and therefore the Software as defined below in Section 1.1.1. of the RSTC. The End User is always a company (only B2B).

These RSTC and the annexes mentioned herein are all an integral part of the agreement between the Provider and the End User (hereinafter "**Agreement**"). By referencing to these RSTC or using the Product (as defined below in Section 1.1.1. of the RSTC), the Parties agree to be bound by these RSTC. If the End User does not agree to the terms of this Agreement, he has to de-install all copies of the Software and return all Product materials.

The RSTC are always attached, if an agreement refers to them. In addition, the actual version of the RSTC is available at any time on the website of the Provider and replaces all prior versions of the RSTC.

1. Services

1.1. General

1.1.1. The ROOMZ product and solutions consists of a hardware product (ROOMZ Displays and Sensors; hereinafter "**Hardware**") as well as of a software (hereinafter "**Software**" and together with the Software the "**Product**"). The purpose of the

Product is the efficient management of the rooms and workspaces of the End User. It offers powerful and simple features to optimize the use of the shared workspaces. In connection therewith the Provider provides to the End User certain Software-as-a-Service services (hereinafter "**SaaS-Services**") as specified in these RSTC.

1.1.2. As part of its SaaS-Services, the Provider:

- a) operates the Product and provides the support services according to the Service Level Agreements (hereinafter "**SLA**") in [Annex 1](#) (hereinafter "**Support Services**");
- b) grants the End User access to the Software to use the Product and to receive the Support Services.

1.2. The SaaS-Services are subject to these RSTC and to the timely payment of the renewal fees as set forth in the official offer from ROOMZ or from the reseller (hereinafter "**Fees**") by the End User. Official MSRP prices (Manufacturer's Suggested Retail Price) are available from Provider on request.

1.2.1. The Software is offered to the End User for a one-year term (hereinafter "**Initial Term**") and automatically renews every year (specified in Section 11 of this RSTC). The End User has the possibility to benefit of a special bundle, which includes the Hardware including a one-year subscription (hereinafter "**Bundle**").

1.3. Support Services and Upgrades

1.3.1. During the Term (as defined below in Section 11 of the RSTC) the Provider will provide the Support Services to the End User, and may apply Upgrades (as defined below in Section 6 of [Annex 1](#)) to the Product, in accordance with the SLA set out in [Annex 1](#).

1.3.2. As long as there is no negative impact on performance, the Provider may sub-contract the provision of any of the SaaS-Services including Support Services at its own free discretion without requiring the consent of the End User.

2. End User Rights and Obligations

2.1. Use of Services by End User

2.1.1. Subject to the End User's compliance with the Agreement and to the End User paying the Fees, the Provider grants to the End User a worldwide, non-exclusive, non-transferable and limited licence to use the Product during the Term of the Agreement.

2.1.2. The use of the Product by the End User shall be subject to the following licensing provisions:

- d) the End User may only use the Product for his own purposes;
- e) the End User must not and agrees not to:
 - (v) copy or reproduce the Product or any part of it other than in accordance with the licence granted in these RSTC;
 - (vi) sell, sub-license, resell, rent, lease, loan, supply, distribute, redistribute, publish or re-publish the Product or any part of it;
 - (vii) modify, alter, adapt, translate or edit, or create derivative works of the Product or any part of it;

(viii) reverse engineer, decompile, disassemble the Product or any part of it (except as mandated by applicable law);

(ix) use the Product other than in accordance with the Provider's instructions;

(x) use the Product in any way that is unlawful, illegal, fraudulent or harmful or use it in connection with any unlawful, illegal, fraudulent or harmful purpose or activity;

(xi) use the Product in any way that causes, or may cause, damage to the Product or impairment of the availability or accessibility of it, or any of the areas of, or services on, the Product; or

(xii) circumvent or remove or attempt to circumvent or remove the technological measures applied to the Product for the purposes of preventing unauthorised use.

f) the Product may only be used by the employees, agents and sub-contractors of the End User;

g) the End User must not and agrees not to sub-license its right to access and use the Product or allow any unauthorised person to access or use the Product.

2.1.3. For the avoidance of doubt, the End User has no right to directly or indirectly access the source code of the Product, either during or after the Term.

2.1.4. The End User shall use all reasonable endeavours to ensure that no unauthorised person will or

could access the Product using the End User's account.

2.1.5. It is the End User's responsibility to ensure and comply with internal policies, union contracts as well as legal requirements of the respective countries regarding the privacy protection of individual employees.

2.1.6. The End User agrees to ensure that access to the Product is strictly restricted to persons authorised to use it.

2.2. Duty to cooperate

2.2.1. It is the End Users sole responsibility to provide the IT systems required to process data with the Product.

2.2.2. The End User will ensure that all instructions in relation to the Agreement and End User's use of the SaaS-Service will be given by a duly authorized representative of the End User to the Provider representative.

2.2.3. The Provider:

- a) may treat all such instructions as the fully authorised instructions of the End User; and
- b) will not comply with any other instructions in relation to the Agreement without first obtaining the consent of an End User representative.

3. Fees

3.1. The End User agrees to pay the software renewal Fees as set forth in the official offer from Provider or from the reseller. Official MSRP prices (Manufacturer's Suggested Retail Price) are available from Provider on request.

3.2. The Fees in connection with the Product and Subscription have to be paid in advance. This also applies to any renewals of the Initial Term or Subscription.

3.3. All Fees have to be paid within thirty (30) days of the invoice date or within the indicated deadlines of the invoice.

3.4. If the End User does not timely pay any amount properly due to the Provider, the Provider may charge the End User interest on the overdue amount at the rate of 5% per year from time to time (which interest will accrue daily and be compounded quarterly).

3.5. The Provider may suspend access to the Product and the provision of the SaaS-Services if any amounts due to be paid by the End User to the Provider are overdue by more than thirty (30) days. In the case of a suspension of the SaaS-Service, the End User remains fully obligated to pay the Fees and the End User is not entitled to claim any refunds or damages.

3.6. The Provider is entitled to increase the Fees for any renewal of the Initial Term or Subscription. The Provider will notify any increase in Fees to the End User thirty (30) days before the expiration of the Initial Term or Subscription.

4. Property Information

No title or ownership of the Product is transferred to the End User, and such Product remains the sole property of the Provider. The Product is protected by the Swiss Copyright Act and by international copyright treaties. Unauthorized copying of the Product is expressly forbidden. In no event shall the End User reverse engineer, decompile, or disassemble the Product.

5. Intellectual Property

All intellectual property rights pertaining to the SaaS-Services and the Product shall,

as between the Parties, be the exclusive property of the Provider.

6. Data Ownership

6.1. The End User is the owner of the data and contents it uses via the Product.

6.2. The End User acknowledges that any data models and algorithms generated by the Provider based on the use of the SaaS-Service by the End User and on End User data are the sole property of the Provider to be used by the Provider at its free discretion for any purposes.

7. Warranties

7.1. The End User warrants to the Provider that:

- c) it has the legal right and authority to enter into and perform its obligations under the Agreement;
- d) it will use the SaaS-Services and the Product strictly in compliance with any law and the conditions set forth in the Agreement.

7.2. The Provider warrants to the End User that:

- d) it has the legal right and authority to enter into and perform its obligations under the Agreement;
- e) it is the owner of the Product and, to the Provider's present knowledge, the Product does not infringe upon any third party patent, copyright, trademark, trade secret or other intellectual property right;
- f) it will perform its obligations under the Agreement with reasonable care and skill.

7.3. The End User acknowledges that:

- a) complex software is never wholly free from defects, errors and bugs, and the Provider gives no warranty or representation that the Product will be wholly free from such defects, errors and bugs; and
- b) complex software is never entirely free from security vulnerabilities; and subject to the other provisions of the Agreement, the Provider gives no warranty or representation that the Product will be entirely secure; and
- c) the Provider does not warrant or represent that the Product will be compatible with any application, program or software not specifically identified as compatible.

7.4. All of the Parties' warranties and representations in respect of the subject matter of the Agreement are expressly set out in the provisions of the Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of the Agreement will be made or implied into the Agreement.

8. Limitations and exclusions of liability

8.1. Nothing in the Agreement will:

- e) limit or exclude the liability of a Party for death or personal injury resulting from negligence;
- f) limit or exclude the liability of a Party for fraud or fraudulent misrepresentation by that Party;

- g) limit any liability of a Party in any way that is not permitted under applicable law; or
- h) exclude any liability of a Party that may not be excluded under applicable law.

8.2. The Provider will not be liable:

- f) in respect of any loss of profits, income, revenue, use, production or anticipated savings;
- g) for any loss of business, contracts or commercial opportunities;
- h) for any loss of or damage to goodwill or reputation;
- i) in respect of any loss or corruption of any data, database or software;
- j) in respect of any special, indirect or consequential loss or damage; and
- k) for any losses arising out of a Force Majeure Event, a "**Force Majeure Event**" meaning an event, or a series of related events, that is outside the reasonable control of the Party affected (including for instance failures of or problems with the Internet or a part of the Internet, hacker attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks, wars etc.) and which by the exercise of reasonable diligence the Party affected was unable to prevent.

9. Data protection

9.1. The Provider and the End User shall comply with the applicable data

protection legislation in relation to the processing of personal data.

9.2. The End User warrants that it has the legal right to disclose all data protected by any applicable data protection legislation (hereinafter "**Personal Data**") that it does in fact disclose to the Provider under or in connection with the Agreement.

9.3. The Provider warrants that:

- c) it will act only on instructions from the End User in relation to the processing of any Personal Data performed by the Provider on behalf of the End User; and
- d) it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of Personal Data and against loss or corruption of Personal Data processed by the Provider on behalf of the End User.

9.4. The ROOMZ Sensors measure the occupancy of the rooms and workspaces by using a passive infrared detection in combination with patented algorithms for accurate detection. Using this detection method, the measured movements are completely anonymous and respect the Personal Data and privacy of the employees of the End User.

10. Confidentiality and publicity

10.1. The Provider covenants to keep confidential and not disclose any information that is marked confidential (hereinafter "**End User Confidential Information**") to any person save as expressly permitted by the Agreement.

10.2. The End User covenants to keep confidential and not disclose any information disclosed (whether in writing, orally or otherwise) by the Provider to the End User (hereinafter "**Provider Confidential Information**") save as expressly permitted by the Agreement.

10.3. Confidential information of a Party may be disclosed by the other Party to that other Party's officers, employees, agents, insurers and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the confidential information disclosed.

10.4. The obligations set out in this Section 10 shall not apply to:

- e) confidential information that is publicly known (other than through a breach of an obligation of confidence);
- f) End User Confidential Information that is in possession of the Provider prior to disclosure by the End User, and Provider Confidential Information that is in possession of the End User prior to disclosure by the Provider;
- g) End User Confidential Information that is received by the Provider, and Provider Confidential Information that is received by the End User, from an independent third party who has a right to disclose the relevant confidential information; or
- h) confidential information that is required to be disclosed by law, or by a governmental authority, stock exchange or regulatory

body, provided that the Party subject to such disclosure requirement must where permitted by law give to the other Party prompt written notice of the disclosure requirement.

10.5. Neither Party will make any public disclosure relating to the conditions of the Agreement (including press releases, public announcements and marketing materials) without the prior written consent of the other Party.

11. Term and Termination

11.1. The Agreement is valid for an initial one-year term ("**Initial Term**"). The Agreement will automatically renew for further additional one-year terms ("**Additional Term**" and together with the Initial Term the "**Term**") after the expiry of the Initial Term if neither Party terminates as per the end of the Initial Term or any subsequent Additional Term by giving the other Party at least one (1) month written notice before the expiration of the current Term.

11.2. Either Party may terminate the Agreement immediately by giving written notice to the other Party if the other Party:

- a) commits any breach of any term of the Agreement, and:
 - (i) the breach is not remediable; or
 - (ii) the breach is remediable, but the other Party fails to remedy the breach within thirty (30) days of receipt of a written notice requiring it to do so; or
 - (iii) persistently breaches the terms of the Agreement (irrespective of whether such breaches collectively

constitute a material breach).

- b) the other Party:
- (i) is dissolved;
 - (ii) ceases to conduct all (or substantially all) of its business;
 - (iii) is or becomes unable to pay its debts as they fall due;
 - (iv) is or becomes insolvent or is declared insolvent; or
 - (v) an order is made for the winding up of the other Party, or the other Party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other Party under the Agreement).

12. Effects of termination

- 12.1. Upon termination of the Agreement, all the provisions of the Agreement will cease to have effect, save that the following provisions of the Agreement will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Sections 5, 10 and 12.2 of the RSTC.
- 12.2. Termination of the Agreement will not affect either Party's accrued liabilities and rights as at the date of termination.
- 12.3. All property belonging to the Provider shall be returned. The Provider has to return to the End User all data in its possession belonging to the End User and destroy all such data.

13. Force Majeure Event

13.1. Where a Force Majeure Event gives rise to a failure or delay in either Party performing its obligations under the Agreement (other than obligations to make payment), those obligations will be suspended for the duration of the Force Majeure Event.

13.2. Neither Party shall be liable for any delay or non-performance under this Agreement caused by any event beyond its reasonable control provided that the Party affected gives prompt notice in writing to the other Party of such Force Majeure Event and uses all reasonable endeavours to continue to perform its obligations under this Agreement.

13.3. A Party who becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under the Agreement, will:

- c) immediately notify the other Party; and
- d) will inform the other Party of the period for which it is estimated that such failure or delay will continue.

13.4. If the Force Majeure Event continues for at least twenty (20) days, the Party not subject to the Force Majeure Event may terminate this Agreement by notice in writing to the other.

13.5. The affected Party will take reasonable steps to mitigate the effects of the Force Majeure Event.

14. Amendments and Applicable laws

14.1. The Provider may change the format or nature of the Product at any time. The Provider shall use commercially reasonable endeavours to notify the End User of material functional

changes to the Product, in writing, including by email. If any such change deters the functionality of the Product, the End User may terminate this Agreement as set out in Section 11 of the RSTC.

14.2. The End User shall ensure that its use of the Product complies with all applicable laws, rules and regulations, including, but not limited to any data protection regulations.

15. Miscellaneous

15.1. No breach of any provision of the Agreement will be waived except with the express written consent of the Party not in breach.

15.2. Unless specifically provided otherwise, any notice required or permitted to be given by either Party under this Agreement shall be in writing and shall only be deemed to have been duly served if hand delivered or sent by email (with the original to be forwarded by registered mail) to the other Party.

15.3. If a provision of the Agreement is determined by any court or other competent authority to be unlawful, invalid and/or unenforceable, the other provision of the Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the Parties, in which case the entirety of the relevant provision will be deemed to be deleted). The Parties commit themselves to substitute the ineffective provision with one that most closely reflects the economic

intention of the ineffective provision. The same applies to unintentional gaps in the Agreement.

15.4. Nothing in the Agreement will constitute a partnership, agency relationship or contract of employment between the Parties.

15.5. This Agreement may not be varied except by a written document signed by or on behalf of each of the Parties.

15.6. The End User may not assign any or all of its contractual rights and/or obligation without the prior written consent of the Provider.

15.7. The End User hereby agrees that the Provider may freely assign any or all of its contractual rights and/or obligations under the Agreement to any affiliate or any successor to all or a substantial part of the business of the Provider from time to time.

15.8. Each Party agrees to execute (and arrange for the execution of) any documents and do (and arrange for the doing of) any things reasonably within that Party's power, which are necessary to enable the Parties to exercise their rights and fulfil their obligations under the Agreement.

15.9. This Agreement is made for the benefit of the Parties and is not intended to benefit any third party or be enforceable by any third party. The rights of the Parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to the Agreement are not subject to the consent of any third party.

15.10. This Agreement constitutes the entire agreement between the Parties in relation to the subject matter of the Agreement, and supersedes all previous agreements, arrangements and understandings between the

Parties in respect of the subject matter.

15.11. This Agreement will be governed by and construed in accordance with the substantive laws of Switzerland excluding its conflict of law provisions and excluding the United Nations Convention on the International Sale of Goods (CISG); and the exclusive place of jurisdiction is Zurich, Switzerland. The Provider may choose as alternative place of jurisdiction any competent court of justice worldwide.

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Annex 1 - Service Level Agreement (SLA)

1. Service Availability

The Provider will use best efforts to ensure that the Product will be available for all days during the year for 99.5% of the time, calculated on a monthly basis. "**Downtime**" (calculated as the difference between 100% of the time in a year and the actual percentage of time during that year that the Product is available) will exclude unavailability due to (i) scheduled maintenance; (ii) technical malfunctions in the Provider's systems or any other circumstances beyond the Provider's reasonable control (for example but not limited to Internet delays, network congestion and ISP malfunctions).

2. Helpdesk

The Provider will use commercially reasonable efforts to make available an email helpdesk facility (hereinafter the "**Helpdesk**") during office day and office hours 08:00 – 17:00 CET.

The Provider commits reasonable internal resources to offer adequate support to the End User.

The End User must make all requests for Support Services through the Helpdesk at support@roomz.io.

2.1. Response Times

The Provider will use reasonable endeavours to respond to requests for Support Services made through the Helpdesk as swiftly as possible and within the following response times. All requests with respect to the Product shall be prioritized based upon the severity of the problem:

Level	Description	Service Time	Response Time
1	Issue affects all or at least core functionality of the Software preventing the End User from carrying out core business processes related to the service.	Office hours: 08:00 – 17:00 CET on Business Days*	6 Hours
2	All other issues with the Software with the core functionalities being usable.	Office hours: 08:00 – 17:00 CET on Business Days*	3 Business Days

*Business Day meaning Monday-Friday except Swiss public national holidays and holidays in the municipality of Fribourg, Switzerland.

2.2. Resolution Times

The Provider will use reasonable endeavours to resolve issues raised by the End User through the Helpdesk as swiftly as possible taking into account the severity of the incident, it being understood, however, that the Provider cannot guarantee resolution times.

3. Measurement

Uptime is measured using the Provider's automated systems over each year. It is calculated to the nearest hour, based on the number of hours in the given year (8'760 hours).

4. Limits on Support Services

The Provider shall have no obligation under the Agreement to provide Support Services in respect of any fault or error caused by:

- a) the improper use of the Product by the End User; or
- b) the use of the Product otherwise than in accordance with the terms of the Agreement.

5. Additional Support for On-Premise Installation

If the Software will be obtained and paid as On-Premise installation, the End User gets up to 5h remote IT support and one server update per year.

6. Upgrades

The End User acknowledges that from time to time during the Term of the Agreement the Provider may, in its sole discretion, apply Upgrades to the Product, "**Upgrade**" meaning new versions of, and updates to the Product, whether for the purposes of fixing an error, bug or other issue or enhancing the functionality of the Product. The End User acknowledges that such Upgrades may result in changes the appearance and/or functionality of the Product.

The Provider will give to the End User prior written notice of any significant Upgrade to the Product. Such notice shall include details of the specific changes to the functionality of the Product resulting from the application of the Upgrade.

In addition to the termination rights in Section 11.2. of the RSTC, the End User is entitled to immediately terminate the Agreement if the Provider fails to meet the service levels more than five (5) times in a year.

7. Annexed maintenance

The Provider may suspend its SaaS-Services (including access to the Product) in order to carry out scheduled maintenance, such maintenance to be carried out whenever possible outside

office hours (as per Section 2.1 of this [Annex 1](#)).

The Provider must give to the End User at least three (3) days' written notice of a scheduled maintenance, including full details of the expected Downtime.

The Provider will make every effort to ensure no disruption during maintenance. Nevertheless, access to the Product may be limited or even suspended.

8. Data Storage

8.1. Operational Data Storage

Data is stored at rest using best-in-class encryption. The system of the Provider is operating in ISO 27001 certified data centres from Microsoft Azure. Servers include automatic failover and automated health checks. Physical data storage takes place within EU and EEA. The Provider is free to change physical data storage to any other country within the EU and EEA without any notification requirement to the End User.

8.2. Operational Data Transport

All communication between the Application and internal or external components (e.g. web browsers) are protected by adequate encryption such as TLS/SSL.

9. Data Backups

Point-in-time recovery (PITR) backups are performed with a full back up every week and a differential backup every 12 hours. Transaction log backups are created every 5-10 minutes.

All backups are stored using best-in-class encryption methods.