Keepfactor General Terms and Conditions November 2017

1. Definitions

1.1. Terms which are capitalized in these General Terms have the following meaning:

(a) <u>Agreement</u> means any agreement between Keepfactor and Customer related to provision of the Services, entered into as set forth in Section 1.3.

(b) <u>Confidential Information</u> means all information disclosed by Keepfactor to Customer, whether orally or in writing, that is designated as confidential or can reasonably be assumed to be confidential given the nature and character of the information and the circumstances of the disclosure. Confidential Information in any case includes the contents and existence of the Agreement and the business relationship between the Parties.

(c) <u>Customer</u> means each person or entity that enters into an Agreement with Keepfactor.

(d) <u>Customer Data</u> means any data, information or material that Customer submits to the Software in the course of using the Service.

(e) <u>General Terms</u> means these general terms and conditions of Keepfactor.

(f) <u>Intellectual Property Rights</u> means all patent rights (including reissues, divisions, continuations and extensions thereof), copyrights, moral rights, trademarks, design rights, rights to utility models, trade secret rights, database rights, mask work rights, neighboring rights to the Services and the Software;

(g) <u>Keepfactor</u> means Keepfactor B.V., established at the Gustav Mahlerplein 2 1082 MA Amsterdam.

(h) <u>Proposal</u> means a proposal made by Keepfactor for Customer in relation to the possible conclusion of an Agreement.

(i) <u>Service</u> means all services provided or to be provided by Keepfactor under the Agreement, which may include providing access to the Software;

(j) <u>Software</u> means the software products of Keepfactor as provided to Customer;

(k) <u>Results</u> means the reports and documentation generated by the Software based on Customer Data.

2. Proposal and Agreement

1.2. These General Terms apply to and form part of any Agreement and all other legal relationships between Keepfactor and Customer connected with the provision of the Services by Keepfactor. Unless explicitly agreed otherwise in writing, these General Terms of Sale shall take precedence over any other communication (oral or in writing) between the Parties relating to the provision Services by Keepfactor.

1.3. An Agreement shall be concluded between the Parties at the earliest of conclusion of a written agreement signed by both Parties, or Keepfactor issuing an order confirmation. Any requests for services or orders submitted by Customer are requests and do not bind Keepfactor in any way. Keepfactor is under no obligation to accept an order.

1.4. All Proposals quoted are without commitment and are valid for six (6) weeks. Prices and rates quoted in Proposals are exclusive of relevant VAT (for Dutch Customers: BTW, for international Customers relevant local tax laws will apply) and may be subject to change due to unforeseen changes in the agreed work commissioned and explicitly described in the Agreement. The rates quoted in Proposals do not automatically apply to future Proposals or Services.

1.5. Customer shall ensure that the information it provides to Keepfactor and on which Keepfactor bases its Proposal is correct and complete.

3. Provision of the Services

1.6. Keepfactor shall make every effort to ensure that the Services are provided with due care and in accordance with the arrangements and procedures agreed in writing with Customer, where applicable. Keepfactor shall provide all Services on the basis of a best efforts obligation, unless and in so far as Keepfactor has explicitly undertaken in the written agreement to achieve a specific result and the result in question is sufficiently determined. Terms stated by Keepfactor for the performance of the Agreement are approximations only, unless otherwise agreed in writing.

1.7. Any complaints about the Services must be submitted to Keepfactor in writing at the earliest possible time but no later than ten (10) business days after the provision of such Services, failing which Customer is deemed to have accepted the Services.

4. Software

1.8. Keepfactor hereby grants to Customer a non-exclusive, non-transferable, worldwide right to use the Service, solely for Customer's own internal business purposes for the duration of the Agreement, subject to the terms and conditions of this Agreement.

1.9. Customer is responsible for all activity occurring under its user accounts and shall abide by all applicable laws, treaties and regulations in connection with its use of the Software, including those related to data privacy, international communications and the transmission of technical or personal data. Customer shall notify Keepfactor immediately of any unauthorized use of any password or account or any other known or suspected breach of security.

1.10. Keepfactor may continue to provide the Software using a new or amended version of the Software. Keepfactor shall not be obliged to maintain, change or add certain features or functionalities of the Software specifically for Customer.

1.11. Keepfactor may temporarily suspend the service in full or in part for the purpose of carrying out preventive, corrective or adaptive maintenance. Keepfactor shall not suspend the Software for longer than necessary and shall arrange for this to take place outside of office hours where possible and, according to the circumstances, shall notify Customer in advance.

5. Personal Data and Customer Data

1.12. Keepfactor's privacy and security policies may be viewed at www.keepfactopr.com/privacy. Keepfactor reserves the right to modify its privacy and security policies in its reasonable discretion from time to time.

1.13. Keepfactor does not own any Customer Data. Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data and shall indemnify and hold Keepfactor harmless against any third party claims based on or arising out of Keepfactor's possession or use of the Customer Data in accordance with the Agreement, including all damages and costs incurred by Keepfactor as a consequence thereof.

1.14. Customer agrees that Keepfactor provides the Service in part using services provided by members of the Microsoft group and services provided by members of the Confirmit group and that the relationship between such third parties and Keepfactor shall be governed by such third party's standard terms and not by any data processing terms agreed between Parties.

1.15. Customer accepts that Keepfactor may use any information generated through the provision of the Service (excluding Customer Data) for its own purposes, including in the provision of services to other customers, provided that such use complies with applicable law.

These General Terms apply to and form part of any Agreement and all other legal relationships between Keepfactor and Customer connected with the provision of the Services by Keepfactor.

6. Intellectual and other property rights

1.16. All Intellectual Property Rights to the Software, Results websites, data files, hardware or other materials such as analyses, designs, documentation, reports, quotations and related preliminary material developed or made available to Customer on the basis of the Agreement shall remain exclusively vested in Keepfactor, its licensors or its own suppliers. Customer shall only acquire those rights of use that are explicitly granted in these General Terms and conditions and by law. Any rights of use granted to Customer shall be non-exclusive, non-transferable to third parties and non-sublicensable.

1.17. To the extent Customer holds any Intellectual Property Rights in the Customer Data, Customer hereby provides to Keepfactor a non-exclusive, non-transferable, worldwide right to use Customer Data, solely for the purposes of this Agreement and Keepfactor's own internal business purposes for the duration of the Agreement, subject to the terms and conditions of this Agreement.

1.18. Customer hereby provides to Keepfactor a non-exclusive, non-transferable, worldwide, perpetual right to use the Results solely for the purposes Customer's own internal business purposes.

1.19. Customer shall not be permitted to remove or amend any details in relation to the confidential nature or in relation to copyrights, brand names, trade names or any other intellectual property right from the Software, websites, data files, hardware or materials.

1.20. Keepfactor shall indemnify Customer against any legal claims from third parties based on the assertion that Software, websites, data files, hardware or other materials developed by Keepfactor itself infringe an intellectual property right of the third party in question, under the condition that Customer notifies Keepfactor immediately in writing of the existence and content of the legal claim and leaves the disposal of the case, including any settlements effected, entirely to Keepfactor. To this end, Customer shall provide Keepfactor with the powers of attorney, information and cooperation that it requires in order to defend itself, where necessary in the name of Customer, against these legal claims. This obligation to indemnify shall not apply if the alleged infringement relates to (i) materials made available to Keepfactor by Customer for the purpose of use, adaptation, processing or incorporation, or (ii) changes made by Customer, or by a third party on behalf of Customer, to the Software, website, data files, hardware or other materials, without Keepfactor's prior written consent. If it is irrevocably established in court that the Software, websites, data files, hardware or other materials developed by Keepfactor itself constitute an infringement of any intellectual property right vested in a third party or if Keepfactor believes that there is a good chance that such an infringement may occur, Keepfactor shall, where possible, ensure that Customer can continue to use the Software, websites, data files, hardware or materials delivered, or functionally similar alternatives. All other or further-reaching obligations to indemnify on the part of Keepfactor shall be excluded.

7. Fees and payment

1.21. Unless otherwise agreed in writing, any invoice shall be due and payable within thirty (30) calendar days of the date of such invoice.

1.22. All amounts due under the Agreement to be paid by Customer to Keepfactor shall be paid in full and without any deduction and Customer shall not be entitled to any right of setoff.

1.23. If Customer does not timely pay an amount when it becomes due and payable, Keepfactor is entitled to late payment interest on such amount, to be calculated from the time such amount became due until the time such amount is paid in full. To the extent permitted by law, the rate of late payment interest shall be one (1) percent per month on the outstanding amount.

1.24. All costs, both extrajudicial and judicial (including the costs of legal assistance), incurred by Keepfactor in the process of the collection of the amounts due by Customer pursuant to the Agreement, shall be reimbursed by Customer to Keepfactor.

8.   Confidentiality

1.25. Except as otherwise provided hereunder, all Confidential Information communicated by Keepfactor to Customer shall be kept in confidence and shall be used only for the purpose of any Agreement, except:

(a)   as may be necessary to comply with laws, statutes and regulations, provided that, prior to disclosure, Customer notifies Keepfactor of such requirement and cooperates with Keepfactor's efforts to seek a protective order or otherwise avoid or minimize the disclosure;

(b)   to the extent such Confidential Information is already known to Customer, becomes known to Customer without confidentiality obligations attached, or is independently developed by Customer without use of the Confidential Information;

(c)   to the extent such Confidential Information is or becomes known to the public other than by a breach of this Section 8;

(d)   to the professional advisers of Customer who are under duties of confidentiality; or

(e)   with prior written consent of Keepfactor.

1.26. Customer will take all reasonable measures to ensure safe preservation or storage with respect to the Confidential Information and shall obtain appropriate undertakings of confidentiality from its employees. Customer shall promptly return or destroy, at Keepfactor's option, all Confidential Information when requested.

1.27. Customer is not allowed to use Keepfactor's trademarks, trade names or any other indications in relation to the Services, or to publicly make any reference to Keepfactor, whether in press releases, advertisements, sales literature or otherwise, except with Keepfactor's prior written consent.

9.   Liability and indemnification

1.28. Neither Party shall be entitled to claim any compensation under the Agreement for indirect, incidental, consequential, or punitive damages including but not limited to loss of profit, decreased turnover, cost of cover, or property damage.

1.29. Keepfactor's liability for damages other than as excluded under Section 1.28 shall not exceed the fees paid to Keepfactor for the Services under the relevant Agreement in the twelve (12) months preceding the event giving rise to the claim.

1.30. Limitations of liability will not apply against the injured Party in case the damage resulted from gross negligence or willful misconduct of either Party or where liability cannot be excluded or limited under applicable mandatory laws.

10.   Termination of the Agreement

1.31. A Party shall only be entitled to terminate the Agreement or suspend the performance of its obligations under the Agreement in whole or in part by means of written notice to the other Party in the following situations:

(a)   the other Party files a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, assignment for the benefit or creditors or similar proceeding;

(b)   the other Party becomes the subject of a petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation, assignment for the benefit of creditors or similar proceeding;

(c)   the other Party is in material breach of the Agreement and that breach (a) is not capable of being cured, or (b) if capable of being cured, remains uncured for thirty (30) calendar days after receiving written notice of the breach. For purposes of this Section 1.31(c), any breach of Sections 1.9, **Fout! Verwijzingsbron niet gevonden.**, 1.13 and 6 shall, without limitation, be deemed a material breach that is incapable of cure;

(d)   the other Party ceases or threatens to cease to carry on business in the ordinary course.

11.   Other provisions

1.32.   **No transfer or assignment.** Customer is not permitted to transfer or assign to third parties any of the rights under the Agreement, except with the Contractor's prior written consent.

1.33.   **Severability.** If any provision of the Agreement shall be held void, invalid, illegal or unenforceable by a court of competent jurisdiction, such provision shall be modified to the extent necessary to render it enforceable without losing its intent, or severed from the Agreement if no such modification is possible, and other provisions of the Agreement shall remain in full force and effect.

1.34.   **Waiver.** A waiver by either party of any term or condition of the Agreement or any breach thereof, in any one instance, shall not waive such term or condition beyond that instance nor any subsequent breach thereof nor shall any delay by either party to exercise any right under the Agreement operate as a waiver of any such right.

1.35.   **Headings.** The headings of the Agreement have been included for easy reference only and do not form part of the Agreement.

1.36.   **Dispute resolution.** The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Agreement promptly through negotiations between them.

1.37.   **Governing law and jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the Netherlands and each party submits to the exclusive jurisdiction of the court in Amsterdam, The Netherlands in respect of all disputes (whether contractual or non-contractual) arising out of or in connection with this Agreement.

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