

BENELIZER SUBSCRIPTION TERMS AND CONDITIONS

COMMERCIAL USE ONLY

1. Introduction

- 1.1 These subscription terms and conditions ("Terms") govern your ("Customer") subscription for and use of the Benelizer application ("Product") made available by Benelizer A/S, having its registered office in Denmark (business registration number: 37367737) ("Company").
- 1.2 These Terms are published at the company's website and accepted in its current and latest version by the Customer upon registration or ordering of the Products or renewal of any such subscription.
- 1.3 The Product is available for commercial customers only, not for consumers.

2. The subscription

- 2.1 The Product is accessible to the Customer at specific URLs designated by the Company in its sole discretion.
- 2.2 Subject to the Customer's acceptance of and compliance with the terms and conditions of these Terms, the Company grants to the Customer a limited, non-exclusive, non-transferable and non-perpetual right to access and use the Product for the features level agreed and solely for the business operations of the Customer. The Customer is not allowed to install, copy, use or otherwise exploit the Product in any other manner than set forth in these Terms. All rights not expressly granted are reserved by the Company.

3. Service objectives

- 3.1 The Company aims to provide operation stability and to make all reasonable efforts to make the Product available to the Customer on the terms and conditions set out herein. The Company's services will be provided in accordance with good IT practice.
- 3.2 The Company will use best efforts to inform the Customer of any known defects which may interfere with the stability of operation or the function of the Product and to remedy and solve such defects.
- 3.3 The Company aims to perform planned service and maintenance outside normal business hours. The Customer will be given advance notice if a scheduled service and maintenance is expected to cause interruptions within normal business hours.
- 3.4 The Company will perform a back-up of the Customer's data according to separate specifications. Customer can request that a back-up be restored. The company may charge a reasonable fee for such a restore.
- 3.5 The Company will keep the Product compatible and operational with the at any time most recent official versions of the Internet browsers: Microsoft Internet Explorer / Edge, Firefox, Chrome and Safari and will make reasonable efforts to keep the Product compatible and operational with other Internet browsers but does not guarantee that the Product will work identically and reliably with any Internet browser.

4. Features requirements, upgrades, maintenance and services

- 4.1 The Customer acknowledges and accepts that it is the sole responsibility of the Customer to investigate and assess the Product in order to ensure that it can operate and function in conjunction with the Customer's needs and requirements, including the Customer's Internet access, hardware and software.
- 4.2 The Company may in its sole discretion decide to make available upgrades, patches, fixes or the like in connection with the Product to the Customer, and the Customer accepts such upgrades, patches, fixes or the like to continue operability.
- 4.3 The Company undertakes no obligations or liability with respect to the provision of telecommunication lines, Internet subscriptions or connections or any other technical means necessary for the Customer to access and use the Product or its data and any and any costs and risks in this respect remains solely with the Customer.

5. Support

- 5.1 The Company is entitled to use agents and sub-contractors for provision of support and consultancy services to the Customer.
- 5.2 The standard support level comprised by the standard subscription fee includes:
 - 5.2.1 Response to reported errors in the Product
 - 5.2.2 Answers to questions regarding the use of the Product provided each answer take no more than a few lines of email text
- 5.3 For services not comprised by clause 5.2, the Company is entitled to invoice support or consultancy services according to the then-current prices. Any such invoicing must be accepted by the Customer prior to the service being delivered.
- 5.4 Based on the Customer's error reporting, the Company will in its sole discretion (i) perform identification of the reported error, (ii) provide instructions to the Customer on the use of the Product in order to minimize the impact of a reported error until a fix may be released, and/or (iii) correct the errors. The Company shall endeavour to revert to the Customer's error reporting no later than 10 hours on business days from receipt of the report.
- 5.5 The support is provided primarily to the Customer's designated Product administrator (the super user), who is the single point of contact with respect to the Customer in this respect. It does not include support for all the Customer's users unless otherwise agreed.
- 5.6 The Company will use its best efforts to reply to the Customer's support queries within one business day.

6. Database storage

- 6.1 Each customer have their own instance of the Benelizer database completely separated from all other customers' databases.

7. Prices and payment

- 7.1 The Customer shall pay the fees in accordance with the current price list set out on the Company's website and the Terms herein.
- 7.2 The Company is entitled in its sole discretion to change the prices and the Terms. Changes will be notified in writing to the Customer no later than four weeks before such changes take effect, which will be at the earliest from the following subscription period. The changes are deemed accepted by the Customer unless the Customer terminates the subscription agreement with usual notice, cf. clause 9, to expire at the end of the then-current subscription period.
- 7.3 In addition to the above, the Company is entitled to change its prices according to changes in currency rates and general price changes (inflation). Such price adjustments will not be notified to the Customer before taking effect.
- 7.4 The Customer must pay invoices no later than the due date of the Company's invoice.
- 7.5 If the Company's invoice is not duly paid after three reminders, the Company is entitled to suspend the Customer's access to the Product and the Customer's data without further notice. The suspended access does not release the Customer from its obligation to pay the invoice and other accruing fees thereafter.
- 7.6 In the event of late payment, the Company may charge a reasonable interest.
- 7.7 If the Customer exceeds the limitations given by the Customer's current subscription license plan there will be no charge for the subscription fee increase for the remainder of the current subscription period. Changes in the subscription fee will take effect from the start of the next subscription period.
- 7.8 If the Customer reduces the use of the Product to a lower subscription license plan, then the subscription fee will be adjusted accordingly beginning at the time of the following subscription period. Prepaid subscription fees for the then-current subscription period will not be refunded.
- 7.9 The Customer accepts to receive invoices and reminders sent by email.
- 7.10 Customers with residence outside the EU will not pay VAT. Danish VAT will be added to the subscription price for all Danish based customers. For customers with other EU residence and a valid VAT number no Danish VAT will be added to the subscription price. For customers with other EU residence and no valid VAT number Danish VAT will be added to the subscription price.

8. Free trial

- 8.1 The Company may offer the Customer a trial subscription for the Product. The trial subscription is not subject to payment of subscription fees by the Customer.
- 8.2 If the Customer does not subscribe to the Product before the trial period expires, the Company will without notification terminate the Customer's access to the Product upon expiry of the trial period and delete the Customer's trial account and data.
- 8.3 Subject to clauses 8.1 - 8.2, these Terms apply to the trial period of the Product. However, the Company does not have any obligations during the trial period and undertakes no liabilities for access and use or inability or failure to access or use of the Product.

9. Term and termination

- 9.1 The initial subscription period is three months from the ordering date of the Product. Hereinafter, the subscription period is automatically renewed and invoiced for successive periods of 3 months. For practical reasons the second subscription period will be for 3, 4 or 5 month in order to align the following subscription periods with calendar quarters. The Customer is entitled to terminate the subscription agreement no later than two weeks before the commencement of a new subscription period. If the subscription is not terminated within this timeframe, it is automatically renewed for one more subscription period of 3 months.
- 9.2 The Company may terminate the subscription agreement immediately if the Customer materially breaches the Terms.
- 9.3 In case of termination of the subscription agreement, the Customer will not be allowed to access and use the Product at the time of expiry/termination of the agreement. The Customer acknowledges and agrees that the Company is entitled to terminate the Customer's access to the Product without further notice after the time of expiry/termination of the agreement.
- 9.4 Prepaid subscription fees will not be refunded in any circumstances.
- 9.5 Upon termination of the subscription agreement, the Company will delete the Customer's data immediately if instructed by the Customer to do so. Otherwise, the Company will store the Customer's data for a period of not less than 90 days calculated from the day after the termination of the subscription.
- 9.6 Subject to separate agreement and payment, the Company will assist the Customer in converting data into a suitable format for the migration of data to other systems or archives.

10. Warranties

- 10.1 The Customer warrants to the Company that its use of the Product is legal in every respect and that the Customer and its users, whether internal or external, adhere to these Terms. The Customer will indemnify and hold the Company harmless from any third party claims arising out of the Customer's use of the Product, including claims concerning un-solicited emails and other marketing activities.
- 10.2 The Customer warrants that it is entitled to process its data in the Product under applicable law and will indemnify the Company of any claim and/or loss in this regard.

11. Disclaimer of warranties

- 11.1 The Company disclaims any and all warranties, representations and conditions, whether express, implied or statutory, including without limitation any warranties, duties or conditions of or related to merchantability, fitness for a particular purpose, lack of, accuracy or completeness of responses, results, correspondence to description, non-infringement, workmanlike effort and lack of negligence with respect to the Product, and the entire risk related thereto remain solely with the Customer.

12. Data protection

- 12.1 The Customer retains the rights to its data as data controller, and the Company acts as data processor on the Customer's behalf. The Customer must observe applicable data protection legislation.
- 12.2 By accepting the "Terms" of this agreement the Customer at the same time enters into an agreement with Benelizer as Data Processor and the Customer as Data Controller. The Data Processor agreement along with other security documents can be found and downloaded from the Benelizer website: www.benelizer.com/securitygovernance
- 12.3 The Company will take all necessary technical and organizational security measures, including any additional measures required to ensure that the data is not accidentally or unlawfully destroyed, lost or impaired or brought to the knowledge of unauthorized third parties, abused or otherwise processed contrary to the EU legislation concerning processing of Personal Data.
- 12.4 The Customer is obligated to keep user logins and passwords to the Product secret from any unauthorized users or third parties.
- 12.5 The Company uses a third party hosting Centre to host the Product and the Customer's data on the Company's behalf.
- 12.6 The Customer is obligated to ensure that the Customer has obtained all necessary rights and/or title to any and all of the Customer's data prior to any storage of such data in the Product. The Customer is under no circumstance entitled to store any data in violation of (i) any third party intellectual property rights and/or (ii) any applicable legislation. The Company is entitled to delete any data that in the sole discretion of the Company constitutes a breach of the aforesaid undertaking by the Customer, and the Customer will not be entitled to any compensation in that respect.

13. Assignment

- 13.1 The Company is entitled to assign all of its rights and obligations pursuant to the subscription agreement, including these Terms to a third party.
- 13.2 The Customer cannot assign its rights and obligations pursuant to the subscription agreement to a third party without the prior written consent of the Company. Such consent must not be unreasonably withheld.

14. Intellectual property rights

- 14.1 The Company retains all intellectual property rights, including without limitation copyrights, patent rights, trademark rights, know-how etc., in and to the Product. The Company does in no way assign, transfer or grant any rights to any of its intellectual property rights to the Customer. This also applies if the customer in full or partly has paid for any bespoke product enhancement or changes.
- 14.2 The Customer is not allowed to assign, license, sell, rent out, lend out, hand over, or pass on the license to the Product to a third party without the written consent of the Company.
- 14.3 The Customer is not entitled to copy, reverse-engineer, disassemble, decompile, change or modify the Product or in any other way attempt to investigate, tamper with and/or discover the source code and/or the structural framework and/or the principles on which the Product is based except as expressly permitted under mandatory applicable law.
- 14.4 The Customer is not entitled to change or remove any marks and notices concerning copyright, patents, trademarks or other rights placed on, applied to or otherwise implemented in the Product.

15. Limitation of liability

- 15.1 The liability of either party is subject to the ordinary rules of Danish law, save for the exceptions and limitations as expressly set out in these Terms.
- 15.2 The Company will only be liable for the Product and excludes liability for any other products, services, tasks or services provided by hosting providers and/or agents acting on behalf of the Company. In no event will the Company be liable for the services, tasks or obligations to be performed by the Customer and/or any third party.
- 15.3 The Company will not be liable for any direct, indirect, punitive or other damages or losses including, without limitation, damages for loss of profits, business interruption, loss of data or the restoration thereof (except as expressly set out in clause 15.4 below), product liability or personal injury arising out of the use of or inability to use the Product or data, including, but not limited to, business interruption, lost business or lost profits or savings. The previously mentioned exclusions and limitations apply irrespective of whether such damages or losses are caused by acts or omissions by the Company attributable to the Company as negligent (including both gross and simple negligence) or incidental.
- 15.4 As regards loss of data, the sole liability of the Company is - to the extent commercially reasonably – to attempt to restore any lost data based on the most recent back-up copy available. Any and all liability for data irreversibly lost, irrespective of the Company's commercially reasonable efforts to restore such data, is limited in accordance with clause 15.5.
- 15.5 In addition to the exclusions and limitations of liability set forth in clause 11 and this clause 15, the entire liability of the Company (whether in contract, tort, gross or ordinary negligence, strict liability, breach or termination of contract, claim of repayment or proportionate repayment, by statute or otherwise) to pay any damages, compensation or any other amounts during the term of these Terms is limited and capped to an aggregate amount equal to the total aggregate subscription fee actually paid by the Customer to the Company for the provision of the Product during the preceding twelve (12) months prior to the act or omission that the liability arises from. Furthermore, the Company's liability towards the Customer cannot in any circumstances, separately or all together, exceed EUR 10,000.
- 15.6 A party will not be liable for non-performance of its obligations (other than failure to pay any amounts due) in the event that a situation arises beyond its reasonable control including failure or breakdown of telecommunications networks and lines, regulations by government authorities, lock-outs, strikes, infrastructure breakdowns, natural disasters, epidemics, pandemics, acts of terrorism, fires, floods, storms, fire storms, sabotage, vandalism, damages caused by computer virus, hacking, war, civil wars, riots, nuclear disaster etc.

16. Confidentiality

- 16.1 All confidential information received by either party from the other party must be held in complete confidence by the receiving party and its directors, employees, advisers or representatives, and must not without the prior written consent of the Company be used for any purpose other than in connection with the fulfilment of the subscription agreement.
- 16.2 Confidential information does not include information which (i) has already passed into the public domain other than through breach of this confidentiality obligation; (ii) has been received from an independent third party other than through breach of a confidentiality obligation; or (iii) the Customer can demonstrate has been independently developed by that party prior to disclosure.
- 16.3 All advertising, press releases, public announcements and public disclosures by a party relating to the subscription must be approved by both parties prior to release to any third party. This clause does not prevent a party from making such press releases, public announcements or public disclosures as may be required by law or otherwise are reasonably justified to protect a party's legitimate interests.
- 16.4 The termination of the subscription agreement will not affect the parties' obligations under this clause 16.

17. Governing law and venue

- 17.1 The Customer's subscription agreement, including these Terms, is governed by Danish law, however, excluding (i) any rules concerning choice of law and (ii) the UN Convention on Contracts for the International Sale of Goods ("CISG"), which do not apply.
- 17.2 Any dispute between the Company and the Customer arising out of the subscription and the Terms will be subject to the jurisdiction of the ordinary courts of Denmark, at the Company's then-current venue.
