

GENERAL TERMS AND CONDITIONS – SAMBA.AI APPLICATION

1. DEFINITIONS

Unless expressly stated otherwise, in these Conditions the following terms beginning with capital letters shall have meanings as set out below:

“**Application**” shall mean the application called Samba.ai which is operated by the Provider and which comprises software for monitoring and analyzing the conduct of users of Customer’s websites or other information systems operated by Customer and planning targeted marketing campaigns based on such analysis.

“**Civil Code**” shall mean the Czech Act No. 89/2012 Coll., the Civil Code.

“**Conditions**” shall mean these General Terms and Conditions – Samba.ai Application.

“**Contact E-Mail**” shall mean the e-mail address of the Customer to which the communication relating to the Contract and its performance shall be delivered.

“**Contract**” shall mean the contract between the Customer and the Provider for provision of agreed Services. These Conditions shall form an integral part of each such Contract unless expressly agreed otherwise in such Contract.

“**Customer**” shall mean the person who enters into the Contract with the Provider for the provision of Services.

“**Customer Side Software**” shall mean the software which collects data from Customer’s websites and / or other information systems operated by the Customer in order to analyze such data within the Application.

“**Fees**” shall mean the remuneration which the Customer shall pay to the Provider for the provision of Services, unless the Customer is using the free version of the Application which provided free of charge. Unless stipulated otherwise, the Fees do not include value added tax (VAT) or any similar taxes or levies under any applicable law.

“**Party**”, “**Parties**” shall mean the Customer and the Provider, individually or collectively as the context requires.

“**Personal Data**” shall mean any data which are regarded as personal data in accordance with applicable personal data protection laws and which the Customer provides to the Provider (including, without limitation, provision by means of granting the Provider access to such personal data by way of operation of Customer Side Software) in connection with the performance of the Services.

“**Provider**” shall mean the entity operating the Application and providing Services to the Customer, i.e. **DiffSolutions s.r.o.**, company incorporated and existing under the Czech law, with its registered office at Praha 10 - Dubeč, Nad mlýnským potokem 640/10, PSČ 10700, Identification Number 24791288, entered into Commercial Register maintained by the Prague City Court, Section C., Insert No. 174549.

“**Services**” shall mean the services provided by the Provider to the Customer as agreed in the Contract.

2. CONTRACT FORMATION AND CHANGES

- 2.1 Each Customer has to conclude the Contract with the Provider (including consenting to the price plan chosen by the Customer and these Conditions) in order to receive the Services. The Services are to be provided exclusively to entrepreneurs acting within the scope of their trade or profession.
- 2.2 In order to conclude the Contract the Customer shall fill in the registration form within the Application in which the Customer shall choose the price plan in accordance with the applicable pricelist available within the Application and provide contact details necessary for conclusion of the Contract, i.e. the name and address (individual Customers) or the company name and registered office (Customers who are legal entities) and e-mail address which will serve the purpose of Contact E-mail and telephone number. Validity and functionality of Customer's email address and telephone number may be verified by the Provider prior to accepting the registration. In the registration process, the Customer shall also grant consent with these Conditions by ticking the appropriate box within the registration form. By submitting the registration form the Customer makes a legally binding order to the Provider for the provision of Services specified in the registration form.
- 2.3 The Provider is not required to accept registration of any Customer or specify reasons for rejection of the registration. Should the Provider decide to accept registration, it shall send an e-mail message confirming the registration to the Customer's Contact E-mail.
- 2.4 The Contract shall be concluded as of the moment of delivery of the Provider's e-mail message confirming the registration to Customer's Contact E-mail, in any case at the moment when the Provider commences provision of Services as specified in Customer's registration at the latest. These Conditions and the price plan chosen by the Customer shall form integral part of the Contract.
- 2.5 The Customer and the Provider may agree to conclude the Contract in a different manner than specified in Articles 2.2-2.4, provided that it is in writing and that it includes express consent of the Customer to these Conditions and the applicable price plan.
- 2.6 The Customer may request change of the scope of Services within the Application or otherwise in writing. The Provider shall not be required to accept such request or specify reasons for rejection of such request. Should the Provider accept such request, it shall issue a confirmation within the Application, or, if the change is not done via the Application, by sending such confirmation via email message to Contact E-mail; by issuing such confirmation the change enters into effect.
- 2.7 The Customer hereby acknowledges and accepts that the Provider shall have the right to make adequate changes to these Conditions pursuant to Section 1752 (1) of the Civil Code. Each such change shall be notified by the Provider to the Customer at least 30 days prior to such change entering into effect. The Customer shall notify its disagreement with the change to the Provider before the change enters into effect otherwise the change shall be deemed to have been accepted by the Customer. Should the Customer timely notify the disagreement with the change to the Provider, the Contract is deemed to have been terminated as of the day when the change enters into effect.

3. COMMUNICATION

- 3.1 The Customer shall ensure that the contact details provided to the Provider upon registration (in particular the Contact E-mail) are accurate and functional for communication. The Customer shall not assert any communication faults resulting from the breach of the above obligation against the Provider.

3.2 The Provider shall communicate with the Customer primarily by way of e-mail messages sent to Contact E-mail. The Customer shall communicate with the Provider either by way of contact form within the Application or by e-mail messages to the address found at Provider's website. The Parties agree that if these Conditions or any provisions of applicable law require communication in writing, it shall include e-mail messages provided that such e-mail message includes the identity details (at least full name and e-mail address) of the person who sent it.

4. PROVISION OF SERVICES

4.1 The scope of Services shall be set out in the Contract.

4.2 All Services are intended for analysis of conduct of users of Customer's websites or other information systems operated by the Customer and planning of targeted marketing campaigns based on such analysis. Implementing and carrying out such marketing campaigns shall be the exclusive responsibility of the Customer and the Provider shall in no event be regarded as creating, ordering, processing or distributing party with respect to any advertisement based on the Services.

4.3 The Customer hereby acknowledges and agrees that all components of the Application are the intellectual property of the Provider, unless expressly stated that they are the intellectual property of third parties. The Customer shall refrain from any conduct that would infringe Provider's or respective third parties' rights to such intellectual property.

4.4 The Customer hereby acknowledges and agrees that all components of the Customer Side Software are the intellectual property of the Provider. The Provider hereby grants the Customer a non-exclusive license to use the Customer Side Software solely for the purpose for which it was provided, i.e. collection of data regarding user conduct on Customer's website or other Customer's information systems and strictly limited for the duration of the Contract. After termination of the Contract the Customer shall delete the Customer Side Software from all Customer's systems and data carriers and refrain from any further use thereof.

4.5 The Customer hereby acknowledges and agrees that all materials provided to the Customer by the Provider within the performance of the Services are intellectual property of the Provider. The Provider hereby grants the Customer a non-exclusive license to use such materials within the operation of Customer's business and make reasonable number of copies for such purpose, however, such license shall not include re-sale, rental, lending or communication to the public. Such license is not limited as to time or territory of use.

4.6 The Customer shall protect its user name and password for the access to the Application and not to disclose such access details to any third party. The Provider accepts no responsibility for misuse of such user name and password.

4.7 The Customer shall use the Application as well as the Customer Side Software in strict compliance with their specifications and operation manuals and refrain from any conduct that could compromise the security, functionality or availability of the Application or Customer Side Software. As the provision of Services depends on proper operation of Customer Side Software, the Customer shall at all times comply with the specification and operational requirements of such Software. The Customer also guarantees and shall ensure that the operation of Customer Side Software within Customer's websites and / or other information systems complies with applicable laws (including, without limitation, in relation to "cookies"); such operation shall be the exclusive responsibility of the Customer. The Customer cannot claim defects in the Services resulting from Customer's breach of obligations in this Article 4.7.

- 4.8 The Provider accepts no responsibility for the accuracy or completeness of data collected from Customer's websites or information systems. The Provider also accepts no responsibility for defects in the Services resulting from inaccurate or incomplete data provided by the Customer (unless such inaccuracy or incompleteness is caused by the Provider).
- 4.9 Scope, functionality and availability of the Services in free version of the Application is solely at the discretion of the Provider. The Provider shall be entitled to amend or modify the scope of such Services, including termination of any Service or part thereof or termination of the free version of the Application as such, without any compensation or any prior notice to the Customer. The Provider shall not be liable for any defects in functionality or availability of free version of the Application. The Provider may also change scope, functionality or availability of the paid version of the Application; substantial changes thereof shall be communicated to and accepted by the Customer in the same method as set out in Article 2.7.
- 4.10 Should the Services in paid version of the Application not be provided by the Provider as stated in the Contract, the Customer shall notify the Provider of such defect without undue delay after its discovery, in any case no later than 30 days from the date of provision of the respective Service, otherwise all Customer's rights resulting from such defect lapse. In such notification, the Customer shall also choose whether it wishes to receive remedy of the defect by re-performance or correction of performance of the respective Service (if possible) or corresponding discount from Fees; Customer shall have no other rights in connection with such defect. Should the Customer fail to include such choice in the notification, the choice is with the Provider. In the event that the defect shall be remedied by corresponding discount from Fees, such discount shall be implemented in the next invoice, unless the Parties agree otherwise.
- 4.11 Data gathered and provided to the Provider as a result of operation of Customer Side Software remain in the ownership of the Customer. The Provider shall be entitled to anonymize such data so that they lose the nature of Personal Data and that they are in no way attributable to the Customer. Such anonymized data shall be owned by the Provider who is, in particular, entitled to use such data without any limitation, including connection of such data with any other data or providing such data to any third party. Should such data be protected by any intellectual property right, the Customer hereby grants to the Provider an exclusive, free of charge license to use such data which is unlimited as to territory, time, volume, purpose and method of use, with the right to assign the license and grant sub-licenses. The license also includes the right of the Provider to amend or modify the data in any way, adapt them (including translation), connect them with other data or include them in a collection of works. The license shall not terminate upon termination of the Agreement.

5. FEES

- 5.1 The Customer shall pay to the Provider the Fees according to the price plan applicable to the Customer, unless the Customer uses the free version of the Application which is provided free of charge. The Customer is entitled to transfer between the free and paid versions of the Application as well as among different price plans of the paid version of the Application through the interface of the Application in accordance with Article 2.6. If the applicable price plan is based on the size of the client database of the Customer and / or the number of messages sent from within the Application, the Provider is entitled to charge an additional Fee set out in the applicable price plan for any excess of database size and / or number of messages. Such additional Fee shall be included in the invoice for the next invoicing period in accordance with Article 5.1.
- 5.2 Unless specified otherwise in the Contract, the invoicing period shall be 1 month and shall commence on the day when the Customer enters the paid version of the Application and continue in monthly periods, i.e. the Services are paid monthly in advance. The invoices shall

be generated automatically and inserted into the respective section within the user account interface of the Customer in the Application. The respective payments shall be automatically deducted from the payment card of the Customer. Should the respective payment fail to be deducted from the payment card of the Customer for the reasons on the side of the Customer, the Provider shall attempt another deduction in a reasonable time period and should it fail again, the Provider shall inform the Customer about it via e-mail message to Contact E-mail. The Customer shall contact the invoicing department of the Provider within 3 days from receipt of such message and agree on alternative means of payment. Should the due Fees not be paid within 5 days from the date of invoice generation, the Provider shall have right to suspend Services to the Customer, should such Fees not be paid within 30 days from the date of invoice generation, the Provider shall be entitled to rescind the Contract and delete the account of the Customer in the Application.

- 5.3 Should the invoice not be paid by the Customer on time, the Provider may also charge default interest set out by the applicable laws.
- 5.4 The Provider may change any price plan at its own discretion. Such change shall be communicated to and accepted by the Customer in the same method as set out Article 2.7.

6. LIMITATION OF LIABILITY

The Provider's liability for damage or any other harm caused to the Customer by the Provider resulting from the breach of Contract or any statutory provisions in connection with the Contract by the Provider (i) shall in case of Customer using the paid version of the Application not exceed the amount of total Fees paid by Customer to Provider in the respective monthly invoicing period which the breach occurred (ii) shall be excluded in case of Customer using free version of the Application. In any case the Provider shall not be liable for lost profits. The above limitation of liability shall not apply in cases where the limitation of liability is excluded by provision of applicable law which cannot be departed from by the agreement of the parties.

7. PERSONAL DATA

- 7.1 Should the Services include processing of Personal Data by the Provider, the Customer hereby represents to the Provider that such Personal Data were collected by Customer and handed-over to the Provider in full compliance with all applicable laws, in particular with the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (“**Regulation**”) and their processing by the Provider in accordance with the Contract will not give rise to any breach of contractual or other legal obligation to the subjects of such Personal Data or any breach of any applicable law (including the Regulation). Should such representation prove untrue, the Customer shall fully indemnify and compensate the Provider for any damage or any other harm that the Provider incurs as a result of such untrue representation.
- 7.2 The Customer will be the data controller and the Provider will be the data processor with respect to the Personal Data provided by the Customer to the Provider in connection with the performance of the Services.
- 7.3 Within the provision of Services the Provider may process in particular the Personal Data concerning the clients of the Customer, its business partners, users of websites or other information systems of the Customer or the employees of the Customer, including without limitation identification and contact details of such persons (including electronic addresses) or data concerning scope and method of use of websites or other information systems of the

Customer. The Provider shall not process special categories of personal data (sensitive data) pursuant to Article 9 of the Regulation.

- 7.4 The purpose of data processing is provision of Services under the Contract, in particular the analysis of data concerning use of websites or other information systems of the Customer. Such data processing shall, inter alia, take the form of analysis of such data, preparation and proposals of marketing campaigns based on such data, etc.
- 7.5 The Provider shall process Personal Data only for the time period necessary to achieve the above purpose of data processing, in any case no longer than for the duration of the Contract. After expiration of this time period of data processing the Provider undertakes to proceed in accordance with Article 7.11.
- 7.6 The Provider shall process the Personal Data only on documented instructions from the Customer, including with regard to transfers of Personal Data to a third country or an international organization, unless required to do so by applicable law to which the Provider is subject; in such a case, the Provider shall inform the Customer of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest.
- 7.7 The Provider shall ensure that persons authorised to process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- 7.8 The Provider shall ensure to take all measures pursuant to Article 32 of the Regulation.
- 7.9 The Provider shall be entitled to engage another processor to process Personal Data only with prior written consent of the Customer. Should such consent be granted, the Provider shall adhere to its obligations under Article 28, paragraph 2 and 4 of the Regulation.
- 7.10 While processing Personal Data, the Provider shall take into account the nature of the processing, assists the Customer by appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of the Customer's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III of the Regulation and ensuring compliance with the obligations pursuant to Articles 32 to 36 of the Regulation taking into account the nature of processing and the information available to the Provider.
- 7.11 The Provider undertakes to, at the choice of the Customer, delete or return all the Personal Data to the Customer after the end of the provision of services relating to processing, at the latest upon termination of the Contract and delete all existing copies unless any applicable law requires storage of the Personal Data.
- 7.12 The Provider shall make available to the Customer all information necessary to demonstrate compliance with the obligations laid down in this Article 7 as well as in any applicable laws and allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer.

The Provider shall implement appropriate technical and organizational measures to protect Personal Data the Customer provides. The Customer will inform the Provider if the Customer has any specific data security requirements whereupon the Parties will agree to implement additional measures in respect of such specific requirements.

8. TERM AND TERMINATION

- 8.1 The Contract shall become valid and effective in accordance with Article 2.4 or 2.5 and shall be made for indefinite period. In addition to the cases where the Contract can be terminated under the rules of applicable law, it can also be terminated by the Customer for any reason or without stating a reason by a written termination notice sent by e-mail from the Contact E-mail to the address support@samba.ai with 1 month termination period and the Provider shall have the right to terminate the Contract for any reason or without stating a reason by written termination notice sent by e-mail to the Contact E-Mail with 3 month termination period. The Customer hereby acknowledges that after termination of the Contract the Provider will delete the account of the Customer within the Application, including all data stored there by the Customer.
- 8.2 In the event that the Customer ceases to use the Application prior to the termination of the Contract, it shall nevertheless pay all Fees applicable until the termination becoming effective as stated above (i.e. including any applicable termination period).

9. FINAL PROVISIONS

- 9.1 All Contracts shall be governed by the laws of the Czech Republic.
- 9.2 Any dispute arising from or in connection with any Contract shall be decided by the courts of the Czech Republic. Local jurisdiction of such courts shall be determined on the basis of the registered office of the Provider at the time of filing of the respective court action.
- 9.3 No provision of any Contract shall establish rights or obligations of any third party and shall not serve interest of any third party.
- 9.4 No Party shall be entitled to assign its rights or obligations under any Contract to any third party with the exception of such an assignment by the Provider to a person which the Provider controls, is controlled by or under common control with or assignment of Provider's monetary receivables against the Customer by the Provider to any third party; the Customer grants its consent to such assignment.
- 9.5 Reference to an "Article" shall mean Article of these Conditions unless expressly stipulated otherwise.