

## Special Conditions of BINDER+CO AG, Gleisdorf – Austria for b-connected

### 1. Subject Matter and Scope

1.1. **b-connected Agreement.** These special conditions for b-connected, together with the Acceptable Use Policy, the Data Privacy Terms, and the applicable Transaction Documents as may be agreed between the Supplier and Customer (collectively the "b-connected Agreement"), govern Customer's use of certain Services by Supplier pursuant to Customer's Order.

1.2. **Defined Terms.** Any capitalized terms herein have the meaning as set forth in Section 14 hereof, unless they are defined within the text.

1.3. **Formation of Contract.** Supplier will provide Customer with Services upon acceptance of Customer's Order.

1.4. **Limitation of Scope.** Even if not specifically excluded in the Transaction Documents and Materials the Services will not include any Applications or software provided by Third Parties not provided by Supplier even if they interoperate with the Services or can be accessed from the Services and any hardware intended for the connection of devices or equipment to the platform.

### 2. Provision of Services

2.1. **Service Standards.** Supplier will provide the Services materially in accordance with the features and functionalities set out in the Transaction Documents. Supplier will use commercially reasonable efforts to make the Services available to Customer subject to operational requirements, including maintenance and security. To the extent availability levels are specified in any Transaction Document such provisions shall prevail.

2.2. **Security.** Supplier maintains a formal security program that is designed to protect against threats or hazards to the security of

Customer's Content and prevent unauthorized access to Customer's Content. The providers of Supplier's cloud infrastructure are ISO 27001 certified. The Platform (i) implements firewalls, anti-malware, intrusion detection/prevention systems, and corresponding management processes intended to protect against malware and (ii) is operated under a security governance model pursuant to ISO 27001. This Section 2.2. contains Supplier's entire obligation regarding the security of Customer's Content, the Platform, and the Services.

2.3. **Changes to the Services.** Supplier may make changes to the Services from time to time provided such changes do not degrade the functionality or security features of the Services. Supplier is entitled to degrade the functionality of a Service or discontinue a Service (i) if required by any applicable law; (ii) upon termination of Supplier's relationship with a provider of software and/or services which are material for the provision of such Service; and (iii) to address a material security risk. Supplier will notify Customer of any material degradation of functionality or the discontinuation of a Service and the effective date at least 45 days, unless a shorter notice period is required by applicable law and except in cases of a material security risk, prior to such change. Customer may terminate the modified Service no later than 30 days prior to the effective date of change. In the event of such termination Customer will be refunded any prepaid amounts for the applicable Service on a pro-rata basis for the remaining Subscription Term.

2.4. **Data Privacy.** Supplier and Customer shall comply with all applicable data privacy laws and regulations governing the protection of personal data in relation to

their respective performance under the b-connected Agreement.

### 3. Use of Services

3.1. **Use Rights.** Customer is granted the non-transferable, non-sublicensable, time-limited, and revocable right to access and use the Services for its internal purposes as an end-user, pursuant to the b-connected Agreement. Services on the Platform may only be used by Users up to the number of Users as agreed in Customer's Order via Customer's Account, using access credentials provided by Supplier.

3.2. **Credentials.** Customer shall (i) carefully store any access credentials and security tokens and protect them from unauthorized access; (ii) not provide access to the Services by any means other than its Account or other means permitted by Supplier; (iii) not circumvent or disclose the authentication or security of its Account, the Platform or any host, network, or account related to the Platform; (iv) ensure that any credentials are used only by the individual who was granted the credentials. Supplier reserves the right to change access credentials if such change is deemed necessary in its reasonable discretion.

3.3. **Responsibility for Users and other Persons.** Customer is responsible for all activities that occur under its Account and any use of the Services by any User or any Third Party who gains access to the Services and all liabilities or other consequences arising therefrom unless such damage is caused by Supplier's violation of the b-connected Agreement. Customer will ensure that any User or any Third Party who gains access to the Services complies with Customer's obligations under the b-connected Agreement. If Customer becomes aware of any violation of its obligations under the b-connected Agreement, Customer will immediately terminate the relevant person's access to the Services and promptly notify Supplier of

any unauthorized use of or access to the Services or the Customer's Account.

3.4. **Customer obligations.** Customer is responsible that its use of the Services complies with all applicable laws at all times. To the extent necessary, Customer shall obtain at its own expense any rights, consents and permits from vendors of software and services used by it in connection with the Services which are necessary for Supplier to provide the Services.

Customer shall always keep up to date any software Supplier develops as part of the Services by allowing the application of any updates and patches as they become available. Customer is solely responsible for the security of its systems and of on-premises hardware and software. Customer is also responsible for any hardware provided by Supplier for the Subscription Term. In case it is not returned in proper condition upon termination, the fee defined in Customer's Order will be charged.

Customer must not (i) copy, modify or create any derivative work of the Services (ii) reverse engineer, decompile, translate disassemble or otherwise attempt to extract any or all of the source code of the Services, or (iii) permit the Services to be used for activities in violation of the Acceptable Use Policy or activities that breach or cause the breach of any applicable laws.

3.5. **Customer's Content.** Customer is responsible for the development, content, management, use, and quality of Customer's Content and the means by which it acquires and shares Customer's Content. This includes without limitation (i) compliance with any applicable laws at all times; (ii) taking steps to maintain legally required or otherwise appropriate security and protection, including backup and archiving, of Customer's Content; (iii) any document retention or archiving obligations resulting from applicable laws or company policies; and (iv) ensuring that Customer's Content can be used by Supplier as provided under the b-connected Agreement without violating any applicable laws or rights of

others. Customer shall promptly deal with any notices or claims claiming that Customer's Content violates any Third Party's rights or applicable laws and give Supplier prompt notice of any such claim. Supplier is entitled to delete any of Customer's Content to avoid or limit Supplier's liability, to protect the security of the Platform or systems related to it and as required by a governmental body.

**3.6. Information obligations.** In addition to the information provided in Section 3.5., Customer will provide information related to Customer's Content as reasonably requested by Supplier to verify compliance with the b-connected Agreement and promptly upon Customer's becoming aware of (i) unauthorized use of its Account; (ii) loss or theft of its Account information; (iii) circumstances or incidents that might possibly affect the security of the Platform or Services; or (iv) measures by authorities or court decisions specifically relating to its use of Services or the Platform which may affect the Platform or the Services.

**3.7. Limited Reliance.** Customer acknowledges and agrees that the outcome from any processing of data through the use of Services is beyond Supplier's control. Customer is responsible for the use and interpretation of the outcome from such processing and any reliance on such outcome.

#### **4. Fees, Payment Terms and Taxes**

**4.1. General.** Customer shall promptly pay any applicable fees for the Services as agreed. Unless otherwise agreed, payments must be made within 14 days upon receipt of the invoice. Any charges associated with the payment are the Customer's responsibility. In case of delayed payment, Supplier may charge the Customer interest

at 9.2 % p.a. above the then current discount rate of the European Central Bank.

**4.2. Taxes.** Any applicable taxes, duties or levies or charges of any kind are Customer's responsibility.

#### **5. Proprietary Rights**

**5.1. Rights in Customer's Content.** Supplier does not acquire any rights, title, or interest in or to Customer's Content, except for the purpose of collecting, using, and exploiting Customer's Content to analyze its own products and services on an ongoing basis. Customer's Content will, upon Customer's request, be deleted by Supplier upon termination of the b-connected Agreement. Any analyses prepared by Supplier on the basis of Customer's Content are and remain Supplier's exclusive property in perpetuity.

**5.2. Rights in the Platform, Services and Feedback.** Supplier, its business partners and/or licensors retain all rights, title and interest in and to the Platform and the Services, including any data and analyses generated, any know-how and any part and improvement thereof, and all intellectual property rights in or to the foregoing. Customer grants Supplier a perpetual unlimited, transferable, sub-licensable, royalty-free license to use any suggestion, recommendation, feature request, or other feedback provided by it or on its behalf related to the Services and/or the Platform.

#### **6. Limited Warranty**

**6.1. Conformance with Service Standards.** Supplier warrants that the Services will be provided as set forth in Section 2.1. If Services fail to perform as warranted hereunder, Supplier's sole obligation and Customer's exclusive remedy will be (i) to use commercially reasonable efforts to restore the non-conforming Service so that it conforms to the warranty, or (ii) if such restoration would not be commercially reasonable or legally permissible, to terminate the non-conforming Service and refund any prepaid

amounts for such Service on a pro-rata basis for the remaining Subscription Term.

**6.2. LIMITATION OF WARRANTY.** SECTION 6.1 CONTAINS THE EXCLUSIVE WARRANTY GIVEN BY SUPPLIER. IT EXCLUDES ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF NON-INFRINGEMENT, OR ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USAGE OF TRADE. IN PARTICULAR, SUPPLIER DOES NOT WARRANT THAT THE SERVICES WILL BE FAIL-SAFE, UNINTERRUPTED, ERROR FREE, OR THAT ANY CONTENT WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED. THIS LIMITATION DOES NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

## **7. Indemnification**

**7.1. Intellectual Property Infringement.** If a Third Party asserts a claim against Customer that the Services infringe such Third Party's patent or copyright, Supplier will defend Customer against or, at its option, settle such claim and pay amounts finally awarded by a court of competent jurisdiction against Customer or included in a settlement approved by Supplier.

**7.1.1. Notices.** Customer shall give Supplier written notice of any such claim without undue delay, allow Supplier to control the defense and settlement and reasonably cooperate with Supplier in this regard. Customer's failure to provide such notice or cooperation will release Supplier from its obligation under this Section 7.1. if, and to the extent it is materially prejudiced by such failure.

**7.1.2. Exceptions.** Supplier's obligations under Section 7.1 shall not apply to the extent that any such infringement claims arise entirely or in part from: (i) Customer's failure to use the most current version of the software supplied as part of the Services or a defect correction or patch made available

by Supplier; (ii) the combination, operation, or use of the Services in conjunction with any Third Party software, equipment, materials, services or products; (iii) any modification, adjustment or configuration of the Services not made by Supplier or (iv) any use of the Services after Supplier's request to Customer to discontinue such use.

**7.1.3. Injunction.** If a permanent injunction is obtained against Customer due to an infringement pursuant to Section 7.1, Supplier will, at its sole discretion: (i) obtain for Customer the right to continue using the Services; (ii) replace or modify the Services so that they no longer infringe the relevant intellectual property right; or (iii) if neither of the remedies in (i) or (ii) are commercially reasonable, grant Customer a pro-rata refund of amounts prepaid by Customer for use of the affective Services, and Customer shall immediately cease to use the affective Services. Remedies specified in this Section may be chosen by Supplier prior to the issuance of a permanent injunction.

**7.1.4. Sole and Exclusive Remedy.** To the extent permissible under any applicable laws, Section 7.1 represents the sole and exclusive remedy available to Customer against Supplier for infringement of intellectual property rights under the b-connected Agreement.

**7.2. Indemnity by Customer.** Customer will indemnify Supplier, its suppliers and contractors from and against and at Supplier's option, defend Supplier from any claims, damages, liabilities, losses, costs and expenses (including reasonable attorneys' fees) arising from or in connection with: (i) Customer's Content; (ii) violation of any laws or rights of others by Customer's use of the Services; (iii) breach by Customer of the b-connected Agreement, (iv) operation, combination, or use of the Services in conjunction with any of Customer's Content and/or in conjunction with any Third Party software, materials, or services; (v) modification, adjustment or configuration of the Services

made by Customer or a Third Party to which Customer facilitates or permits access to the Services, including Users; (vi) Supplier's compliance with designs, plans, or specifications provided to Supplier by Customer or on its behalf; (vii) claims by any User or any Third Party to which Customer facilitates or permits access to the Services; and (viii) Customer's use of Supplier's trademarks, brandnames, and logos in breach of the authorization granted to Supplier in a Transaction Document.

## 8. **Limitation of Liability**

8.1. **Limitation.** Except for Supplier's obligation under Section 7, Supplier's entire liability for all claims, damages, and indemnities arising out of or related to the b-connected Agreement, regardless of the legal basis for the claim is limited in the aggregate to any fees paid by Customer to Supplier during the period of 12 months preceding the date on which the claim arose.

8.2. **Disclaimer.** In no event will Supplier be liable for any amounts for loss of production, interruption of operations, contractual claims against Customer by any Third Party, damage to property, loss or corruption of Customer's Content or other data, loss of use, costs associated with data recovery or re-creation, or any indirect, incidental, consequential, punitive, or special damages.

8.3. **Limitation on Claims.** Any claim for damages is forfeited unless it is raised in writing within 3 months of occurrence of damage at the latest. Thereafter all claims arising out of that event shall be barred.

8.4. **Scope of Limitations and Exclusions.** The foregoing limitations and exclusions shall not apply to (i) damages caused by Supplier's intentional act or omission or extraordinary gross negligence; (ii) culpable injury to life, body or health; (iii) in cases of fraud or fraudulent misrepresentation.

## 9. **Temporary Suspension**

9.1. **Right to Suspend.** Supplier may suspend Customer's use of Services

immediately if Supplier determines that Customer has materially breached any of its obligations or that there is a threat to the security of the Platform in connection with Customer's access to or use of Services or if any suspension is required by applicable laws, a court decision, or a request from a governmental body. Customer's failure to pay fees within 10 days after receipt of a reminder notice or non-compliance with any of its obligations in Section 3 or 11 constitutes a material breach.

9.2. **Effect of Temporary Suspension.** A temporary suspension does not relieve Customer to pay fees. If Customer complies with Supplier's notification of actions to be taken to reinstate the Services to the extent the cause of the suspension can be remedied, Supplier will lift the suspension.

## 10. **Termination**

10.1. **Termination upon expiration.** Unless renewed as provided in the Order, the b-connected Agreement will terminate at the date provided in the Order.

10.2. **Termination of Convenience.** Services may not be terminated for convenience during the Subscription Term.

10.3. **Termination for Cause.** Either Party may terminate Services for cause in the event of the other Party's material breach if such breach remains uncured for a period of 30 days from receipt of notice specifying the breach by the other Party. Events that entitle Supplier to terminate Services and/or the b-connected Agreement for cause include: (i) acts or omissions that entitle Supplier to a suspension pursuant to Section 9 that remain uncured for a period of more than 30 days; (ii) Supplier's obligation to comply with laws or requests of a governmental body; (iii) a change in control of Customer or a company within its group that according to Supplier's reasonable opinion, adversely might affect its position, rights, or interests; and (iv) Customer's ceasing to operate in the ordinary course, making an assignment for the benefit of creditors or becoming the subject of any

insolvency, liquidation, dissolution, or similar proceeding.

**10.4. Effect of Termination.** Upon termination of Services for any reason, Customer shall (i) cease to use the Services; and (ii) return or, if instructed by Supplier, destroy or delete any materials relating to the Services. Termination of the b-connected Agreement shall be deemed a termination of Services. Unless otherwise provided in the b-connected Agreement, Customer must pay all fees due at the time of termination and is not entitled to any refund. In case Customer has terminated for cause in accordance with Section 10.3., it will be refunded a reasonable portion of any prepaid amounts for the Services for the remaining Subscription Term. Any terms and conditions of the b-connected Agreement, which by their nature are intended to survive a termination or expiry, shall survive and continue in full force after such termination or expiry.

**10.5. Post-Termination Phase.** Supplier will upon Customer's request made in writing within 30 days following the termination date delete Customer's Content.

## **11. Confidentiality, Compelled Disclosure**

**11.1. Confidentiality Obligations.** Each Party shall treat Confidential Information disclosed by the other Party as confidential and only use it permitted by, the b-connected Agreement, and must not disclose such Confidential Information to anyone except to those Users who are bound to appropriate confidentiality obligations and who need to know that information for implementation of, or who are otherwise permitted by, the b-connected Agreement to use such information.

**11.2. Confidential Information.** Customer acknowledges that any information Supplier provides to Customer in connection with the b-connected Agreement is Supplier's Confidential Information.

**11.3. Compelled Disclosure.** Supplier will not disclose Confidential Information

and/or any of Customer's Content to any Third Party except (i) as instructed by Customer, (ii) as permitted in the b-connected Agreement, or (iii) as required by laws or governmental order. In the latter case Customer will be promptly notified by Supplier and receive a copy of the governmental order.

## **12. Export Control and Sanctions Compliance**

**12.1. Export and Sanctions Laws.** Customer must at all times comply with all applicable Export and Sanctions Laws. Customer must (i) deny and prevent access to Services from any location subject to export and sanction laws; (ii) not grant access to the Services or the Platform to any individual or entity designated on any applicable sanctioned party list from time to time.

## **13. General Provisions**

**13.1. Force Majeure.** Neither Party shall be liable for any failure or delay in its performance under the b-connected Agreement in case of unforeseeable, unavoidable events or impediments which are beyond the parties' influence, such as for example war, terrorism, natural disasters, epidemics, pandemics, prohibitions of state or authorities, impediments due to applicable national, European Union or international regulations of foreign trade laws (including embargos), lack of energy, virus or other attacks of Third Parties on the IT system to the extent they occurred despite observance of protective measures of customary care or terrorism.

**13.2. Dispute Resolution.** The competent Austrian court at the headquarters of Supplier shall have exclusive jurisdiction for any dispute arising out of the b-connected Agreement. The Supplier is, however, entitled to file any claims or other legal remedies, in particular motions for injunctive relief at the competent court at the Customer's seat (elective legal venue),

in particular, if this serves the purpose of accelerating the legal process.

**13.3. Applicable Law.** The b-connected Agreement shall be governed by and construed in accordance with the substantive laws of Austria excluding its rules of conflict of laws and the UN Convention of Contracts for the International Sales of Goods (CISG).

**13.4. Validity and Enforceability.** If any provision of the b-connected Agreement is held to be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remainder of the b-connected Agreement will not be affected or impaired, and the invalid, illegal or unenforceable provision shall be restated to reflect the original intentions of the Parties as nearly as possible in accordance with Applicable Law.

**13.5. Entire Agreement Provision.** The b-connected Agreement constitutes the full and complete statement of the terms agreed between the Parties with respect to the subject matter thereof and supersedes any previous written or oral Agreement relating to its subject matter. The b-connected Agreement may not be modified other than in writing executed by duly authorized representatives of each party or if agreed in a transactional document via an online mechanism except for the circumstances set forth in Section 2.4.

**13.6. Assignment.** Supplier may assign the b-connected Agreement to any of its Affiliates that assumes its obligations. Customer shall not assign the b-connected Agreement, in whole or in part without Supplier's prior written consent. If assigned the b-connected Agreement will extent to and be binding upon the successors and permitted assigns of each party.

**13.7. Set-off, Retention.** Customer may only set off claims or assert a right of intention with regard to claims that are not contested by Supplier or have been finally adjudicated by a court of valid jurisdiction.

**13.8. Order of Precedence.** In the event of a conflict or inconsistency the documents

prevail in the following descending order: (i) Order Form; (ii) Transaction Documents; (iii) Special Conditions; (iv) the Data Privacy Terms and the Acceptable Use Policy. If a document is provided in different languages, the English language version of that document prevails.

**13.9. Independent Contractors.** For all purposes, the Parties will be deemed to be independent contractors, and nothing contained in the b-connected Agreement will be deemed to constitute a joint venture, partnership, employer-employee relationship, or other agency relationship. Neither Party is, nor will either Party hold itself out to be, vested with any power or right to contractually bind or act on behalf of the other Party.

## 14. Definitions

14.1. "**Acceptable Use Policy**" means the document of the same name located on Suppliers homepage at <https://www.binder-co.com/en/legal-notice>.

14.2. "**Account**" means the web-based account enabling access to and use certain Services provided on the Platform through a unique URL assigned to Customer by Supplier.

14.3. "**Affiliate**" means a corporation or other legal entity, directly or indirectly owned or controlled by or owning or controlling or under common control with one of the Parties where "control" shall mean to have, directly or indirectly, the power to direct or cause the direction of the management and policies of a corporation or other entity. 15.4. "**Applicable Law**" means the law specified in Section 14.5.

14.4. "**Applicable Law**" means the law specified in Section 13.3.

14.5. "**Application**" means software that is deployed on the Platform and/or interoperates with the Platform via Platform APIs.

14.6. "**Confidential Information**" means any information disclosed by a Party to the other Party in connection with the b-connected Agreement which is – when

disclosed – identified as "Confidential". In addition, any information and materials obtained by Customer in connection with Customer's receipt of Services is deemed to be Supplier's Confidential Information as also provided in Section 11.2. Confidential Information does not include information that: (i) is generally available to the public without breach of the b-connected Agreement; (ii) is or becomes available to the receiving Party from a source other than the disclosing Party, provided that the recipient Party has no reason to believe that such source is itself bound by a confidentiality obligation or that such source has obtained the information through any wrongful act; (iii) was already lawfully in the receiving Party's possession prior to receipt without a corresponding obligation of confidentiality; (iv) is independently developed by the receiving Party without the use of, or reference to, Confidential Information; or (v) has been released by the disclosing Party for non-confidential use.

14.7. **"Customer's Content"** means any information or data that is entered, uploaded onto or stored on the Platform in connection with Customer's use of Services under its Account, provided that Customer's Content excludes the Services and the Platform.

14.8. **"Data Privacy Terms"** means the document of the same name located on Suppliers homepage at <https://www.binder-co.com/en/privacy-policy>.

14.9. **"Material"** means any software, sample code, scripts, libraries, software development kits, technology, documentation, and other proprietary material or information made available to Customer by or on behalf of Supplier in relation to the provision of Services.

14.10. **"Order"** means the Customer's formal ordering of Services. on a document or electronic form provided by Supplier.

14.11. **"Platform APIs"** means Suppliers' application programming interfaces that are integrated with the Platform or the Services.

Platform APIs are part of the Platform and the Services.

14.12. **"Party"** means Supplier or Customer.

14.13. **"Platform"** means the Supplier proprietary cloud-based platform solution on which the Services are provided.

14.14. **"Services"** means (i) the services as described in the Transaction Documents and (ii) Materials.

14.15. **"Subscription Term"** means the period for which the Services are agreed in the Order.

14.16. **"Third Party"** means any person or legal entity other than Supplier and Customer.

14.17. **"Transaction Documents"** means the documents which describe or further govern the Services and are referenced in the Order.

14.18. **"User"** means any individual who has access credentials to Customer's Account.