



WE PERSONALISE TRAVEL BOOKINGS

# Master Service Agreement (MSA)

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Nezasa AG, Sihlstrasse 99, 8001 Zürich, Switzerland ("Nezasa")

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# 1. Subject Matter, Scope, Definitions and Interpretation

1.1 Nezasa develops and operates a software-based distribution and reservation platform for tailor-made itineraries. The platform provided to the Customer is indicated in the applicable Service Order (the "Platform").

1.2 The Platform may consist of the Nezasa TripBuilder and TripBooster based on the applicable Service Order. The Nezasa TripBuilder allows to present personalizable travel packages to travel Agents and End Customers, which those can interactively adjust and book from the tour operator, and potentially other future products that will form part of the Platform. The Nezasa TripBooster is a mobile travel companion that shows information about the itinerary and can drive the upselling of additional travel products while the traveller is in-destination.

1.3 The Platform can be used by providers of touristic services to sell individual travel packages to both Agents and End Customers.

1.4 If agreed in the applicable Service Order(s), the Platform also allows the Customer to purchase specific products and/or services provided by suppliers of Nezasa (the "Suppliers") such as flights, hotel accommodation, rental cars, activities and transfers from Nezasa (together the "Supplier Products") in order to design and sell to travel Agents and End Customers product packages according to its Booking Agreements. Neither Nezasa nor any Supplier, but only the Customer shall be the seller of the Supplier Products towards the Agent, End Customer or any third party.

1.5 The Customer acknowledges that the Subscription Fee is based on the assumption that all itineraries which are planned with the Nezasa TripBuilder by the Customer are also booked with the Nezasa TripBuilder. If itineraries planned with the Nezasa TripBuilder are not booked with the Nezasa TripBuilder by the Customer, then Nezasa reserves the rights to (i) increase the Subscription Fee with immediate effect appropriately and/or (ii) terminate the concerned Service Order(s) with immediate effect based on Section 14.6 below.

1.6 Particularly if the Customer is according to the applicable Service Order(s) entitled to purchase Supplier Products over the Platform, then the Customer herewith explicitly acknowledges that Nezasa is not a tour operator. Nezasa only provides the technology to plan and book travel products and acts as a reseller or agent of Supplier Products.

1.7 Any capitalised terms not otherwise defined in the Agreement shall have the meanings set forth in the Annex to this Master Services Agreement.

1.8 In the Agreement, unless the context requires otherwise,

- (i) the headings are inserted for ease of reference only and shall not affect the construction or interpretation of the Agreement,
- (ii) references to one gender include all genders and
- (iii) words in the singular shall include the plural and vice versa.

## 2. The Agreement

2.1 This Master Services Agreement forms together with (i) the definitions as set out in the Annex, (ii) the Data Processing Agreement as set out on Nezasa's website and (iii) the service order(s) that are agreed between the Parties and as further specified in Section 3 below (the "Service Order(s)"), the "Agreement".

2.2 In case of discrepancies between provisions of the Agreement, the following applies:

- (i) Any Service Order prevails over this Master Services Agreement,
- (ii) this Master Services Agreement prevails over the Data Processing Agreement, and
- (iii) the Data Processing Agreement prevails over any other Annex (with the exception of Service Orders), unless explicitly otherwise provided in the specific Annex with reference to this Master Services Agreement.

2.3 The Agreement constitutes the entire legal relationship between the Parties concerning the Platform as well as any rights and obligations, acts and omissions of the Parties connected with the Agreement.

2.4 Unless otherwise expressly agreed in writing by the Parties, the Agreement applies in place of and prevails over any terms or conditions contained in or referred to in any correspondence or elsewhere or implied by trade custom or course of

dealing. Any general terms of business or other terms and conditions or other documents issued by the Customer in connection with the Agreement shall not be binding on Nezasa.

2.5 Any information or promises on the Platform are provided for information purposes only and are not binding to Nezasa unless explicitly provided otherwise in the Agreement with regard to a specific case. Offers of Nezasa concerning a Service Order are indicated clearly on the Platform.

## 3. Service Orders

Service Orders according to the Agreement may only be agreed between and changed by the Parties in writing. They shall be Annexes to this Master Services Agreement.

## 4. Services and Operation of the Platform

### 4.1 General

The right to access and use the Platform granted to the Customer by Nezasa (the “Subscription Services”) and any other services to be provided to the Customer by Nezasa under the Agreement (the “Professional Services”) are described in the applicable Service Order and other parts of the Agreement. The Professional Services may also include Project Services and Support Services.

### 4.2 Subscription Services

4.2.1 The scope and the limitations to the Subscription Services provided to the Customer and the Fees to be paid for the Subscription Services under the Agreement are described in the respective Service Order.

4.2.2 Subject to the terms and conditions of the Agreement, Nezasa hereby grants to the Customer a non-transferable, non-sublicensable and non-exclusive right to access and use the Platform and to authorize Customer’s employees, agents, and contractors as defined in the respective Service Order, if any (the “Authorized Users”), to access and use the Platform beginning with the Agreed Start Date and during the term of the respective Service Order.

4.2.3 Associated Companies of the Customer and Authorized Users of Associated Companies, if any, are not entitled to use the Platform unless explicitly provided otherwise in the applicable Service Order.

4.2.4 The Customer and the Authorized Users, if any, shall only be entitled to access and use the Platform in the Territory. Unless otherwise provided in the applicable Service Order, the Territory shall be worldwide.

4.2.5 If Nezasa is not able to provide the Subscription Services after the Agreed Start Date due to a delay of the Customer to perform Customer’s obligations under the Agreement, the following shall apply notwithstanding any other provision of the Agreement:

- (i) Nezasa is not obliged to provide Subscription Services or any other services under the applicable Service Order until the date at which the Customer has performed all required obligations under the Agreement plus an appropriate set up time to be determined by Nezasa; and
- (ii) the Subscription Fees to be paid under the applicable Service Order shall still start on the Agreed Start Date.

4.2.6 If Nezasa is not able to provide the Subscription Services after the Agreed Start Date due to its own delay to perform its obligations under the Agreement, the following shall apply notwithstanding any other provision of the Agreement:

- (i) Nezasa shall inform the Customer of the new Agreed Start Date;
- (ii) the Subscription Fees to be paid under the applicable Service Order shall start at such new date; and
- (iii) any claims of the Customer connected with the postponed Agreed Start Date, particularly damage claims, shall be excluded.

## 4.3 Project Services

4.3.1 The Customer may want to be provided with project services by Nezasa (the “Project Services”) in order to ensure that the Platform and the Services can be used properly by the Customer. Such Project Services are always agreed in a Service Order.

4.3.2 The Project Services, if any, and the fees to be paid therefore are governed by the Agreement and particularly by the applicable Service Order.

4.3.3 Nezasa shall render the Project Services with due care and shall always comply with the applicable Swiss laws and other rules the Parties may agree in the applicable Service Order.

4.3.4 Nezasa shall promptly inform the Customer on the progress of the Project Services upon Customer’s request.

4.3.5 In the event no fixed price is agreed Nezasa shall document properly the time spent and the material used in connection with the performance of the Project Services in an activity report which shall be disclosed to the Customer together with the invoice concerning the Project Services.

4.3.6 The milestones as agreed in the applicable Service Order, if any, are not binding, but estimations only.

4.3.7 Nezasa shall inform the Customer within 5 days after the completion of the Project Services. The Customer shall accept the Project Services within further 5 days unless there are defects or errors which impede the Customer’s use of the Project Services. Defects or errors indicated to Nezasa by the Customer timely shall be remedied by Nezasa promptly.

4.3.8 The date of the going live shall be agreed by both Parties.

4.3.9 Any claims of the Customer arising out of or connected with a delay, default, error or defect are excluded, provided that in case of a delay of over 90 days the Customer is entitled to terminate the respective Service Order. The term of 90 days shall be extended to the extent the delay is caused by the Customer.

## 4.4 Operation of the Platform

4.4.1 Nezasa shall operate and maintain the Platform for the Customer in accordance with the applicable service level agreement (the “SLA”) which is set out in the respective Service Order. It will provide preventive, adoptive, corrective and perfective maintenance services, further develop the Platform, release updates and upgrades from time to time (collectively, the “Releases”) and monitor the Platform in order to maintain and improve it.

4.4.2 The Customer is entitled to send to Nezasa Requests in case of any Incident. The Requests will then be answered and/or solved by Nezasa in accordance with the Agreement (the “Support Services”).

4.4.3 Following the receipt of a Request, such Request shall be processed by Nezasa during the Business Hours and within the applicable Reaction Time set out under the applicable SLA.

4.4.4 The applicable Reaction Time shall begin with Nezasa’s receipt of the Request. If the Request is received by Nezasa after 17:00 CET or on a non-Business Day, the Request shall be deemed as received only on the following Business Day at 9:00 CET, unless otherwise provided in the applicable SLA.

4.4.5 The Support Services shall be provided in Nezasa’s free discretion via email, telephone, ticketing system or remote access. The Customer shall be obliged to enable Nezasa to such remote access and to ensure that the respective services of Nezasa do not violate applicable laws (particularly data protection laws).

4.4.6 The Customer acknowledges and accepts that:

- (i) notwithstanding any other provision of the Agreement Nezasa provides the Support Services according to the SLA on a reasonable effort basis only, unless explicitly otherwise provided in the respective Service Order; and
- (ii) the only remedies of the Customer in case of one or several violations of the SLA are set out in Section 10.1.5 below. Any other liabilities and remedies of the Customer concerning the Subscription Services, the Professional Services and the SLA, particularly claims for damages, are excluded, unless explicitly otherwise set out in the Agreement.

4.4.7 If the amount of Requests of the Customer exceeds the maximal amount agreed in the applicable Service Order in a calendar month, Nezasa is entitled to charge the Customer for any additional Request according to the then current Price List unless the Request was caused by an error or a defect for which Nezasa is responsible.

4.4.8 The Support Services do not include:

- (i) support for any software which is not part of the Platform;
- (ii) support of any interfaces of the Customer that are not part of the Platform;
- (iii) support of any hardware or other associated equipment of the Customer which is necessary to use the Platform or which are connected therewith.

4.4.9 The Platform, the Subscription Services and the Professional Services may be temporarily unavailable from time to time for scheduled maintenance, unscheduled emergency maintenance, or due to other causes beyond Nezasa's reasonable control. Nezasa shall use reasonable efforts to provide notice to the Customer of any scheduled unavailability of the Platform, the Subscription Services and the Professional Services, unless a stricter maintenance level is agreed in the applicable SLA.

## 4.6 Consultation of Third Parties

4.6.1 Nezasa is entitled to consult third parties in order to provide the Subscription Services and the Professional Services without the consent of the Customer. It is entitled to choose the Suppliers that provide services to the Customer, its Agents or End Customers in its free discretion.

4.6.2 Nezasa shall ensure that such consulted third parties enter into agreements that have included reasonable non-disclosure provisions in case Confidential Information of the Customer has to be protected.

## 4.7 Responsibilities and Obligations of the Customer

4.7.1 The Customer is solely responsible for obtaining and maintaining appropriate equipment and ancillary services needed to connect to, access, or otherwise use the Platform, the Subscription Services and the Professional Services, including, without limitation, computers, computer operating systems, internet access, and web browsers.

4.7.2 The Customer shall be responsible, represent and warrant that he takes all necessary steps which are required that neither the Customer nor Nezasa violates the applicable laws, including but not limited to the applicable data protection laws, due to the provision of the Subscription Services and the Professional Services by Nezasa according to the Agreement. Such steps may include, but may not be limited to:

- (i) inform the concerned individuals and legal entities about the ways and the extent of Nezasa's collection and use of personal data; and/or
- (ii) even obtain informed consent of such individuals or legal entities in case where applicable data protection laws require so.

4.7.3 Customer shall:

- (i) co-operate with and support Nezasa in performing the Subscription Services and the Professional Services and provide any assistance or information as may reasonably be required by Nezasa, including in relation to the diagnosis of any faults;
- (ii) perform the implementation and testing activities (for which it is responsible) timely;
- (iii) report faults promptly to Nezasa;
- (iv) ensure the security, completeness and accuracy of all inputs and outputs;
- (v) keep full backup copies of all of its data; and
- (vi) set up a state-of-the-art project management and coordinate all representatives of the Customer involved in the cooperation between the Customer and Nezasa.

4.7.4 If the Customer does not perform its obligations under the Agreement timely, the milestones, if any, shall be postponed accordingly.

## 5. Limitations of Use and Remedies

5.1 The Customer shall use the Platform only for its own internal business operations (including granting access to Authorized Users under the terms of the Agreement).

5.2 Except expressly provided in the Agreement, Customer shall not:

- (i) do anything inconsistent with Nezasas' rights and title to the Platform and the Software;
- (ii) disassemble, reverse engineer or decompile the Software or any part thereof, or otherwise derive its source code;
- (iii) sell, rent, lease or make otherwise available or permit access to the Platform to any third party;
- (iv) use or attempt to use any deep-link, scraper, robot, spider, or any other device, tool or program to access, acquire or monitor any part of the Platform;
- (v) violate the security of the Platform or attempt to gain unauthorized access to the Platform;
- (vi) provide on the Platform any information or use the Platform or parts thereof in any manner that infringes or violates the rights of Nezasa or any third party, the applicable laws or regulations;
- (vii) perform any action which may impair the operability of the Platform;
- (viii) use the Platform in any manner that is unlawful or harms Nezasa (including but not limited to the brand of Nezasa) or the users of the Platform; or
- (ix) remove any proprietary notices or labels from the Platform.

5.3 The Customer is responsible for, represents and warrants that its Authorized Users comply with Section 5.2 above and other relevant provisions of the Agreement.

5.4 Nezasa reserves the right to investigate complaints or reported violations of the Agreement and to take any action it deems appropriate.

## 6. Changes to the Platform and the Agreement

6.1 Nezasa may, without notice to the Customer, upgrade, update, further develop and otherwise modify the Platform, the Subscription Services and the Professional Services in its sole discretion at any time, including without limitation providing updates or modifying features or functionality, removing features or functionality or providing new Releases, always provided that if Nezasa limits substantial functions of the Platform then Nezasa will use commercially reasonable efforts to inform its customers on the Platform accordingly at least 12 months prior to such limitation. The Customer herewith accepts, and the Agreement also applies to all such modifications, changes and Releases.

6.2 Changes or amendments to the provisions of the Agreement may be implemented by Nezasa at any time and at its free discretion. The Customer must accept such changes and amendments prior to the access to the Platform. If the Customer does not accept the changed or amended Agreement, it is entitled to terminate each concerned Service Order based on Section 14.6 below.

## 7. Passwords

The Customer shall ensure that all passwords and cryptographic keys are kept confidential and with due care by the employees and third parties that received the passwords or cryptographic keys from the Customer.

## 8. Fees

8.1 The Customer shall pay to Nezasa the fees indicated in the applicable Service Order (the "Fees") as they become due plus all related taxes. Such Fees may consist of Setup Fees, Subscription Fees, Utility Fees and Add-On Fees to the extent set out in the applicable Service Order.

8.2 The Customer has to pay additionally for any Professional Services provided to the Customer by Nezasa that are not covered by the Fees as set out in an applicable Service Order, provided that such Professional Services have been requested by the Customer (the "Additional Fees").

8.3 The Fees and the Additional Fees shall not include the VAT which has to be paid by the Customer additionally, if any and applicable.

8.4 If no prices are stated in the Service Order, then the prices stated in the then current Price List of Nezasa shall be the Fees or Additional Fees payable.

8.5 Nezasa is entitled to change the Fees and the Price List in its free discretion, always provided that in such case:

- (i) the Fees for a certain period of time already paid by the Customer cannot be increased by Nezasa anymore;
- (ii) Nezasa has to inform the Customer of a change of the Fees in advance; and
- (iii) the Customer is entitled to terminate the concerned Service Order with immediate effect based on Section 14.6 below.

8.6 The due dates, the means of payment and the currency are indicated in the applicable Service Order.

8.7 Unless otherwise agreed in the concerned Service Order:

- (i) Setup Fees are one-time fees to be paid in advance;
- (ii) Subscription Fees are recurring fees, to be paid monthly in advance;
- (iii) Utility Fees are recurring and transaction-based fees that are due at the first day of each calendar month following the concerned calendar month;
- (iv) Add-On Fees consist of a one-time fee to be paid in advance and a recurring fee being part of the Subscription Fee (i.e. add ons increase the agreed Subscription Fee); and
- (v) Additional Fees are one-time fees being due at the time of completion of the concerned services.

8.8 Unless otherwise agreed in the concerned Service Order, all invoices shall be paid to Nezasa by the Customer in Euro in full and without deduction within fifteen (15) days of the date of the invoice.

8.9 The Customer is entitled to dispute an invoice of Nezasa within 15 days of the date of receipt. After this term the invoice is deemed to be accepted by the Customer.

8.10 Without prejudice to any other rights it may have, Nezasa shall be entitled to charge the Customer interest at the rate of 12% per annum on any overdue Fees or Additional Fees from the due date until the date of receipt of payment by Nezasa.

8.11 Unless explicitly agreed in writing otherwise, all Fees are non-refundable. There are no refunds or credits for unused periods.

8.12 Nezasa may suspend or terminate the Customer's and Authorized User's access to the Platform, the Subscription Services and/or the Professional Services provided to the Customer if Fees or Additional Fees remain unpaid for at least 45 days of the date of the invoice.

## 9. Reservation of Rights

9.1 The Customer acknowledges and agrees that, as between the Customer and Nezasa, Nezasa is the sole and exclusive owner of all rights, title and interest in and to the Platform, the Subscription Services and the Professional Services (including but not limited to the Project Services, if any) and any working results, data and information developed or collected by Nezasa or any third party that provides services to Nezasa or the Customer based on or in connection with the Agreement (other than Customer Data), including but not limited to all ideas, inventions, inferences, discoveries, developments, formats and processes, and all copyrights, patent rights and other intellectual property and proprietary rights therein and thereto. Third parties according to this Section 9.1 may include, but are not limited to consultants of Nezasa or employees of affiliates of Nezasa such as Nezasalabs Portugal Unipessoal, Lda.

9.2 Any rights not expressly granted to the Customer herein are reserved by Nezasa. All suggestions, enhancement requests, feedback, recommendations or other input provided by the Customer or any other party relating to the Subscription Services or Professional Services shall be owned by Nezasa, and the Customer hereby does and shall make all assignments and take all reasonable acts necessary to accomplish the foregoing ownership rights.



9.3 The Customer owns any data, information or material originated by the Customer that the Customer submits or provides in the course of the registration and using the Subscription Services or the Professional Services (the "Customer Data").

9.4 The Customer shall be solely responsible for the accuracy, quality, content and legality of Customer Data, the means by which the Customer Data is acquired and the transfer of the Customer Data outside of the Subscription Services or the Professional Services.

9.5 Nezasa acquires no right, title or interest in or to Customer Data under the Agreement except to the limited extent necessary to perform the Subscription Services or the Professional Services or have performed any services connected with the Agreement by Suppliers for the Customer or other customers which includes the internal use of the Customer Data and the provision of the Customer Data to its service providers (provided that such service providers shall be obliged to keep the Customer Data confidential), but excludes any provision of Customer Data to other third Parties unless explicitly provided in this Section or Section 12 below.

9.6 Notwithstanding the above provisions of this Section 9, Nezasa shall be entitled to evaluate the data obtained through the use of the contractual services by the Customer (tracking data, patterns of behaviour, etc.) and to use them to improve the Platform, the Subscription Services and Professional Services. Nezasa may also use Customer Data in aggregated form to create anonymous profiles and benchmark data that do not allow the identification of Authorized Users or other users. The anonymous profiles and benchmark data may be used for comparisons that may be made available to the Customer and third parties (including other customers of Nezasa) for benchmark, information and risk management purposes. Nezasa may also

- (i) compile statistical and other information relating to the contractual services, operation and use of the Platform or the Software and
- (ii) use anonymised data in aggregate form for security and operations management purposes to produce statistical analyses and for research and development purposes (sections (i) and (ii) are collectively referred to as "Service Analyses"). Nezasa may make Service Analyses publicly available. However, Service Analyses will not process Authorized User data, personal data or confidential information in any form that could be used to identify the principal, end user or any other person. Nezasa retains all intellectual property rights in Service Analyses.

9.7 The limited right of Nezasa to use the data according to Sections 9.5 and 9.6 above shall be and remain valid notwithstanding any other provision of the Agreement and shall particularly survive any expiration or termination of any Service Order and the Agreement. The use of Customer Data by Nezasa shall not be limited due to Section 12 below provided that Nezasa complies with Sections 9.5 and 9.6 above.

## 10. Limited Warranty

### 10.1 Limited Warranties of Nezasa and Remedies of the Customer

10.1.1 Nezasa represents and warrants to the Customer that:

- (i) it has all necessary power and authorization to accept the Agreement;
- (ii) the Agreement is legal, valid, binding and enforceable against the Nezasa; and
- (iii) Nezasa's acceptance of the terms and conditions of the Agreement will not violate any law, rule, regulation, or any agreement, binding Nezasa.

10.1.2 Nezasa represents and warrants to the Customer that it will make commercially reasonable efforts to: (i) provide the Platform substantially in accordance with the description set out in the Agreement; and (ii) to comply with the SLA as agreed in the respective Service Order.

10.1.3 Nezasa represents and warrants to the Customer that the Project Services, if any, and the Support Services will be performed with due care, skill and ability and in accordance with applicable laws and regulations.

10.1.4 In the event Nezasa breaches the foregoing warranty and the Customer provides Nezasa with written notice of such breach, Customer's sole remedy and Nezasa's sole obligation shall be one of the following options, such option to be selected by Nezasa in its sole discretion:

- (i) to the extent practicable, Nezasa may correct any defect or error, provided that Nezasa agrees that such defect or error is correctable; or
- (ii) Nezasa may terminate the applicable Service Order and issue a refund to the Customer in an amount equal to the fees prepaid by the Customer (if any) for the respective Subscription Services not received.

10.1.5 In the event Nezasa breaches the foregoing warranty concerning the SLA for issues of level "Severe" at least five (5) times in a calendar month and the Customer promptly provides Nezasa with written notices of such breaches, Customer's sole remedy in addition to the remedy set out in Section 10.1.4 above shall be the right to terminate the concerned Service Order with immediate effect in accordance with Section 14.6 below.

10.1.6 The foregoing states Customer's sole and exclusive remedies, and Nezasa's entire liability, for breach of the warranties provided under the Agreement. The Customer agrees that it shall have no remedy under this Section for claims made after termination or expiration of the Agreement.

10.1.7 Where the Customer notifies Nezasa of a suspected warranty breach and following review Nezasa determines there is no breach, then Nezasa reserves the right to charge the Customer for associated costs of such review, which shall be Additional Fees and be calculated in accordance with the then current Price List.

10.1.8 The Platform may include software under license from third parties. Such third parties do not:

- (i) make any representations or warranties with respect to the Platform, the Subscription Services or the Professional Services;
- (ii) assume any liabilities regarding the Customer's use of the Platform, the Subscription Services or the Professional Services; or
- (iii) agree to or assume any obligation to provide support or information related to the Platform, the Subscription Services or the Professional Services.

10.1.9 WITH THE EXCEPTION OF THE FOREGOING LIMITED WARRANTY, THE PLATFORM, THE SUBSCRIPTION SERVICES AND THE PROFESSIONAL SERVICES CONNECTED THEREWITH ARE PROVIDED ON AN "AS IS", "WITH ALL FAULTS", AND "AS AVAILABLE" BASIS AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORTS IS WITH THE CUSTOMER. WITH THE EXCEPTION OF THE FOREGOING LIMITED WARRANTY, NEZASA DOES NOT MAKE, EXPRESS OR IMPLIED, AND DISCLAIMS ANY AND ALL WARRANTY CONNECTED WITH THE PLATFORM, THE SUBSCRIPTION SERVICES AND/OR THE PROFESSIONAL SERVICES.

10.1.10 WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NEZASA DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES:

- (I) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WORKMANLIKE EFFORT;
- (II) OF UNINTERRUPTED OR ERROR-FREE ACCESS OR USE OF THE PLATTFORM;
- (III) THAT THE OPERATION OR USE OF THE PLATFORM WILL BE TIMELY, UNINTERRUPTED OR ERROR-FREE; OR
- (IV) THAT THE QUALITY OF THE SUBSCRIPTION SERVICES OR THE PROFESSIONAL SERVICES WILL MEET CUSTOMER'S REQUIREMENTS.

10.1.11 THE CUSTOMER ACKNOWLEDGES THAT NEITHER NEZASA NOR ITS THIRD PARTY PROVIDERS CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SUBSCRIPTION SERVICES AND/OR THE PROFESSIONAL SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. NEZASA IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

10.1.12 THE CUSTOMER ACKNOWLEDGES THAT NEZASA IS NO MERCHANT OF PRODUCT PACKAGES AND DOES NOT ASSUME ANY LIABILITY FOR PRODUCT PACKAGES. IT ONLY ENABLES THE CUSTOMER TO DESIGN AND SELL TO TRAVEL AGENTS AND END CUSTOMERS PRODUCT PACKAGES.

10.1.13 THE CUSTOMER ACKNOWLEDGES THAT ANY WARRANTY OF NEZASA IN CONNECTION WITH PRODUCTS OR SERVICES OFFERED BY NEZASA IS EXCLUDED WITH THE EXCEPTION OF THE LIMITED WARRANTY CLAIMS AS SET OUT SECTION 11.5 BELOW IN CASE THE CUSTOMER IS ACCORDING TO THE APPLICABLE SERVICE ORDER(S) ENTITLED TO PURCHASE SUPPLIER PRODUCTS OVER THE PLATFORM.

## 10.2 Limited Warranties of the Customer

10.2.1 The Customer represents and warrants that:

- (i) it has all necessary power and authorization to accept the Agreement;
- (ii) the Agreement is legal, valid, binding and enforceable against the Customer;
- (iii) the Customer's acceptance of the terms and conditions of the Agreement will not violate any law, rule, regulation or Service Order, or any agreement, binding the Customer; and
- (iv) the Customer will observe all applicable laws and the provisions of the Agreement.

10.2.2 The Customer represents and warrants that it does not disclose any contents such as pictures, drawings or trademarks included in or connected with the Supplier Products to any third party unless explicitly indicated in the concerned Service Order.

10.2.3 The Customer further represents and warrants that:

- (i) it will not directly or indirectly provide access to the Platform, the Subscription Services or the Professional Services to any person (including any natural person or government or private entity) that is located in or is a national of any embargoed or highly restricted country under the Swiss laws, the European laws or the United States Export Regulations; and
- (ii) it is not located in, under the control of, or a national or resident of any such country or on any such list.

10.2.4 If the Customer is according to the applicable Service Order(s) entitled to purchase Supplier Products over the Platform, the following shall apply:

- The Customer represents and warrants that
  - (i) it always sells the Supplier Products in its own name to travel Agents or End Customers and under no circumstance acts as an agent only;
  - (ii) it will under no circumstances sell the Supplier Products in the name of Nezasa or one or several Suppliers to travel Agents, End Customers or other third parties; and
  - (iii) it always ensures that any Agent, End Customer or other third party is aware of the fact that neither Nezasa nor any Supplier, but only the Customer is the seller of the Supplier Products towards the Agent, End Customer or any third party.
- The Customer shall indemnify, defend and hold harmless, to the fullest extent permitted by law and without limitation according to Section 11 below, Nezasa, its officers, directors and employees against any cause of action, all liabilities, losses, costs or expenses (including reasonable fees and expenses of legal counsel) with respect to any claim, whether threatened, asserted, accrued or contingent, a travel Agent or End Customer to which the Customer sold Supplier Products.

## 11. Limitation of Liability and Indemnification

11.1 UNLESS EXPLICITLY OTHERWISE PROVIDED IN THE AGREEMENT,

- (I) THE LIABILITY OF EACH PARTY UNDER OR IN CONNECTION WITH THE PLATFORM, THE SUBSCRIPTION SERVICES, THE PROFESSIONAL SERVICES AND THE AGREEMENT SHALL BE LIMITED TO THE EXTENT POSSIBLE BY THE GOVERNING LAW; AND
- (II) EACH PARTY SHALL, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NOT BE LIABLE UNDER OR CONNECTED WITH THE AGREEMENT, STRICT LIABILITY OR ANY OTHER THEORY.

11.2 WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NEZASA SHALL NOT BE LIABLE FOR:

- (I) FOR ERROR OR INTERRUPTION OF USE OF THE PLATFORM, INACCURACY OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS;
- (II) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES;
- (III) PRODUCTS OR SERVICES OF THIRD PARTIES; OR
- (IV) FOR ANY MATTER BEYOND ITS REASONABLE CONTROL.

11.3 ANY INFORMATION ABOUT SUPPLIER PRODUCTS ARE PROVIDED BY THE SUPPLIERS AND NEZASA HAS NO POSSIBILITY TO CONTROL THE ACCURACY AND CORRECTNESS OF SUCH INFORMATION. NEZASA SHALL THEREFORE IN NO EVENT BE LIABLE IN CONNECTION WITH ANY INFORMATION ABOUT SUPPLIER PRODUCTS.

11.4 THE PLATFORM MAY CONTAIN LINKS TO OTHER WEBSITES. THESE WEBSITES ARE NOT UNDER CONTROL OF NEZASA AND NEZASA IS NEITHER RESPONSIBLE NOR LIABLE FOR THE CONTENTS THEREOF.

11.5 IF THE CUSTOMER IS ACCORDING TO THE APPLICABLE SERVICE ORDER(S) ENTITLED TO PURCHASE SUPPLIER PRODUCTS OVER THE PLATFORM, THEN THE FOLLOWING SHALL IN ADDITION TO THE ABOVE APPLY: IF THE CUSTOMER INCURS LOSS OR DAMAGE IN CONNECTION WITH PRODUCTS OR SERVICES SOLD OR PERFORMED BY A SUPPLIER OR ANY OTHER THIRD PARTY, NEZASA IS NOTWITHSTANDING THE FOREGOING PROVISIONS ONLY LIABLE TO THE CUSTOMER FOR SUCH LOSS OR DAMAGE TO THE EXTENT THAT NEZASA IS ENTITLED TO CLAIM DAMAGES FROM THAT THIRD PARTY. IN THAT CASE, NEZASA HEREBY ASSIGNS ITS CLAIMS FOR DAMAGES AGAINST THE THIRD PARTY TO THE CUSTOMER, IN LIEU OF PAYMENT (AN ZAHLUNGSSTATT). THIS ASSIGNMENT IS DEEMED TO SATISFY ALL CLAIMS BY THE CUSTOMER AGAINST NEZASA RESULTING FROM NEZASA'S LIABILITY FOR THE PRODUCTS OR SERVICES SOLD OR PROVIDED BY THE THIRD PARTY. NEZASA AGREES TO SUPPORT CUSTOMER IN ASSERTING THE CLAIMS. IF AN ADDITIONAL DECLARATION OF ASSIGNMENT IS NECESSARY IN ORDER TO ASSIGN CLAIMS, NEZASA AGREES TO ISSUE SUCH A DECLARATION IN DUE COURSE UPON REQUEST. THE FOREGOING SENTENCE SHALL PARTICULARLY APPLY WITH REGARD TO ANY WARRANTY CLAIMS OF THE CUSTOMER AGAINST NEZASA.

11.6 UNLESS EXPLICITLY PROVIDED IN THIS SECTION 11, ANY LIABILITY OF NEZASA RESULTING FROM OR CONNECTED WITH PRODUCTS AND SERVICES SOLD OR PROVIDED BY THIRD PARTIES SHALL BE FULLY EXCLUDED TO THE EXTENT LEGALLY POSSIBLE.

11.7 FOR THE AVOIDANCE OF ANY DOUBT, THE LIABILITY PROVISIONS UNDER THIS SECTION 11 APPLY TO ALL LIABILITY CLAIMS BOTH CONTRACTUAL AND EXTRA-CONTRACTUAL, INCLUDING BUT NOT LIMITED TO CLAIMS BASED ON WARRANTY, INDEMNITY AND PRODUCT LIABILITY.

11.8 THE CUSTOMER HEREBY INDEMNIFIES NEZASA AND AGREES TO HOLD NEZASA HARMLESS TO THE FULLEST EXTENT POSSIBLE FROM ANY AND ALL CLAIMS BY ANY SUPPLIER ALLEGING LOSS, DAMAGES OR INJURY AS A RESULT OF A CLAIM OF THE CUSTOMER AGAINST THE SUPPLIER.

## 12. Confidentiality Obligation

12.1 For purposes of the Agreement, "Confidential Information" means information disclosed by one Party to the other Party under the Agreement that is marked as confidential or would normally be considered confidential under the circumstances.

12.2 Without limiting the foregoing, Confidential information shall include:

- (i) with respect to Nezasa, the software of the Platform, the Subscription Services, Professional Services, the principles (including, but not limited to, software development or design) upon which they are based, the manner by which they operate, and any improved software object functionality and performance derived from the Customer's use of the Platform, the Subscription Services or the Professional Services;
- (ii) with respect to the Customer, the Customer Data provided under the Agreement; and
- (iii) with respect to both Parties, any information that relates to research, product plans, products, services, clients, markets, developments, inventions, designs, drawings, engineering, marketing or finances of the disclosing Party.

12.3 Notwithstanding the foregoing, Confidential Information does not include information that:

- (i) the recipient of the Confidential Information already knew;
- (ii) becomes public through no fault of the recipient;
- (iii) was independently developed by the recipient; or
- (iv) was rightfully given to the recipient by another party.

12.4 Each Party will:

- (i) protect the other Party's Confidential Information with the same standard of care it uses to protect its own Confidential Information, but in no event less than reasonable care; and
- (ii) not disclose the Confidential Information to third parties.

12.5 Each Party (and any affiliates, employees and agents to whom it has disclosed Confidential Information) may use Confidential Information only to exercise rights and fulfil obligations under the Agreement, while using reasonable care to protect it.

12.6 Notwithstanding the foregoing, each Party may disclose the other Party's Confidential Information to its employees, officers, agents, consultants, Suppliers or sub-contractors (the "Representatives") who need to know such information for the purposes of carrying out the obligations under the Agreement, provided that the disclosing party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this Section 12. The disclosing Party shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this Section 12.

12.7 Notwithstanding the foregoing, each Party may disclose the other Party's Confidential Information when required by law, court order or governmental or regulatory authority, but only after it, if legally permissible:

- (i) uses commercially reasonable efforts to notify the other Party; and
  - (ii) gives the other Party the chance to challenge the disclosure.
- 12.8 Each Party's obligations regarding the Confidential Information of the other Party shall continue for a period of ten (10) years after the expiration or termination of the Agreement.

## 13. Data Protection

13.1 Each Party shall comply with all applicable legal provisions regarding data protection. In particular, Nezasa shall not provide or otherwise disclose any personal data of the Customer to any third party without authorization unless provided otherwise in the Agreement.

13.2 Details on the use of the Customers' personal data by Nezasa are set forth in the Data Processing Agreement and in the Privacy Policy of Nezasa.

## 14. Term and Termination

14.1 The Agreement shall take effect at the effective date of the first Service Order agreed between the Parties and shall, unless earlier terminated as set forth below, remain in effect until the last Service Order has been terminated or expired.

14.2 Each Service Order concerning the Subscription Services shall remain in effect, unless earlier terminated as set forth below, through the initial term which shall be thirty six (36) months after the Agreed Start Date as defined in the applicable Service Order, unless otherwise designated in the applicable Service Order concerning the Subscription Services (the "Initial Term").

14.3 Unless otherwise stated in the applicable Service Order concerning the Subscription Services, the Initial Term and each subsequent renewal term of the respective Service Order shall automatically renew for successive thirty six (36) months periods (each a "Renewal Term") unless either Party notifies the other of its intent not to renew, which notice must be provided at least ninety (90) days prior to the end of the Initial Term or the then-current Renewal Term of the respective Service Order concerning the Subscription Services.

14.4 Any Service Order other than a Service Order concerning the Subscription Services, particularly a Service Order concerning Products, shall be a non-recurring transaction, unless otherwise designated in the applicable Service Order.

14.5 Each Party may notwithstanding the foregoing provisions terminate the Agreement (including but not limited to any Service Order) at any time with immediate effect upon occurrence of the following events:

- if bankruptcy or similar events occur, including but not limited to the case of the appointment of a receiver, custodian, trustee, conservator, administrator or liquidator or any other officer with similar powers for a Party; or
- in case of ceasing of business, winding up or liquidation of a Party saves for the purposes of corporate reconstruction.

14.6 Each Party may notwithstanding the foregoing provisions terminate the concerned Service Order at any time with immediate effect upon occurrence of the following events:

- in case the other Party is in material default regarding its obligations under the concerned Service Order and has not cured such material default within thirty (30) days after receipt of a written notice of the other Party; or
- in the event Nezasa breaches the warranty according to Section 10.1.2 above concerning the SLA for issues of level "Severe" at least five (5) times in a calendar month and the Customer provides Nezasa timely with written notices of such

breaches.; or

- In any other extraordinary termination event specifically set out in the Agreement.

14.7 Upon termination or expiration of the Agreement:

- (i) Customer's and Authorized User's right to access and use the Platform, the Subscription Services and the Professional Services shall immediately terminate;
- (ii) any suspension or termination pursuant to this Section shall not relieve the Customer of its payment obligations;
- (iii) all Fees will become immediately due and payable; and
- (iv) each Party shall destroy all tangible manifestations of the Confidential Information and not use the Confidential Information for any purpose.

14.8 The Customer hereby acknowledges and agrees that Nezasa has no obligation to retain Customer Data and that the Customer Data may be irretrievably deleted and destroyed within thirty (30) days after the termination or expiration of the Agreement or the respective Service Order.

14.9 For the avoidance of any doubt, a termination of the Agreement does not lead to

- (i) any rescission or unwinding of any Service Order and
- (ii) a termination of agreements between the Customer and Suppliers.

14.10 Termination or expiration of the Agreement shall not relieve either Party of its respective obligations to the other hereunder that arose prior to the effective date of termination. Notwithstanding anything herein to the contrary, all Sections of the Agreement that, by their nature, should survive termination or expiration of the Agreement will survive, including without limitation, accrued rights to payment, ownership, indemnity obligations, confidentiality obligations, warranty disclaimers, and limitations of liability.

## 15. Force Majeure

15.1 No Party shall be liable to the other Party if performance of any of its obligations hereunder is prevented, hindered, or delayed by the occurrence of circumstances beyond its control, which circumstances shall include, but shall not be limited to, any act of God, act of any government or other statutory undertaking, industrial dispute beyond the area of control of such Party, fire, explosion, accident, power failure, pandemics and disease. Notwithstanding the foregoing sentence, the payment of any fees under the Agreement shall never be excluded or delayed due to force majeure event.

15.2 Following the occurrence of any such event the Party thereby affected shall notify the other Party in due time of such occurrence and such Party shall use its reasonable endeavours to overcome or to minimise the adverse effects thereof.

15.3 Performance of the affected and related obligations shall be postponed for a period equal to the time lost by reason of the delay. If as a result of force majeure a Party is rendered definitely unable to perform, or if the period of force majeure has lasted longer than three (3) months or as soon as it is reasonably clear that it will last longer than three (3) months, the other Party may, with immediate effect, terminate the Agreement in writing.

## 16. Taxes

Each Party will pay any taxes now or hereafter imposed by law on the respective Party unless otherwise provided by the Agreement.

## 17. Marketing

17.1 The Customer grants Nezasa its consent to publish press releases concerning the entry into this Master Services Agreement, and the Customer will be given the opportunity to approve the content of such press releases.

17.2 Nezasa may use Customer's name and logo for its websites and inclusion in its customer or supplier lists and in its promotional, marketing and investment materials, without the prior consent of the Customer.

17.3 The Customer agrees to support Nezasa, free of charge, in producing a case study that can be published by Nezasa.

17.4 The rights of Nezasa under this Section 17 shall not be limited by any expiration or termination of the Agreement or any Service Order.

## 18. Enticing Staff

18.1 The Customer undertakes that, during the term of the Agreement and 24 months thereafter, it shall without Nezasa's prior written consent

- (i) not hire directly or indirectly any employee of Nezasa, and
- (ii) not pay for any services provided by a third party that hired directly or indirectly any employee of Nezasa and uses such employees to provide services.

18.2 A violation of this Section 18 by the Customer shall entitle the Nezasa to claim specific performance ("Realerfüllung") from the Customer. Moreover, the Customer undertakes to pay Nezasa an agreed penalty of CHF 100'000 for each violation of this Section 18. Payment of the penalty shall not relieve the Customer from the obligation to observe the Agreement. Claims for damages exceeding the amount of the penalty to be paid by the Customer are reserved.

## 19. Miscellaneous

19.1 The Parties may send termination notices to the other Party by email or mail to the current contact data provided by the respective Party.

19.2 The written form according to the Agreement shall include a notice by email, mail and any communication made between the Parties in an electronic form over the Platform to the extent such communication is traceable for Nezasa, including but not limited to Nezasa's ticket system, unless explicitly otherwise provided in the Agreement.

19.3 The Master Services Agreement and any Annexes thereto, including but not limited the Service Orders, shall form an integral part to the Agreement.

19.4 Except as otherwise provided in the Agreement, the Parties agree that, in the event of any disputed or unresolved claim, debt or obligation, any and all rights to set-off and/or rights to retain funds are expressly waived.

19.5 The Parties hereto are and remain independent parties. It is not the Parties' intent to create and the Agreement does not create the formation of a partnership, joint venture or similar relationship between the Parties.

19.6 Neither Party shall assign or transfer any of its rights and obligations under the Agreement without the other Party's prior written consent.

19.7 No amendment or modification of the Agreement shall be valid or binding on the Parties unless made in writing. This shall also apply to the foregoing sentence.

19.8 Should any provision of the Agreement be invalid or unenforceable, the remaining provisions shall be valid. In the place of an invalid provision, a valid provision is presumed to be agreed upon by the Parties, which comes economically closest to the one actually agreed upon.

19.9 Failure or neglect by Nezasa to enforce any of the provisions of the Agreement shall not be construed or deemed to be a waiver of Nezasa's rights nor shall this affect the validity of the whole or any part of the Agreement, nor prejudice Nezasa's rights to take subsequent action.

19.10 ALL DISPUTES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT SHALL BE GOVERNED BY SUBSTANTIVE SWISS LAW EXCLUDING THE CONFLICT OF LAW RULES AND THE LAWS IN TREATIES INCLUDING BUT NOT LIMITED TO THE UNIFORM LAW ON PURCHASES (VIENNA TREATY).

19.11 ALL DISPUTES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT SHALL BE SOLELY AND FINALLY SETTLED BY A COURT OF ARBITRATION CONSISTING OF ONE ARBITRATOR IN ACCORDANCE WITH THE SWISS RULES OF INTERNATIONAL ARBITRATION OF THE SWISS CHAMBER OF COMMERCE. THE PLACE OF ARBITRATION SHALL BE ZURICH. THE COURT OF ARBITRATION SHALL CONDUCT THE PROCEEDINGS AND ALL AWARDS SHALL BE RENDERED IN THE ENGLISH LANGUAGE.



## Annex: Definitions

The following definitions apply to the Agreement (including but not limited to the applicable Service Orders). Any capitalised terms not otherwise defined in the Agreement shall have the meanings set forth below:

- “Additional Fees” mean the fees as described in Section 8.2 above.
- “Add-On Fees” mean fees described in Sections 8.1 and 8.7 above and agreed in the concerned Service Order.
- “Agent” is an agent to which the Customer may sell products and/or services that it purchased over the Platform if agreed so in the applicable Service Order(s).
- “Agreed Start Date” shall be the start date of the Initial Term as set out in the applicable Service Order.
- “Agreement” means the contractual relationship between the Parties as defined in Section 2 of this Master Services Agreement.
- “Annex” means an annex to this Master Services Agreement, including but not limited to Service Order(s).
- “Associated Company” means an entity that directly or indirectly controls, is controlled by, or is under common control with, a Party. For purposes of the foregoing, "control" means the ownership of: (i) at least fifty percent (50%) of the voting power to elect directors of the company; or (ii) at least fifty percent (50%) of the ownership interest in the company.
- “Authorized User” means the authorized user as defined in Section 4.2.2 above.
- “Booking Agreements” mean any agreement between the Customer and Agents or End Customers based on which the products or services sold over the Platform are sold by the Customer if so agreed in the applicable Service Order(s).
- “Business Hours” means 09:00hrs (CET) to 17:00hrs (CET) on Business Days, unless otherwise provided in the applicable SLA.
- “Business Days” means Mondays to Fridays except for public holidays in Zurich and/or Switzerland.
- “Confidential Information” means the confidential information defined in Section 12 above.
- “Customer” is the customer of Nezasa and a Party of the Agreement.
- “Customer Data” means the data defined in Section 9.3 above.
- “Data Processing Agreement” means the Data Processing Agreement (Vereinbarung Auftragsbearbeitung DSGVO) as referred to in Section 2.1 above.
- “Data Subject” means the data subject as defined under the applicable data protection laws.
- “End Customer” means any customer to which the Customer is selling products and/or services that it purchased over the Platform if agreed so in the applicable Service Order(s).
- “Fee” means the fee as defined in Section 8.1 above.
- “Incident” means a support case triggered upon the receipt by Nezasa of a Request addressed to the official helpdesk as provided by Nezasa. This relates to the technical support process which is aimed at solving a specific technical problem of the Customer. An Incident may extend over several telephone calls or emails.
- “Initial Term” means the initial terms as defined in Section 14.2 above.
- “Intellectual Property Rights” means intellectual property rights including without limitation rights in patents, trademarks, other trade-identifying symbols and inventions, copyrights, design rights, database rights, rights in know-how, trade secrets and any other intellectual property rights arising anywhere in the world, whether registered or unregistered, and including applications for the grant of any such rights.
- “Master Services Agreement” means this master services agreement.

- “Platform” means the platform as referred to in Section 1.1.
- “Price List” means the current official price list of Nezasa.
- “Professional Services” means the services as referred to in Section 4.1.1 above.
- “Project Services” means the Services provided by Nezasa as further described in Section 4.3 above.
- “Releases” are defined in Section 4.4.1 above.
- “Renewal Term” means the renewal terms as defined in Section 14.3 above.
- “Representatives” means employees, officers, agents, consultants or sub-contractors as defined in Section 12.6 above.
- “Request” means a technical enquiry which is notified by the Customer to the Nezasa support team in accordance with the Agreement.
- “Section” means a section of this Master Services Agreement.
- “Service Order” means the relevant fully executed service order which is accepted in writing by both Parties. This Master Services Agreement may be supplemented by additional Service Order(s) from time to time.
- “Services” means the services to be provided by Nezasa under the Agreement.
- “Setup Fees” mean fees described in Sections 8.1 and 8.7 above and agreed in the concerned Service Order.
- “SLA” means the service level agreement described in Section 4.4.1 above.
- “Software” means the software owned by Nezasa to provide the Platform.
- “Subscription Fees” mean fees described in Sections 8.1 and 8.7 above and agreed in the concerned Service Order.
- “Subscription Services” means the subscription services as described in Section 4 above.
- “Supplier” means any supplier that provides products or services to Nezasa which can be purchased from Nezasa by the Customer over the Platform, if agreed so in the applicable Service Order(s).
- “Supplier Products” are defined in Section 1.4 above.
- “Support Services” means the support services described in Section 4.4.2 above.
- “Territory” means the territory defined in Section 4.2.4 above or the applicable Service Order.
- “Utility Fees” mean fees described in Sections 8.1 and 8.7 above and agreed in the concerned Service Order.
- “VAT” means value added tax chargeable under applicable law for the time being and any similar additional tax.