

# Appendix 2

## Expertum Terms & Conditions

expertum

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# 1 Definitions

Within the framework of the General Agreement and its Appendices, the terms listed are defined as follows.

- **Agreement** This General Agreement as well as its Appendices and Work orders.
- **Commencement Date** The date on which, as the case may be, this General Agreement or a Work order commences, as set out in that document.
- **Deliverables** Means items that Expertum prepares for or provides to the customer as described in a Work order.
- **General Agreement** Contract that states the rules for a long-term relationship between the Parties and that sets a body of rules that enable the Parties to close Work orders.
- **Governance** means the procedure for agreeing any variation or change to the terms set out herein and any additional terms relating to any part of the Services agreed between the Parties.
- **Services** means work that Expertum performs for the customer as described in a Work order, including but not limited to, maintenance, support, development, implementation, consulting, or training services.
- **Work order** means any document attached to or included in this Agreement which describes the Deliverables and Services, including any requirements, specifications or schedules.
- **Third Party(ies)** Any party which is not signatory to this General Agreement. Customer's subcontractors are a.o. deemed as Third Party(ies).

## 2 Terms and conditions

### 2.1 Invoicing & Payment

The subscription price as determined in the work order is invoiced on a **yearly basis in advance**. Payments are due **30 days end month, from Expertum's invoice date**. Payment is not dependent on completion of any implementation or other services.

Expertum may discontinue the subscription if Customer fails to pay any sums due. In case of non-payment on the due date, all sums due by Customer shall be increased ipso jure and without formal notice with a yearly delay interest of 8,5 % until the date of full payment.

### 2.2 Subscription Renewals

The subscription to Ray will be **automatically renewed** on a yearly basis.

### 2.3 Indexation

The **license part of the subscription price will be indexed automatically once per year** during the automatic renewal. This indexation is based on the evolution of the Belgian "Labour Reference Cost Agoria Digital PC 200" and is calculated according to the following formula:

$$P1 = PO * (S1/S0)$$

- P1: Adjusted license part of the subscription price
- PO: Initial license part of the subscription price mentioned in this proposal (§3.2)
- S1: "Labour Reference Cost Agoria Digital PC 200" applicable for the renewal month
- S0: "Labour Reference Cost "Agoria Digital PC 200" applicable for the month Customer subscribed to Ray.

The cost of the BTP platform on which Ray operates heavily depends on the prices and conditions applied by SAP. Consequently, we will **update the runtime part of the subscription price automatically once per year** during the automatic renewal. The update will be based on the price increase applied by SAP.

### 2.4 Subscription Auditing

By subscribing to Ray, Customer gives his consent for his tenant to be **quarterly audited** by Expertum. This audit will merely relate to the subscription and aims at checking the contract parameters:

- If the total **number of monitored users** as stated in the work order has **increased** in such a way that the number of subscribed blocks becomes insufficient, a delta invoice rectifying the subscription situation will be issued for the remains of the running period. At automatic

renewal time, the new amount of needed blocks of monitored users will be considered for the new period.

- If the total **number of monitored users** has **decreased** in such a way that the number of subscribed blocks becomes too high, the new (lower) amount of needed blocks of monitored users will be considered for the new period at automatic renewal time. From the invoice for the new period a deduction will be made for the amount of blocks you subscribed too much on the current period (pro rata the quarters).
- The runtime model has been determined based on “normal” use of the Expertum BTP platform. In the work order it has been defined in what runtime model Customer has been classified. In case Expertum detects a (substantially) **higher use of the BTP platform** (memory, computing power, storage) than anticipated in the work order, Expertum will increase the runtime model applied for the customer. This higher usage can be caused by several factors, including but not limited to: monitoring more than 2 landscapes with Ray, performing more than 1 run per system per day, having an unusually complex authorizations concept on certain monitored systems, etc. When the higher usage is detected, a delta invoice rectifying the subscription situation by increasing the runtime model applied will be issued for the remains of the running period. At automatic renewal time, the new runtime model will be considered for the new period.

## 2.5 Governing legislation

Belgian Law will govern the underlying contract. In the absence of an amicable agreement between the parties within two months of notification of one party to the other of a difference concerning the interpretation or execution of the underlying agreement, only the courts of the judicial district of Bruges will be competent and this notwithstanding multiple defenders or introduction of third parties.

## 2.6 Customer Responsibilities

Customer will:

- Allow Expertum super-user access to access the customer’s tenant of Ray for support and audit purposes.
- If onsite delivery is needed, provide Expertum’s staff access to customer site(s) or any other required parties building facilities, during normal business hours as well as after hours. In case of special access problems, Customer will advise Expertum without delay.
- If onsite delivery is needed, provide a minimum work desk/space for the Expertum staff to perform the various activities from the customer’s network.
- Be responsible for managing all client applications running on the workstations of the SAP users.

## 2.7 Expertum Responsibilities

Expertum will:

- Provide the necessary BTP tenant containing the Ray application and the necessary runtime according to the agreed terms and conditions within this General Agreement and the Work orders.
- Inform Customer as from the moment there are early indications that the existing BTP platform would not be able to handle the load or to perform according to customer

expectations. In such case a performance and capacity report will be provided along with recommendations.

- Periodically review the quality of the processes by monitoring the BTP platform on which Ray runs.
- Assure that Expertum affiliated companies or eventual subcontractors will act according to the agreements.

## 2.8 Assumptions and General Agreements

- The documentation language used is English. The service desk can be contacted in Dutch, French or English. Support is provided remote from the Expertum premises.
- Consultancy and project activities are excluded from the subscription fees and will be based on time and material.
- Expertum will regularly inform Customer of new features of Ray. While doing so, Expertum will inform Customer of the update schedule.

## 2.9 Out of scope

As Expertum is not responsible for the infrastructure, functional implementation and the development of the SAP systems, Expertum can't be held responsible for the quality of the data that is uploaded into Ray. Nevertheless, Expertum will use its best effort to help Customer in case issues with data quality are detected. In that case, this support will be billed additionally as time & material.

## 2.10 Confidentiality and documents

### 2.10.1 Non-disclosure

Expertum shall preserve the confidentiality of the user and authorizations data used by Ray during the subscription period and use its reasonable endeavours to disclose this data solely to its employees, subcontractors or contractors who need to know it for the operations of Ray. Expertum warrants that its employees, contractors, affiliate or associate companies and/or subcontractors are made aware of and adhere to this obligation.

The provisions of this article will continue to bind Expertum for a period of 1 year following the subscription cancellation, for whatever reason.

Upon subscription cancellation Expertum will remove the customer's tenant from its BTP platform, removing all customer's data from Expertum's databases and retaining no copies whatsoever.

### 2.10.2 Publicity

Customer grants its permission for its name to be included in the reference lists of Expertum. All press releases, notifications or public announcements, including publicity documents (unless they are intended for the Parties' internal use or have to be published for legal reasons or based on accounting or deontological rules), which are disseminated by a Party, its employees or agents within the framework of this General Agreement of the object thereof, shall be coordinated by the Parties and be approved before they are disseminated.

## 2.11 Intellectual Property

### 2.11.1 Intellectual property rights of the customer

All intellectual property rights held by Customer remain the property of Customer, who assigns to Expertum, by means of the present Agreement and for the full term thereof, the right to utilize these intellectual rights free of charge only if and when needed for the use of Ray.

Customer declares and guarantees that it is entitled to grant these rights of use, that proper usage by Expertum shall in no way violate the rights of Third Parties, and that it shall indemnify Expertum against Third Party claims.

### 2.11.2 Intellectual property rights of Expertum

Ray is intellectual property of Expertum and will remain so, whatever events might happen. This includes, but is not limited to, the code of the app. All intellectual property rights held by Expertum, used or not used within the framework of providing the Services remain the property of Expertum. Expertum will own and retain ownership and all intellectual property and other proprietary rights of any kind (a) in the Deliverables, other than those Deliverables where it is expressly stated in a Work order that ownership will vest in Customer, and (b) in all other reports, materials, documentation, software, system interfaces, templates, methodologies and processes, ideas, concepts and techniques that Expertum may develop or use in connection with the provision of the Services. Subject to the fulfilment of Customer's obligations under the applicable Work order and acceptance of the Deliverables, Expertum grants to Customer a non-transferable, non-exclusive, license to use those Deliverables owned by Expertum solely for Customer's own internal use.

### 2.11.3 Freedom to use ideas.

Neither this General Agreement nor Work order will prevent or restrict Expertum from providing software or services to other clients which are the same or similar to the Services or using for any purpose Expertum considers appropriate any techniques, ideas, concepts or know how gained or arising from the performance of the Services.

### 2.11.4 Intellectual property indemnity

Either party shall defend or settle any claim against the other party that hardware, software or any Services, service tools, processes or materials developed solely by that party and used to deliver the Services, infringes any third party's intellectual property rights ("Infringement Claim") provided (i) the party promptly notifies the other party in writing of the claim; (ii) the party reasonably cooperates with the other party in such defence and settlement; and, (iii) the party grants the other party sole authority to control the defence and any related settlement.

Notwithstanding the foregoing, Expertum shall not be liable for any Infringement Claim that arises as a result of (i) any modification of the Services or Deliverables, or breach of a Work order by Customer, (ii) use of the Services or Deliverables other than in accordance with the documentation, (iii) use of a superseded release of software or Deliverables if the infringement would have been avoided by the timely implementation of an enhancement supplied by Expertum, (iv) use of Deliverables or Services created in compliance with BOH's specifications or instructions, or (v) use of the Services or Deliverables in combination with devices, data, programs or services not supplied by Expertum.

This section states the entire liability for claims of intellectual property infringement of both parties, but will in any event be subject to the limitation of liability rules set out in this General Agreement.

## 2.12 Framework Term

The term of this General Agreement will commence on its Commencement Date, being the date of signature of the last party, and will thereafter continue in effect until terminated.

If Expertum commences the Services in connection with a project described in a Work order prior to the date of signature of that Work order, all provisions in this General Agreement will apply to such Services.

## 2.13 Termination

### 2.13.1 Termination on Notice.

This General Agreement may be terminated by either party before automatic renewal by giving not less than 3 months advance written notice. When Customer terminates this General Agreement, parties will no longer be able to enter into any subsequent Work order not already agreed to on the date of termination. However, all existing Work orders will continue as agreed.

Should Customer, upon termination of this General Agreement, also wish to terminate all existing Work orders, Customer will pay Expertum for all additional costs incurred by Expertum as a result of the early termination of the Services (the "Termination Costs"), for example costs relating to subcontracts or relocation, costs relating to or residual value of equipment, costs relating to redeployment of personnel, or as set out in the relevant Work order. Expertum will take reasonable steps to mitigate any such Termination Costs, but these Termination Costs will in any event be equal to the aggregate of the still outstanding amounts under such Work order.

### 2.13.2 Termination for Breach.

If Customer or Expertum fail to comply with the terms of the General Agreement or Work order and the failure, if capable of remedy, is not remedied within 30 days following receipt of written notice specifying the failure, then the other party may, by giving further written notice to the defaulting party, terminate the applicable Work order after the end of such 30-day period.

### 2.13.3 Termination on Insolvency.

The General Agreement or one or more of the Work orders may be terminated immediately by either party upon written notice to the other party in the event that the other party is unable to pay its debts or has a receiver, administrator, administrative receiver or liquidator appointed or calls a meeting of its creditors or ceases for any other reason to carry on business; or in the reasonable opinion of the other party any of these events appear likely. A termination of the General Agreement pursuant to this Section will automatically terminate all Work orders in place at the date of termination of the General Agreement.

#### 2.13.4 Consequences of Termination.

The termination of an individual Work order will not operate to terminate any other Work order or the General Agreement but the parties will not unreasonably withhold or delay agreement to any consequential amendments to any remaining Work orders which may be necessary.

On the termination of a Work order for any reason each party will return to the other any property of the other that it then has in its possession or control relating to that Work order and which is not required in connection with any continuing Work order, except that solely for Expertum's internal audit purposes, Expertum may retain one copy of any materials and documentation supplied by Customer, upon which the Services are based.

If Expertum's Services are terminated pursuant to this article before completion of the Services, all fees for Services properly performed and expenses incurred by Expertum in accordance with the Work order up to the date of termination will be met by Customer and will be due and payable immediately.

Except for matters related to confidentiality or intellectual property rights, the parties will first attempt to resolve any dispute or alleged breach internally by escalating it through management, and, prior to pursuing litigation, use a mutually acceptable alternative dispute resolution process. Termination by either party pursuant to this Article will not affect rights and obligations which have already accrued to the parties under this General Agreement or under any Work order prior to the termination.

### 2.14 Third party rights

Expertum warrants that, to the best of its knowledge and belief, its services and uses of software, except for SAP software provided by Customer, do not infringe upon any patent or copyright of any third party. In the event that the use of software or the services performed would be subject to an action based on the infringement of intellectual property rights, Expertum shall assume at its own expense the defence against such third party claims of infringement both in court and out of court upon the condition that Customer has informed Expertum in writing immediately of such claim and Expertum shall indemnify Customer for any damages incurred.

### 2.15 Employment

Both Expertum and Customer mutually agree, during the term of the project and for a period of 1 year thereafter, not to directly or indirectly, hire, offer employment to or offer any other form of compensation for services, to personnel of the other party engaged in the performance of this project, without the prior written consent of the other party. In case of violation of this provision, the violating party shall pay to the other party an amount equal to twice the yearly compensation for services provided or promised by the violating party to such personnel, by way of liquidated damages.

### 2.16 Liabilities

Expertum enters the obligation to carry out the work assignment with the necessary professional care. The total amount that can be claimed from Expertum in damages for the events, actions or omissions of whatsoever nature giving rise to liability shall, per Work order, be limited to the yearly amount paid under that Work order in connection to the part of the Services giving rise to liability,

calculated as from the Commencement Date of that Work order during the first year, and from the anniversary of the Commencement Date of that Work order until the day before the next anniversary for all subsequent years.

In any event, Expertum's total liability in respect of any claims (whether in contract, negligence or otherwise) under or in connection with this General Agreement will not exceed the maximum aggregate sum of €200,000.

Expertum will not be liable, whether in contract, negligence or otherwise, for (i) loss of profits or of contracts, loss of goodwill or anticipated savings, loss of or corruption to data, loss of revenues, or wasted management or staff time and (ii) any indirect, special or consequential loss, damage, cost or expense of any kind whatsoever and howsoever caused, whether or not Expertum has been advised of their possibility, arising directly or indirectly out of the General Agreement or any Work order or performance, non-performance or delayed performance by Expertum of any of its obligations under or in connection with this General Agreement and/or any Work order.

No claim can be lodged by one Party against the other within the framework of this General Agreement after a period of one year has elapsed calculated from the date on which that Party took knowledge or should reasonably have taken knowledge of the facts or circumstances, which form the basis of this claim.

## 2.17 Force Majeure

Neither Customer nor Expertum shall be liable for any delay, failure in performance, loss or damage due to fire, explosion, power blackout, earthquake, flood, the elements, strike, embargo, labour disputes, acts of civil or military authority, war, terrorist acts, acts of God, acts or omissions of carriers or suppliers, acts or regulatory or governmental agencies, or other causes beyond such party's reasonable control, whether or not similar to the foregoing provided that the party seeking excuse has notified the other party of the occurrence of the cause of the delay or failure and its likely duration as soon as reasonably possible, has not caused the delay or failure through its negligence or fault, takes all reasonable steps to mitigate the effect thereof on the other party, and provides the other party notice of cessation of the cause of the delay or failure.

If the circumstance has lasted three months or if it is clear that it will last more than three months, either party may terminate the agreement without any period of notice.