BASECONE LTD. GENERAL TERMS AND CONDITIONS

Version: AVUK2.0
Date: 9 November 2016

ARTICLE 1.   DEFINITIONS

The capitalised terms employed in these General Terms and Conditions bear the meaning assigned to them below, unless a different meaning is assigned to them elsewhere in these General Terms and Conditions:

1.1.   **General Terms and Conditions:** the terms and conditions set out in this document;

1.2.   **Archive:** the digital folders within the Organisation within which Data can be stored. Such Data is explicitly not deemed to refer to any documents which are processed for the purposes of a bookkeeping system;

1.3.   **Basecone:** the public company with limited liability, Basecone, having its registered office in London, United Kingdom, Registration Number 55299245;

1.4.   **Data:** any data (personal or otherwise) which an End User processes and/or stores with the aid of the Service. Data may be sourced from other parties;

1.5.   **Processing Agreement:** the processing terms and conditions which constitute an integral part of these General Terms and Conditions, and the relevant Agreement;

1.6.   **Service:** the software (on its own or as a service) developed by Basecone with the aid of which it is possible for a Client to process their entire administration;

1.7.   **End User:** a natural person who uses the Service under a Client's responsibility;

1.8.   **Date of commencement:** the date on which the provision of a Service commences;

1.9.   **Intellectual Property Rights:** all intellectual property and related rights, which is deemed to include but is not confined to copyrights, database rights, domain names, trading name rights, design rights, neighbouring rights and patents, as well as any rights to know-how;

1.10.   **Environment:** an environment within a Service comprising one (1) or more Organisations to which the relevant End Users have access for the purposes of availing themselves of that Service;

1.11.   **Client:** a legal entity with which Basecone enters into an Agreement pursuant to which Basecone will provide a Service;

1.12.   **Organisation:** a separate section within an Environment which is created by a Superuser for the purposes of End Users processing Data as authorised;

1.13.   **Agreement:** any contract which Basecone and a Client enter into with each other pursuant to which Basecone will provide a Service;

1.14.   **SLA:** a service level agreement which Basecone and a Client enter into separately with each other and which sets out what they have agreed in relation to the level, quality and problem-solving methods applicable in relation to the relevant Service;

1.15.   **Superuser:** a natural person who in their capacity as an End User holds the most senior administrative permissions within an Environment and whom the relevant client appoints to serve as administrator of the Client's Environment;

1.16.   **Website:** http://www.basecone.com or any subdomain or other extension for the relevant domains.

ARTICLE 2.   QUOTATIONS AND CONCLUSION OF AN AGREEMENT

2.1.   Basecone and a Client shall be deemed to have entered into an Agreement with each other after that Client has created an Environment on the Website, the Client has accepted the offer displayed on the Website and Basecone has confirmed it in writing and/or the Client has consented to a quotation issued by Basecone. The Web site shall mention the amounts which are payable and in this respect the description of a Service provided on the Website shall also be binding.

2.2.   In the event that a Client does not explicitly indicate that it accepts a quotation or offer but nevertheless consents to Basecone performing work which is covered by the description of the relevant Services or gives the impression that it does, that quotation or offer shall be deemed to have been accepted. This shall also apply where a Client asks Basecone to perform certain work without waiting for a formal quotation.

2.3.   A quotation issued by Basecone shall be valid for the period of time stipulated in it. In the event that no deadline is stipulated, the relevant quotation shall be valid for thirty (30) days after the date on which Basecone issues it.

2.4.   Should it appear that, when an Agreement comes into effect, the information supplied by the relevant Client is incorrect, Basecone shall be entitled to adjust any fees accordingly.

2.5.   An Agreement shall apply as of the time on which the relevant Service is provided to the Client concerned in technical terms (the "Date of Commencement"), unless some other date of commencement has been agreed to.

ARTICLE 3.   EXECUTION OF AN AGREEMENT

3.1.   Following registration on the Website and the conclusion of an Agreement, Basecone shall provide the relevant Client with the Service concerned in accordance with the Agreement in question.

3.2.   In the event that and in so far as this is required for the purposes of ensuring the proper provision of a Service, Basecone shall be entitled to arrange for specific work to be carried out by another party without notifying the relevant Client of this. Basecone shall not charge a Client for any expenses incurred by such other party.

3.3.   A Client shall supply Basecone with up-to-date contact details for the purposes of communication between them. In the event that a Client changes those contact details, it shall notify Basecone of this immediately through the relevant Service and/or Basecone's support department.

3.4.   In the event that the details referred to in Article 3.3 are not punctually supplied to Basecone or should the relevant Client fail to comply with their obligations in some other way, Basecone shall be entitled to suspend compliance with its obligations without having a duty to provide any compensation.

3.5.   Unless otherwise agreed in writing, any deadline (for delivery or otherwise) that is cited shall only be indicative and shall under no circumstances be of a material nature.

ARTICLE 4.   DELIVERY OF SOFTWARE (AS-A-SERVICE)

4.1.   Basecone shall provide a Client with a non-exclusive, non-transferable license to use the relevant Service throughout the term and subject to the provisions of the Agreement concerned. Such licence shall be governed by the conditions and/or limitations stipulated in these General Terms and Conditions.

4.2.   The licence referred to in the foregoing clause shall also be deemed to cover all future updates of the Service in question.

4.3.   A Client shall itself be responsible for creating any Organisation, Superuser and/or End User within the Environment for the relevant Service.

4.4.   Unless otherwise agreed in writing, a Client shall not be permitted to apply for a Service on behalf of any other party, to sublease it or to place it at the disposal of another party in any other way. This is not deemed to include the staff of the relevant Client's business or organisation.

4.5.   When procuring a Service, a Client shall ensure that all applicable legal obligations are strictly complied with.

4.6.   Upon registration as provided for in Article 2.1, a Client shall choose their own user name and password, as well as office code. A Client shall be deemed to be aware that the loss of log-in details may result in unlawful access to the Service concerned. For this reason a Client shall conceal its log-in details from any unauthorised person. A Client shall itself be responsible for any action which is carried out in its Environment through the relevant Service.

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ARTICLE 5.   SUPPORT PROVIDED BY BASECONE

5.1.   Basecone shall provide support in the form of email contact, online manuals, frequently asked questions and webinars. Such support shall be freely accessible to a Client and may be found on the Website and through the relevant Service.

5.2.   In addition to the support referred to in Clause (1), it shall be possible to receive additional support pursuant to a separate agreement. Basecone shall present an offer for such an agreement at a Client's request.

5.3.   A Client shall be deemed to be aware that it is not possible to carry out custom work as part of a Service.

ARTICLE 6.   AVAILABILITY AND MAINTENANCE

6.1.   Subject to the provisions of the relevant SLA, the following shall apply with regard to the availability of a Service and any disruption of it.

6.2.   Basecone shall adopt technical and organisational measures to ensure that a Service is available. Nevertheless, Basecone cannot guarantee that such measures will be effective at all times.

6.3.   A Client shall be deemed to be aware that the relevant Service depends on a stable internet connection at the site where the Client avails itself of that Service. Basecone cannot control any internet connection, network, equipment or any other service or device which it has not supplied.

6.4.   By way of an addendum to the foregoing clause, Basecone may provide support in relation to the operation of a Service and any related services provided by another party. Nevertheless, Basecone will depend on the relevant Client's cooperation. Any warranty given in the relevant SLA can only be realised in the event that the Client concerned provides full, timely assistance.

6.5.   Basecone shall be entitled to take its Service, associated websites or parts thereof out of service temporarily for the purposes of maintaining, modifying or improving them and/or maintaining, modifying or improving any associated software or other facilities. Where such disruption of service occurs, Basecone shall endeavour to have this occur outside office hours as far as possible and to give the relevant Client timely notice of any scheduled disruption of service. In the event that Basecone is of the opinion that a disruption of the relevant Service – whether during office hours or otherwise – is required to ensure the proper operation of that Service, it shall be entitled to render that Service unusable immediately without notifying the Client concerned beforehand. Nevertheless, Basecone shall never have a duty to provide compensation for any loss suffered in relation to such a disruption of service.

ARTICLE 7.   WARRANTIES AND MODIFICATIONS

7.1.   A Client shall be deemed to have accepted that the relevant Service will only contain the functionality and other properties which it finds in that Service at the time when it is supplied ("as is"), hence with all visible and invisible bugs and defects.

7.2. Basecone shall remedy any problems and/or defects that have been reported in the next update of the Service concerned. In the event of an urgent problem and/or defect Basecone shall do all in its power to implement an update and to make it available to the relevant Client within one (1) working day.

7.3. Basecone cannot guarantee that any connection to a third party will work and/or be adequately secured at all times. A Client shall be deemed to be aware that in this respect Basecone depends on such other party (and the latter's availability and/or infrastructure).

7.4. Basecone shall not check any data sourced from a third party (or any third-party connection) to ensure that it is accurate and complete. A Client shall itself be responsible for checking whether such Data is accurate and complete. Basecone shall not be responsible for the supply of inaccurate or incomplete Data by a third party.

7.5. Basecone shall be entitled to modify the functionality of a Service from time to time. In this respect any feedback and suggestions from a Client shall be welcome, although Basecone shall be entitled not to make any modification provided that it has reasonable grounds for this. Although it has no obligation to do so, Basecone shall endeavour to give notice that an update is to be implemented no less then two (2) working days in advance. Under no circumstances may a Client continue to use the former version of the relevant Service or claim entitlement to an update which has been announced but which has not been implemented due to circumstances.

ARTICLE 8.   CODES OF CONDUCT

8.1. A Client shall be prohibited from using a Service to contravene the law of the Netherlands or any other legislation or regulations applicable in relation to the Client or Basecone, or to infringe any other party's rights.

8.2. Basecone prohibits (whether it is lawful to do so or not) the use of a Service to store, disseminate or offer Data which:

   a. is manifestly and primarily intended to help others infringe other parties' rights;
   b. is manifestly defamatory, libellous, insulting, racist, discriminatory or incendiary;
   c. infringes the privacy of any other party, which is at any rate deemed to include but is not confined to the dissemination of any other party's personal details without their consent or any need to do so or repeatedly harassing another party with such undesirable communication;
   d. contains links, torrents or references to material (or places where they may be found) which manifestly infringes copyright, or neighbouring or portrait rights;
   e. comprises unsolicited commercial, charitable or non-commercial communication; or
   f. contains malicious content, such as a virus or spyware.

8.3. A Client shall refrain from occasioning nuisance for or causing harm to other Clients or internet users, or inflicting   damage on systems or networks belonging to Basecone or any other Client. A Client shall be prohibited from running any process or program through Basecone's systems or otherwise which the Client knows or may reasonably be expected to know could occasion nuisance or inflict harm on Basecone, its Clients or internet users.

8.4. Should Basecone be of the opinion that any nuisance, harm or other threat exists which may compromise the performance of the computer systems or network belonging to Basecone or any other party and/or the provision of services through the internet, in particular, due to the excessive transmission of email messages or other data, denial of service (distributed or otherwise) attacks, poorly secured systems or the activities of a virus, trojan or similar software, Basecone shall be entitled to take any action which it deems necessary to counter or avoid such threat. Basecone may recover any costs which may reasonably be expected to be associated with such action from the relevant Client.

8.5. A Client shall be liable for and shall indemnify Basecone against any loss that the latter suffers or costs which it incurs as a result of its failure to comply with Clauses (1) to (4) of this article, the unlawful use of the relevant Service, any modification of that Service and/or the unlawful storage of Data. The foregoing sentence shall remain in effect following the termination of the relevant Agreement.

.8.6.   No maximum has been stipulated in relation to the Data stored in the Archive by means of the Service. Nevertheless a "fair use policy" shall apply in this respect.

8.7.   A "fair use policy" is deemed to refer to the maximum extent of a Service or any storage which the relevant Client is entitled to use for the purposes of such Service. In this case a realistic amount of storage shall be determined based on the average use of all users of a Service of a similar scope and/or subject to similar terms and conditions. In the event that a Client exceeds the equivalent of twice the realistic amount, Basecone shall contact that Client to find a reasonable solution, for example, a larger fee.

ARTICLE 9.   INTELLECTUAL PROPERTY RIGHTS

9.1.   The Intellectual Property Rights applicable in relation to a Service, the related software and all information and illustrations on the Website are held by Basecone and/or its licensors. Such Service may not in any way whatsoever be copied or used without separate permission from Basecone and/or its licensors except in those circumstances in which this is legally permitted.

9.2.   Any Data which a Client stores or processes with the aid of a Service is and shall remain the property of that Client (or its licensors). Basecone shall acquire a limited licence to use such Data for the purposes of providing the relevant Service, including any future aspects of it. A Client may cancel a licence by deleting the relevant information or by notifying Basecone of such cancellation in writing.

9.3.   Basecone shall refrain from accessing any Data which a Client stores and/or disseminates with the aid of a Service, unless this is explicitly agreed to with that Client or Basecone has a duty to do so pursuant to any provision of the law or a judicial order. In this case Basecone shall make an effort to limit its access to such Data as far as possible in so far as it is within its means to do so.

9.4.   In the event that a Client sends information to Basecone, for example, in the form of feedback concerning a bug, a suggestion for improvement or any information which wittingly or unwittingly results in an improvement, it shall be deemed to have granted Basecone an unlimited, perpetual licence to use that information for the purposes of the relevant Service. Such information is deemed to include all Data generated, processed and used through the relevant Service. Such licence shall not apply in relation to any information which a Client explicitly designates as confidential.

ARTICLE 10. PERSONAL DATA

10.1.   For the purposes of a Service Basecone shall be designated as the processing agent and the relevant Client as the data controller under the Data Protection Act.

10.2.   The parties undertake to act in relation to each other in accordance with the Data Protection Act and any other legislation and regulations pertaining to privacy.

10.3.   Any personal data which Basecone obtains from a Client shall only be used for the purposes of providing the relevant Service.

10.4.   Basecone shall adopt adequate technical and organisational measures in relation to the processing of personal data to provide protection against its loss or any form of unlawful processing (such as the unauthorised disclosure, impairment, modification or supply of such personal data).

10.5.   In spite of the fact that Basecone is required to adopt adequate security measures in accordance with the foregoing clause, it cannot fully guarantee that any security will be effective in all circumstances. In the event of the impending or actual circumvention of such security measures Basecone shall do all in its power to limit the loss of personal data as far as possible.

10.6. Basecone shall be entitled to engage any other party for the purposes of processing personal data. To this end it shall insist on making the same arrangements with such other party in relation to the purpose of processing it and the relevant security measures.

ARTICLE 11. NON-DISCLOSURE

11.1. The parties to an Agreement shall be deemed to have undertaken not to disclose any confidential information which they receive concerning their contracting party's business, including the nature of that Agreement. Those parties shall also impose that obligation on their staff, as well as any other party whom they engage for the purposes of executing the relevant Agreement.

11.2. All of the information that either party acquires pursuant to an Agreement, any information which must be deemed to be confidential given its nature, which is also deemed to refer to but is not confined to any personal data supplied by the relevant Client, or any information which either party to an Agreement deems to be confidential shall at any rate be deemed to be confidential.

ARTICLE 12. FEES

12.1. The fees payable for the provision of a Service shall be set out in the relevant offer presented by Basecone. All fees shall be cited in GBP, exclusive of VAT.

12.2. A Client shall be invoiced for any amount owing after each period and shall be calculated on the basis of its actual usage.

12.3. Basecone shall be entitled to adjust its fees at any time. Basecone shall give notice of any adjustment in writing or through the relevant Service no less than thirty (30) days before it comes into effect, so as to ensure that the Client concerned is able to take cognisance of it.

12.4. In the event that a Client does not wish to consent to an adjustment of fees as provided for in the foregoing clause, it may cancel the relevant Agreement subject to Article 18.3. The use of any Service after the date of commencement shall be deemed to constitute consent to any amended or appended terms and conditions.

ARTICLE 13. TERMS OF PAYMENT

13.1. Basecone shall send a Client an invoice for any amounts (periodic or otherwise) payable by the latter. A Client shall consent to the automatic direct debit payment of the relevant invoiced amount from an account belonging to it whose number is known to Basecone. In the event that the account number changes, the Client shall notify Basecone of this as soon as possible.

13.2. A Client shall consent to Basecone issuing electronic invoices. Invoices shall be sent to the relevant Client's email address known to Basecone in PDF, XML or any other generally accepted format.

13.3. In the event that automatic direct debit is not successful, the relevant Client shall be notified of this. Should automatic direct debit fail a second time for administrative reasons, Basecone shall be entitled to charge the relevant client an administration fee amounting to GBP 25.00 exclusive of VAT in the case of each failed direct debit instruction.

13.4.   In the event that a Client still fails to pay an invoiced amount (in full) after the deadline for payment, Basecone shall again allow that Client a reasonable period of time within which to pay the invoiced amount. As of thirty (30) days after the date on which an invoice is due, a Client who fails to pay on time shall be in default after being given written notice to this effect. As of that time Basecone shall be entitled to limit the services that it provides, for example by limiting access to the relevant Service or temporarily suspending that Service without the Client concerned being entitled to require compensation for any loss which it may suffer as a result. In the event that Basecone resorts to such suspension, the relevant Client's obligations shall continue to apply in full, which is also deemed to include but shall not be confined to its duty to effect payment. This right to suspend performance shall also apply in relation to any Service in respect of which that Client has complied with its obligations.

13.5.   In the event that a Client fails to effect payment punctually, it shall have a duty to provide full compensation for any judicial and extrajudicial expenses, including all lawyer's fees, in addition to the amount due and any interest payable in respect thereof.

13.6.   A claim for payment shall fall due with immediate effect in the event that the relevant Client or some other party files for the Client's bankruptcy, applies for a moratorium on payments for the Client, any other party arranges for the Client's assets to be attached or the Client enters liquidation or is dissolved.

13.7.   A Client shall not be permitted to suspend payment of any amount due or to set it off.

ARTICLE 14. FORCE MAJEURE

14.1.   In the event of force majeure, which is deemed to refer to any malfunction affecting the internet or telecommunications infrastructure, a distributed denial of service (DDOS) or any other denial of service attack, the disruption of business, a breakdown of supplies, fire and flooding in addition to what the law stipulates in this respect, and in the event that Basecone's own suppliers do not enable it to effect supply irrespective of the reason for this, with the result that Basecone cannot reasonably be expected to comply with the relevant Agreement, Basecone may suspend its execution of that Agreement without any duty to provide compensation.

14.2.   Where a situation of force majeure persists for longer than ninety (90) days, either party to the relevant Agreement shall be entitled to cancel it in writing. In this case whatever performance has already been effected pursuant to such Agreement shall be billed proportionately but the parties to it shall not owe each other anything else in so far as this is due to the situation of force majeure.

ARTICLE 15. LIABILITY

15.1.   Basecone shall only be liable in relation to a Client for any direct loss due to its culpable failure to comply with the relevant Agreement. "Direct loss" is only deemed to refer to:
a.   damage directly inflicted on tangible goods ("damage to goods");
b.   any reasonable costs which a Client can show it needed to incur in order to remind Basecone to comply with the relevant Agreement properly (again);
c.   any reasonable expenses incurred for the purposes of determining the cause and extent of such loss in so far as it involves the direct loss referred to here;
d.   any reasonable costs which a Client can show it has incurred for the purposes of avoiding or limiting the direct loss referred to in this article.

15.2.   Under no circumstances shall Basecone be liable for compensation for any indirect or consequential loss due to loss of turnover or earnings, a delay, the loss of data, a failure to meet a deadline as a result of changed circumstances or the relevant Client's provision of inadequate assistance, information or materials, or information or advice provided by Basecone the substance of which does not explicitly constitute part of the relevant Agreement.

15.3. The maximum amount which shall be paid in the event of liability pursuant to Clause (1) of this article shall be confined to compensation for a direct loss amounting to no more than the sum that the relevant Client has paid Basecone during the twelve (12) months prior to the occurrence giving rise to such loss subject to a maximum of GBP 5,000.00 including VAT in the case of each occurrence, in respect of which a series of connected occurrences shall be treated as a single one. The overall maximum claimed shall amount to GBP 10,000.00 inclusive of VAT per annum.

15.4. Nevertheless, the limitation of liability set out in this article shall cease to apply in the event that and in so far as the relevant loss is due to a deliberate act or omission, or wilful recklessness on the part of Basecone.

15.5. Basecone shall only be liable on the grounds of a culpable failure to comply with an Agreement, provided that relevant Client duly notifies Basecone in writing immediately that it is in default, simultaneously stipulating a reasonable period of time within which to remedy such non-compliance, and Basecone also culpably fails to comply with its obligations after that deadline. The relevant notice of default must contain as detailed a description of the non-compliance as possible, so as to enable Basecone to respond to it appropriately.

ARTICLE 16. TERM AND TERMINATION

16.1. An Agreement shall be concluded for the term mentioned in the relevant offer. Where no term is mentioned, an Agreement shall be concluded for a term of one (1) month.

16.2. Unless otherwise agreed in writing, where cancellation does not occur in writing subject to the relevant term of notice, an Agreement shall be tacitly renewed for an identical term at a time.

16.3. Both parties shall observe a term of notice of cancellation of thirty (30) days.

16.4. Basecone shall be entitled to cancel an Agreement with immediate effect but without any obligation to pay compensation in so far as is reasonable in the event that:
   a. the relevant Client fails to comply with its obligations and to remedy such default within five (5) days after being notified in writing that it is in default;
   b. the relevant Client is declared bankrupt, applies for a moratorium on payments or all of its assets are attached.

ARTICLE 17. EXIT

17.1. Throughout the term of an Agreement Basecone shall store the relevant Data for no less than ten (10) years. Unless otherwise agreed in writing, Basecone shall be entitled to delete that Data after those ten (10) years. Following the termination of an Agreement, Basecone shall ensure that the relevant Data remains available for six (6) months for the purposes of creating a dump as provided for in the next clause. Unless otherwise agreed in writing, Basecone shall be entitled to delete that Data after those six (6) months.

17.2. Acting at the relevant Client's request, Basecone shall provide that Client with a dump of the Data as processed un til the termination of the Agreement concerned in PDF, XML and/or Excel format on a generally accepted medium, provided that the Client submits a request for this in writing to Basecone within two (2) weeks after the termination of the Agreement and pays Basecone a fee of GBP 150.00 exclusive of VAT payable for this on time. A Client shall accept that such a dump will have the properties which the Client finds that it has at the time of receipt ("as is") and that Basecone's liability in that respect shall be entirely confined to converting that dump for use by the Client or otherwise rendering it suitable for this purpose.

ARTICLE 18. AMENDMENT OF AN AGREEMENT

18.1.   Basecone shall be entitled to amend these General Terms and Conditions, provided that its Clients are notified of the proposed amendment by no later than thirty (30) days beforehand. Such amendment shall also apply in relation to existing Agreements.

18.2.   Any amendment of secondary importance may always be effected without a Client being entitled to cancel the relevant Agreement.

18.3.   In the event that a Client declines to consent to an amendment of these terms and conditions, until the date on which the latter come into effect it may cancel the relevant Agreement as at that date.

ARTICLE 19. FINAL PROVISIONS

19.1.   An Agreement shall be governed by and construed in accordance with the law of the Netherlands.

19.2.   In so far as the rules of mandatory law do not stipulate otherwise, any dispute arising in relation to an Agreement may be brought before a competent Dutch court of law in the district in which Basecone has its statutory registered office.

19.3.   For the purposes of an Agreement "written" or "in writing" also refers to any communication by email or through the relevant Service, provided that the sender's identity and the integrity of the content are established.

19.4.   A Client shall not be entitled to assign an Agreement and all of its rights and duties pursuant to it to another party without Basecone's separate consent.

19.5.   Basecone shall be entitled to assign its rights and duties pursuant to an Agreement to any other party who takes over the relevant Service or business operations from it.

19.6.   In the event of any conflict between the provisions of an Agreement, its annexes or any additional terms and conditions, the following order of priority shall apply:

a.   the Agreement;

b.   any annexes to that Agreement;

c.   any additional terms and conditions.

19.7.   In the event that any provision of an Agreement turns out to be null and void, this shall not affect the validity of the entire Agreement. The parties shall agree on a replacement provision which approximates the meaning of the original Agreement as far as possible.

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