

# Terms and conditions (SaaS)

**1. DEFINITIONS**

1.1 Except to the extent expressly provided otherwise in this Agreement:

"**Additional Modules**" means additional software applications/ modules offering additional functions to the Software, and which may be offered by Solitwork and demanded by Licensee from time to time.

"**Agreement**" means these terms including any schedules, orders of license and any amendments to this Agreement from time to time.

"**Business Days**" means any day of the week in a calendar year, except (i) any Saturday or Sunday, (ii) any day which is a legal holiday in Solitwork's or its suppliers' place of office, or (iii) any day on which banking institutions, and/or other businesses are authorized or required by law or other governmental action to close or limit its opening hours.

"**Business Hour**" means the period from 8:00 a.m. to 4:00 p.m. on a Business Day.

"**Documentation**" means any descriptions, declarations, drawings, explanations, handbook, instructions, manuals, specifications, or the like which describes or gives information and guidance with regard to the Software and/or Additional Modules - in paper copy or electronic format, whichever is made available, or in which ever form the Licensee makes a copy.

"**Effective Date**" means the date of the mutual signature of the Parties, or the latest date thereof if the Parties sign on different dates.

"**Force Majeure Event**" means any event or circumstance beyond the reasonable control of the affected Party, including, without limitation, acts of God, fire, flood, explosion, war, terrorism, riot or civil commotion, pandemic or epidemic, labor disputes affecting third parties, governmental actions or changes in law, failure of public telecommunications or internet infrastructure, hacking, denial-of-service attacks, viruses or other malicious software or attacks, power outages, or any other event or circumstance of a similar nature.

For the avoidance of doubt, a Force Majeure Event shall include events affecting data centers, cloud infrastructure, or other third-party service providers used to deliver the Services. The affected Party shall be excused from performance of its obligations under this Agreement to the extent and for the duration such performance is prevented or delayed by a Force Majeure Event.

"**Intellectual Property Rights**" means copyrights, database rights, design rights, catalogue rights, trademarks, patent rights (including any application and/or any non-patented inventions) and the intellectual property forming basis for such rights, including algorithms, code, concept (including the structure of functions and elements), data, design, descriptions, drawings, equations, formulas, graphics, knowhow, marks, objects, object code, pictures, photos, processes, presentations, receipts, schemes, source code, technical solutions, and Updates or improvements or variation to any such mentioned parts or whole.

"**License Period**" means the period during which the Licensee has access to the Software.

"**Maintenance Services**" means the routine maintenance of the Software.

"**Product**" means the Software and the Documentation referred to collectively, and any test version or test environment thereof, if applicable.

"**Software**" means the AFC platform and the Client Module and the Server Module, offering authorized users to enter data to produce presentations of the data and make business related reporting thereof, including all source code and all other relevant Intellectual Property Rights.

"**Update**" means any hotfix, patch, minor version upgrade, or other modification to the Software. Updates may be automatically deployed by Solitwork and shall be implemented with reasonable efforts to minimize disruption to the Licensee, preferably outside the Licensee's normal Business Hours. Notwithstanding the foregoing, if an Update is necessary to maintain security, operational stability, or to address other critical issues, Solitwork may implement such Update at any time without the Licensee's prior consent. Solitwork shall have no liability for any temporary service interruptions or limited functionality resulting from the deployment of Updates.

"**User Data**" means the Licensee's own data which a User enters into the Software by manual means or file upload, or which is imported by automatized means from the Licensee's other systems (such as ERP systems) into the Software Solution.

## **2. BACKGROUND AND PURPOSE**

- 2.1 This Agreement sets out the terms and conditions for Solitwork's provision of the Software to the Licensee.
- 2.2 Notwithstanding any specifications or information in the Licensee's order confirmation, invoice, general terms and conditions of sale or supply, or any similar documents or attachments, this Agreement shall prevail and govern any delivery or service provided by Solitwork.
- 2.3 This Agreement is an appendix to the Order Form. In the event of any inconsistency between this Agreement and the Order Form, the Order Form shall prevail.
- 2.4 Solitwork's current technical requirements for the Software Solution are available at <https://solitwork.com/technical-specification/> (the "Technical Requirements"). The Licensee must comply with the Technical Requirements both at the commencement of this Agreement and throughout its term. Solitwork may update the Technical Requirements from time to time by publishing the updated version at the same URL. Such updates shall automatically form part of this Agreement thirty (30) days after publication, unless the Parties agree otherwise in writing within that period.
- 2.5 The Software is provided to the Licensee as standard, "as-is," with its standard functionalities. The Licensee is solely responsible for determining whether the Software meets its business needs and for any decisions made—or not made—based on analyses or presentations of User Data generated by the Software.

## **3. LICENSED RIGHTS**

- 3.1 Subject to the terms and conditions of this Agreement, Solitwork hereby grants to the Licensee, a limited, non-exclusive, non-sublicensable and non-transferrable license to use Solitwork's Solution and any related Documentation, as made available, as follows:
  - 1) Using the Software to feed it with the Licensee's User Data to analyze and produce visual presentations of the User Data for the Licensee's visual understanding of the User Data and internal business decision making processes based thereon. If required by the Licensee the use of the Software may include a limited set up and use of a test environment, depending on separate fees
  - 2) The right to read and use the Documents as instructions for installing, testing and using the Software.
- 3.2 The explicitly stated licensed rights herein are the entire rights granted to the Licensee. The Licensee is permitted to allow its own employees and representatives, as well as employees and representatives of Licensee's (downstream)

subsidiaries in its company group to use the Software as set out herein, provided that Licensee is making sure that the Agreement is acknowledged and adhered to in full by such subsidiaries.

3.3 Except as expressly permitted under this Agreement, the license granted to the Licensee pursuant to Section 3.1 is subject to the following restrictions:

- 1) selling, distributing, leasing, renting, assigning, licensing, sublicensing, or otherwise transferring the Product, in whole or in part to any other party;
- 2) permitting non-authorized personnel to access the Software before they have accepted to respect and uphold the restrictions in this Agreement;
- 3) decompiling, disassembling, reverse engineering, reverse assembly, reverse compiling, analyzing or modifying parts or whole of the Software or otherwise attempt to discover algorithms, architecture, source code, structure or other elements of the Software;
- 4) altering or otherwise creating derivate works, translating or otherwise make competing or substituting versions of the Product, or any part thereof; or
- 5) causing or allowing any third party to access the Product to perform any of the prohibited actions mentioned herein.

3.4 Any breach by the Licensee of the prohibitions set out in Section 3.3 shall be deemed a material breach of the Agreement, cf. Section 13.

#### **4. LICENSE TERM AND TERMINATION**

4.1 This Agreement shall be effective as of the Effective Date and be non-terminable for the Licensee for a period of 18 months from the Effective Date, and for a period of 36 months for Solitwork from the Effective Date. After the lapse of such initial time periods the Agreement shall remain in force until terminated according to Section 4.2.

4.2 Notwithstanding Section 4.1 this Agreement, or any Additional Modules, may be terminated by either Party for whatever reason after the initial 18 and 36 month periods set out in Section 4.1, by either Party providing 3 months prior written notice to the other Party, which may be served at any time during the term of the Agreement. The notice period shall be considered initiated from the end of the calendar month the notice was presented in.

#### **5. FREE PLAN**

5.1 If the Licensee is using the Software on any free-of-charge basis as specified in the Order Form including any related support services to the extent provided by Solitwork at its sole discretion (collectively, "Free Plan Services"), Solitwork makes such Free Plan Services available to Licensee until the earlier of

5.1.1 the end of the free plan specified in the Order Form,

5.1.2 the Effective Date of any purchased version of the Software, or

5.1.3 written notice of termination from Solitwork.

5.2 Solitwork grants the Licensee, during the Free Plan Service period, a non-exclusive, non-transferable right to access and use the Free Plan Services for the Licensee's business purposes in accordance with the Documentation and subject to the access and usage restrictions set forth in this Agreement.

5.3 There is no guarantee that features or functions of the Free Plan Services will be available, or if available will be the same, in the general release version of the Software, and Licensee should review the Software features and functions before making a purchase. Solitwork reserves the rights at any time to, solely at its own discretion, determine, which features will be included in the Free Plan Services.

- 5.4 **SOLITWORK WILL BE UNDER NO OBLIGATION TO PROVIDE ANY MAINTENANCE, MAINTENENCE SERVICE OR SUPPORT SERVICES WITH RESPECT TO THE FREE PLAN SERVICES TO THE LICENSEE. NOTWITHSTANDING ANYTHING TO THE CONTRARY, SOLITWORK PROVIDES THE FREE PLAN SERVICES "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND. TO THE EXTENT PERMITTED BY LAW, SOLITWORK DISCLAIMS ALL IMPLIED WARRANTIES AND REPRESENTATIONS, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.**
- 5.5 The Licensee assumes all risks and pays all costs associated with its use of the Free Plan Services. The Licensee's sole and exclusive remedy in case of any dissatisfaction or Solitwork's breach of the Agreement with respect to such Free Plan Services is termination of the Free Plan Services. Any obligations on behalf of Solitwork to indemnify, defend, or hold harmless under this Agreement are not applicable to Licensee using Free Plan Services
- 6. EFFECTS OF TERMINATION**
- 6.1 Upon termination of this Agreement, regardless of the reason, the Licensee's access to the Software shall cease.
- 7. SERVICETARGET AND FAIR USE**
- 7.1 Solitwork undertakes, to the fullest extent reasonably possible, to ensure the Licensee's access to the Software for the duration of the Agreement but cannot guarantee 100% availability. The Software is hosted by Microsoft and Crayon, and Solitwork refers to the terms and conditions of Microsoft and Crayon available at the following link [Licensing Documents \(microsoft.com\)](#) and [Customer terms and conditions - Crayon](#).
- 7.2 System outages or similar unavailability shall not be deemed a breach by Solitwork, including but not limited to cases resulting from a Force Majeure Event, failures or operational disruptions at the hosting provider, or from Maintenance Services or Updates.
- 7.3 Fair use is defined as use of Software that is reasonable and consistent with generally accepted standards for the use of such software.
- 7.4 Any use exceeding what can reasonably be expected under normal usage shall not be considered fair use. This includes, but is not limited to, excessive data transfer, disproportionate storage capacity or usage, or any activity that disrupts or may disrupt other users' access to and use of the Software, or that results in significantly increased storage or download costs for Solitwork.
- 7.5 Solitwork reserves the right to monitor the Licensee's storage and download usage. Solitwork may, at its sole discretion, impose reasonable limits on data storage and transfer in order to enforce the fair use provision.
- 7.6 In the event of a breach of the fair use provisions, Solitwork may, at its sole discretion:
- 1) Notify the Licensee in writing of the breach and require the Licensee to immediately adjust its usage to comply with the Agreement;
  - 2) If the breach continues or is repeated, suspend or restrict the Licensee's access to the Software, in whole or in part, without liability and until the Licensee has remedied the breach to Solitwork's reasonable satisfaction; and
  - 3) Adjust the License Fee or other applicable charges to reflect the Licensee's actual usage, based on the usage patterns identified by Solitwork.

## **8. SUPPORT SERVICES AND MAINTENANCE**

- 8.1 Solitwork provides the Licensee with a prepaid Timebank for support and consulting services with the number of hours for the Timebank specified in the Order Form. The Timebank hours apply on a monthly basis and cannot be carried over to subsequent months. Any use exceeding the selected number of hours per month shall be invoiced on time spent at Solitwork's then-current hourly rates.
- 8.2 Timebank usage is recorded per commenced quarter-hour and deducted from Timebank on an ongoing basis. Solitwork shall provide the Licensee with a quarterly statement of balance and usage only if hours have been consumed during the relevant period.
- 8.3 Unused hours in Timebank expires without compensation at the end of the License Period.
- 8.4 Solitwork reserves the right to assess whether a specific request constitutes standard support or additional consulting services. Any additional services shall be invoiced based on time spent at Solitwork's then-current hourly rates.
- 8.5 Maintenance Services and Updates may be automatically deployed by Solitwork and shall be implemented with reasonable efforts to minimize disruption to the Licensee, preferably outside the Licensee's normal business hours. Notwithstanding the foregoing, if maintenance is necessary to maintain security, operational stability, or to address other critical issues, Solitwork may implement such maintenance at any time without the Licensee's prior consent. Solitwork shall have no liability for any temporary service interruptions or limited functionality resulting from the deployment of maintenance.
- 8.6 Solitwork may include new functionality in the Software.
- 8.7 For Software hosted by Solitwork new functionality is applied automatically.
- 8.8 For Software hosted by the Licensee - whether in his own technical set-up or with a third-party supplier of his choosing - the responsibility for applying the new functionality rests with the Licensee. The Licensee is free to decide if and when to deploy an Update. However, all Updates are cumulative, meaning it is not possible to opt out of a specific feature and still apply other Updates.
- 8.9 Should the adding of the new functionality have any implications on the fee charged for the Software, Solitwork must notify the Licensee with at least 30 days prior notice. Should the Licensee decide not to accept the adjusted fee caused by such functionality, the Licensee must notify Solitwork within 10 days after receipt of Solitwork's notice.

## **9. LICENSE FEES AND ADJUGEMENT**

- 9.1 In consideration of the rights granted in this Agreement Licensee shall pay to Solitwork the fees as set out in the Sub-form(s). The fees may depend on the Licensee's usage and volume of User Data into the Software, and/or use of a test environment.
- 9.2 The use of a test environment, or the activation of Additional Modules will imply extra fees, as will be set out in a relevant Sub-form.
- 9.3 All fees are set as of the date of signature and shall be adjusted annually according to the percentage change in the Harmonised Index of Consumer Prices (HICP) for the European Union of October, as published by Eurostat, provided that the adjustment is at least 4%, and with effect from January 1 of each year. If the index referred to in this provision is discontinued, the adjustment shall be based on a comparable index.
- 9.4 Prices may also be adjusted based on additions and modifications.

- 9.5 In addition to the above, Solitwork may, with immediate effect, require prices to be adjusted if it is documented during the Agreement period that Solitwork's external costs for delivering the agreed Software have increased, including, but not limited to, additional costs for subcontractors for licenses or other resources used in the delivery of the agreed services.
- 9.6 The Parties shall be obligated every three years from the Effective Date to initiate negotiations regarding any amendments to this Agreement, including, without limitation, changes to terms, services, service levels, commercial provisions, and technical requirements.
- 9.7 The Parties shall negotiate in good faith with a view to reaching agreement on any such adjustments. Negotiations shall commence no later than 30 days prior to the expiry of each three-year period, unless otherwise agreed in writing.
- 9.8 If the Parties do not reach agreement on amendments within a reasonable time after the commencement of negotiations, this Agreement shall continue in full force and effect on its then-current terms.

## **10. DATA PROTECTION**

- 10.1 To the extent Solitwork processes personal data on behalf of the Licensee, Solitwork guarantees that it will:
- 1) act solely in accordance with the instructions received from the Licensee regarding the processing of such personal data;
  - 2) implement appropriate technical and organizational measures to protect against unlawful or unauthorized processing of the personal data and against loss or destruction of such personal data; and
  - 3) not disclose or sell personal data to any third party.
- 10.2 The Licensee warrants to Solitwork that it has the legal right to transfer, store, and process the User Data in and via the Software.

To the extent Solitwork processes personal data on behalf of the Licensee, such processing shall be governed by Solitwork's Data Processing Agreement available on <https://solitwork.com/databehandleraftale> which shall form an integrated part of this Agreement. The Parties acknowledge that the Data Processing Agreement complies with the requirements set out by the Danish Data Protection Agency.

## **11. INTELLECTUAL PROPERTY RIGHTS**

- 11.1 The Licensee acknowledge and agree that the Product is and remains a proprietary and confidential set of assets and that Solitwork is the owner and holder of any and all Intellectual Property Rights in and to the Product, both in current and future versions and updates and any other educational or promotional material or reports prepared by Solitwork. Solitwork is as the sole owner of the Product and all Intellectual Property Rights thereto fully entitled to develop, modify, update and commercialize the Product in its current or future form(s) or any know-how acquired by Solitwork in the course of this Agreement, including transferring any right therein, to any party at any time it may so choose.
- 11.2 The User Data will be and remain the Licensee's property and Solitwork will not access such User Data unless requested by the Licensee, for example in connection with services or assistance to the Licensee.
- 11.3 Should the Licensee be subject to an intellectual property rights claim from a third party, the Licensee shall notify Solitwork without undue delay. Solitwork may, upon receipt of any third party claim that the Software infringes on third party intellectual property rights, either join or take over the case for its own cost, or alter, amend or develop the Software or acquire the necessary rights to provide the Licensee with a version of the Software which is not infringing the relevant third party rights. In cases where Solitwork consider that none of the above options are viable, Solitwork may in its sole discretion terminate this License Agreement and any Sub-forms in full.

**12. SOLITWORK'S LIABILITY**

12.1 Solitwork liability in relation to the Licensee, or any of the Licensee's Users shall be limited to documented costs which are direct and reasonably adequate consequences of Solitwork material breaches of this Agreement.

12.2 **UNDER NO CIRCUMSTANCES SHALL SOLITWORK BE LIABLE (i) FOR ANY DIRECT, INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR BUSINESS, LOSS OF EFFICIENCY, INTERRUPTION, LOSS OF GOODWILL, LOSS OF PROGRAMS OR USER DATA/DATA OR CONTENT OR INFORMATION, COSTS FOR ADVISORS PERSONAL INJURY, NEGLIGENCE, FAILURE TO MEET ANY DUTY OF CARE, OR FOR ANY OTHER LOSS ARISING OUT OF OR RELATED TO THE PRODUCTS, AND REGARDLESS OF WHETHER IN CONTRACT, TORT, OR OTHERWISE; OR (ii) FOR ANY CLAIM ATTRIBUTABLE TO ERRORS, OMISSIONS OR OTHER FEATURES OF THE PRODUCT.**

12.3 Solitwork's maximum aggregated liability, whether in contract, tort or otherwise, related to this Agreement shall under any circumstances be limited to a sum equal to 50% of the license fee that the Licensee has actually paid to Solitwork in the previous 12 months, or a sum of DKK 100.000, whichever at the time is the lowest.

12.4 The limitation of liability in Section 12.3 shall not apply to liability for which statutory law does not permit such limitations, such as liability for willful misconduct.

**13. LICENSEE'S LIABILITY**

13.1 The Licensee has the sole responsibility and liability for the User Data fed into the Software and the results the Licensee achieve from the use of the Software, including any consequence of using User Data which contains data amounting to personal data under GDPR or similar laws in relevant jurisdictions without having entered into the proper agreements with Solitwork.

13.2 The Licensee warrants that, unless disclosed in full by written means to Solitwork before the Effective Date, neither the Licensee, nor any of its corporate subsidiaries, employees or representatives : (i) is a citizen, national, or resident of, or under the control of, any government of or person or entity which the UN have put on the Security Council's Consolidated Sanctions List, or USA or EU have imposed similar sanctions or restrictions on, (ii) the Software Solution access under this Agreement will not be transferred, exported or re-export to any country, person or entity subject to any such restrictions by the UN, USA or EU; (iii) is convicted of, have committed or is subject to criminal investigations for acts of bribery or corruption, tax fraud, or financial crimes, acts which has or may result in the loss of the right to conduct business, in any relevant jurisdiction. Any violation of the restrictions set forth herein shall render this Agreement null and void.

13.3 The Licensee shall hold Solitwork harmless from any consequence of failure to adhere to the agreed regulations on personal data.

13.4 The Licensee shall hold Solitwork harmless from any of the Licensee's subsidiaries' failure to adhere to the terms of this Agreement.

**14. BREACH**

14.1 In the event of a material breach by the Licensee, and if such breach is not remedied within 14 Business Days after Solitwork has sent a written notice to the Licensee to cure the breach, Solitwork shall be entitled to:

- 1) terminate this Agreement with immediate effect; and
- 2) suspend the Licensee's access to the Software immediately after the expiry of the notice period referred to above.

14.2 In the event of termination of the Agreement, the Licensee shall be entitled to receive its User Data and other stored data in the Software. Solitwork shall retain such data for 3 months, after which it will be deleted. The Licensee must take the initiative to have the User Data and other data transferred and is obliged to provide Solitwork with instructions regarding the transfer of User Data and other data.

14.3 Solitwork shall be entitled to charge fees at its then-current hourly rates for consulting services for assistance with the data transfer to the Licensee, regardless of how the Agreement was terminated.

14.4 The Licensee shall not be entitled to claim compensation for any direct or indirect loss resulting from Solitwork's decision to enforce its rights under section 14.1.

## 15. ASSIGNMENT

15.1 The Licensee may not assign its rights or obligations under the Agreement without Solitwork's prior written consent. For the avoidance of doubt, any direct or indirect change of control of the Licensee—whether by merger, consolidation, sale of shares or other equity interests, or any similar transaction—shall be deemed an assignment subject to the restrictions of this Clause.

15.2 Solitwork may, without the Licensee's consent, assign its rights and obligations under the Agreement.

## 16. MISCELLANEOUS

16.1 The Licensee shall not assign, transfer, pledge or in any way encumber this Agreement or the Products, to any third party without the prior written approval of Solitwork, granted or withheld on Solitwork's sole discretion. Any transfer to a third party will be made subject to such third party entering into a Agreement with Solitwork and upon any such transfer the Licensee's rights in the Software will lapse in full.

16.2 If any provision hereof is held invalid or unenforceable, then to the extent permitted by law, the other provisions of this Agreement shall remain in full force and effect and shall be construed in order to carry out the intentions of the Parties in respect of, and including, any provision hereof which is invalid or unenforceable as nearly as may be possible, and the Parties shall use reasonable endeavors to replace the relevant provision with a valid and enforceable substitute provision with an effect as close as possible to the intended effect of the invalid or unenforceable provision

16.3 Nothing in this Agreement shall be construed or imply that the Parties are parties in a joint venture or company, partners, distributors or other arrangements giving one of the parties the right to legally represent or act on the other Party's behalf.

16.4 Solitwork may from time to time issue amendments and updates to the terms and conditions of this License, which shall be considered as an integral part or replacement part of this License. The Licensee may opt out from such updated terms and conditions by terminating the Agreement according to Section 4, provided that the amendments materially affect the Licensee's rights obligations under the Agreement. Non amendments do not give rise to termination right.

## 17. MEDIATION AND JURISDICTION

17.1 If the Parties are unable to resolve a dispute through direct negotiations, the dispute shall be submitted to mediation. If the Parties have not agreed on the mediator within 14 Business Days after one of them has requested mediation, either Party may request the Mediation Institute, Vesterbrogade 32, 1620 Copenhagen ([www.mediationsinstituttet.dk](http://www.mediationsinstituttet.dk)), to propose a mediator.

17.2 The mediation shall take place in accordance with the then-current standard Agreement for mediation established by Mediator Lawyers, the association's ethical rules, and the rules of professional conduct for lawyers.

17.3 If the dispute is not resolved through mediation within 8 weeks after a request for mediation has been made, either Party shall be entitled to have the dispute adjudicated by the City Court of Copenhagen.