

# ServicePilot SaaS General Terms and Conditions

Ref.: Version dated 2020/02/17

ServicePilot provides cloud technology services for monitoring servers, applications, databases, log management, VoIP and other supported technologies.

These terms and conditions describe how the Customer may use ServicePilot SaaS in connection with the Monitored Services, i.e. the Hosts or Objects that the Customer describes at the time of subscription, or that it may modify in the parameters associated with his Customer Account.

The Customer may use ServicePilot SaaS as a free service under the Free Plan, or as a paid service under the Pro Plan by subscribing to this service.

In this document, the term "Customer" refers to the company or entity that subscribes to ServicePilot SaaS as a professional as part of its activity. ServicePilot SaaS is not intended for use by consumers or non-professionals.

ServicePilot means ServicePilot, which enters into this Agreement with the Customer, as a provider of ServicePilot SaaS.

Other terms with initial capital letters are defined in section 19 of this Agreement.

## 1. PURPOSE OF THIS DOCUMENT

1.1 This document describes the terms and conditions of the Service for the use of ServicePilot SaaS as a free service under the Free Plan, or as a paid service under the Pro Plan.

## 2. DURATION

2.1 In the case of the Free Plan, this Agreement is for an indefinite period of time, and may be terminated at any time by ServicePilot without notice, and without having to justify a reason.

2.2 In the event that the Customer subscribes to the Pro Plan, this Agreement is entered, at Customer's choice: for an initial period of 12 months or 1 month as from the Pro Plan Subscription Date. Subscription to the Pro Plan will be tacitly, automatically and indefinitely extended for successive periods of time equal to the initial term, unless the Customer terminates it, by closing its Customer Account through the Administration Sections of the ServicePilot SaaS Platform Website, or by ServicePilot as set forth in article 9. The closing of the Customer Account by the Customer shall not give rise to any refund.

## 3. FREE PLAN

3.1 The Free Plan allows the Customer to use ServicePilot SaaS free of charge on certain types of monitoring mentioned on the ServicePilot SaaS Platform Website.

3.2 Monitoring Information (provided in the form of reports, dashboards, maps, event list, e-mails or any other form indicated in the ServicePilot SaaS Online Documentation) is archived by the SaaS ServicePilot Platform in the case of the Free Plan, unless a limited trial period is granted by ServicePilot.

3.3 For generating Monitoring Information over past periods, the Customer must subscribe to the Pro Plan, which allows to retain the necessary data to manage a history within the maximum historization period indicated on the ServicePilot SaaS Platform Website and within the limit, in any case, of its subscription period.

3.4 The Customer with a Free Plan can subscribe to the Pro Plan on the ServicePilot SaaS Platform Website.

## 4. MONITORED SERVICES

4.1 The Customer is responsible for integrating ServicePilot SaaS into its Monitored Services in compliance with this Agreement and the ServicePilot SaaS Online Documentation, and for bearing the costs and expenses required by such work.

4.2 In particular, ServicePilot may provide certain scripts or executables in object code that are part of the Client-Side ServicePilot Software that the Customer must then install in compliance with the ServicePilot SaaS Online Documentation. The resources required to operate the Client-Side ServicePilot Software depend on the use of ServicePilot SaaS and on the Monitored Services within the Customer's information system. In particular, the Customer must ensure that the Client-Side ServicePilot Software is installed in an environment that has sufficient network and computing resources to operate properly, and is responsible for keeping watch over and assessing the impact of the operation of the Client-Side ServicePilot Software on its information system, by taking all necessary measures, including: network bandwidth management, QoS, disk, cpu.

4.3 The Customer undertakes not to alter the correct functioning of ServicePilot SaaS. In particular, the Customer must not alter any ServicePilot Software, nor use ServicePilot SaaS other than as specified in the ServicePilot SaaS Online Documentation, or send excessive traffic or malformed requests to the ServicePilot SaaS Platform. The Customer is informed that the ServicePilot SaaS Platform is a technical platform that is intended to be used by ServicePilot to provide similar or different services to third parties, and that impairing its operation may cause damage to ServicePilot or to these third parties.

4.4 The Customer is responsible for ensuring that the e-mail address he sets up to receive alerts is working properly, to check and collect it.

## 5. SERVICEPILOT SAAS PLATFORM ACCESS

5.1 The Customer undertakes to update any information it provides to ServicePilot as it changes, in particular any data contained in the Administration Sections of the ServicePilot SaaS Platform Website, and any information relating to means of payment in the event of a subscription to the Pro Plan.

5.2 A username and password authenticate the Customer's access to the ServicePilot SaaS Platform Website for the access of each Authorized User. The Customer undertakes that the identifiers and passwords will be used individually by Authorized Users, the Customer being responsible for their use and ensuring their confidentiality.

5.3 The interaction of the Client-Side ServicePilot Software with the ServicePilot SaaS Platform is authenticated by means of an access key generated at the Customer's request and associated with its Customer Account and with its Monitored Services, which the Customer must install when setting up the Client-Side ServicePilot Software. The Customer is responsible for the use of ServicePilot SaaS by the Client-Side ServicePilot Software which access is authenticated in such a manner, and responsible for managing and revoking said access keys through the various means at its disposal for the management of its Customer Account.

5.4 The means provided for management of the Customer Account allow the Customer to create Authorized Users, according to various types of user profiles that the Customer authorizes to connect to the ServicePilot SaaS Platform Website in order to view the generated Monitoring Information and use ServicePilot SaaS and set up alerts.

5.5 The Customer may use ServicePilot SaaS to monitor Monitored Services included in its own information system, or to monitor Monitored Services of its own customers. In this case, the means provided for management of Customer's Account allow the Customer to create Authorized Users for these third parties, to whom the Customer may associate "read-only" profiles attached to the Monitored Services that concern them for the Monitoring Information sent by the Client-Side ServicePilot Software authenticated using the access key created and managed by the Customer for the monitoring of the Monitored Services of its own concerned customer. The Customer shall not grant administrative rights to third party Authorized Users, nor allow them by any means to manage authentication keys for the Client-Side ServicePilot Software and is in any case responsible for ensuring that their use of ServicePilot SaaS is in compliance with this Agreement and shall comply with the terms of article 4.

5.6 The Customer warrants that any Authorized Users shall comply with the terms of this Agreement, whether or not they are from its organization.

## 6. USE OF THE FUNCTIONALITIES OF THE SERVICEPILOT SAAS PLATFORM

6.1 The functionalities of the ServicePilot SaaS Platform are described in the ServicePilot SaaS Online Documentation.

6.2 Before using any infrastructure, functionality, or any content of the ServicePilot SaaS Platform Website, the Customer agrees to review any special terms of use or FAQs, and to make reasonable use of those functionalities and in accordance with the terms of this Agreement, including the ServicePilot SaaS Online Documentation and any additional terms of use, FAQs or ServicePilot recommendations, not to abuse system resources allowing the ServicePilot SaaS Platform to operate and not to alter their use. Failing this, ServicePilot reserves the right to apply the provisions of article 9.1 in order to suspend or terminate the access of an Authorized User of the Customer, or the access of the Customer itself.

6.3 ServicePilot may provide information, documentation and training material through the ServicePilot SaaS Platform Website. Such content shall be deemed to be the intellectual property of ServicePilot, as set forth in article 15.2, and shall be used personally by the Customer solely for the purpose of performing this Agreement, excluding of any other use without the prior written agreement of ServicePilot.

6.4 The Customer undertakes not to use any infrastructure or functionality of the SaaS ServicePilot Platform for illegal purposes.

## 7. SUPPORT SERVICES

7.1 The Free Plan allows the opening of tickets by e-mail and by any other means indicated in the ServicePilot SaaS Online Documentation.

7.2 The Pro Plan allows tickets to be opened by e-mail, as well as by telephone during ServicePilot Business Hours, and by any other means set forth in the ServicePilot SaaS Online Documentation.

7.3 In the event that the Customer notices any malfunction of ServicePilot SaaS, it undertakes, immediately, to forward the information to ServicePilot as set forth below in article 7.4 and to stop the operation of the concerned Client-Side ServicePilot Software.

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**7.4** Support services allow the Customer to inform about malfunctions of the ServicePilot Software or the ServicePilot SaaS Platform, which are reproducible and exclusively caused by the ServicePilot Software or the ServicePilot SaaS Platform, hereinafter the Malfunctions. In particular, support services do not cover anomalies caused by: (i) any Monitored Services; (ii) any problems concerning the hardware, software or information system of the Customer or its Authorized Users; (iii) any improper use or modification of ServicePilot SaaS access or settings, or of ServicePilot SaaS components, by the Customer or by any other person authorized or not; (iv) any failure to comply with the technical prerequisites for using ServicePilot SaaS.

**7.5** The Customer may use the contact methods and procedures mentioned in the ServicePilot SaaS Online Documentation, which ServicePilot may modify from time to time, so that the persons authorized to access the Support may explain the Malfunctions they have personally noticed. The Customer undertakes to carry out all procedures and tests in compliance with ServicePilot's instructions and to report the results to the ServicePilot technical team.

**7.6** After evaluation of all elements by ServicePilot, ServicePilot may propose a workaround solution, or make software changes, or, if necessary, provide the Customer, through communications networks, with files or code fragments that are intended to provide a solution to the Malfunction (these files or code fragments must then be installed by the Customer in accordance with ServicePilot's instructions), or schedule, depending on the assessment of the severity of the Malfunction by ServicePilot and its development schedule, the provision of a corrective update of the ServicePilot Software or the ServicePilot SaaS Platform.

**7.7** The Customer's technicians in charge of integrating and testing the Monitored Services in relation to ServicePilot SaaS must be properly trained in the use of ServicePilot SaaS. In performance of this Support service, ServicePilot is not required to make any development for the Customer or to diagnose Monitored Services, nor to provide any service or advice in connection therewith. Support can only be requested by the Authorized User designated by the Customer for this purpose in the Administration Sections of the ServicePilot SaaS Platform Website.

**7.8** As part of the provision of the service, ServicePilot will provide successive versions of the ServicePilot Software involved in the provision of ServicePilot SaaS and the ServicePilot SaaS Platform as these successive versions are made available by ServicePilot and included in the production environment. The Customer undertakes to implement any necessary changes in its Monitored Services as indicated in article 4 of this Agreement, including the integration of any new version of the Client-Side ServicePilot Software and shall not prevent the proper functioning of any update procedures.

**7.9** Any new version of the Client-Side ServicePilot Software of the ServicePilot Software provided to the Customer pursuant to this Agreement shall be governed by the terms and conditions of this Agreement. ServicePilot provides Support only for current versions of the Client-Side ServicePilot Software.

## **8. SPECIFIC OBLIGATIONS OF THE CUSTOMER**

**8.1** This Agreement is entered into by ServicePilot on the basis of the information, declarations and characteristics of the Customer and its activity and the Monitored Services mentioned by the Customer, as declared by the Customer to ServicePilot. These statements, their existence and accuracy, constitute substantial conditions for ServicePilot's consent to enter into this Agreement. In the event that this information is subject to change, the Customer undertakes to inform ServicePilot as soon as it becomes aware of the change. ServicePilot reserves the right to terminate this Agreement in the event of a change, or to cancel this Agreement if it is informed that any of these statements are inaccurate or false, without compensation to the Customer.

**8.2** The Customer guarantees that it complies with applicable laws relating to the protection of personal data and that all data of the Customer's Authorized Users are collected, processed and used in accordance with applicable laws.

**8.3** As part of the Pro Plan, the Customer undertakes to comply with the metrics corresponding to the Monitored Services it has subscribed to, not to bypass them and, in particular, to use the Client-Side ServicePilot Software only in connection with raw data proceeding directly from the Hosts or Objects which are corresponding to its subscription.

**8.4** Under the Pro Plan, raw data proceeding from the operation of the Client-Side ServicePilot Software is not intended to be used or retrieved by the Customer and is only archived by ServicePilot SaaS in a reprocessed form that allows the optimized operation of the ServicePilot SaaS Platform and the functionalities for creating Monitoring Information within the maximum archival period specified on the ServicePilot SaaS Platform Website. As the Monitoring Information is deleted upon termination of this Agreement, as well as any data transmitted to the ServicePilot SaaS Platform Website or to the Administration Sections of the ServicePilot SaaS Platform Website, or any information obtained from them, including any Monitoring Information

generated, it is the Customer's responsibility to make all arrangements for the preservation of the Monitoring Information by its own means.

**8.5** ServicePilot SaaS is designed to process raw data streams from standard Monitored Services according to the types of services and technologies supported by ServicePilot producing a normal volume of raw data processed by the Client-Side ServicePilot Software. As part of the Pro Plan, ServicePilot will make its best efforts to process the raw data streams proceeding from the Client-Side ServicePilot Software but cannot guarantee that it will be able to absorb abnormally large or unreasonable streams. The Customer acknowledges that ServicePilot may suspend, limit or terminate all or part of the subscribed services that ServicePilot could not process despite its best efforts, in particular in the event that the raw data streams proceeding from the Client-Side ServicePilot Software would endanger the stability or the operation of the ServicePilot SaaS Platform.

## **9. SUSPENSION OR TERMINATION OF THIS AGREEMENT**

**9.1** Without prejudice to any other provisions of this Agreement, ServicePilot may suspend the use of all or part of ServicePilot SaaS, ServicePilot Software or the ServicePilot SaaS Platform by the Customer, or terminate this Agreement at any time if: (i) the Customer does not comply with one of the terms of this Agreement; (ii) if ServicePilot is informed that ServicePilot SaaS is being used for illegal purposes; (iii) If the Customer is insolvent or subject to reorganization or liquidation proceedings; (iv) in the event of regulatory changes legally requiring ServicePilot to cease providing ServicePilot SaaS to the Customer.

**9.2** In particular, ServicePilot may suspend access to any content, or delete any content, contributed or made available by the Customer pursuant to this Agreement, including through its use of ServicePilot SaaS, or the ServicePilot SaaS Platform or ServicePilot SaaS Platform Website, which, in its sole discretion, is unlawful or contains unlawful content, or after receiving notice from a third party that such content infringes their rights, or upon an order of a Court or of any competent authority.

**9.3** Without prejudice to any other remedy, any breach by either party of any of its essential obligations shall entitle the other party to terminate this Agreement fifteen (15) days after receipt of a registered letter with acknowledgement of receipt of formal notice requesting the party in default to remedy such failure or default within the aforementioned period, which has remained without cure after such period. At the option of the non-faulty party, termination shall be deemed to have occurred as of right, after the expiry of this period and without any further formality, including judicial formality.

**9.4** Upon termination of this Agreement, for any reason whatsoever, the Customer undertakes to immediately cease all use of ServicePilot SaaS, ServicePilot Software or the ServicePilot SaaS Platform and to pay all amounts due to ServicePilot.

**9.5** ServicePilot may notify the Customer of the termination of this Agreement, in particular in the event that ServicePilot ceases to provide ServicePilot SaaS or certain offers related to ServicePilot SaaS, or for technical, operational or commercial reasons. In such cases, ServicePilot will make its best commercial efforts to notify the Customer with at least three (3) months' notice. This commitment of prior notice does not apply to the user of the Free Plan, ServicePilot may also, if as the case may be, temporarily freeze or limit the number of resources of the ServicePilot SaaS Platform assigned to the operation of ServicePilot SaaS under the Free Plan, the Hosts or Objects, without notice.

## **10. USE OF SERVICEPILOT SAAS BY THE CUSTOMER**

**10.1** The Customer is responsible for its use of ServicePilot SaaS in accordance with its usage, with this Agreement, and in particular with the ServicePilot SaaS Online Documentation. The Customer is responsible for the operation and monitoring of its information system, and must ensure that no person other than Authorized Users is authorized to use the ServicePilot SaaS Platform Website, the ServicePilot SaaS Platform, the ServicePilot Software, including the Client-Side ServicePilot Software. In the event that the Customer is informed of a misuse or unauthorized use committed by anybody, the Customer undertakes to immediately inform ServicePilot.

**10.2** The Customer is not authorized to grant access to the Administration Sections of the ServicePilot SaaS Platform Website or to any administration function of the Customer Account, or to any part thereof, to any third party, and is not authorized to market, distribute or communicate in any way all or part of ServicePilot SaaS to any third party, whether free of charge or against payment, without prior written consent of ServicePilot, without prejudice to what is provided in article 5.5.

**10.3** ServicePilot may make changes to these Terms of Use of ServicePilot SaaS, or its offer resulting, in particular, from regulatory or legislative changes. In the event that such changes occur, they will be notified to the Customer by the agreed means of communication as mentioned in the ServicePilot SaaS Online Documentation. The changes shall be deemed applicable to the Customer eight (8) days after such notice, unless the Customer terminates this

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Agreement by closing its Customer Account through the Administration Sections of the ServicePilot SaaS Platform Website.

**10.4** Occasionally, ServicePilot may change codes, change or delete phone numbers, change the Application Programming Interface (API) allowing the interaction with ServicePilot SaaS, or suspend the service for operational, maintenance, or emergency reasons.

**10.5** ServicePilot will use its best commercially reasonable efforts to notify the Customer by any means, including through the pages of the ServicePilot SaaS Platform Website, of scheduled maintenance dates, and to reduce unavailability times during the day (procedures performed generally at night - CET+1).

## **11. FINANCIAL TERMS AND CONDITIONS FOR THE PRO PLAN**

**11.1** The price for the subscription to the Pro Plan is mentioned in the Online Documentation of ServicePilot SaaS and is payable in advance according to the practical terms mentioned in the said document for the commitment period chosen by the Customer as set forth in article 2.2. The amount due is determined on the basis of the options chosen by the Customer at the time of subscription or as modified in the parameters associated with his Customer Account and in particular the Monitored Services, i.e. the Hosts or Objects that the Customer decides to manage.

**11.2** The price will be charged by ServicePilot based on the records and information automatically logged by the ServicePilot SaaS Platform and ServicePilot systems.

**11.3** The agreed price does not include any services or supplies additional to those provided for in this Agreement.

**11.4** Prices are subject to revision by ServicePilot. In this case, ServicePilot undertakes to make its best commercially reasonable efforts to alert the Customer with at least three (3) months' notice of the price change.

**11.5** In the event of non-payment on the due date, late payment penalty of 1.5% of the amount of the unpaid invoice per month (or the maximum rate permitted by law, whichever is lower) is due by the Customer from the due date, as of right and without formal notice, until full payment of the amount in question has been received and ServicePilot may also delay, retain and/or suspend the provision of all services provided for herein. Interest on arrears shall be payable automatically, without prior formal notice, at the end of the payment period. In addition, a flat compensation of forty (40) Euros, or its equivalent in the invoicing currency, shall apply as a minimum (or any other amount fixed by applicable regulations), as compensation for recovery costs.

**11.6** The other payment details are mentioned in the ServicePilot SaaS Online Documentation.

## **12. RESPONSIBILITY**

**12.1** ServicePilot provides ServicePilot SaaS, without warranty of any kind, express or implied, as to its quality, performance or results.

**12.2** ServicePilot does not warrant that ServicePilot SaaS will operate uninterrupted or error-free, or that it will meet the expectations of the Customer or its Authorized Users, or that it will work in any combination of elements selected by the Customer or its Authorized Users. The Customer undertakes to implement POCs (proofs of concept) on qualification machines before any production use.

**12.3** ServicePilot is not responsible for the unavailability of ServicePilot SaaS caused by a failure of telecommunications operators. Given the uncertainties of the Internet network and transmission protocols, the Customer acknowledges that ServicePilot cannot guarantee the relevance or completeness of the transmissions, nor, in particular, the correct receipt by the Customer of the alerts at the configured e-mail address.

**12.4** ServicePilot is not liable for indirect damages caused to the Customer, and in particular: loss of income or information. The Customer undertakes to make a backup copy of all information on the workstations and servers where the Client-Side ServicePilot Software is installed and on the equipment and resources accessed by the Client -Side ServicePilot Software.

**12.5** In no event shall ServicePilot be liable for any damage caused by the use of ServicePilot SaaS or caused by faulty integration, installation or configuration, including data loss, or caused by the unavailability of ServicePilot SaaS.

**12.6** ServicePilot is not liable for any damage caused by the use of ServicePilot SaaS in conjunction with any other software or hardware of the Customer, including the Monitored Services, or caused by any technical problems of the Customer, who is responsible for entering into any necessary maintenance contracts.

**12.7** Without prejudice to the foregoing, in the event that the Customer establishes proof of ServicePilot's contractual liability in performance of its obligations hereunder, its liability shall be limited to the total amount of the price paid by the Customer pursuant to this Agreement during the twelve (12) months preceding such claim. To the extent that the Customer subscribes to the Free Plan, ServicePilot is released from any liability given

*the free provision of ServicePilot SaaS in this case, which is used under the exclusive responsibility of the Customer.*

**12.8** As set forth in article 10.1 above, the Customer is responsible for his use of ServicePilot SaaS. In particular, the Customer guarantees ServicePilot against any harmful consequences caused by defective Monitored Services, or resulting from claims by any third party, or from claims by competent authorities, and in particular from claims relating to the fact that:

- any content transmitted by the Customer, or sent to the ServicePilot SaaS Platform Website, to the Administration Sections of the ServicePilot SaaS Platform Website or any means of administering the Customer Account, or used in connection with ServicePilot SaaS, including Monitored Services, is unlawful or infringes the rights of any third party,
- any Monitoring Service has caused damage, including data loss, data corruption, or failure to operate as expected,
- any Monitoring Service is illegal, does not comply with laws and regulations, or causes damage to a third party,
- any action or omission of the Customer has caused damage to a third party.

## **13. TAXES**

The Customer shall be responsible for paying or refunding to ServicePilot or, if required by law, to the appropriate government agency, any taxes that would be imposed on the amounts of the subscription to ServicePilot SaaS, or otherwise imposed in connection with the transactions contemplated by the Agreement, including taxes on sales, use, excise duties, value-added tax, exports, imports and flat-rate levies and other similar taxes in connection with the amounts paid to ServicePilot, which do not include such taxes. The Customer shall pay directly all taxes for which it is responsible; the Customer shall also reimburse ServicePilot for any taxes to be paid or collected by ServicePilot, if applicable.

## **14. EXPORT**

The Customer and any Authorized User acknowledge and agree that ServicePilot SaaS and its components are subject to the laws, rules, regulations and restrictions on exports, as well as national security controls of the United States and European Union countries and relevant international agencies (the "Export Controls") without prejudice to the other obligations of the Customer and any Authorized User; the Customer and any Authorized User undertake not to export or re-export, and not to authorize the export or re-export of ServicePilot SaaS or any part of its components in breach of Export Controls. The Customer and any Authorized User hereby declare (i) that they are not a natural or legal person to whom the provision of ServicePilot SaaS or any part of its elements is prohibited by the Export Controls; and (ii) undertake not to export, re-export or otherwise transfer ServicePilot SaaS or any part of its components to (a) any country subject to a commercial embargo by the United States and/or a country of the European Union, (b) a citizen or resident of any country subject to a commercial embargo by the United States and/or a country of the European Union, (c) any person, legal or natural, to whom the provision of ServicePilot SaaS or any part of its components is prohibited by Export Controls, or (d) if the Customer or any Authorized User is established in Latin America or North America, any person involved in activities relating to the design, development, production or use of nuclear materials, nuclear facilities, nuclear weapons, missiles or chemical or biological weapons.

## **15. INTELLECTUAL PROPERTY RIGHTS**

**15.1** ServicePilot warrants that it is the owner or licensee of ServicePilot SaaS, that it has the right to grant the rights referred to in article 15.2 below, and that ServicePilot SaaS does not infringe the copyright, trademark rights, trade secrets, patents or other intellectual property rights of any third parties. In the event of an alleged violation of these rights by ServicePilot SaaS, ServicePilot undertakes to defend the Customer in any action for compensation, provided that the Customer immediately informs ServicePilot in writing of the alleged violation, that the Customer accepts ServicePilot's intervention and cooperates in the settlement of any dispute. The Customer acknowledges that ServicePilot will have full control of the dispute. In accordance with the provisions of this article, ServicePilot shall indemnify the Customer for any payments made by the Customer ordered by a final decision against the Customer, or resulting from the amicable settlement of the dispute.

**15.2** ServicePilot retains all intellectual property rights to the ServicePilot SaaS Platform Website and its components, on ServicePilot SaaS. For the purposes of this Agreement, and during its term, the Customer has a non-exclusive, non-transferable right of use of the elements mentioned above in object form, and, unless otherwise specified, through remote use only, said elements being hosted on the ServicePilot SaaS Platform with the exception of the Client-Side ServicePilot Software which is provided in object code. The Customer undertakes not to reverse engineer ServicePilot SaaS or its

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components, the Client-Side ServicePilot Software, nor to attempt to derive its source code in any way whatsoever, the ServicePilot SaaS Online Documentation and the specifications of the Application Programming Interface (API) being already provided to the Customer, which contain the necessary information for the interoperability of ServicePilot SaaS.

**15.3** The Customer warrants that it is the author or owner of the rights of use on the elements of any content it provides to ServicePilot for the performance of this Agreement, including the Supervised Services, as well as any elements or content contributed through the ServicePilot SaaS Platform Website, that these various elements do not infringe any copyright, trademark, trade secret, patent or other third party rights. In the event of an alleged infringement of any of these rights by the Customer, the Customer undertakes to defend ServicePilot and compensate it for all expenses, costs, payments ordered by a Court, or resulting from an amicable settlement of the dispute.

## **16. PERSONAL DATA**

**16.1** In this Article 16, the terms Controller and Processor have the meaning given in Article 4 of Regulation (EU) 2016/679 on Data Protection (GDPR). The terms defined in the Agreement, used in this section 16 with initial capitalization, have the meanings described in this Agreement.

**16.2** In performance of this Agreement, ServicePilot will, on behalf of the Customer, Controller, access, transport or store Personal Data provided by the Customer proceeding from the Monitored Services for the operational functioning of the ServicePilot SaaS monitoring service, for the technical management of the access to ServicePilot SaaS by Authorized Users, authorized to connect to and use ServicePilot SaaS under the conditions provided for in this Agreement and for the implementation of e-mail alerts configured by the Customer. In his capacity as Controller, the Customer ensures (i) that raw data proceeding from the Supervised Services that it chooses to configure in the Administration Sections of the ServicePilot SaaS Platform Website or the various means of administration of its Customer Account and that may contain Personal Data, including indirectly personal data, such as IP addresses, are processed for supervisory purposes with the consent of the persons concerned and/or in accordance with applicable laws and regulations; (ii) that Authorized Users' accesses are created in agreement with the data subjects whose Personal Data they use; (iii) that the e-mail addresses used in connection with the alerts set up are used in agreement with the persons concerned.

**16.3** As part of the support services mentioned in Article 7, the Customer undertakes to communicate to ServicePilot reports of malfunctions that are devoid of any personal data.

**16.4** As part of the provision of the functionalities referred to in 16.2, for which ServicePilot may process Personal Data on behalf of the Customer, ServicePilot undertakes:

- to process Personal Data only on documented instructions from the Customer;
- not to transfer any Personal Data to a country outside the European Union, or to the extent that the Personal Data are processed by Subcontractors outside the European Union, whether established in an adequate country or whether they provide appropriate guarantees within the meaning of the regulations and in particular the GDPR;
- to ensure that its personnel authorized to process Personal Data undertake to respect confidentiality and process Personal Data only on instructions from the Customer as provided for in this Agreement;
- to take appropriate security measures according to a standard level of security established taking into account the state of knowledge, the costs of implementation and the nature, scope, context and purposes of the processing operation as well as the risks related to the processing operations described in 16.2. In the event that the Customer requests a different or higher level of security, the provisions of article 16.5 shall be applied;
- to delete, at the end of the term of this Agreement, any Personal Data that may be in its possession for the services mentioned in 16.2, unless there are legal obligations to keep it for a longer period. Without prejudice to the foregoing, the contact data provided by the Customer associated with the Customer Account may be used by ServicePilot for a maximum period of three years as from the end of the term of this Agreement for commercial solicitation purposes, unless the persons concerned object;
- to provide the Customer with all the information necessary to demonstrate compliance with the obligations set out in this article 16.3 and to allow audits to be carried out to verify compliance with the obligations set out in this article 16.3. The parties agree that these audits will be carried out by an independent auditor of international reputation, who shall not be a competitor of ServicePilot, who must be validated by ServicePilot and who must sign a confidentiality agreement. The audit is at the Customer's expense and must be conducted within the strict limits described above. Prior to the audit operations, the Customer shall indicate

the purpose of the audit and the types of information to be accessed by the auditor, which shall only relate to the obligations provided for in this article, compliance with the obligations provided for in this article 16.3, excluding any other areas. In particular, the audit may not cover financial, accounting and commercial data of ServicePilot. ServicePilot undertakes to cooperate in good faith with the independent auditor selected on the date agreed between the parties for the performance of the audit operations and to facilitate his audit by providing him with all necessary information and by responding to all his requests relating to this audit. The audit will be conducted during ServicePilot's Business Hours. The audit operations may not disrupt the activity of ServicePilot or the performance of the Agreement. A full copy of the auditor's audit report will be provided to ServicePilot. The audit opportunity is open to the Customer once (1) a year. The cost of mobilizing ServicePilot teams during audit operations will be invoiced to the Customer at the ServicePilot day/man rates in effect on the date of the Customer's request. In the event that the Customer requests different audit conditions, the provisions of Article 16.5 shall be applied.

**16.5** In the event that the Customer requests ServicePilot for services related to the processing of Personal Data for which the Customer is the Controller, these services will be provided, subject to feasibility and acceptance by ServicePilot, at ServicePilot's current rates and will result in an additional order form.

**16.6** In accordance with this Agreement, ServicePilot may subcontract the performance of its services. With regard to the services mentioned in 16.2, ServicePilot may thus transmit the necessary Personal Data, as the case may be, to the companies belonging to the group to which ServicePilot belongs for the implementation of the said service, and to its Subcontractors in charge of carrying out all or part of the services concerned, who will then only have Personal Data strictly necessary for the performance of their service. The list of companies, as the case may be, that are members of the group to which ServicePilot belongs and of the aforementioned ServicePilot Subcontractors is provided to the Customer on the date of signature of this Agreement. ServicePilot will inform the Customer of any changes to this list. In the event of modification of this list and refusal by the Customer of the new Subcontractor of ServicePilot, the Customer shall bear all consequences and damages resulting from any delay or impossibility to perform the concerned services subsequently to its refusal of the concerned Subcontractor. It is the Customer's responsibility to inform the concerned persons of the list of ServicePilot Subcontractors mentioned above and of the changes to this list.

## **17. GENERAL PROVISIONS**

**17.1** ServicePilot does not provide any hardware, telephone installation, terminal equipment or Internet connectivity.

**17.2** With the exception of code fragments and examples that may be contained in the ServicePilot SaaS Online Documentation, ServicePilot does not provide any source code, including those of ServicePilot SaaS, of ServicePilot Software, of any results of the Customization or Development Services.

**17.3** This Agreement may not be transferred by the Customer, in whole or in part, without the prior written consent of ServicePilot. ServicePilot has the right to transfer all or part of this Agreement subject to notifying the Customer of this transfer and on the condition that the transferee is bound to the Customer under the same terms. In addition, ServicePilot may use any subcontractor of its choice for the performance of this Agreement. When the ServicePilot subcontractor is required to process personal data on behalf of the Customer, the provisions of Article 16.6 above shall apply.

**17.4** Each party undertakes not to poach or attempt to poach the other party's personnel for the duration of this Agreement increased by one year after its term or termination. In the event of non-compliance with this undertaking, the defaulting party undertakes to pay the other party a compensation equivalent to 12 months' salary paid before the departure of the poached employee, including taxes and social security contributions, or an amount extrapolated to 12 months if the employee has remained less than 12 months, without prejudice to the other party's right to claim compensation for its damage.

**17.5** The use of the keys or identifiers and passwords provided to the Customer for access to ServicePilot SaaS, to the Administration Sections of the ServicePilot SaaS Platform Website, to the various means of administration of its Customer Account or the ServicePilot SaaS Platform Website shall be deemed to be proof of the Customer's identity when using said resources. In addition, the parties agree that data and information automatically logged by the ServicePilot SaaS Platform and ServicePilot systems will be considered as proof of the use of the ServicePilot SaaS Platform and ServicePilot systems. The Customer is informed that data and information automatically logged by the ServicePilot SaaS Platform and ServicePilot systems are also used for billing purposes and may also be used to produce aggregate statistics.

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**17.6** The fact that ServicePilot does not claim for the enforcement of one or more of the provisions of this Agreement shall not be construed as a waiver of its right to avail itself of it at a later date.

**17.7** If any provision of this Agreement is found by a court of competent jurisdiction to be contrary to law, such provision shall be enforced to the fullest extent permitted by law and the other provisions of this Agreement shall remain in full force and effect. Notwithstanding the foregoing, the parties consider the provisions of this Agreement which limit, denounce or exclude warranties, remedies or damages to be independent and to remain in force despite the invalidity or unenforceability of a claim. The limitations and exclusions provided for in the Agreement have been decisive in determining the consent of the parties to the signing of this Agreement.

**17.8** ServicePilot may include the Customer in its list of customers communicated to its prospects for reference purposes and, subject to the Customer's written consent, announce in its marketing communications that the Customer has chosen ServicePilot.

**17.9** In the event of force majeure, the obligations of the affected party shall be suspended, in particular in the event of: (i) acts or omissions of governments or competent authorities; (ii) blocking of telecommunications networks; (iii) insurrections, civil war, military operations, national or local states of emergency, fire, lightning, explosion, flood, storm, action or omission of a third party.

This Agreement is subject to French law. Any dispute relating to this Agreement shall be submitted to the exclusive jurisdiction of the courts of Paris in France. All communications and notifications made pursuant to this Agreement may be made in French, English or Spanish languages.

## 18. CONTRACTUAL DOCUMENTS

**18.1** This Agreement consists of the following elements:

- the present General Terms and Conditions,
- the ServicePilot SaaS Online Documentation,
- the information identifying the Customer.

**18.2** In case of contradiction between these various documents, the documents mentioned first above shall prevail over the others.

**18.3** These General Terms and Conditions may be provided to the Customer in several languages for the information of the Customer. Notwithstanding the foregoing, the French language version shall be deemed to be the contractual version.

## 19. DEFINITIONS

**Administration Sections of the ServicePilot SaaS Platform Website** means those parts of the ServicePilot SaaS Platform made available through the ServicePilot SaaS Platform Website that are reserved for the use of the Authorized Users, where the Customer can manage its Monitored Services settings and where the Authorized Users can access the Monitoring Information. All or part of these administration functions may also be used by the Customer by administration means using an API made available by ServicePilot through authentication keys attached to the Customer Account.

**Authorized Users** means individuals who are designated by the Customer as authorized to use the ServicePilot SaaS Platform, whose names and information are filled-in in the Administration Sections of the ServicePilot SaaS Platform Website or other means of administering the Customer Account provided by ServicePilot.

**Business Hours** means ServicePilot Business Hours from 9am to 12pm and from 2pm to 6pm (Paris time - France) during ServicePilot business days from Monday to Friday.

**Client-Side ServicePilot Software** means the ServicePilot Software provided to the Customer, which the Customer must install on Monitored Services systems or on systems capable of accessing the Monitored Services, as set forth in Article 4, and as further specified in the ServicePilot SaaS Online Documentation.

**Customer Account** means the account created for the Customer on the ServicePilot SaaS Platform Website, after subscription to the service, allowing the Customer to use the ServicePilot SaaS Platform.

**Hosts or Objects** means the entities that may be monitored under ServicePilot SaaS as defined in the ServicePilot SaaS Online Documentation.

**Monitoring Information** means the statistics and data generated by the Customer's use of ServicePilot SaaS, relating to the Monitored Services, which are made available to the Customer on the Customer Account for Authorized Users, provided in the form of reports, dashboards, maps, event list, e-mails or any other form set forth in the ServicePilot SaaS Online Documentation.

**Monitored Services** means one or more servers, applications, databases, logs, VoIP services and other supported technologies, described by the Customer at the time of its subscription, or as modified in the parameters associated with its Customer Account, in relation to which the Customer wishes to be authorized to use ServicePilot SaaS.

**Pro Plan Subscription Date** means the effective date of this Agreement for Pro Plans, after the Customer has subscribed to the Pro Plan, as set forth in this Agreement, and receipt of the corresponding price by ServicePilot.

**Server-Side ServicePilot Software** means the ServicePilot Software installed on the ServicePilot SaaS Platform, which is not provided to the Customer, but only used remotely.

**ServicePilot SaaS Online Documentation** means the documentation describing the use of ServicePilot SaaS by the Customer, which is provided by ServicePilot on the ServicePilot SaaS Platform Website and modified from time to time by ServicePilot.

**ServicePilot SaaS Platform** means the technical platform described in more details in the ServicePilot SaaS Online Documentation, which includes Server-Side ServicePilot Software, the Monitoring Information, and relevant ServicePilot servers including those running the ServicePilot SaaS Platform Website and the Administration Sections of the ServicePilot SaaS Platform Website and the different ways of administering the Customer Account.

**ServicePilot SaaS Platform Website** means the ServicePilot SaaS Platform Website, available at <https://cloud.servicepilot.com> where ServicePilot makes the ServicePilot SaaS Platform accessible to the Customer or any other address that ServicePilot may notify the Customer.

**ServicePilot Software** means Server-Side ServicePilot Software and Client-Side ServicePilot Software, described in the ServicePilot SaaS Online Documentation, implementing ServicePilot technologies, allowing the monitoring of multiple supported technologies, supervision of servers, applications, databases, log management, VoIP and other supported technologies.