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General Terms and Conditions Smartbridge AG

1 Introduction

- (a) Smartbridge AG (hereinafter referred to as Smartbridge) is the manufacturer of the web application Staffcloud, a personnel and project management system. The subject of the contract between Smartbridge and the customer is:
 - (i) Use of the Staffcloud software (license) as Software as a Service, including storage of the customer's data on the servers of Smartbridge's hosting partner;
 - (ii) Services in connection with the Staffcloud software (e.g. introductory training, process optimization, API consulting);
 - (iii) Maintenance of the Staffcloud software as part of continuous integration (updates, upgrades, releases);
 - (iv) Introductory training: To ensure the introduction and operation of the software at the customer's premises, Smartbridge trains the customer's personnel and advises the customer on the configuration of the software;
 - (v) Support services: Smartbridge provides support services to assist with questions and problems;
 - (vi) Customised development: Certain customised developments can be carried out at the customer's request. These are agreed and invoiced separately in a contract for work and services.
- (b) The details of the rights of use and the services to be provided are governed by the respective main contract.

2 Contract conclusion and contract structure

- (a) The contract between the customer and Smartbridge is concluded when the customer signs and returns the main contract based on Smartbridge's offer to Smartbridge (digitally via a service such as Skribble, electronically as a scan or by post as an original). A subsequent countersignature by Smartbridge is not required. By signing the main contract, the customer confirms that they have taken note of these General Terms and Conditions.
- (b) The contract between the parties consists of the following parts:
 - (i) Offer
 - (ii) Main contract
 - (iii) General Terms and Conditions (GTC)
 - (iv) Service and Support Agreement (SLA)

- (v) Data Processing Agreement
 - (vi) Price List Customer Success.
- (c) The provisions of the main contract and the service and support agreement (SLA) shall take precedence over the provisions of these GTC in the event of a conflict. In the event of a conflict, the provisions of the Data Processing Agreement shall take precedence over these GTC.
- (d) These GTC shall also apply to any repeat orders placed by the customer without this having to be expressly mentioned in the corresponding offer or order.
- (e) Without having to provide any reasons and without having to incur costs, Smartbridge reserves the right to:
- (i) reject an order;
 - (ii) to cancel within 10 days of acceptance of an order; or
 - (iii) to suspend the provision of services due to significant events beyond Smartbridge's influence (e.g. force majeure, political developments, changing legislation, business-damaging actions by the customer or third parties, etc.).

3 Scope of services

- (a) Smartbridge provides Staffcloud on an operating environment in the most current version and makes it available to customers for use as a service.
- (b) The provision of Staffcloud is continuous (24/7), subject to the scheduled maintenance windows. Smartbridge rectifies any malfunctions as quickly as possible. However, permanent, fault-free operation cannot be guaranteed.
- (c) The provision of Staffcloud includes the performance of regular data backups. In the event of data loss caused by Smartbridge's operating environment, Smartbridge restores the data based on the previous day's data backup. Further claims by the customer in the event of data loss caused by Smartbridge are excluded.
- (d) Smartbridge will only restore data at the customer's request by means of a written order and for an additional fee. Such fee is based on time and effort according to the prices indicated in the Price List Customer Success.
- (e) In order for the customer to reach clarity on the scope of functionality of Staffcloud, various sources are available to it before concluding the contract. In addition to the website and its numerous videos, the customer can clarify specific questions in a presentation. A free version of Staffcloud is also available at any time, for which the customer can register independently. It is the customer's responsibility to ensure that

the functionalities of Staffcloud meet its needs before concluding the contract. Any deviations from customer requirements are only considered defects or errors if Smartbridge has expressly guaranteed the fulfilment of such specific customer requirements in writing.

4 Rights of use

- (a) Smartbridge is entitled to all intellectual property rights to Staffcloud, to the supplied documents and updates of Staffcloud, to all features created by Smartbridge for the customer, as well as to all other work results. The customer is only entitled to the rights to use Staffcloud expressly granted within the scope of this contract. All other rights, in particular ownership, commercial rights and intellectual property rights, in particular copyrights to Staffcloud and all usage authorisations not expressly transferred remain with Smartbridge.
- (b) Smartbridge grants the customer the non-exclusive and non-transferable right to use Staffcloud for its own use and for the intended purpose for the duration of the contract. In particular, reverse engineering is prohibited.
- (c) The customer is not authorized to make Staffcloud available to third parties for use against payment or free of charge. The customer is expressly prohibited from making Staffcloud available to third parties in any form (including renting, lending or disclosure). Excluded from this limitation of use is the use of the customer portal (Tempcloud) for the customer's end customers in accordance with Smartbridge's General Terms and Conditions for Tempcloud as well as the use of the staff portal by the customer's employees. The customer is obliged to define the corresponding authorizations.
- (d) If the customer intends to use Staffcloud together with third-party software, separate license conditions apply between the customer and the respective provider of the third-party software. Smartbridge assumes no responsibility for hardware, operating software, server programs or third-party software that exchanges data with Staffcloud, e.g. MSWord, MExcel, accounting or payroll programs, etc.
- (e) Should the customer, its employees or third parties related to the customer intentionally or grossly negligently violate the provisions of this contract regarding the use and protection of Staffcloud through an act or omission, the customer owes Smartbridge three times the value of the agreed annual usage fee for each individual case of breach of contract in the sense of a contractual penalty in accordance with Art. 160 para. 1 Swiss Code of Obligations. Smartbridge reserves the right to claim damages. The payment of this contractual penalty does not release the customer from its contractual obligations. In particular, Smartbridge is entitled to demand remediation or removal of the breach of contract at any time or to terminate the contract with immediate effect.

5 Obligations of the customer

- (a) The customer confirms that it is aware that it processes not only the personal data of its employees and its own customers, but also the particularly sensitive personal data of its employees. The customer confirms that it complies with the applicable data protection laws as the controller.
- (b) The customer shall take the necessary organizational and technical measures in its business to protect Staffcloud from unintentional disclosure, theft or misuse by unauthorized individuals. Furthermore, the customer shall ensure that the number and location of logins authorized in connection with the intended use are monitored.
- (c) The customer's obligations during day-to-day operation, in particular when using support services, are listed in the SLA.
- (d) The customer is obliged to check all data outputs from Staffcloud that are used to pay wages, issue invoices or for other financial transactions. Discrepancies in the data output must be reported by the customer to Smartbridge support immediately after discovery.
- (e) The customer shall create the appropriate conditions for Smartbridge to provide the agreed services. The customer is in particular responsible for the following areas:
 - (i) Procurement and operation of hardware and third-party software that exchanges data with Staffcloud (incl. interface responsibility);
 - (ii) Internal training of employees in the use of Staffcloud based on the initial training provided by Smartbridge;
 - (iii) Provision of the data to be processed or migrated, together with the assurance that it is legally in the customer's possession; input of the data; data transfer and recovery of the data; responsibility for data integrity and data accuracy;
 - (iv) Immediate information in the form specified by Smartbridge when faults and errors occur;
 - (v) Compliance with the instructions for use specified by Smartbridge (see training);
 - (vi) Execution of the instructions given to the customer by Smartbridge;
 - (vii) Provision and safeguarding of data communication, internet connection and telephony; management of the interfaces with the relevant providers; maintenance of the technical equipment to be installed by the customer for remote maintenance.

6 Changes and further development

- (a) Smartbridge reserves the right to modify processes and functionalities of Staffcloud or the services within the scope of the innovation process ("continuous integration"). Smartbridge therefore does not guarantee that all functions will remain unchanged.
- (b) Smartbridge can offer to customer a comprehensive further development of individual functionalities of the basic version as fee-based modules in a functionality package provided by Smartbridge or as an add-on. In this case, the customer expressly waives the original functionalities, but has the option to use the corresponding functionality package or add-on, which contains the desired functionality, free of charge until the end of the contract period.
- (c) Smartbridge reserves the right to remove individual functionalities or entire modules from the offered scope of functionality without replacement.

7 Availability and restrictions

- (a) In the provision of Staffcloud for use by the customer, Smartbridge takes all technically and economically reasonable measures to offer the most uninterrupted availability possible. Smartbridge commits to an availability (uptime) of Staffcloud of 99.5% on an annual average.
- (b) Despite careful development and testing, Staffcloud malfunctions cannot be completely avoided. Such errors are rectified as part of releases for continuous quality assurance and further development.
- (c) Smartbridge optimizes the operation, performance and quality of Staffcloud with maintenance work on Staffcloud or the servers on which Staffcloud runs. The customer therefore tolerates short-term usage restrictions caused by maintenance work. Smartbridge carries out maintenance work preferably at off-peak times (between 5 p.m. and 8 a.m.). In the event of urgent troubleshooting, maintenance work can also be carried out during office hours without prior notice. Longer interruptions due to maintenance work are communicated directly in Staffcloud.
- (d) Smartbridge cannot guarantee the execution of functionalities in every conceivable combination, even if Staffcloud does not expressly prohibit such actions being performed by customer.
- (e) Smartbridge cannot guarantee unlimited performance of functionalities. In particular, computationally intensive functionalities with large amounts of data can lead to longer waiting periods or aborts. Smartbridge cannot provide exact performance limits, as these depend in particular on the end device and browser or internet

connection used. The customer is required to limit the use of the functionalities in a manner that the amount of data retrieved is reduced.

- (f) The Staffcloud planning view, the web portal for the customer's employees and the web portal for the customer's end customers can only be operated via a web browser. Staffcloud is optimised for the free Chrome, Firefox and Microsoft Edge browsers. Smartbridge cannot guarantee the correct display or execution of all functionalities on all available browsers or all available end devices (PCs, mobile devices). The customer acknowledges that the planning view is not suitable for use on tablets and smartphones in particular.
- (g) The Staffcloud system has apps (iOS, Android) for the customer's employees, which offer the most important functionalities of the employee web portal. Smartbridge cannot guarantee the correct functioning of the apps on all device generations and system configurations. Smartbridge endeavours to enable problem-free operation for the most common configurations (end device, operating system). The customer's employees are encouraged to use the latest version of the respective app.
- (h) The export function makes it possible to export extensive data records from Staffcloud in .xls, .csv or .json format. The export function also has extensive configuration options to export the data in a user-defined way. Nevertheless, Smartbridge cannot guarantee that all database items can be accessed via the export function. In the case of very large queries, the export may refuse to run. The customer is required to set the filter options so that the queried data records are smaller and to export them step by step.
- (i) The customer can send emails and text messages via Staffcloud. Smartbridge cannot guarantee that all messages will reach the recipient.

8 Interfaces to third parties

- (a) Staffcloud offers the option of reading out data via a generic interface or reading it into the application via the interface. Smartbridge offers the customer access to the interface of its database after a thorough check.
- (b) If there are interfaces to third-party systems, the customer is responsible for processing the data in the third-party systems in accordance with data protection regulations.
- (c) Smartbridge assumes no liability for the accuracy, admissibility, completeness and smooth transmission of data to third-party systems.
- (d) Smartbridge reserves the right to restrict or completely block access to the interface. This applies in particular if the interface is used excessively, improperly or illegally.

9 Support and customer service

- (a) Smartbridge offers assistance with questions and problems. The conditions and service description are set out in the separate document "Service and Support Agreement" (SLA). The parties agree on the specific service level applicable to the customer in the main contract. The customer designates a suitable employee who is the only one to collect support requests and communicate them to Smartbridge in a comprehensible manner.

10 Remuneration

10.1 Pricing model Rights of use

- (a) All fees are listed in the Smartbridge offer and are charged as follows:
 - (i) **Onboarding fees:** One-off onboarding fees must be paid before the required work is carried out. These include training and configuration services.
 - (ii) **Utilisation fees:** The usage fees listed in the offer are made up of the following parameters: Number of active employees in the database, number of users (administrators), booked functionality package and booked add-ons. Usage fees are invoiced at the beginning of the period at the selected frequency (quarterly, semi-annually, annually).
 - (iii) **Upgrades:** The customer can adjust all parameters upwards during the contract period (upgrade). The costs incurred for this are communicated transparently to the customer before the upgrade in accordance with the underlying price model. Upgrades are charged in the next periodic invoice to be paid. If the last periodic invoice has already been issued, the upgrade will be invoiced separately.
 - (iv) **Downgrades:** During the contract period, parameters cannot be adjusted downwards (downgrade).
 - (v) **Variable volumes:** Staffcloud offers two different types of variable volumes. These include SMS and deployment hours/deployments. Both types are offered in volume packages, the prices of which can be seen in the offer. If purchased volumes are not fully utilized, they can be carried over to the next contract period. Unused volumes cannot be refunded at the end of the contract.
 - (vi) **Maintenance fee:** The maintenance fee is included in the usage fee.
 - (vii) **Fees for partners:** Staffcloud can be connected to other software providers via the interface. Staffcloud offers integrated solutions in various areas (reporting, digital contracts, payroll accounting, etc.). Staffcloud charges a usage fee for the integration.

10.2 Remuneration for services

- (a) Services relating to specific work explicitly commissioned by the customer, such as customized developments, shall be agreed and invoiced separately. Insofar as this supplementary contract contains information on the expected scope of the services to be provided, this information shall be solely indicative. Such information is therefore neither a fixed price nor a binding cost ceiling, unless the parties explicitly agree this in the supplementary contract.
- (b) Services, in particular for the remediation of faults that were not caused by Staffcloud or that cannot be reproduced (e.g. faults caused by hardware influences, operating errors, unauthorized interventions, the effects of third-party software, viruses, errors in data material provided by the customer or third parties) shall be subject to a separate fee on time & material basis.
- (c) For services expressly requested by the customer outside normal working hours (Monday-Friday 09:00-17:00), Smartbridge charges a surcharge of 50%.
- (d) Travelling time may be invoiced as working time. Expenses are to be reimbursed in accordance with the applicable rates.

10.3 Invoicing, payment deadlines and late payment

- (a) All invoices are sent by e-mail to an e-mail address defined by the customer.
- (b) Invoices must be paid within the contractually agreed payment period (see corresponding offer).
- (c) Costs in the event of late payment: processing fee (at the earliest from day 70 after the invoice date, when handed over to the collection service provider) depending on the amount of the claim, maximum amount in CHF: 50 (up to 20); 70 (up to 50); 100 (up to 100); 120 (up to 150); 149 (up to 250); 195 (up to 500); 308 (up to 1,500); 448 (up to 3,000); 1,100 (up to 10,000); 1,510 (up to 20,000); 2,658 (up to 50,000); 6% of the claim (from 50,000).
- (d) All prices quoted by Smartbridge are exclusive of VAT.

11 Access blocking

- (a) In the event of late payment, Smartbridge is authorized to withdraw the customer's right to use Staffcloud after prior warning until the outstanding amount has been paid in full.

- (b) In the event of a violation of the provisions regarding rights of use and confidentiality, Smartbridge can immediately and definitively withdraw the right of use from the customer.
- (c) It is the customer's responsibility to export all relevant data to enable work without access to Staffcloud.

12 **Secrecy**

- (a) Smartbridge and the customer mutually assure each other to maintain information and data provided or made accessible confidential and to ensure the same level of protection as afforded to their own business secrets.
- (b) In particular, information about the code, structure, functionalities, user interface and design of Staffcloud are considered trade secrets of Smartbridge. Staffcloud contains information, ideas, concepts and procedures, in particular regarding the processing of data for certain applications, which constitute trade secrets of Smartbridge. Accordingly, the customer undertakes to treat Staffcloud with the same level of care and confidentiality as it affords its own business secrets, to use it only for the intended purpose described in this contract and, subject to prior written authorization by Smartbridge, not to make it accessible to third parties in any manner or form, either in whole or in part, nor to publish it. The customer ensures through appropriate instructions, agreements and other suitable measures that all persons who have access to the software fulfil these obligations.
- (c) The customer agrees that Smartbridge may mention the customer as a reference in its sales documents. The customer may mention Smartbridge or Staffcloud in advertising material or event information.

13 **Warranties**

- (a) Smartbridge continuously drives the improvement of Staffcloud (continuous integration). In particular, Smartbridge endeavours to rectify all errors that can be reproduced under the conditions specified by the customer within a reasonable period of time. The customer is obliged to document the conditions and the nature of the error with reasonable effort and to provide Smartbridge with this information via support.
- (b) Smartbridge does not assume any warranty for errors and their rectification that were caused by incorrect manipulation by the customer. Smartbridge's log files, in which all actions on Staffcloud are registered and saved, serve as the basis for assessing the cause of the error.

- (c) Smartbridge is responsible for solving any interface problems with third-party software solely if the interoperability with these programs has been expressly guaranteed under the main contract and the problems are due to Staffcloud errors. The customer is responsible for careful operation, backing up the data entered into Staffcloud and checking the output results. The customer is responsible for operating Staffcloud in an operating environment that meets the system requirements.
- (d) The customer is aware of the complexity of the Staffcloud system as a whole and the restrictions set out in these GTC and acknowledges these.

14 Liability

- (a) Smartbridge's liability is limited to gross negligence and intentional damage. In particular, no liability is assumed for damages caused by third-party errors (hardware and software suppliers, network operators), errors in software supplied by third-party manufacturers, improper or abusive use of Staffcloud by the customer, incorrect data output by Staffcloud or data loss.
- (b) Furthermore, liability is excluded for defects that are due to causes beyond the control of Smartbridge (in particular force majeure), improper operation, changes to the conditions of use or operation or other reasons for which the customer is responsible.
- (c) Any further claims for direct or indirect damages resulting from a Staffcloud error are excluded. Smartbridge is solely obliged to rectify technical errors.
- (d) Liability is limited to one year's fees.

15 Data protection

- (a) Smartbridge provides services for the processing and storage of personal data and complies with the Swiss Federal Data Protection Act (FADP). Smartbridge is obliged to comply with the obligations contained in the Data Processing Agreement (Appendix 1). The Data Processing Agreement is drawn up in accordance with the provisions of the EU GDPR (in particular Art. 28 et seq.) and the FADP.
- (b) The customer as the controller is solely responsible for compliance with the data protection laws applicable to it. The further obligations and rights of the customer with regard to the diligent processing of data are governed by the Data Processing Agreement. Smartbridge acts as a processor with regard to personal data that customers upload to Staffcloud in accordance with the Data Processing Agreement.

16 Changes to the General Terms and Conditions

- (a) Smartbridge reserves the right to make adjustments to fees and prices at the end of the regular contract period. For fixed-term contracts, the ordinary contract period is the end of the contract and for open-ended contracts, the next possible termination date.

17 Contract term and termination

17.1 Contract duration

- (a) The term of the contract is specified in the main contract.
- (b) All rights to the use of Smartbridge's services, in particular support and maintenance, expire at the end of the contract or upon termination.
- (c) Access beyond the expired or terminated contract period is only granted in exceptional cases for 30 days after the contract end date and is subject to fees and the conclusion of a new contract. The customer acknowledges that Smartbridge deletes its data 30 days after the end of the contract.

17.2 Termination by the customer

- (a) The customer has the option of terminating the contract in writing within 30 days of the effective date. Onboarding work performed by Smartbridge must be paid despite termination and will be invoiced respectively not reimbursed.
- (b) After the 30-day period has expired, the contract can be terminated in writing at the end of each month. In such case the customer shall pay to Smartbridge 75% of the contractually agreed usage fees from the termination date until the contract end date.
- (c) Upon termination of the respective contract, Staffcloud is blocked for use by the customer via the Internet as of the effective date of the termination. The customer is required to download its data to a local storage medium using the export functionality of Staffcloud. The customer is aware of the limitations of the export options or clarifies these in advance with Smartbridge. Should the customer wish to export data records for database items that are not supported by the export functionalities of Staffcloud, the customer is required to contact Smartbridge at an early stage. Further services provided by Smartbridge upon termination of the contract are subject to a fee.

17.3 Termination by Smartbridge

- (a) Smartbridge may terminate this contract in writing and withdraw the rights granted to the customer if the customer is in serious breach of this contract, in particular if the customer is at least 30 days in arrears with the payment of fees despite a written reminder or if the customer continues to violate its obligations in accordance with section 5 despite a written warning and a reasonable deadline of at least 30 days to restore the contractual situation.

18 Final provisions

18.1 Completeness

- (a) This contract contains all agreements between the parties relating to the subject matter of this contract. Any previous agreements are hereby superseded.

18.2 Written form

- (a) All amendments and additions to this contract (including this clause) and all ancillary agreements must be made in writing in order to be valid, unless a stricter form is required by law, with express reference to this contract. The formal requirement can only be waived by written agreement.

18.3 Notifications

- (a) Notifications in accordance with this contract are to be sent exclusively by the respective authorized individuals in written form, by letter or email to the address of the contractual partners. The customer is obliged to provide Smartbridge with a contact address (e-mail), which Smartbridge will use as a single point of contact for all notifications regarding the contract (including notifications regarding data protection) for the duration of the contract and which will ensure the forwarding within the customer's business to the responsible authorized individual.

18.4 Offsetting

- (a) The customer can only offset its own claims with the written consent of Smartbridge.

18.5 Assignment and transfer

- (a) The assignment of the rights of use granted to the customer under these GTC to third parties is excluded.

- (b) If the customer's company is taken over by a third party, the current contract cannot be transferred without the prior consent of Smartbridge. A new contract with the new owner is mandatory.

18.6 Partial invalidity

- (a) Should parts of this contract be null and void or become legally ineffective, the contract shall continue to apply as such. In such a case, the contracting parties shall adapt, interpret and apply the contract in such a manner that the purpose intended by the invalid or legally ineffective part is achieved as far as legally permissible.

18.7 Place of jurisdiction/applicable law

- (a) The exclusive place of jurisdiction is Zurich, Switzerland.
- (b) All rights and obligations under this contract are subject to Swiss law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 and to the exclusion of Private International Law (Conflict of Laws).

18.8 Dispute resolution

- (a) Both contracting parties undertake to endeavour in good faith to reach an amicable settlement in the event of differences of opinion in connection with this contract.