

Standard Terms of Service
Bynder LLC

1. Introduction

These Standard Terms of Service apply to the Agreement between Customer and Bynder and, together with the Service Level Agreement and applicable Statement of Work, represent the intention of the Parties in entering into this Agreement.

2. Grant of Subscription

- 2.1. Unless otherwise specified in a Statement of Work, and subject to payment of the Subscription Fee, in accordance with the terms of this Agreement, Bynder will provide to Customer a subscription during the applicable Term to: (i) access and use the Product according to the number of Users specified in the Commercial Terms; (ii) access and use the Product exclusively for Customer's internal business purposes; and (iii) use the User Instructions in relation to each Product subscribed to solely for the purpose of supporting use of the Product.
- 2.2. Customer may add additional brands or entities to the definition of Customer in the Definitions section of this Agreement, provided that Customer gives prior written notice to Bynder (email to suffice) and subject to Bynder's approval. Additional rights and/or the inclusion of additional brands or entities may require additional payments by Customer and Bynder reserves the right to refuse such addition in its sole discretion.
- 2.3. These Standard Terms of Service apply to all offers and contracts pursuant to which Bynder provides to Customer the Product and/or Professional Services.

3. Ownership of Intellectual Property Rights

- 3.1. Bynder retains ownership of all Intellectual Property Rights in the Product it provides. Bynder grants to Customer the license required for Customer to use the Intellectual Property Rights and Confidential Information included in the Product and permits Customer to make copies of other information necessary for Customer to receive and use the Product via the internet.
- 3.2. Customer retains ownership of all Intellectual Property Rights in its systems, materials, information, software, products, and Customer Data. Customer grants to Bynder the right to access Customer Data strictly to the extent necessary to carry out its obligations under this Agreement.
- 3.3. Except as expressly stated in this Agreement, no license is granted by either Party to the other with respect to its Intellectual Property Rights and nothing in the Agreement shall be construed to grant to either Party any ownership or other interest. There are no implied licenses granted under this Agreement.

4. Bynder Responsibilities

- 4.1. Bynder will perform its obligations under this Agreement with reasonable skill and care; and in accordance with Good Industry Practice and all applicable Regulations.
- 4.2. The timelines, interim dates, and delivery dates specified by Bynder or agreed between the Parties shall always apply as target dates, shall not bind Bynder, and shall always be indicative. Notwithstanding the foregoing, Bynder shall make reasonable efforts to comply to the greatest extent possible with any such timelines, interim dates, and delivery dates. If a timeline, interim date, and delivery date likely to be exceeded, Bynder and Customer shall consult with each other about the consequences of the term being exceeded in relation to further planning.
- 4.3. In all cases, including if the Parties have agreed to firm timelines, interim dates, and delivery dates, Bynder shall only be in breach as a result of exceeding any timeline after Customer has declared Bynder to be in breach in writing and a reasonable Cure Period to remedy the breach has passed. Customer's notice of breach must describe the breach as comprehensively and in as much detail as possible in order to give Bynder the opportunity to respond adequately.
- 4.4. Measurements and particulars given in Bynder's drawings, images, catalogues, websites, offers, advertising material, standardisation sheets, etc. are not binding for Bynder, unless expressly stated otherwise by Bynder.
- 4.5. Bynder shall not be bound by timelines, interim dates, and delivery dates, whether or not final, if the Parties have amended either the content or scope of the Agreement (additional work, a change of specifications, etc.), or the approach with respect to performance of the Agreement, or if Customer fails to fulfil its obligations arising from the Agreement or fails to do so on time or in full. Additional work during performance of the Agreement shall never constitute a reason for Customer to give notice of termination or to rescind the Agreement, except as explicitly stated in this Agreement.
- 4.6. Should Bynder be required by a competently issued order of a government agency or in connection with a legal obligation to perform a service specifically in relation to Customer, Bynder shall provide prompt notice of such request or requirement to Customer, unless prohibited from doing so by law, so that Customer may seek an appropriate protective order or other appropriate remedy. If a protective order or other remedy is not obtained, Bynder may furnish that portion of Customer Data that is subject to the request and will exercise its best efforts to obtain reliable assurance that any Confidential Information so furnished will be accorded confidential treatment. If, pursuant to a request or a competently issued order of a government agency or in connection with a legal obligation, Bynder performs work relating to Customer Data, Customer employees, or Users, all costs associated with this work shall be borne by Customer.
- 4.7. Except as indicated in this Agreement or any applicable Statement of Work, Bynder shall not be obliged to carry out any format conversion of Customer Data and shall not be responsible for checking the accuracy and completeness of the results of the Product and the data generated through the use of the Product, unless Customer has reported an error in accordance with Subsection 5.5(iv).

5. Customer Responsibilities

- 5.1. Customer shall ensure that all Users are informed of and comply with this Agreement and the Acceptable Use Policy ("AUP"), which applies to this Agreement by reference is available at <http://www.bynder.com/en/legal/acceptable-use-policy/>. Customer is fully responsible for all persons to whom it permits access to, and use of, the Product as if they were Customer itself.

- 5.2. Customer shall take all reasonable security measures necessary to ensure that Users are limited to those persons who need access to the Product in order to perform their duties to Customer.
- 5.3. Customer shall not outsource, rent, resell, or sublicense the Product or any related Intellectual Property Rights, nor permit concurrent use or time-sharing of any User Account. Customer must treat access or identification codes and certificates provided by or because of Bynder to Customer as Confidential Information, which may only be disclosed in accordance with Section 10 (Confidentiality) of this Agreement.
- 5.4. Customer bears the risk of selecting the items, goods, and/or services to be provided by Bynder and shall at all times be responsible for the use and management of the Product and any results obtained therefrom.
- 5.5. Customer shall cooperate with Bynder as is reasonably required to implement and maintain the Product. In particular, Customer will: (i) always extend, in a timely manner, the cooperation reasonably required by Bynder; (ii) make available to Bynder the necessary documents, data, and information reasonably requested by Bynder in a timely manner; (iii) grant Bynder access to Customer's systems and offices, as necessary and subject to Bynder's strict observance of Customer's applicable safety and information security policies; and (iv) notify Bynder without undue delay of any Customer Data errors.
- 5.6. Customer guarantees that the information, designs, and specifications that it provides to Bynder as required to implement and maintain the product are accurate and complete. If the information, designs, or specifications provided by Customer contain inaccuracies apparent to Bynder, Bynder shall contact Customer to make enquiries about the matter.
- 5.7. Customer will be responsible for maintaining its Customer Data integrity (including errors, corruption, or incompleteness) up until point at which the Customer Data is uploaded into the Product. Bynder shall not be responsible for Customer Data integrity prior to the upload of the Customer Data into the Product or suffered by Customer through no fault of Bynder or the Product.
- 5.8. If Customer suffers data loss or corruption through no fault of Bynder or the Product, Bynder may make its commercially reasonable efforts to rectify the data corruption or loss upon Customer's request and will invoice Customer on a time and materials basis for work to fulfil any such request.
- 5.9. If a certain date is foreseen in this Agreement or the applicable Statement of Work for cooperation by Customer, and Customer fails to comply with the deadline, Bynder will notify Customer as soon as Bynder becomes aware of this failure (email being sufficient for this notice). The notice will state that the contributions must be received by Bynder within five (5) working days of receipt of the notice.
- 5.10. If Customer's contributions are not received by Bynder within the five (5) day notice period in Subsection 5.9, Bynder will not be responsible for curtailment of the Product and Professional Services, including the non-attainment of Uptime as guaranteed in the Service Level Agreement, delivery deadlines, or quality agreed in the applicable Statement of Work, insofar as this curtailment or non-attainment is directly attributable to Customer's non-cooperation.
- 5.11. If Customer's failure to cooperate results in Bynder's inability to complete the deliverable and/or Project, Customer will not be entitled to a refund of sums paid; Customer will pay any unpaid One-Off Costs and any unpaid Subscription Fee for the first twelve (12) months; Bynder may immediately terminate the Agreement upon written notice to Customer; and Bynder will be entitled to seek other remedies beyond those stated in this Section 5.

6. Third Party Products

- 6.1. Bynder has no liability whatsoever with respect to Third Party Products that Customer uses in conjunction with the Product.
- 6.2. Where integration is required between the Product and Third Party Products, Bynder will alter only the Product that are the subject of this Agreement and will not under any circumstances alter Third Party Products. Where such integration with Third Party Products is not possible, Bynder will notify Customer as soon as is practicable.
- 6.3. Any exchange of data or other interaction between Customer and a third party provider is solely between Customer and such third party provider and will be pursuant to policies and terms separate from this Agreement. Bynder shall not be responsible for any disclosure, modification, or deletion of Customer Data resulting from any use of or access by Third Party Products or third party providers.

7. Processing of Personal Data

- 7.1. To the extent that Personal Data is processed using the Product, the Parties acknowledge that Bynder is a Data Processor and Customer is a Data Controller and each Party shall comply with their respective statutory or regulatory data protection obligations.
- 7.2. Bynder, as well as its subcontractors, licensors, and hosts, take sufficient and appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to Personal Data, having regard to the state of technological development and cost of implementing any measures, to ensure a level of security appropriate to the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction, or damage and the nature of the Personal Data to be protected.
- 7.3. Bynder shall process Personal Data in accordance with Customer's instructions. Should Customer's instructions contravene or appear likely to contravene legislation binding Bynder, Bynder will notify Customer and request alternative instructions not in contravention of such legislation. Bynder shall have no liability whatsoever for breaches of Data Protection Legislation that arise as a result of its following Customer's instructions in implementing and supplying the Product.
- 7.4. Customer is fully responsible for its Customer Data and guarantees to Bynder that the content, use, and/or processing of the Customer Data are not unlawful and do not infringe the rights of any third party.
- 7.5. Customer shall ensure that all Personal Data that it supplies or discloses to Bynder has been obtained fairly and lawfully and that Customer will obtain all necessary consents from Data Subjects and registrations with authorities that are required to permit Bynder to transfer Personal Data to third parties to fulfil its obligations under this Agreement.
- 7.6. Customer indemnifies Bynder against any claim of a third party, including Data Subjects, instituted for whatever reason in connection with its Customer Data or the performance of this Agreement.
- 7.7. If a third party alleges infringement of its data protection rights, Bynder shall be entitled to take measures it deems necessary to prevent the infringement of a third party's rights from continuing.
- 7.8. Bynder shall have no liability whatsoever for the protection of Personal Data in the event that Customer uses a Bynder Product to release such Personal Data to unauthorized persons, entities, or organisations.

- 7.9. Subject to applicable Data Protection Legislation, if a Data Subject submits a request to Customer to find out what of their Personal Data Customer holds, and/or to obtain a copy of their Personal Data, Bynder shall inform Customer, unless prohibited by law, and will cooperate and invoice Customer on a time and material basis for any work conducted in fulfilling such requests. Should Bynder be required by law to supply Personal Data to third parties, Subsection 4.6 shall apply.

8. Support and maintenance services

- 8.1. Bynder's Service Level Agreement applies to this Agreement by reference. The Service Level Agreement contains the levels of availability and support for the Product and is available at www.bynder.com/en/legal/service-level-agreement/. During the applicable Term, and subject at all times to payment of the Subscription Fee, Bynder shall provide support and maintenance services for the Product in accordance with the requirements set out in the Service Level Agreement.
- 8.2. Customer agrees that Bynder may collect and use technical information gathered as part of the support and maintenance services for the Product. Technical information includes User's operating system and browser, as well as statistics, such as terms most searched, date and time of last login, number of downloads, number of uploads, and number of views. Bynder may use this information solely to improve the Product and will not disclose this information in a form that identifies Customer or User(s).

9. Fees and payment

- 9.1. All prices are exclusive of tax and other government levies banking fees, and regulatory fees that have been or are later imposed. Customer agrees to pay any tax applicable to it and if Customer is required to deduct or withhold any tax, it must pay the amount deducted or withheld as required by law and pay Bynder an additional amount so that Bynder receives payment in full as if there were no deduction or withholding. Except where otherwise agreed, all invoices and payments are in USD.
- 9.2. The Subscription Fee will be adjusted yearly at the rate of inflation as reflected by the Consumer Price Index – Urban for all US cities, unadjusted ("CPI-U") as published by the United States Bureau of Labor Statistics, calculated upon each anniversary of each Invoice Date. Should CPI-U conclude a negative rate, no adjustment to the Subscription Fee will be made.
- 9.3. Customer shall pay in full to Bynder the fees and charges set out in the Commercial Terms and in any amendment for the purchase of additional modules no later than thirty (30) days after the Invoice Date ("Payment Period"). Should it be determined and agreed by both Parties that additional services are required to complete the Project after the Project Start Date, the scope and price of such additional services shall be agreed upon in a separate amendment to this Agreement and Bynder shall invoice accordingly.
- 9.4. If Customer fails to pay the fees and charges within the Payment Period, Customer shall owe statutory commercial interest on the outstanding amount without the need for Bynder to issue a demand or notice of default.
- 9.5. If, after receiving a demand or notice of default, Customer fails to pay the fees and charges, and any applicable statutory commercial interest, then Bynder may refer the debt for collection, in which case Customer shall pay the debt collection fees and expenses associated with any legal proceedings in addition to the total amount owed, as well as any additional bank or payment processing fees. In addition to the foregoing, if Customer fails to pay an invoice within the Payment Period, then Bynder may suspend service until all such unpaid amounts are paid or alternative arrangements for payment are agreed in writing.
- 9.6. If Customer wishes to dispute any amounts invoiced by Bynder, Customer must provide written notice to Bynder within ten (10) working days of receiving the invoice. Such notice must contain reasonable detail of the claim. Customer must pay in full any undisputed amount under the invoice.
- 9.7. A representative from each Party shall meet and attempt in good faith to resolve the dispute raised under this Section 9. If within twenty (20) days the representatives have been unable to resolve the dispute, and if the dispute relates to whether amounts were properly charged, the Product was actually provided, or the Professional Services were actually performed, either representative may submit the dispute to an independent third party auditing firm that is mutually agreeable to the Parties. The Parties shall cooperate with the appointed auditing firm and shall provide the auditing firm access to such books and records as may be reasonably necessary to reach a decision. The auditing firm shall use commercially reasonable efforts to complete its work within thirty (30) days following its engagement. The resolution by the auditing firm shall be final and binding on the Parties. Upon final determination that any amount in dispute under this Section 9 is owed to Bynder, Customer shall promptly pay to Bynder such amount, together with statutory interest at a rate equal to the prime rate of interest on the last day of the applicable Payment Period, accrued up to the date of actual payment. The expenses of the auditing firm shall be apportioned equally between Customer and Bynder.

10. Confidentiality

- 10.1. The Receiving Party shall not at any time during the Term and for a period of five (5) years after termination or expiration of this Agreement, publish, disclose or otherwise divulge any Confidential Information of the Disclosing Party to any third party, except to those of the Receiving Party's Authorized Representatives who have a need to know such Confidential Information and who are bound by confidentiality obligations no less stringent than those contained in this Agreement. The Receiving Party shall instruct its Authorized Representatives of its obligations under this Agreement and shall be responsible for any breach of this Agreement by its Authorized Representatives.
- 10.2. The Receiving Party will only have a duty to protect Confidential Information disclosed to it by the Disclosing Party.
- 10.3. The Receiving Party shall: (i) keep the Confidential Information in the strictest confidence; (ii) use the Confidential Information only for the of performing its obligations or exercising its rights under this Agreement; (iii) store the Confidential Information with the same degree of care as the Receiving Party uses to protect its own information of a similar nature, but no less than a reasonable degree of care; (iv) store the Confidential Information in a manner so as to prevent any use of Confidential Information in violation of this Agreement and/or unauthorized communication of the Confidential Information; and (v) store the Confidential Information in accordance with any particular and reasonable information security requirements of the Disclosing Party for the transmission, storage, or handling of the Confidential Information.
- 10.4. The Receiving Party shall promptly notify the Disclosing Party in writing of any misuse or misappropriation of its Confidential Information that may come to the Receiving Party's attention.
- 10.5. This Agreement imposes no obligation upon a Receiving Party with respect to Confidential Information which: (i) the Receiving Party can demonstrate was already in the Receiving Party's possession or knowledge and which the Receiving Party lawfully acquired other

than from the Disclosing Party; (ii) is or becomes publicly available through no fault of the Receiving Party; (iii) is independently developed by the Receiving Party without a breach of this Agreement, which can be demonstrated by documentary evidence; (iv) is disclosed by the Receiving Party with the Disclosing Party's prior written consent; or (v) is required by law to disclose, in which case Subsection 4.6 on disclosures shall apply.

- 10.6. The Receiving Party will only make such copies (in whatever format) of any document or other material containing any of the Confidential Information as are reasonably necessary for its performance of its obligations under this Agreement. Upon receipt of the Disclosing Party's written request or upon termination or expiration of this Agreement, the Receiving Party shall: (i) immediately stop using all Confidential Information; (ii) promptly return to the Disclosing Party all documents, copies, or other material containing Confidential Information; or (iii) upon the Disclosing Party's request, destroy all such Confidential Information and any copies thereof.
- 10.7. Notwithstanding the foregoing, it is understood that the Receiving Party's computer systems may automatically back-up the Confidential Information of the Disclosing Party. To the extent that such computer back-up procedures create copies of any Confidential Information, the Receiving Party may retain such copies in its regular archival or back-up computer storage system(s) for the period that such archives or back-ups are normally kept by the Receiving Party. All archived or backed-up Confidential Information shall be subject to the confidentiality and non-use restrictions under this Agreement in accordance with this Section 10.
- 10.8. The Receiving Party acknowledges that disclosure of any Confidential Information may give rise to irreparable injury to the Disclosing Party, which may be inadequately compensable in damages. Accordingly, the Disclosing Party may seek injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available.
- 10.9. Customer acknowledges that software originating from Bynder is always confidential in nature and that this software contains trade secrets of Bynder and its suppliers or producers.

11. Publicity.

- 11.1. At any time after signature of this Agreement, Bynder may publish or use Customer's name and logo on: (i) Bynder's website; (ii) marketing collateral; (iii) online advertisement banners; and (iv) in Bynder's sales presentations.
- 11.2. Bynder will obtain Customer's written permission prior to publication for each of the following: (i) press release; (ii) publication of case study or white paper on website and marketing collateral (and discussion of case study or white paper during sales presentations); and (iii) Customer quote on Bynder's website.

12. Warranties

- 12.1. Each Party warrants to the other Party that: (i) it has the authorization to enter into this Agreement; (ii) it shall comply with all applicable federal, state, local or other laws and regulations applicable to the performance by it of its obligations under this Agreement and it has and shall obtain all applicable permits and licenses required of it in connection with its obligations under this Agreement; (iii) it is not a party to any pending or ongoing litigation, arbitration, or other dispute which, if decided unfavourably to it, would reasonably be expected to have a materially adverse effect on its ability to fulfil its obligations under this Agreement.
- 12.2. Customer warrants: (i) it and its Users will use the Product in accordance with this Agreement and the AUP; (ii) Customer Data will not infringe or misappropriate any Intellectual Property Rights or Confidential Information of any third party; (iii) it accepts responsibility for ensuring Customer Data is complete prior to upload into the Product; and (iv) it has and will obtain such consent from the Data Subjects of any Personal Data for its collection, use, and transfer in connection with this Agreement.
- 12.3. Bynder warrants: (i) it has the right to grant the subscription in Subsection 2.1 to Customer in accordance with the terms of this Agreement; (ii) the Product shall not infringe upon the Intellectual Property Rights of any third parties; and (iii) the Product will conform in all material respects with the specifications agreed in the applicable Statement of Work.
- 12.4. **Warranty disclaimer. Except as explicitly stated in Subsections 12.1 and 12.3 of this Agreement, the applicable Statement of Work, and the Service Level Agreement, and to the extent permitted by law, Bynder disclaims all warranties and conditions, whether express or implied by statute, common law, or otherwise, including but not limited to any warranty of satisfactory quality, merchantability or fitness for a particular purpose in connection with Customer's purchase of the Product under this Agreement. Bynder does not warrant that the Product will meet Customer requirements or that use will be uninterrupted or error free.** The Product is provided "as is", and the entire risk as to its satisfactory use is with Customer. Customer acknowledges that it has carried out independent research and analysis as to the appropriateness of the Product and Professional Services for its requirements, has relied upon its own independent research to make an informed decision to select Bynder to deliver the Product and Professional Services, and has not relied upon any written or oral advice from Bynder.

13. Indemnification

- 13.1. Customer shall indemnify, at its expense, against any third party claim, suit, action or proceeding (each, an "Action") brought against Bynder (and Bynder's officers, directors, employees, agents, service providers, licensors, and affiliates) by a third party not affiliated with Bynder to the extent that such Action is based upon or arises out of: (i) use of the Product that infringes upon any applicable law or regulation, whether wilfully or due to negligence of Customer; (ii) Customer's noncompliance with or breach of this Agreement, including unauthorized use of the Product via any User Account; or (iii) Customer's use of Third Party Products.
- 13.2. Subject to Section 14, Bynder shall indemnify Customer at its expense, against any Action brought against Customer (and its officers, directors, employees, agents, service providers, licensors, and affiliates) by a third party not affiliated with Bynder to the extent that such Action is based upon or arises out of: (i) any Product which infringes upon any applicable law; (ii) corruption or loss of Customer Data caused solely by Bynder; or (iii) any Product, used within the scope of this Agreement, which infringes any Intellectual Property Rights of a third party.
- 13.3. If an injunction against Bynder is sought and not dismissed within thirty (30) days, or if a court of competent jurisdiction issues a judgment from which no appeal is taken that, by providing the Product, Bynder has infringed upon any Intellectual Property Rights of a third party, Bynder shall: (i) obtain for Customer the right to continue using such Product or modules; (ii) replace or modify such Product or modules so that they do not infringe upon such proprietary rights and is free to be used by Customer; or (iii) in the event that Bynder is unable or determines, in its reasonable judgment, that it is commercially unreasonable to do either of the aforementioned, Bynder shall reimburse to Customer any prepaid fees that relate to the infringing Product or modules.

- 13.4. In order for either Party to be entitled to indemnification under this Section 13, the indemnified Party must: (i) provide the indemnifying Party with prompt written notice within thirty (30) days of becoming aware of such Action; (ii) give the indemnifying Party sole control and authority over the defense or settlement of such Action; and (iii) provide the indemnifying Party with proper and full information and reasonable assistance to defend and/or settle any such claim or action.
- 13.5. Neither Party shall, without the other Party's prior written consent, accept any settlement that imposes any restrictions or obligations on the other Party, requires the other Party to make an admission, or imposes on the other Party liability not covered by these indemnities.
- 13.6. The indemnified Party shall take reasonable steps to mitigate its loss following a breach which falls within this Section.
- 13.7. Sections 13 and 14 state the entire obligations of the indemnifying Party and the indemnifications in this provision shall be the exclusive remedy for claims for indemnity.

14. Limitation of liability

- 14.1. In addition to the limitations of liability in Subsections 6.1, 7.3 and 7.8, in no event will either Party be liable to anyone for any consequential, indirect, exemplary, special or incidental damages or pure economic loss, including (i) lost profits, business opportunities, goodwill, or anticipated savings; (ii) costs of procuring substitute goods or products; or (iii) wasted management or staff time.
- 14.2. Bynder and its suppliers shall have no liability whatsoever to Customer for any damages for the non-functioning of the product due to unavailability of the internet.
- 14.3. Excluding liability for death or personal injury arising out of negligence, liability for fraudulent misrepresentation, and liability for damage caused by Malware, which shall be unlimited, each Party's total cumulative liability in connection with this Agreement and the Product, whether in contract or tort or otherwise, will be limited to the total amount of Subscription Fee (excluding taxes) owed under this Agreement for the twelve (12) month period immediately preceding the final event giving rise to such liability.
- 14.4. Customer acknowledges that the Subscription Fee reflects the allocation of risk set forth in this agreement and that Bynder would not enter into this agreement without these limitations on its liability.

15. Term and Termination

- 15.1. **Term.** Subject to earlier termination in accordance with this Section 15, this Agreement shall take effect on the Effective Date as stated in the Execution Top Sheet and shall continue for the term of the Agreement as provided in the Commercial Terms. The Agreement shall renew for twelve (12) month periods ("Subsequent Terms") at the expiration of the Initial Term and any Subsequent Term, unless Customer provides written notice to Bynder of its intention not to renew more than ninety (90) days prior to the expiration of the Agreement.
- 15.2. **Bankruptcy or insolvency.** Either Party may terminate this Agreement effective immediately upon: (i) receipt of written notice of insolvency or bankruptcy of the other Party; (ii) the commencement by or against that Party of any case or proceeding under any bankruptcy, reorganization or insolvency law, or any other law for the relief of debtors; or (iii) the appointment of any receiver, trustee or assignee to take possession of the properties of that Party, unless such petition or appointment is set aside, withdrawn, or ceases to be in effect within thirty (30) days from the date of said commencement, appointment, liquidation, or dissolution of that Party.
- 15.3. **Material breach.** Either Party may terminate this Agreement or a specific Statement of Work if the other Party is in Material Breach of this Agreement or Statement of Work and the breaching Party fails to cure such material breach within a Cure Period of fourteen (14) days from receipt of notice of Material Breach from the non-breaching Party. Such notice of Material Breach must describe the breach as comprehensively and in as much detail as possible in order to give the other Party the opportunity to respond adequately during the fourteen (14) day Cure Period.
- 15.4. **Change of Control to competitor.** In the event that a Party is acquired by, sells substantially all of its assets to or undergoes a Change of Control in favour of a direct competitor of the other Party and fails to inform the other Party in writing, the other Party may terminate this Agreement effective immediately upon the date of Change of Control.

16. Effects of termination.

- 16.1. Upon termination or expiry of this Agreement Bynder shall immediately cease providing the Product to the Customer and any subscriptions or licences granted hereunder shall terminate. Upon expiration or termination of the Agreement or a User Account, Bynder may immediately deactivate the relevant User Account(s) and shall be entitled to delete such User Account(s) from the Product after forty (40) days.
- 16.2. If this Agreement is terminated by Customer due to Bynder's Material Breach under Subsection 15.3 or by Customer under Subsections 15.2 or 15.4, Bynder will refund the pro-rata amount of any pre-paid sums up to and including the date of the event giving rise to the termination.
- 16.3. If this Agreement is terminated by Bynder due to Customer's Material Breach under Subsection 15.3 or by Bynder under Subsections 15.2 or 15.4, Customer will not receive any refund of sums paid under this Agreement and Bynder shall be entitled to all of the Subscription Fees due under this Agreement for the entire Term.
- 16.4. Customer may request, within six (6) months of termination pursuant to Section 15, for Bynder to return to it the Customer Data in a commonly accepted export format within three (3) months of the request. If this Agreement is terminated by Customer due to Bynder's Material Breach under Subsection 15.3, Bynder will return Customer Data free of charge. In all other circumstances, Bynder will invoice Customer on a time and material basis for work to fulfil such a request. Within six (6) months of termination, Customer may request Bynder to dispose of all Customer Data without returning a copy to Customer, unless Bynder is required by law to keep copies and subject to Subsection 10.7 on automatic back-ups. After six (6) months after termination, Bynder may dispose of all Customer Data, unless required to retain it by law and subject to Subsection 10.7 on automatic back-ups. Upon request, Bynder will provide a certificate to Customer as soon as practicable after the Customer Data has been destroyed.
- 16.5. Termination of this Agreement for any reason shall not affect the accrued rights of the Parties arising under this Agreement, including the right to recover damages against the other Party. All clauses which by their nature should logically survive expiry or termination of this Agreement shall survive the expiry or termination of this Agreement and shall remain in force and effect.

17. Governing Law and Dispute Resolution

- 17.1. This Agreement shall be governed by the laws of the State of Delaware without respect to choice of law principles.
- 17.2. Prior to initiating arbitration under this Section 17, the Parties shall refer any legal dispute for at least one (1) negotiation session and each Party shall use all reasonable endeavors to participate in the negotiation session in good faith to resolve the dispute. If within sixty (60) days of the first negotiation session, the Parties have not resolved the dispute, they shall refer the matter for arbitration in accordance with Subsection 17.4.
- 17.3. Unless otherwise agreed in writing, all dispute resolution discussions shall be conducted subject to the confidentiality obligations contained in Section 10 and shall be without prejudice to the rights of each Party.
- 17.4. The Parties agree that any and all disputes arising out of or related to this Agreement, whether based on contract law or in tort, shall be exclusively submitted for final and binding arbitration pursuant to the Arbitration Rules of the American Arbitration Association (AAA) in effect on the date of commencement of arbitration, as modified by this Agreement. The costs of arbitration, including the fees and expenses of the arbitrator(s), shall be shared equally by the Parties, unless the arbitration award provides otherwise. Each Party shall bear the cost of preparing and presenting its own case. The arbitral tribunal shall consist of three (3) arbitrators, unless the amount of claim as specified by the claimant in the arbitration does not exceed USD four-hundred thousand (\$400,000), in which case the arbitral tribunal shall consist of one (1) arbitrator. The place of arbitration shall be Boston, Massachusetts. The language to be used in the arbitration proceedings shall be English. Any controversy over whether an issue is arbitrable shall be determined by the arbitrator(s). The arbitrator(s) shall not have the authority to award punitive or exemplary damages and the Parties expressly waive their rights to any such damages. The award may be confirmed and enforced in any court of competent jurisdiction. Without prejudice to any other rights or remedies that Bynder may have, Customer acknowledges and agrees that damages alone will not always be an adequate remedy for any breach by Customer and that accordingly Bynder shall be entitled, without proof of special damages, to the remedies of injunction, specific performance, or other equitable relief for any threatened or actual breach of the provisions of this Agreement and Bynder will be entitled to apply for injunctive relief and other provisional measures either to a court having jurisdiction in relation to such relief or order or under the AAA rules for expedited arbitration.
- 17.5. For any court proceedings in aid of or ancillary to arbitration, each Party submits to the exclusive jurisdiction of the US District Court for the District of Massachusetts or, if such court does not have subject matter jurisdiction, the courts of the Commonwealth of Massachusetts sitting in Boston, and any appellate court from any thereof. Each Party waives any right it has to object to such a proceeding being brought in those courts including by claiming that an action, suit, or proceeding has been brought in an inconvenient forum or that those courts do not have jurisdiction. The Parties explicitly waive the right to claim consolidation of arbitral proceedings and agree such a consolidation would be a deviation from the agreed arbitral proceedings.
- 17.6. Waiver of Jury Trial. THE PARTIES AGREE AND ACKNOWLEDGE THAT THEY HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR RELATED TO THIS AGREEMENT. The scope of this waiver is intended to be all-encompassing of any and all disputes, including contract claims, tort claims, and all other common law and statutory claims. This waiver is irrevocable and shall apply to any subsequent amendments, renewals, or modifications to this Agreement, any schedule or additional terms, and any applicable Statement of Work.
- 17.7. If the subject matter of a dispute does not permit the Parties to use the dispute resolution procedures set forth in this Section 17, or such dispute resolution procedures are deemed unenforceable, then each Party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Agreement and all contemplated transactions, including, but not limited to, contract, equity, tort, fraud, and statutory claims, in any forum other than the US District Court for the District of Massachusetts or, if such court does not have subject matter jurisdiction, the courts of the Commonwealth of Massachusetts sitting in Boston, and any appellate court from any thereof. Each Party agrees that a final judgment in any such action, litigation or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.
- 17.8. Notwithstanding any dispute of the implementation of the procedures set out in this Section 17, throughout any dispute settlement process Bynder shall continue to provide the Product and perform its other obligations under this Agreement and Customer shall continue to pay all fees due under the Agreement.

18. Other Terms

- 18.1. Assignment. Neither Party's rights or obligations under this Agreement (except the right to receive money) will be assigned or delegated without the written consent of the other Party, except that either Party may, with notice but without needing the other Party's consent, assign all of its rights and delegate all of its obligations under this Agreement to an entity: (i) which such Party owns or controls; or (ii) by which such Party is owned or controlled. In addition, either Party may, with notice but without needing the other Party's consent assign its rights and delegate its obligations under this Agreement to an entity to which it transfers substantially all of its assets relating to this Agreement. Any consent required by this paragraph will not be unreasonably withheld, conditioned, or delayed. In the case of any assignment permitted hereunder without the other Party's consent, the assignor will promptly notify the non-assigning Party in writing of the assignment and will include in its notice a statement of the facts that permit assignment without consent. This Agreement will inure to the benefit of and be binding upon the respective successors and assigns, if any, of the Parties. Nothing in this paragraph will be construed to permit any attempted assignment which would be unauthorized pursuant to any other provision of this Agreement.
- 18.2. No waiver. Failure or neglect by either Party to enforce at any time any of the terms of this Agreement shall not be construed or deemed to be a waiver of that Party's rights hereunder.
- 18.3. Notices. All notices, requests, claims, demands and other communications between the Parties shall be in writing. All notices shall be given by: (i) delivery in person; (ii) nationally recognized next day courier service; (iii) first class, registered, or certified mail, with postage prepaid; or (iv) email. All notices shall be effective upon: (a) receipt by the Party to which notice is given; or (b) on the fifth (5th) day following dispatch of the notice, whichever occurs first. The postal address for delivery of notices to Bynder is: Bynder LLC, Attn: Legal, Max Euweplein 46, 1017MB Amsterdam, the Netherlands. The email address for delivery of notices to Bynder is: legal@bynder.com. The address for delivery of notices to Customer is set out in the Standard Agreement.

- 18.4. Force majeure. Neither party shall be liable for any loss or delay (including failure to meet the Uptime guarantee and any warranty obligation) to the extent such failure or delay is due to a Force Majeure Event. In the event of a Force Majeure Event, in order for the affected Party to claim the protection of this Subsection 18.4, it must, within fifteen (15) Business Days: (i) notify the other Party of the occurrence of the Force Majeure Event; (ii) indicate the foreseeable duration, if possible; and (iii) inform the other Party of the measures taken or contemplated to mitigate the consequences of such event. If the Force Majeure Event continues for a period in excess of sixty (60) days, either Party may terminate this Agreement immediately upon written notice. In the event of such termination, work which has already been performed under the contract shall be paid for on a proportional basis and expenses that have been incurred in mutual agreement shall be paid in full, without further liability.
- 18.5. Insurance. During the Term, Bynder shall maintain at its own expense insurance policies with the following minimum coverage and limits: (i) commercial general liability insurance of one million USD (\$1,000,000) per occurrence for bodily injury and property damage; (ii) professional indemnity insurance of one million USD (\$1,000,000) per claim; (iii) worker's compensation insurance of one million USD (\$1,000,000) per employee, per accident or disease; (iv) automobile liability insurance of one million USD (\$1,000,000) per accident for any vehicle used by Bynder to provide services to Customer under this Agreement. Upon Customer's written request, not more than once annually, Bynder shall supply certificates of insurance to Customer as evidence of the coverage stated in this Subsection 18.5.
- 18.6. Headings. The headings of the Sections and Subsections of this Agreement have been inserted for reference only and shall in no way affect the interpretation of any of the terms or conditions in this Agreement. If this Agreement is ever translated into any other language, the English language version of this Agreement will be used exclusively in construing and interpreting this Agreement.
- 18.7. Independent contractor status. The Parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties.
- 18.8. Entire Agreement. This Agreement represents the entire agreement between the Parties and replaces and supersedes all previous or contemporaneous oral or written agreements, understandings or arrangements between the Parties with respect to this subject matter. Each Party acknowledges, to the fullest extent allowable by law, that in entering into this Agreement it has not relied on any statement, representation, assurance or warranty other than as expressly set out in this agreement. The applicability of any of Customer's purchasing or other conditions is expressly rejected.
- 18.9. Modifications. If Bynder makes a material change to any applicable Online Terms, then Bynder will notify Customer by either sending an email to the notification email address provided by Customer, or posting a notice to the administrator in Customer's Bynder account. If the change has a materially adverse impact on Customer and Customer does not agree to the change, Customer must notify Bynder at legal@bynder.com within thirty (30) days after receiving notice of the change. If Customer notifies Bynder as required, then Customer will remain governed by the Online Terms in effect immediately prior to the change until the end of the then current Subscription Term. If the Subscription Term is renewed, it will be renewed under the then current Online Terms.
- 18.10. Inconsistency. In the event of any inconsistency between various provisions and documents making up this Agreement, the hierarchy shall be: (i) the A Commercial Terms; (ii) these Standard Terms of Service; (iii) Service Level Agreement; (iv) applicable Statement of Work; (v) Acceptable Use Policy; and (vi) any other applicable terms.
- 18.11. Amendment. This Agreement may not be modified or amended except in writing signed by an authorized representative of both Parties or as otherwise agreed by the Parties.
- 18.12. Severability. Should any provision of this Agreement be determined to be void, invalid or otherwise unenforceable by any court of competent jurisdiction, then: (i) the Parties shall agree to a suitable and equitable provision to be substituted in order to carry out, so far as may be valid and enforceable, the intent and purpose of the impugned provision; and (ii) the remainder of this Agreement shall not be affected.
- 18.13. Third Party Rights. This Agreement is made for the benefit of the Parties, and is not intended to benefit or be enforceable by any third party. The rights of the Parties to terminate, rescind, or amend this Agreement, or to reach any settlement relating to this Agreement, are not subject to the consent of any third party.
- 18.14. Travel expenses. Customer shall reimburse Bynder for all reasonable and customary travel expenses incurred in the course of Bynder's performance of this Agreement or an Order. Such expenses shall be pre-approved in writing by Customer and shall include, but not be limited to, transport, accommodation and a per diem amount of \$150.00 per day per Bynder employee for out-of-pocket expenses (e.g. meals and local transport). Should the travel reasonably require an overnight stay, the travel shall constitute two (2) days. Reimbursable expenses shall be invoiced by Bynder to Customer within one (1) month of the last day of travel. Upon request by Customer, Bynder shall provide copies of documentation for such expenses.

19. Definitions

As used in this Agreement, the following terms shall have the meanings specified below. References to Sections or Subsections shall refer to Sections or Subsections of these Standard Terms of Service, unless otherwise specified. In this Agreement: (i) the singular includes the plural and vice versa and any gender includes any other gender; (ii) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to each of the same as amended by any subsequent statute, enactment, order, regulation, or instrument or as contained in any subsequent re-enactment thereof; (iii) the words "month", "year", and "quarter" mean calendar month, calendar year, and calendar quarter, unless otherwise stated; (iv) the word "including" (or any analogous word or phrase) means "including without limitation"; and (v) the terms "Data Subject", "Data Controller", "Data Processor" and "Personal Data" have the meanings given under the Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

Agreement this Master Services Agreement, together with the Commercial Terms, any applicable Statements of Work, the Service Level Agreement, the Acceptable Use Policy, and other attachments hereto, all of which are incorporated by reference, and as may be modified, amended, or supplemented from time to time.

Authorized Representative a person with permission from the Receiving Party to access Disclosing Party's Confidential Information.

Business Day	9 am to 6 pm (Boston local time) Monday through Friday (not including public holidays).
Bynder	the provider of the Product. Includes the contracting Bynder entity and all parent and subsidiary companies in the Bynder organization.
Change of Control	a change in the holder of the right to, directly or indirectly, direct or cause the direction of the management and policies of an entity (whether through the ownership of voting shares, by contract or otherwise), or the acquiring of more than fifty percent (50%) of the shares of that entity or of the voting rights attached to it, including through an initial public offering of more than fifty percent (50%) of the share capital of that entity.
Commercial Terms	the contents of the section of the Agreement entitled "Commercial Terms".
Confidential Information	any and all non-public information disclosed to the Receiving Party by the Disclosing Party, whether in the past, now or in the future, in any form or format whatsoever, whether tangible or intangible, including Intellectual Property Rights, whether or not subject to or protected by registered or unregistered copyright, patent, trademark, existing now or in the future, that relates to the Disclosing Party or their business, prospective business, finances, budgets, costs, marketing, contracts, suppliers, customers, employees, or investors; technical processes, computer software or programs (including source code and object code), trade secrets, know-how, inventions, applications, documentation, schematics, data, designs, drawings, works in progress, engineering, security reports and information, penetration test reports, formulae, or other test data; correspondence with governmental agencies or authorities; or the terms of any agreement negotiated or entered into between the Parties and the discussions, negotiations, and proposals related to any such negotiation or agreement, where the information is: (i) clearly and conspicuously marked as "confidential" or "proprietary" or with a similar designation; (ii) identified by the Disclosing Party as confidential and/or proprietary before, during, or promptly after presentation or communication; or (iii) disclosed in a manner in which the Disclosing Party reasonably communicated, or the Receiving Party should reasonably have understood, that the disclosure should be treated as confidential, whether or not the specific designation "confidential" or "proprietary" or any similar designation is used.
Cure Period	the time frame within which a Party that has defaulted or materially breached its obligations under this Agreement is permitted by the other Party to remedy such default or material breach, such time frame to be set out in this Agreement or the notice itself, as applicable.
Customer Data	all items supplied by Customer or its Authorized Representatives for inclusion in, uploading to, or use in association with the Product. Customer Data includes programs, data, or other software files, documents, tests, pictures, graphics, video, animation, and sound recordings, as well as all the data created by Users and any Personal Data provided by Customer in the context of this Agreement.
Data Protection Legislation	as applicable, federal data protection laws and regulations in operation from time to time; Health Insurance Portability and Accountability Act 1996 Public Law 104-191; Massachusetts General Laws Chp. 93H; the Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and equivalent implementing EU member state legislation, Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) and all applicable Regulations relating to the processing of personal data and privacy.
Deliverables	the output specified in the Statement of Work and implemented in accordance with the Project Plan.
Disclosing Party	the Party disclosing Confidential Information.
Effective Date	the date this Agreement comes into force as agreed in the Execution Top Sheet.
Force Majeure Event	an occurrence beyond the control and without the fault or negligence of the Party affected and which that Party is unable to prevent or mitigate through the exercise of reasonable diligence, including: acts of God, expropriation or confiscation of facilities, any form of Government intervention, war, hostilities, rebellion, terrorist activity, local or national emergency, sabotage or riots, strikes (excluding strikes by Bynder personnel), and floods, fires, explosions or other catastrophes, electricity failure, faults affecting the internet, computer network or telecommunication facilities, and failure by secondary suppliers engaged by Bynder at Customer's instruction to duly meet their obligations.
Good Industry Practice	in relation to any undertaking and any circumstances, the exercise of the degree of skill, care, prudence, efficiency, foresight, and timeliness which would be expected from a skilled and experienced person engaged in the same type of undertaking.
Initial Term	the period defined in the Agreement.
Intellectual Property Rights	all and any copyright, know-how, technical information, rights in inventions, patents, trade secrets, trademarks and trade names, business names, logos, service marks, moral rights, design rights, rights in get-up, database rights and rights in data, computer data, generic rights, proprietary information rights, the right to sue for passing off, utility models, domain names, rights in goodwill, and all similar or equivalent rights and in each case, whether registered or not, including any application to protect or register such rights and all renewals and extensions of such rights or applications, whether vested, contingent, or future, and wherever existing.

Invoice Date	the date on each invoice, which is automatically generated on the date the invoice is created, sent to, and received by Customer via e-mail.
Malware	viruses, worms, Trojan horses, or other malware or harmful computer code, files, scripts, agents, or programs.
Material Breach	a failure by one Party that is severe enough to undermine the entire Agreement by depriving the other Party of a core benefit for which the Agreement was entered into, including: failure to make payment when due, breach of confidentiality obligations, infringement of Intellectual Property Rights and failure to remedy such breach in accordance with this Agreement, breach of applicable laws, repeated non-material breaches cumulatively amounting to a material breach, and failure to keep current all billing information to the extent that it interferes with invoicing.
One-Off Costs	the one-time costs required for the implementation of the Product of the One-Off Deliverables, provided by qualified Bynder employees. Costs correspond to the rates set out in the Commercial Terms.
Online Terms	terms applicable to the Agreement, as updated from time to time, and available for review and download at: www.bynder.com/en/legal/ , including these Standard Terms of Service, the Service Level Agreement, and the Acceptable Use Policy.
Party	each signatory to this contract (collectively, "Parties").
Payment Period	the period specified in Subsection 9.3 of these Standard Terms of Service.
Product	Bynder software as described in the Agreement, User Instructions (excluding verbal instructions), any additional modules purchased, and any modified, updated, or enhanced versions of such modules that Bynder may make available pursuant to this Agreement. The Product is also referred to as "Brand Portal" and the terms can be used interchangeably.
Professional Services	the services provided by qualified Bynder employees upon request.
Project	the implementation of the Product detailed in the applicable Statement of Work.
Project Documentation	any document associated with the delivery of the Project.
Project Plan	the document outlining the objectives, Deliverables, and time frames of the Project.
Project Start Date	the date on which implementation of the Project commences, as set out in the applicable Statement of Work. This is also the date on which the calculation of the Subscription Fee commences.
Receiving Party	the Party that receives Confidential Information from the Disclosing Party.
Regulations	any law, legislation, instrument, rule, order, regulation, directive, by-law, industry code, or decision which applies to, concerns, or otherwise affects any Party's obligations under this Agreement, as may be amended or varied from time to time including Data Protection Legislation.
Service Level Agreement ("SLA")	the content of the Service Level Agreement then in force.
Standard Terms of Service	the contents of this document.
Statement of Work	the contents of the Statement of Work in the Agreement, or any subsequent Statement of Work agreed between the Parties.
Subscription Fee	the recurring amount of money, as agreed in the Commercial Terms and any amendment thereto, to be paid by Customer to Bynder for the use of the Product.
Subsequent Term	any renewal Term of the Agreement, as stated in the Commercial Terms.
Term	the period of time commencing upon the Project Start Date of the relevant Project, including the Initial Term and any Subsequent Term(s). The Term will end on the date this Agreement expires or terminates or the date the applicable Statement of Work expires or terminates, as applicable.
Third Party Products	a product provided by a company other than Bynder.
Uptime	as calculated in the Service Level Agreement.
User	any individual who accesses and/or uses the Product through Customer's account.
User Account	the permission granted to a User to access and use the Product. A User Account may not be shared by multiple Users. In the case of departure, long-term sickness, long-term leave, or retirement), a User Account can be deactivated and a new User Account can be activated to enable Customer to use all User Accounts to which it has subscribed.



User Instructions written and verbal instructions, including documentation, emails, presentations, and webinars, as well as the instructions stored in the Knowledge Base (help.bynder.com) and the release notes of new Product features.
