

# ESSENSIUM GENERAL TERMS AND CONDITIONS

## on MIND services

### “EGTCM”

#### 1. Scope

1.1 These Essensium general terms and conditions on MIND services (“EGTCM”) apply to any proposal and/or agreement and/or order for delivering services by Essensium (having its seat in Belgium, 3001 Leuven, Gaston Geenslaan 9, known in the RLE Leuven (Belgium) under company registration number 0872984063 (“Essensium”)) (“Services”) to the Customer (and – as the case may be - any statement of work and/or any amendment to either the Agreement or any statement of work; in either stage of the cooperation between the parties) sent to the Customer and accepted by Essensium (and/or any document similar, related and/or added thereto, in the most broad sense of interpretation) (“Agreement”). The Services to be executed by Essensium to the Customer shall in principle run through the signature of a master agreement for services, to which one or more statements of work will be attached containing the concrete description of the Services to be executed from time to time to the Customer. In case said master agreement for services (and connecting statements of work) will be signed, these EGTCM will complement said documents and form one (1) integral agreement governing the rights and obligations between the Parties. If no said master agreement for services and/of statement(s) of work would be signed, only these EGTCM shall govern the rights and obligations between the Parties on the execution of the Services.

1.2 A “Customer” means every company to who, either in writing or orally, Essensium sends a proposal, who places an order for the provision of Services by Essensium, with who Essensium intends to conclude an agreement with regard to the provision of these Services.

1.3 These EGTCM shall form an integral part of the Agreement, which will constitute the sole and entire agreement between the negotiating and/or contracting parties unless otherwise agreed between the parties in writing. Parties may only explicitly deviate from the Agreement in writing.

1.4. Essensium and the Customer may, in addition to these EGTCM, make further special agreements regulating the relationship between the parties. These are only valid and can only prevail over these EGTCM if they have been expressly agreed by both contracting parties in writing.

1.5. The Customer's terms and conditions shall only apply if they are explicitly confirmed in writing by both parties prior to the execution of the Agreement. The application of these EGTCM is an essential condition for Essensium to conclude the Agreement.

1.6. The Customer declares to have received these EGTCM prior to the signature of the Agreement. The Customer has thus been able to take note of the EGTCM content and has accepted the EGTCM prior to the conclusion of the Agreement by means of its express written agreement/confirmation to the EGTCM.

1.7. Should one or more provisions of these EGTCM be (come), in whole or in part, excessive or invalid, this concerned provision shall not entail the nullity of the remaining EGTCM. The Agreement and the remaining provisions shall continue in full force and effect. The contracting parties shall agree to replace the excessive or invalid clause by a legally valid clause, which shall correspond - as closely as possible - to the original intention of the parties.

1.8. Essensium reserves the right to adapt or modify these EGTCM at any time. Any change or modification of these EGTCM will only apply if the Customer has expressly agreed to that adaptation or modification. Any clauses of the EGTCM that have not been adapted or modified and that are explicitly accepted by the Customer will at any time remain in full binding force, notwithstanding such adaptation or modification.

1.9. This English language version of the EGTCM is the original version and in the event of discrepancies with general terms and conditions translated in other languages, these EGTCM in the English version shall always take precedence over any translation that will only be communicated for information purposes.

#### 2. General provisions

2.1. The Agreement governs the provision of Services by Essensium to the Customer listed in the Agreement. The Services will be executed on the site as indicated in the Agreement, remotely or in an hybrid way of execution, to be agreed between the parties. Any changes to the location from where the Services will be executed and which have an impact on the cooperation between the Parties, will be priory discussed with Essensium.

2.2. If either party believes that other matters beyond those covered in this document should be part of the Agreement, the parties will convene upon these additional matters in writing through the signature of an agreement/amendment, which agreement/amendment will explicitly refer to be integrated with the Agreement (including a.o. the EGTCM) (“Amendment”); otherwise, said eventual additional matters are not included as part of the Agreement for the provision of the Services.

#### 3. Intellectual property for the provision of the Services

Any existing intellectual property of either of the Parties prior to the start of - or developed aside - the cooperation between the Parties, shall remain the sole property of the Party owning the said intellectual property (in broad sense of interpretation).

Any newly created intellectual property further to the provision of the Services that is based on, extends, or is distributed under an Open Source license will be, where possible, solely owned by Essensium. Essensium will make this intellectual property available to the Customer under the same Open Source license.

Any newly created intellectual property further to the provision of the Services which is not based on, extends, or is distributed under an Open Source license will be solely owned by the Customer.

#### 4. Limitation of liability

4.1. Essensium will execute the Agreement to the best of its efforts in accordance with reasonable business standards.

4.2. Essensium shall not be liable for damages of any kind, except for its own willful misconduct or gross negligence or, when proven, that of its subcontractors, unless the parties expressly agree otherwise in writing.

4.3. Unless in the event of its own willful misconduct or gross negligence, Essensium will not be responsible to the Customer for consequential, exemplary or incidental damages (such as loss of profit or employee's time) regardless of the reason.

4.4. In no event shall the liability and/or obligations of Essensium under the Agreement or arising out of the provision of Services exceed the amounts paid by the Customer over a period of six (6) months prior to the case that leads to Essensium's liability under these EGTCM.

4.5 Insofar as the Services include the use, the deployment or the distribution of existing software, not developed by Essensium, all such software is provided on an "as is" basis without any guaranty. Essensium can only be held liable for development and modifications performed as part of the Services.

## 5. Timely delivery of Services

If conditions arise which prevent compliance with timely provision of Services delivery schedules, Essensium will not be liable for any damage or penalty for delay in delivery, except when such delay is a sole consequence of Essensium's own willful misconduct or gross negligence or that of its subcontractors. However, Essensium will use all reasonable efforts to give notice of delays and to avoid any damages or penalties as a consequence thereof.

## 6. Complaints

6.1. In case of complaint regarding the Services executed, such complaint must be reported to Essensium via email to [admin@mind.be](mailto:admin@mind.be) indicating the motivation of the complaint within eight (8) calendar days after the reason for such complaint has occurred.

6.2. No valid complaint can be filed outside the above mentioned time periods.

## 7. Fee

7.1 All fees for the execution of the Services are expressed in euro (exclusive of VAT and possible excise duties or other taxes of any nature and where applicable), unless explicitly stated otherwise. Every increase of the VAT rate or possible other taxes between the order and execution are to be paid by the Customer, without any prior communication by Essensium.

7.2 Essensium retains the right to correct possible typing errors regarding the Agreement.

7.3 Essensium reserves the right to change the fees unilaterally if said fee changes are the result of objective circumstances outside of its powers, such as a.o. and without limitation (i) a change to the information or data provided by the Customer or if such information should prove to be incorrect or incomplete and/or (ii) a change in (local) tax and excise duties. This list of objective circumstances is not exhaustive and is only used as an example. In case the reason for a fee change would not be clear to the Customer, the Customer can request Essensium to explain the fee change.

7.4. All fees agreed between the parties will be subject to indexation as from each January 1<sup>st</sup> insofar between the signature of the Agreement and the first of January there's more than four (4) months. The indexation is based on the consumption index provided by the Belgian Government on <https://statbel.fgov.be/nl/themas/consumptieprijindex/consumptieprijindex#figures>.

## 8. Payment

8.1. Unless otherwise stated in the Agreement, Essensium shall invoice the Customer after the execution of the Services agreed, or at the end of each month if the Services cover more than one month.

8.2. Unless otherwise stated in the Agreement, payment terms shall be due within 30 days from the date of invoice.

8.3. On overdue accounts and without any action needed by Essensium, the Customer shall pay an interest at the rate of 12% per year, starting from the due date of the invoice. The invoice will

also be increased by a fixed compensation equal to 10% of the invoice amount for late payment if the Customer has failed to pay the invoice before its due date. However, Essensium is entitled to claim a higher compensation if Essensium can prove that the damages exceed the abovementioned fixed compensation.

8.4. The Customer shall in all cases remain jointly and severally liable for the payment of the invoices of Essensium, even if Essensium has agreed to draw up the invoices in the name of third parties.

8.5. Invoices that are not objected to via an e-mail to the [finance@essensium.com](mailto:finance@essensium.com) (burden of proof lays upon the Customer) within eight (8) calendar days will be considered to be accepted and final.

8.6. In the event of non-payment of an invoice, all outstanding invoices, even those who are not already due (if applicable), will become automatically and without any notice of default due and payable.

8.7. In case of late/nonpayment of an invoice, Essensium reserves the right to suspend or terminate its Services, whichever applies best to the occurring situation of late/nonpayment.

8.8. The Customer is never entitled to make deductions for guarantee or for any other reason, or to proceed to compensation regimes.

8.9. The Customer is not permitted to set off any claim that it has against Essensium against the claims that Essensium has against the Customer, unless Essensium has given prior written permission for this.

## 9. Force majeure and hardship

Neither party will be liable to the other for delays in performing any obligations under the Agreement due to circumstances beyond its reasonable control, including but not limited to revolts, insurrections, riots, wars, acts of enemies, national emergency, strikes, floods, earthquake, embargo, inability to secure materials or transportation, and acts of God, and other events beyond the reasonable control of the parties caused by nature or governmental authorities ("*force majeure*"). In case such force majeure situation would occur and the Services cannot be executed in a professional manner due to the force majeure situation, the obligations of Parties will be suspended for the duration of the force majeure.

## 10. Dispute resolution

10.1. Customer and Essensium shall endeavor to resolve any controversy, claim or dispute arising out of or relating to the Agreement, or the performance or breach thereof, by negotiation.

10.2. Any claim that is not resolved by negotiation within thirty (30) days of notification shall exclusively be governed by and interpreted in accordance with Belgian law, excluding its conflict of law provisions. The applicability of the Vienna Sales Convention is expressly excluded.

10.3. In case of a dispute between the Parties, arising out of the performance, the validity or the interpretation of the Agreement, the Parties agree that these disputes shall be subject to the exclusive jurisdiction of the courts of Leuven (Belgium).

## 11. Change of control

Any change of control within either of the parties in any interpretation possible, will not have an effect on the continuity

on the signed Agreement(s). Delivery of the Services will continue in full force.

The same counts in case of any restructuring within Essensium which might cause that the provision of the Services would be executed by another legal entity, to be appointed by Essensium.

## **12. Other**

13.1. Both Essensium and Customer will comply with all laws applicable to the Agreement.

13.2. All notices given under the Agreement will only be effective when received in writing. Notices to the Customer and Essensium will be sent via e-mail to the CEO of Essensium (burden of proof lays upon the Customer) to the address provided in the Agreement which shall be interpreted being at the latest on the third business day following the sending date.

13.3. Changes or amendments to the Agreement must be in writing and must be priority signed by both parties.

## **13. Complete agreement**

The Customer acknowledges to have read the Agreement, to understand the Agreement, and agrees to be bound by it and all EGTCM described therein. Further, the Customer represents and agrees that the Agreement sets forth the complete and exclusive statement of the agreement including the governing terms and conditions between the parties, which shall prevail over and supersede all proposals, printed provisions on subordinate Customer documents including oral or written agreements, the Customer's general terms and conditions and all other communications between the parties relating to the subject matter of the Agreement.