NETWORG

TERMS AND CONDITIONS OF NETWORG CZ S.R.O. FOR TALXIS SOFTWARE

These Terms and Conditions (the "**Terms**") are Terms and Conditions within the meaning of §1751 of the Act no. 89/2012 Coll., Civil Code, and apply to the relations arising from **Agreement for Provision of TALXIS software** (hereinafter referred to as "**Agreement**") concluded between the Client and the Provider. The Client and the Provider may jointly be referred to as the "**Parties**" or individually as the "**Party**".

By concluding the Agreement, the Client confirms that he has read the Terms, knows their content, understands them and agrees with them.

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1. DEFINITION

1.1. Meaning of capitalised words is defined in Annex No. 1 to these Terms and in the introductory part above, unless expressly stipulated otherwise in these Terms.

2. SUBJECT AND PURPOSE OF THE AGREEMENT

2.1. The subject of the Agreement is the Provider's obligation to provide the Client with Software in the SaaS (*Software as a Service*) mode within the scope of modules chosen in the Agreement and the Client's obligation to pay the Price for the provision of the Software.

2.2. The Software is based on interaction with Third-Party Products. In no event shall the Provider be liable for any defects or problems caused by Third Party Products.

2.3. The Client is obliged to obtain licenses for Third-Party Products itself; in the case of Microsoft products, Client may use Provider's offer in accordance with the following paragraph.

2.4. The Provider is an official partner of Microsoft. Provider can provide an offer to the Client for the purchase of licenses for Microsoft products at Client's request. If the Client is interested in this offer, a specific product, additional services, such as product installation and implementation, price, payment, and other conditions will be agreed in a separate Agreement. Client will always agree to the license terms directly to Microsoft.

2.5. If the Parties agree in the Agreement, or in an Individual Agreement pursuant to the following paragraph, the Provider shall ensure the connection of the Software with the Third-Party Products and their mutual interoperability so that the Software has the functionalities agreed by the Parties.

2.6. The Parties may enter into an individual Agreement for the purpose of further development and advancement of the Software, integrating new Third-Party Products into the Software, or providing additional services.

2.7. The Parties may enter into an Individual Agreement to provide the following professional services **not** covered by the Agreement or the Terms: customization, maintenance, orchestration, testing, incident resolution, troubleshooting, support, preparation for updates, software enhancements, data integrity checks, user training, etc.

2.8. These Terms shall apply in the case of an individual Agreement pursuant to paragraph 2.6 mutatis mutandis. The Terms shall also apply mutatis mutandis in cases where the Client has been granted a license to the Software by a person other than the Provider who was contractually authorized by the Provider, unless otherwise agreed (e.g., EULA is agreed). In any case, the Client must agree to the license terms and conditions directly to the Provider.

3. CONCLUSION OF THE AGREEMENT

3.1. The Client chooses the preferred module on the website www.talxis.com and fills in the data required by the Provider. Filling in the data and sending the form to the Provider is the Client's offer to conclude the Agreement.

3.2. At the request of the Client, the Provider may provide the Client with basic information about the Software before sending the offer or allow him to try the Software under the conditions specified by the Provider.

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3.3. At the Client's request on specific adjustment, Software development, integration of other Third-Party products into the Software or any other additional services, the Provider may, based on the information provided, provide the Client with an offer that will include in particular the price or the method of its calculation, method of securing licenses for Third parties Products, the number of licenses granted to the Software, the number of user accounts, the functionality of the Software, additional services, and the estimated date of the first release of the Software.

3.4. The Agreement is deemed concluded when:

a) The Provider receives the Client's written statement on accepting the offer according to par. 3.3;

b) The Client receives the Provider's written statement on accepting the order according to par. 3.1; or

c) The last Party signs the written Individual Agreement.

3.5. Acceptance of the offer with an amendment or deviation made by the Client is excluded.

3.6. The offer is valid for 30 days of the date when it is sent to the Client unless otherwise stipulated in the offer.

4. THE TECHNICAL REQUIREMENTS

4.1. The Client is obliged to have legal and functional Third-party Products specified in Annex 2 in its operational environment, and it is obliged to update them regularly in accordance with the current system requirements of the Software. The Client is also obliged to ensure that its operational environment meets the current system requirements of the Software for the entire duration of the Agreement. If the Client fails to comply with these obligations, the Provider is not liable for any loss of ability to operate the Software free of any defects or other problems.

4.2. The Provider is not the owner of the Infrastructure on which the Software is running. The Provider is not responsible for Software failures due to any malfunction or failure of the Infrastructure.

4.3. The Provider is entitled to modify and change the Software from time to time for the purpose of preventing problems in the Software or its interaction with Third-party Products. The Provider is not obliged to inform the Client of such changes and modifications unless they substantially alter the agreed features of the Software.

4.4. The Provider can access data in the Database. Client acknowledges that all data in the Databases is stored in the Infrastructure provided by Microsoft or by other Third-party Product vendors or in the Client's Infrastructure. The Client shall ensure that all data in Databases is always backed-up and protected by sufficient means against unauthorized access, change, loss or destruction. The Provider shall not make any data back-ups and is not responsible for ensuring the integrity, availability or security of data in the Database.

4.5. In the event of termination of the use of the Software, the Client may request the Provider to provide the cooperation necessary for the migration of data from the Databases with which the Software worked. However, the Provider is not obliged to comply with this request. The Client may request such cooperation in writing until the date of termination of the license pursuant to par. 5.6 at least 10 days in advance. The Client is obliged to reimburse the Provider for all costs incurred by the provision of cooperation.

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5. LICENSE ARRANGEMENTS

5.1. Nothing in these Terms or the Agreement grants the Client a license to Third Party Products.

5.2. The Client declares that it lawfully owns a valid license to Third-party Products it uses. The Client further declares that any interaction of the Software with Third Party Products that it agrees with the Provider is in accordance with the license terms and conditions for Third Party Products. The Client bears all responsibility for the damage caused to the Provider or to any third parties if the Client's statements pursuant to this paragraph prove to be false.

5.3. The Client (as the indemnifying party) will indemnify the Provider (as the indemnified party) against all claims, damages, losses or other harm and other expenses (including out-of-court settlement costs, costs of proceedings before an administrative authority or court, legal representation, etc.), claimed by a third party against Provider due to a breach of the Client's obligations arising from the previous paragraph. In such a case, the Client agrees to conduct out-of-court negotiations with the third party and defend the Provider in any court, arbitration or other proceedings at its own expense.

5.4. The Provider declares that it:

   a) is an authorized executor of the economic rights of the intellectual property rights to the Software or parts thereof, and / or

   b) holds valid licenses for the Software or parts thereof,

   and that he is authorized to handle the intellectual property rights / licenses in such way that he can grant the Client a valid license to the Software to the extent specified in this Aticle.

5.5. The Provider grants to the Client non-exclusive, non-transferable and territorially unlimited license to use the Software. The Client must not use the Software in such a manner that would constitute activity competing with the Provider (e.g., must not resell the Software) or in a manner that could in any way harm the Provider. The Client is not under any circumstances entitled to make copies of the Software or parts thereof, distribute, lease, loan, sell or publish the Software or parts thereof. The Client must not allow access to the Software to third parties with the exception stipulated in paragraph 5.11.

5.6. The license is granted for the duration of the Agreement, extended by 30 days. An exception is the situation when the Client has been in arrears with a payment justly invoiced by Provider - then the license expires 30 days from the due date of the Price or other amount, even if the Provider withdraws from the Agreement due to late payment within the meaning of par. 14.3 a).

5.7. The license to use the Software is limited in quantity to the number of user accounts agreed in the Agreement. Unless otherwise agreed, the License is limited to one user account. The Client understands that the Software will work only in interaction with Third Party Products and is obliged at its own expense (with the option under par. 2.4) to secure a sufficient number of licenses for Third Party Products so that the Software can be properly used for the number of user accounts agreed by the Parties.

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5.8. One user account cannot be used by more than one person. When using the Software, the User is always obliged to prove the legitimacy of its use by logging in to the user account. Use of the Software by anyone other than an authorized user who is authorized to log in to their user account is prohibited. The Client acknowledges and agrees that the correct number of users under the License is continuously monitored by users logging in to user accounts. If a limited user license has been granted to the Client, the Client acknowledges that it is responsible for the correct number of uses by authorized users. The Provider is entitled to request from the Client credible proof of the fact that the number of users using the Program corresponds to the scope of the license. Failure to do so may result in termination of the License.

5.9. The Client is entitled to use the Software in the usual way, in particular it can enter data into it, it can connect and process it using dynamic data interconnection functions and advanced analysts created on the basis of entered information and calculated fields and use other functions of the Software for their usual purpose.

5.10. The source codes for the Software will not be provided to the Client. The Client is in no way authorized to reverse engineer, decompile, dismantle, or attempt in any other way to obtain the source code for Software or its parts. Furthermore, the Client is not entitled to translate, process, change or modify the Software or its parts in any way. However, the Client (or its user or subcontractor) is entitled to combine the Software with other software or create its own software based on the Software (add-ons) in a PowerApps environment from Microsoft, if it has duly completed Microsoft training in the use of PowerApps for that purpose and received the appropriate certificate; the Client is obliged to prove this fact to the Provider at its request. The Client is entitled to do so only for his own use.

5.11. The Client has the right to grant a sublicence to use the Software to a third party only for the purpose of data migration, making permitted modifications according to para. 5.10 or providing support, maintenance, and updates. In such case Client is obliged to bind his subcontractor:

a) to comply with the rules and restrictions set out in this Article to the same extent as applies to the Client;

b) to refrain from using the sublicense for any purpose other than as permitted by this paragraph;

c) not to provide access to the Software or sublicense to any other persons.

5.12. The Client (as an indemnifying party) undertakes to indemnify the Provider (as an indemnified party) against all damages that the subcontractor would cause by breach of the obligations to which he was or should have been obliged under this paragraph.

5.13. The Client is not entitled to assign the license to a third party.

5.14. The license fee is included in the price of the Software, unless otherwise stipulated by the Parties.

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5.15. If the Provider has a serious suspicion that the Client is in breach of the obligations arising from this Article, it may audit the activities of the Client and the sub-licensees in relation to the Software. The audit must be performed in such a way as to minimize the impact on the normal operating activities of the Client or the sub-licensee. If it is reasonable and possible with regard to the circumstances, the Provider informs the Client or the sub-licensee of its intention to perform an audit in advance. The Client is obliged to provide all necessary co-operation and to follow the instructions of the Provider and auditors, or to ensure the co-operation of the sub-licensee. All costs incurred by the Client or the sub-licensee in connection with the audit shall be borne by the Client.

6.   PRICE

6.1.   The Client undertakes to pay a flat rate for the use of the Software for each calendar month of the duration of the Agreement. The amount of the Price is stated in the Agreement, while the amount of the Price depends mainly on the selection of individual modules of the Software and on the number of individual types of user accounts for the Software.

6.2.   The Client is obliged to notify the change in the number of individual types of user accounts in writing at least 2 weeks before the beginning of the calendar month in which the number of user accounts should change. The Provider will inform the Client in writing how the Software Price will change for the following period.

6.3.   The Client acknowledges that the Provider may change the method of calculating the Price or its amount, especially depending on changes in the pricing and licensing policy of the Provider's suppliers and / or third-party Products. The Provider will notify this change no later than 2 months before the change takes effect. In that case, the Client has the right to terminate the Agreement pursuant to para. 14.6. From the effective date of the change, the Client is obliged to pay the Price in a new amount.

6.4.   Prices and any other amounts for the Provider's services specified in the Agreement, in any offer, price list, presentation or marketing material of the Provider are specified exclusive of value added tax (VAT), unless explicitly stipulated otherwise by the Provider. The Provider represents that the Provider is a VAT payer in the Czech Republic. The Provider shall charge the VAT together with the price to the Client. All other taxes, fees, import duties or other financial obligations to public authorities are not included in the price and are borne by the Client.

6.5.   The price shall not include expenses beyond the scope of usual operating costs of the Provider, e.g. translation expenses, travel expenses or accommodation expenses, if they are necessary in relation to provision of the Software. In case such expenses arise, the Provider shall request the Client's approval. Until the Client approves these expenses, the deadline for resolving the matter shall be suspended, the Provider shall not be deemed to be in delay and the deadline for resolving the matter shall be postponed by the period of time needed for the Client to grant its consent.

7.   PAYMENT TERMS

7.1.   Unless otherwise stipulated in the Agreement, the Price will be paid monthly. The Provider shall issue an invoice to the Client at the end of each calendar month in which the Software has been used.

7.2.   Each invoice falls due within 14 (fourteen) days after its delivery to the Client, unless the invoice states a longer maturity period. The Client shall pay the invoice to the bank account indicated in the invoice using all payment identifiers, such as the variable symbol, contained in the invoice.

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7.3. The Client hereby agrees that all invoices will be sent electronically to the Client's e-mail address specified in the Agreement or another e-mail address designated by the Client over the duration hereof. Any change of invoicing e-mail address shall be effective from the calendar month following the calendar month in which it has been notified to the Provider.

7.4. If the Client is in delay with the payment of the price, costs or any other amount justifiably invoiced by the Provider, the Provider is entitled to prevent the Client from accessing the Software after 30 days from the due date of this amount. The Provider is not responsible for any damage incurred by the Client as a result of denied access to the Software pursuant to this paragraph.

8. **RIGHTS AND OBLIGATIONS OF THE PARTIES**

8.1. Parties are obliged to work together to provide full co-operation and sharing accurate information in order to ensure that the Software is made available properly and in a timely manner, especially to cooperate in connection with the migration of data into software, implementation of Software into the operating environment of the Client, ensuring the interconnection and interoperability of the Software with Third Party Products, etc., if such services are to be provided under the Terms or the Agreement or any other agreement of the Parties. In particular, it concerns cooperation according to par. 8.3, 8.4, 8.5 and 8.6.

8.2. In case the Client is in delay with delivering the information or providing co-operation, this fact cannot be imputed to the Provider. Any and all deadlines agreed by the Parties shall be postponed by the period of time for which the Provider waited for the information or co-operation of the Client.

8.3. If required by the Provider, the Client will allow and provide the Provider with access to its operational and testing environment, both remote and on-site (physical) access, including access to the Workstations and to the premises where they are located and access to the Database.

8.4. The Provider is entitled to access the data in the Database to the extent necessary for the fulfillment of the Agreement and the Terms.

8.5. If necessary, according to the Provider, the Client will ensure the availability, participation and active co-operation of qualified employees of the Client who have sufficient knowledge of the Client's operating environment. Contact Persons of both Parties are responsible for co-ordinating and ensuring the collaboration and co-operation.

8.6. Each Party shall appoint a Contact Person prior to the conclusion of the Agreement and shall provide the other Party with his name, e-mail, telephone number and, if applicable, other contact details. If there is a personnel change in the position of the Contact Persons, the relevant Party shall notify the other Party of this fact without undue delay. The change shall be effective from the first day of the calendar month following the month in which the change was made.

8.7. The software is not subject to any acceptance testing.

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8.8. The Client is obliged to ensure that its users of the Software and Third-party Products keep the user access details to the Software confidential and protect them from being revealed, disclosed and/or misused by third parties who are not the Client's users, and that they notify the Client in case of loss of access details and/or in case of suspicion of theft or misuse thereof without undue delay. If a user loses his or her access details or suspects their theft or misuse, the Client is obliged to immediately take measures under its own responsibility, e.g. ask the Provider to block such login details. The Client is liable for damage incurred by it or its user as a result of breach of this obligation.

8.9. The Provider is entitled to interrupt the operation (availability) of the Software and eventually the operation (availability) of Third-Party Products, if this is necessary to update or improve the Software, or if it is otherwise necessary, under the following conditions:

a) the interruption of operation may take place on the day and time (usually between 18:00 and 6:00), which the Provider notifies at least 2 days in advance, or

b) in the event of unexpected serious problems with the Software, the Provider is entitled to suspend the operation of the Software for the time necessary to resolve them without prior notice.

8.10. The Provider is not liable for any outages or problems with the Software within the meaning of par. 10.3 c).

8.11. One of the services provided within the Software is the virtual exchange service, through which it is possible to make telephone calls to telephone numbers. The Service is based entirely on Third Party Products, in particular Microsoft and FAYN Telecommunications. Its scope and possibilities are therefore limited by the business conditions of Microsoft and FAYN Telecommunications s.r.o., with its registered office at Popelova 150/71, 620 00, Brno, and the technical limitations of the product used. The Client is obliged to get acquainted with the above mentioned terms and conditions and agree to them. Given that the Provider is not a provider of electronic communications services within the meaning of Act. No. 127/2005, the Act on Electronic Communications, but only mediates the service of a third party, that is an entrepreneur in electronic communications, the Provider has no legal obligation to provide emergency calls or provide information enabling the location or identification of a person calling emergency numbers. The Client is obliged to ensure that each user of the Software is acquainted with the information contained in this paragraph.

9. SOFTWARE DEFECTS

9.1. The Client is obliged to check whether the Software has been provided in accordance with this Agreement within 5 (five) days from the provision (ie enabling the use) of Software.

9.2. The Software has a defect only when it does not comply with the requirements set in Agreement or the Individual Contract.

9.3. If the Client or a person to whom the Client provided a sublicence makes any changes, modifications or updates to the Software, if it links the Software to other software, or if it interferes in any other way with the Software, the Client loses all rights from defective performance (Warranties).

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9.4. Shall the provision of Software be affected by a defect, the Client shall address a complaint to the Provider without undue delay, at latest within 5 days from the day of its provision or delivery. The complaint shall describe the defect or the way how it occurs in detail. The Parties have agreed that the preferred claim in the complaint is eliminating the defect by repair.

9.5. The Provider shall verify whether there is a defect, and if it is, the Provider shall remedy the defect by repair.

9.6. The repair provided on the basis of this article is not a paid service within the meaning of the Agreement for the provision of professional services (service Agreements) and the time and costs incurred for the repair cannot be charged.

10. LIABILITY

10.1. The Provider shall not be liable for any direct or indirect damage caused to the Client through the use of the Software, even if the Client had previously warned the Provider that damage can be incurred, including but not limited to the loss of profits, special or accidental damage. The Provider accepts no liability for the Client's non-material damage.

10.2. The Provider is not liable for any Software failure or delay if it is caused by the fact that the operating environment or the Third-party Products were not legal or updated or improved in conformity with the current system requirements of the Software.

10.3. The Provider accepts no liability for:

   a)   any loss of competency of the Client's operating environment and/or Workstations to operate the new version of the Software;

   b)   unavailability or loss of data, data corruption or other damage in relation to Database;

   c)   unavailability, delay or other problems regarding the Software caused by unavailability or problems of Third-party Products or problems on the side of the Client or its service providers, or, as the case may be, on the side of the Provider's service providers.

10.4. The Client is obliged to maintain best practices of the security of Software and Third-party Products recommended by the Provider and by the suppliers of Third-party Products. The Client accepts all liability for damage caused to itself, to the Provider or to third parties if such damage could have been prevented by maintaining the best practices.

10.5. The Parties agree that if the Provider were obliged to compensate the Client for any damage in spite of the above, this obligation of the Provider would not exceed Price for the Software paid by the Client in the last 2 calendar months.

11. DATA PROCESSING

11.1. The terms and conditions of personal data processing are regulated by **Annex 3** to the Terms.

12. DUTY OF CONFIDENTIALITY

12.1. For the purpose of this Article, any Party receiving Confidential Information of the other Party shall be referred to as the "receiving Party" and any Party providing its Confidential Information to the other Party shall be referred to as the "disclosing Party".

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12.2. The receiving Party will hold all Confidential Information in confidence. The receiving Party may only use the Confidential Information in accordance with the terms of this Agreement and solely for the purpose of cooperation of the Parties on provision of Software by the Provider.

12.3. The restrictions of this Agreement on use and disclosure of Confidential Information will not apply to information that without the breach of this Agreement (a) is already known to the receiving Party, (b) is or becomes publicly known, (c) is or subsequently comes into the possession of the receiving Party from a third party, or (d) is independently developed by the receiving Party without the use of Confidential Information.

12.4. The receiving Party will have the burden of proof relating to all exceptions to the definition of Confidential Information.

12.5. The receiving Party will exercise reasonable care to protect the Confidential Information from any loss or unauthorized disclosure.

12.6. The receiving Party may disclose Confidential Information to a third party if it is compelled by law or a competent public body to disclose any Confidential Information if the receiving Party:

a) provides the disclosing Party with prompt written notice, to the extent that it is legally permitted to do so, so that the disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement, and

b) cooperates with the disclosing Party to obtain a protective order or another appropriate remedy.

12.7. If the Parties cannot obtain a protective order, another appropriate remedy, or otherwise fail to quash the legal process requiring disclosure, the receiving Party shall disclose the requested Confidential Information only to the extent necessary to satisfy the request.

12.8. The receiving Party may disclose Confidential Information:

a) if and to the extent that the disclosing Party consents in writing to such disclosure, or

b) to the receiving Party's officers, directors, employees, affiliates, or representatives who (i) need-to-know that Confidential Information in furtherance of the Agreement, (ii) have been informed of the confidentiality obligations of this Agreement, and (iii) agree to abide and be bound by the provisions of this Agreement with respect to the duty of confidentiality.

13. BREACH OF AGREEMENT

13.1. In case of late payment of any sum rightfully invoiced to the Client by the Provider according to this Agreement, the Client is obliged to pay to the Provider a contractual penalty in the amount of 0.05 % of the outstanding sum for every commenced day of the delay.

13.2. If any of the Parties or a person to whom the Parties provided Confidential Information breaches the duty of confidentiality or restriction of use of Confidential Information pursuant to Clause 12 hereof, the breaching Party shall pay a contractual penalty of EUR 7 000 to the non-breaching Party for each individual case of breach.

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13.3. If the Client or a person to whom the Client provided a sublicence breach any of the Client's obligations under Art. 5 of these Terms, especially paragraphs 5.5 (ban on competition), the restrictions set out in par. 5.10 (ban on reverse engineering) and par. 5.11 (ban on granting the license for other than allowed purposes) the Client shall pay to the Provider a contractual penalty in the amount of EUR 40,000.

13.4. If the Client is in delay with the provision of cooperation (paragraph 8.1**Chyba! Nenalezen zdroj odkazů.**) for more than 30 days, he shall pay to the Provider a contractual penalty in the amount of EUR 2,000.

13.5. Payment of any contractual penalty hereunder shall in no way prejudice the aggrieved Party's right to compensation for damage to the full extent.

13.6. All contractual penalties are payable within 14 Working Days from the day their claim has been made by the non-breaching Party.

14. DURATION AND TERMINATION OF THE AGREEMENT

14.1. The Agreement is concluded for an indefinite period of time, unless a specific term is stipulated in the Agreement.

14.2. The Agreement shall be terminated exclusively by a written agreement signed by both Parties, by withdrawal from the Agreement due to its substantial breach or by notice of termination pursuant to this Article.

14.3. The Client has breached the Agreement substantially:

a)   if it has been in default with a payment justly invoiced by Provider for a period of more than 20 days,

b)   the Client uses the Software at variance with this Agreement or Terms,

c)   if it has breached the duty of confidentiality under Art. 12 (confidentiality obligation) more than twice or

d)   violates its obligations under Art. 5 in particular para. 5.5. (Prohibition of competition, etc.) or 5.9. (prohibition of reverse engineering, etc.).

e)   is in delay with the provision of cooperation according to 8.1**Chyba! Nenalezen zdroj odkazů.** for a period longer than 30 (thirty) days.

14.4. Any of the Parties may withdraw from the Agreement in case the other Party enters an insolvency proceeding, is in the risk of bankruptcy or bankrupt, or enters liquidation.

14.5. The termination of the Agreement by withdrawal must be done in writing and is effective on the date of delivery of a withdrawal notice to the other Party.

14.6. Either Party is entitled to terminate the Agreement by giving written notice without giving a reason. The notice period is 1 month and starts on the first day of the month following the delivery of the notice.

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14.7. Under the conditions of para. 17.10. (force majeure), either party is entitled to terminate this Agreement if force majeure prevents the other Party from fulfilling its obligations under this Agreement for more than 20 consecutive days. The notice of termination must be made in writing and shall take effect on the day of delivery to the other Party.

14.8. Regardless the reason and the manner of termination of the Agreement, the rights and obligations agreed under the following Articles shall survive the termination of the Agreement: 10 (liability), 11 (personal data processing), 13 (breach of Agreement), 14 (duration and termination of the Agreement) a 17 (Final Provisions). Duty of confidentiality according to Art.12 in relation to Confidential information exchanged between the Parties before the termination of the Agreement shall survive in regard to: i) Confidential Information that constitutes business secrets for as long as this information keeps the status of a business secret under the applicable law, and ii) other Confidential Information for the term of 3 (three) years from the termination of the Agreement.

15. FORM OF COMMUNICATION

15.1. Communication between the Parties shall take place in Czech or English languages. Any and all requests, notices or other communications made by the Parties in connection to the Agreement, Software or Terms must be in the Czech or English language, otherwise they will not be taken into account.

15.2. The Parties shall communicate mostly through their Contact Persons.

15.3. The requirement of written form is considered satisfied when:

a) an electronic text signed by simple electronic signature is delivered to the e-mail address of a competent person of the other Party, or, as the case may be, the e-mail address explicitly intended for sending such texts;

b) both Parties sign an electronic text using the standard electronic signature SIGNI while complying with the requirements of its provider – Digital Factory s.r.o., for this kind of signature.

15.4. An electronic message is considered delivered at the moment stated in the electronic confirmation of delivery or, if there is no such confirmation, on the day following the day when the electronic message was sent.

16. CHANGE OF TERMS

16.1. The Provider reserves the right, at its discretion, to change, modify, add or remove any part of the Terms by making the new version of the Terms available on its website and notifying the Client in writing. If the Client does not reject the change within 15 days of the notification, it is considered that the Client has accepted the new version of the Terms. If the Client rejects the changed Terms within the specified period, the rejection constitutes termination of the Agreement with a notice period of 30 days from the date of rejection, unless the Parties agree otherwise. During this period, the latest version of the Terms accepted by the Client will apply.
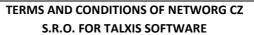
17. FINAL PROVISIONS

17.1. The Terms, the Agreement and all legal relations arising from them or related to them are governed by the law of the Czech Republic with the exclusion of conflict of law rules.

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17.2. The Parties disapply any customs of trade within the meaning of Section 558 (2) of Act No. 89/2012 Coll., the Civil Code, as amended, except for those explicitly stipulated in the Agreement. The parties also exclude the use of Sections 2389c to 2389f of Act No. 89/2012 Coll., Civil Code, as amended, with the exception of those expressly agreed in the Contract.

17.3. The Agreement and the Terms supersede any prior oral or written agreements of the Parties relating to the subject matter of the Agreement. Any e-mail or other communication between the Parties and expressions of will of the Parties made prior to the date of conclusion of the Agreement shall be deemed irrelevant to the text of the Agreement and Terms and shall not be taken into account in the interpretation of the Agreement and Terms.

17.4. **Some provisions of the Terms could be considered surprising, in particular paragraphs and articles 4.4 (backup), 5 (license provisions), 5.3 (indemnification in case of violation of the rights of third parties), 7.4 (termination of the license in case of late payment of the Price), 10 (exclusion and limitation of liability), 13 (contractual penalty), 14.3 (material breach of Agreement), 17.2 (exclusion of provisions). The Provider expressly warns the Client of these provisions and the Client confirms by concluding the Agreement that he has read them and agrees with them.**

17.5. Headings of Articles in the Agreement and Terms serve for ease of reference and shall not be used for interpretation of the Articles. Any terms expressed in the Agreement and Terms in singular can be interpreted in plural, if applicable, and vice versa.

17.6. The Parties agree that any dispute between them shall be settled amicably. If the Parties fail to reach an amicable resolution to the dispute, any dispute arising out of or in connection with the Agreement or the Terms and Conditions shall be finally resolved by the Arbitration Court attached to the Czech Chamber of Commerce and the Agricultural Chamber of the Czech Republic by one arbitrator appointed by the President of the Arbitration Court.

17.7. The failure or omission of a Party to enforce any of its rights hereunder shall not be deemed as the future waiver of such rights and does not establish practice between the Parties.

17.8. The Provider is entitled to place the business name, logo, trademark or any other trade designation of the Client onto its website into the references section and use it in all its reference marketing materials.

17.9. The Parties agree that they shall not demand that the existing customers, clients or suppliers of the other Party terminate, restrict or cancel their co-operation with the other Party or withdrawn from it, nor will they be encouraged to do so.

17.10. The Parties consider the event of Force Majeure to be all unforeseeable circumstances not within a Party's reasonable control, including but not limited to natural disasters, embargo, strikes (including planned strikes), epidemic (and related measures) and war. In the event of Force Majeure where a Party is prevented from the performance of its obligations under the Agreement or Terms, the Party shall notify the other Party of this fact without undue delay providing the period during which it may not perform under the Agreement or Terms. The events of Force Majeure shall not affect the payment obligation of any of the Parties.

17.11. The Client is not entitled to assign the Agreement or any claims, rights or any claims, rights or receivables arising from the Agreement or the Terms without the Provider's written consent.

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17.12.Without prior written consent of the Provider, the Client may not set off any claim, right or receivable arising out of the Agreement against the Provider

17.13.Should any of the provisions these Terms or the Agreement be or become invalid, void, ineffective or unenforceable, this fact shall not affect the rest of the Agreement and Terms. The Parties agree to replace any such invalid, ineffective, void or unenforceable provision of the Agreement or Terms with a provision that is valid, effective, not considered void, enforceable and with the same business and legal meaning within 14 (fourteen) days of receiving a written request from the other Party.

17.14.All documents of Agreement will be considered complementary and / or explanatory. In the event of a conflict between the Terms, the Agreement and / or their annexes, the following documents shall prevail, in ascending alphabetical order:

   a)   Individual Agreement, if concluded

   b)   Agreement

   c)   Annexes to the Agreement

   d)   Terms

17.15.The annexes to the Terms are:

   a)   Annex No. 1. - Definitions

   b)   Annex No. 2 - Talxis Software Specifications

   c)   Annex No. 3 – Data processing terms

17.16.These Terms and Conditions are effective January 1, 2021.

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ANNEX 1 - DEFINITIONS

Price	It is the amount determined by the Agreement that the Client will pay to the Provider for the use of the Software.
Database	It is the database of the Software and all data inserted into it by the Client and/or its personnel and suppliers.
Confidential Information	Shall mean all material, non-public, business or manufacturing-related information, written or oral, whether or not it is marked as confidential, that has been disclosed or made available to the receiving Party, directly or indirectly, through any means of communication or observation. Confidential Information also includes personal data, if any, processed by the Parties hereunder. Confidential Information also includes information shared between the Parties prior to the effective date of Agreement, if it would otherwise be considered as Confidential Information according to this definition.
Contact person	Shall mean persons appointed by the Provider and by the Client as persons responsible for communication with the other Party and co-operation of the Client's and Provider's employees.
Infrastructure	Shall mean a set of hardware equipment and software tools which run the Third-party Products and the Software, store the contents of Databases, in particular servers, switches, routers, firewalls, data storages, etc
Client	Is a person who has entered into an Agreement with the Provider. Alternatively, it is a person who has been legally granted a license by a person different from the Provider.
Client's Personal Data	Shall mean the personal data that are processed by the Provider on behalf of the Client in the course of Software provision.
Terms	These Terms and Conditions of NETWORG CZ s.r.o. for TALXIS Software.
Provider	Is business company NETWORG CZ s.r.o., IČ: 03412687, with its registered office at Sokolovská 352/215, Vysočany, 190 00 Prague 9, Czech Republic, registered in the Commercial Register kept by the Municipal Court in Prague under file no. No. C 231313.

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Workstation	Shall mean a single server, PC, or mobile device including a tablet.
Third party products	Shall mean Microsoft software products, as well as software products from other companies that interact with the Software. Third party products are defined in Annex No. 2 and / or in the Agreement or in a partial Agreement.
Agreement	It is an agreement concluded between the Provider and the Client, the subject of which is the provision of a License to use the Software under the conditions specified in these Terms.
Software	It is a TALXIS cloud solution, that is used to digitize the Client's processes. The TALXIS specification is set out in Annex 2 to the Terms.

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ANNEX 2 - TALXIS SOFTWARE SPECIFICATIONS

1. **Description of Software**

    1.1. TALXIS is a system for storing and managing data, for managing everyday processes in the company and their automation, facilitating data management and putting them in the right context. A specific description of the features and functionalities of the Software is part of the Agreement or Individual Agreement, if concluded. For more information about the Software, visit www.talxis.com.

2. **Mandatory Third-Party Products**

    2.1. The following Third-Party Products are necessary for the proper functioning of the Software:

    2.1.1. Each user who will only access one specific TALXIS application must have assigned a Power Apps Per app plan license. If a given user should access more than one TALXIS application or other third-party applications within one Power Platform environment, the number of assigned Per app plan must correspond to the number of used applications. Alternatively, the user must have assigned a Power Apps per User Plan license, which is no longer limited to the number of applications.

    2.1.2. At least one Power Apps per User Plan license is required within the entire tenant of the Customer, which serves to create the environment.

    2.1.3. Each user who accesses TALXIS applications must have assigned at least a Microsoft 365 Business Basic or higher license, or their SKU equivalent.

    2.1.4. Azure Active Directory Tenant

    - Tenant represents the entire organization. This is a dedicated instance of Azure Active Directory that the organization or developer receives at the beginning of the relationship with Microsoft. This relationship can start by logging in to Azure, Microsoft Intune or Microsoft 365.

    2.1.5. Microsoft Exchange Online

    - Microsoft Exchange Online is again part of Microsoft 365 licenses. In the case of hybrid scenarios (Microsoft Exchange Server – On Premise solution), it is necessary to address the infrastructure individually with the Provider.

3. **General conditions for Integration of other Third-Party Products**

    3.1. If the Parties agree in the Agreement or Individual Agreement on the integration of other Third-Party Products, the Client must meet at least the following conditions, unless the Provider specifies specific conditions in the Agreement or Individual Agreement:

    3.1.1. Client must have licenses to use Third Party Products that are required to integrate with the Software or other activities under the Agreement or Individual Agreement. Par. 5.3 of Terms shall apply mutatis mutandis;

    3.1.2. The Client must have interoperability information enabling the connection of the Third-Party Product to the data structure of the Software, in particular it may be a Rest API connector, Webhook, etc.

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3.1.3. Due to the fact that the conditions are variable over time, the Client must also meet the current conditions for integration available at docs.talxis.com.

3.1.4. Before ordering integration services, the Client is obliged to fill in an integration questionnaire with the Provider, which serves to prepare the offer and define the integration as such. The questionnaire will be provided by the Provider to the Client at his request.

4.   Requirements for the Client's operating environment

4.1.   The Client's equipment on which the Software will be run must have Internet access with technical parameters that allow the running of a web browser common in the place and time of development of the latest version of the Software and also allow trouble-free use of the web browser.

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ANNEX 3 - DATA PROCESSING TERMS

1. LEGISLATION

1.1. Unless otherwise provided in the Agreement, the meaning of capitalized words is stated in Annex 1 to the Agreement.

1.2. In the course of Service provision, the Provider may process information and data which can be considered personal data in the meaning of data protection legislation, i.e. the Czech Act No. 110/2019 Col. on the processing of personal data; and Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

2. ROLES AND DATA PROCESSING INSTRUCTIONS

2.1. The Parties acknowledge and agree that:

a) Provider is a processor of Client's Personal Data;

b) Client is a controller or processor, as applicable, of Client's Personal Data;

c) Each Party will comply with the obligations applicable to it under the applicable law with respect to the processing of Client's Personal Data.

2.2. If Client is a processor, Client warrants to the Provider that Client's instructions and actions with respect to Client's Personal Data, including its appointment of the Provider as another processor, have been authorized by the relevant controller.

2.3. The Provider shall process the Client's Personal Data exclusively in compliance with the applicable legal regulations: a) for the purpose of uploading the Client's Personal Data to the Software under the Agreement and for the purpose of data analysis; b) in accordance with the Agreement; and c) as further specified in other written instructions provided by the Client.

3. DURATION OF PERSONAL DATA PROCESSING

3.1. The Provider shall process the Client's Personal Data only for the period of uploading the Client's Personal Data into the Software and for the period of data analysis according to the Agreement.

3.2. Personal Data shall be processed for the period necessary for provision of the Software pursuant to the Agreement and the Individual Contracts.

4. NATURE AND PURPOSE OF PERSONAL DATA PROCESSING

4.1. The Provider shall process the Client's Personal Data for the purpose of uploading and analysing the Client's Personal Data and shall do so only in electronic form, as well as through remote access in case of analysis.

5. TYPES OF PERSONAL DATA

5.1. Client's Personal Data may include, in particular, identification details, contact details, user details, financial details, voice recording, call transcription, in some cases also gender details and other details which are analysed or uploaded by the Provider into the Software and Third-party Products within the scope of the Agreement.

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6.   CATEGORIES OF DATA SUBJECTS

6.1.   Client's Personal Data shall concern the following categories of data subjects:

a)   data subjects whose personal data were transferred to the Provider for the purpose of uploading into the Software;

b)   data subjects whose personal data are processed by the Provider for the purpose of of analysis via remote access.

6.2.   These data subjects may include (a) Client's employees or Client's co-workers, (b) members of Client's bodies, (c) Client's clients or potential clients, and (d) employees and co-workers of Client's clients.

7.   RIGHTS AND OBLIGATIONS OF THE PARTIES

7.1.   Only Provider and workers of the Provider will have access to personal data. The Customer acknowledges that the Provider also uses some third-party services (especially Microsoft and Atlassian), if the Customer uses these functionalities, it may happen that some data will be shared with this third party so that the functionality can be made available. Among other things, Provider uses Microsoft Azure services from Microsoft. The Microsoft Terms are available here: https://azure.microsoft.com/en-us/support/legal/. From Atlassian we can use the services of the software tool JIRA (helpdesk).

7.2.   Provider provides speech-to-text services that allow Client to automatically record calls, make a transcript to the text and save it. A Microsoft product (Azure Cognitive Services, Speech to Text) is used for this service, which will process the data for the Provider. In the event that the Parties agree on this service in the Agreement, the Client confirms that he has been acquainted with the service and agrees with its implementation.

7.3.   If any third party, particularly a data subject or supervisory authority, requests any Party to provide any information in relation to personal data processing under the Agreement or the Data Processing Terms, or in this relation makes any claim or exercises any right against any Party, the Party undertakes to inform the other Party about such procedure without undue delay.

7.4.   Client is liable for fulfilling all obligations in relation to Client's Personal Data processing, particularly for informing data subjects about Client's Personal Data processing, obtaining consent with Client's Personal Data processing if necessary, dealing with data subjects' requests relating to the exercise of their rights (such as right to information, access, rectification, erasure, process limitation, right to object etc.). Client is further liable for fulfilling all notification obligations towards any supervisory authority relating to Client's Personal Data processing, especially for notifying the supervisory authority on any personal data breach.

7.5.   The Provider is responsible for evaluating whether the security measures and the Provider's commitments hereunder meet Client's needs, including with respect to any security obligations of Client under the applicable law.

7.6.   For the duration of Client's Personal Data processing, if the Provider receives any request from a data subject in relation to Client's Personal Data, the Provider shall notify the Client of this fact within 7 days of receipt of such a request and send the text of the request to the Client with the notification.

7.7.   For the purpose of the Client's Personal Data protection the Provider undertakes, for the duration of processing Client's Personal Data under the Data Processing Terms, that it:

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a) shall ensure all security requirements on Client's Personal Data protection required by the Agreement and the Data Processing Terms to protect them against a data breach;

b) shall not engage another processor without prior authorization of Client;

c) if the Provider decides to involve another processor to carry out certain activities on behalf of the Client, the subprocessor shall be bound by the same data protection obligations, arising from an agreement or another legislative act of the European Union or member State, as stipulated in these terms and conditions of personal data processing;

d) shall in the scope appropriate to the nature of processing and available information be supportive of Client with ensuring appropriate technical and organizational measures to secure the personal data, notifying personal data breach to any supervisory authority or data subject, assessing data protection impact and with prior consultations with the supervisory authority;

e) shall provide Client with all necessary information to fulfil the Client's obligation to react to data subjects' requests to exercise their rights under the data protection legislation;

f) shall return to Client and delete, as described in the Agreement, upon the termination of the provision of Services, all Client's Personal Data, including all existing copies, unless the European Union or Member State law requires their storage;

g) shall provide Client with all information necessary to demonstrate Client's compliance with the obligations stated in the Data Processing Terms and allow for and contribute to audits, including inspections, conducted by Client or another auditor mandated by Client.

7.8. The Provider put in place and agrees to apply the following measures to ensure security of processing of the Client's Personal Data for the whole duration of their processing:

a) Organisational Measures:

o the Provider's employees shall be regularly instructed on the principles of personal data safety and on cyber security;

o the Provider adopted internal guidelines for handling of personal data and valuable information;

o all of the Provider's employees (including authorised persons) shall be bound by a confidentiality obligation at least with respect to all transferred personal data;

b) Technical measures include, in particular:

o individual user accounts must be provided with passwords. Multi-factor authentication is recommended each log on,

o it is not recommended to bulk export any personal information from the system. If they need to be exported, they need to be encrypted,

o regular maintenance of equipment, security software and anti-virus programs according to the conditions of providers,

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o   active means to prevent unauthorized persons from accessing personal data and the means of processing them; means to prevent the unauthorized reading, creation, copying, transmission, modification, deletion or other processing of personal data.

7.9.   The Provider shall protect the Client's Personal Data that are being processed against cyberattacks in a manner that is appropriate given the nature of the Client's Personal Data and the state of the art.

7.10.   The Provider may charge the Client for the purposefully expended costs connected to inspection and audit under Art. 7.7.g) of these terms and conditions of personal data processing

7.11.   The Client is obliged to send any request for audit exclusively to the e-mail address of the Provider hello@networg.com. After receiving a request for audit, the Provider and the Client shall agree in advance on the following: (a) the possible date of the audit, security measures and the methods of maintaining confidentiality during the audit; and (b) the expected beginning, scope and duration of the audit, the security measures and the methods of maintaining confidentiality during the audit.

7.12.   The Provider may object in writing to any auditor engaged by the Client if the Provider believes the auditor is not sufficiently qualified, is not independent, is competing with the Provider or is otherwise clearly unsuitable. Based on such an objection, the Client is obliged to engage a different auditor or perform the audit itself.

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