

# Cloud Services Agreement for End Users

of

## **Semantic Web Company GmbH (doing business as Graphwise)**

This Cloud Services Agreement (this "Agreement") is concluded by and between

**Semantic Web Company GmbH, FN 323939g, Mariahilfer Strasse 70, 1070 Vienna, Austria –  
Europe ("SWC")**

and

**YOU**

**("Customer")**

the entity that has executed this Agreement.

This Agreement sets forth the terms and conditions that govern orders placed by Customer for Services under this Agreement.

### **1. AGREEMENT DEFINITIONS**

- 1.1. "Ancillary Program" means any software agent or tool owned or licensed by SWC that SWC makes available to Customer for download as part of the Cloud Services for purposes of facilitating Customers access to, operation of, and/or use with, the Services Environment. The term "Ancillary Program" does not include Separately Licensed Third Party Technology.
- 1.2. "Auto Renew" or "Auto Renewal" is the process by which the Services Period of certain Cloud Services under an order is automatically extended for an additional Services Period unless such Services are otherwise terminated in accordance with the terms of the order or this Agreement. The Service Specifications incorporated into Customers order define which Cloud Services are eligible for Auto Renewal as well as any terms applicable to any such renewal.

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- 1.3. "Cloud Services" means, collectively, the SWC cloud services (e.g., SWC software as a service offerings and related SWC Programs) listed in Customers order and defined in the Service Specifications. The term "Cloud Services" does not include Professional Services.
- 1.4. "SWC Programs" refers to the software products owned or licensed by SWC to which SWC grants Customer access as part of the Cloud Services, including Program Documentation, and any program updates provided as part of the Cloud Services. The term "SWC Programs" does not include Separately Licensed Third Party Technology.
- 1.5. "Professional Services" means, collectively, the consulting and other professional services which Customer has ordered. Professional Services include any deliverables described in Customers order and delivered by SWC to Customer under the order. The term "Professional Services" does not include Cloud Services.
- 1.6. "Program Documentation" refers to the user manuals referenced within the Service Specifications for Cloud Services, as well as any help windows and readme files for the SWC Programs that are accessible from within the Services. The Program Documentation describes technical and functional aspects of the SWC Programs. Customer may access the documentation online at <https://help.poolparty.biz/> or such other address specified by SWC.
- 1.7. "Separate Terms" refers to separate license terms between Customer and a third party licensor that are specified in the Program Documentation, Service Specifications, readme or notice files and that apply to Separately Licensed Third Party Technology.
- 1.8. "Separately Licensed Third Party Technology" refers to third party technology that is licensed under Separate Terms and not under the terms of this Agreement.
- 1.9. "Services" means, collectively, both the Cloud Services and Professional Services that Customer has ordered.
- 1.10. "Services Environment" refers to the combination of hardware and software components owned, licensed or managed by SWC to which SWC grants Customer and Customers Users access as part of the Cloud Services which Customer has ordered. As applicable and subject to the terms of this Agreement and Customers order, SWC Programs, Third Party Content and Customers Content may be hosted in the Services Environment.
- 1.11. "Service Specifications" means the descriptions on <http://www.semantic-web.at> and / or <http://www.poolparty.biz>, or such other address specified by SWC, that are applicable to the Services under Customers order, including any Program Documentation, hosting, support and security policies (for example, SWC PoolParty Cloud Service Description and Product Matrix et al), and other descriptions referenced or incorporated in such descriptions or Customers order AND the information provided in Annex I to this Agreement.

- 1.12. "Services Period" refers to the period of time for which Customer ordered Cloud Services as specified in Customer's order.
- 1.13. "Third Party Content" means all text, files, images, graphics, illustrations, information, data, audio, video, photographs and other content and material, in any format, that are obtained or derived from third party sources outside of SWC and made available to Customer through, within, or in conjunction with Customer use of, the Cloud Services. Examples of Third Party Content include data feeds from social network services, RSS feeds from blog posts, and data libraries and dictionaries or content linked / harvested from 3rd party sources as for instance data from the LOD cloud. Third Party Content does not include Separately Licensed Third Party Technology.
- 1.14. "Users" means those employees, contractors, and end users, as applicable, authorized by Customer or on Customer's behalf to use the Cloud Services in accordance with this Agreement and Customer order. For Cloud Services that are specifically designed to allow Customer customers, suppliers or other third parties to access the Cloud Services to interact with Customer, such third parties will be considered "Users" subject to the terms of this Agreement and the Customer's order.
- 1.15. "Customer" and "Customers" refers to the individual or entity that has executed this Agreement.
- 1.16. "Customer Content" means all text, files, images, graphics, illustrations, information, data (including Personal Data as described in Section 10 (Data Protection) below), audio, video, photographs and other content and material, in any format, provided by Customer or Customer's users that reside in, or run on or through, the Services Environment.

## **2. TERM OF AGREEMENT**

This Agreement is valid for the order which this Agreement accompanies. This Agreement may also be referenced for any purchase that increases the quantity of the original Services ordered (e.g., additional services and / or instances), for any Cloud Services options offered by SWC for the original Services ordered, and for any renewal or Auto Renewal of the Services Period of the original order.

## **3. RIGHTS GRANTED**

- 3.1. For the duration of the Services Period and subject to Customer payment obligations, and except as otherwise set forth in this Agreement or Customer order, Customer have the non-exclusive, non-assignable, royalty free, worldwide limited right to access and use the Services that Customer ordered, including anything developed by SWC and delivered to Customer as part of the Services, and to use Separately Licensed Third Party Technology, solely for Customer internal business operations and subject to the terms of this Agreement and Customer order, including the Service Specifications. Customer may allow Customer Users to use the Services for this purpose and Customer is responsible for Customer Users' compliance with this Agreement and the order.

- 3.2. Customer does not acquire under this Agreement any right or license to use the Services, including the SWC Programs and Services Environment, in excess of the scope and/or duration of the Services stated in Customer order. Upon the end of the Services ordered Customer's right to access and use the Services will terminate.
- 3.3. To enable SWC to provide Customer and Customer Users with the Services, Customer grant SWC the right to use, process and transmit, in accordance with this Agreement and Customer order, Customer Content for the duration of the Services Period plus any additional post-termination period during which SWC provides Customer with access to retrieve an export file of Customer Content. SWC will not be responsible for any use, disclosure, modification or deletion of Customer Content resulting from any such access by third party program providers or for the interoperability of such third party programs with the Services.
- 3.4. Except as otherwise expressly set forth in Customer order for certain Cloud Services offerings (e.g., a private cloud hosted at Customer facility), Customer acknowledges that SWC has no delivery obligation for SWC Programs and will not ship copies of such programs to Customer as part of the Services.
- 3.5. The Services may contain or require the use of Separately Licensed Third Party Technology. Customer is responsible for complying with the Separate Terms specified by SWC that govern Customer's use of Separately Licensed Third Party Technology. SWC may provide certain notices to Customer in the Service Specifications, Program Documentation, readme or notice files in connection with such Separately Licensed Third Party Technology. The third party owner, author or provider of such Separately Licensed Third Party Technology retains all ownership and intellectual property rights in and to such Separately Licensed Third Party Technology.
- 3.6. As part of certain Cloud Services offerings, SWC may provide Customer with access to Third Party Content within the Services Environment. The type and scope of any Third Party Content is defined in the Service Specifications applicable to Customer order. The third party owner, author or provider of such Third Party Content retains all ownership and intellectual property rights in and to that content, and Customer's rights to use such Third Party Content are subject to, and governed by, the terms applicable to such content as specified by such third party owner, author or provider.

#### **4. OWNERSHIP AND RESTRICTIONS**

- 4.1. Customer retains all ownership and intellectual property rights in and to Customer Content. SWC or its licensors retain all ownership and intellectual property rights to the Services, including SWC Programs and Ancillary Programs, and derivative works thereof, and to anything developed or delivered by or on behalf of SWC under this Agreement.
- 4.2. Customer may not, and may not cause or permit others to:
- a) remove or modify any program markings or any notice of SWC's or its licensors' proprietary rights;
  - b) make the programs or materials resulting from the Services (excluding Customer Content)

available in any manner to any third party for use in the third party's business operations (unless such access is expressly permitted for the specific Services Customer have acquired);

c) modify, make derivative works of, disassemble, decompile, reverse engineer, reproduce, distribute, republish or download any part of the Services (the foregoing prohibitions include but are not limited to review of data structures or similar materials produced by programs) unless required to be permitted by law for interoperability, or access or use the Services in order to build or support, and/or assist a third party in building or supporting, products or Services competitive to SWC;

d) perform or disclose any benchmark or performance tests of the Services, including the SWC Programs;

e) perform or disclose any of the following security testing of the Services Environment or associated infrastructure: network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing, or penetration testing; and

f) license, sell, rent, lease, transfer, assign, distribute, host, outsource, permit timesharing or service bureau use, or otherwise commercially exploit or make available the Services, SWC Programs, Ancillary Programs, Services Environments or SWC materials to any third party, other than as expressly permitted under the terms of the applicable order.

## **5. SERVICE SPECIFICATIONS**

5.1. The Services are subject to and governed by Service Specifications applicable to Customer order and listed in Annex I of this Agreement. Service Specifications may define provisioning and management processes applicable to the Services (such as planning), types and quantities of system resources (such as storage allotments, support or availability), functional and technical aspects of the SWC Programs, as well as any Services deliverables. Customer acknowledges that use of the Services in a manner not consistent with the Service Specifications may adversely affect Services performance and/or may result in additional fees. If the Services permit Customer to exceed the ordered quantity (e.g., soft limits on sessions, storage, servers, etc.), then Customer is responsible for promptly purchasing additional quantities to account for Customer excess usage.

5.2. SWC may make changes or updates to the Services (such as infrastructure, security, technical configurations, application features, etc.) during the Services Period, including to reflect changes in technology, industry practices, patterns of system use, and availability of Third Party Content. The Service Specifications are subject to change at SWC's discretion; however, SWC changes to the Service Specifications will not result in a material reduction in the level of performance or availability of the applicable Services provided to Customer for the duration of the Services Period.

## 6. USE OF THE SERVICES

- 6.1. Customer is responsible for identifying and authenticating all Users, for approving access by such Users to the Services, for controlling against unauthorized access by Users, and for maintaining the confidentiality of usernames, passwords and account information. By federating or otherwise associating Customer and Customer Users' usernames, passwords and accounts with SWC, Customer accepts responsibility for the confidentiality and timely and proper termination of user records in Customer local (intranet) identity infrastructure or on Customer local computers. SWC is not responsible for any harm caused by Customer Users, including individuals who were not authorized to have access to the Services but who were able to gain access because usernames, passwords or accounts were not terminated on a timely basis in Customer local identity management infrastructure or Customer local computers. Customer is responsible for all activities that occur under Customer and Customer Users' usernames, passwords or accounts or as a result of Customer or Customer Users' access to the Services, and agree to notify SWC immediately of any unauthorized use. Customer agrees to make every reasonable effort to prevent unauthorized third parties from accessing the Services.
- 6.2. Customer agrees not to use or permit use of the Services, including by uploading, emailing, posting, publishing or otherwise transmitting any material, including Customer Content and Third Party Content, for any purpose that may (a) menace or harass any person or cause damage or injury to any person or property, (b) involve the publication of any material that is false, defamatory, harassing or obscene, (c) violate privacy rights or promote bigotry, racism, hatred or harm, (d) constitute unsolicited bulk e-mail, "junk mail", "spam" or chain letters; (e) constitute an infringement of intellectual property or other proprietary rights, or (f) otherwise violate applicable laws, ordinances or regulations. In addition to any other rights afforded to SWC under this Agreement, SWC reserves the right, but has no obligation, to take remedial action if any material violates the restrictions in the foregoing sentence (the "Acceptable Use Policy"), including the removal or disablement of access to such material. SWC shall have no liability to Customer in the event that SWC takes such action. Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and ownership of all of Customer Content. Customer agrees to defend and indemnify SWC against any claim arising out of a violation of Customer obligations under this section.
- 6.3. Customer is required to accept all patches, bug fixes, updates, maintenance and service packs (collectively, "Patches") necessary for the proper function and security of the Services, including for the SWC Programs, as such Patches are generally released by SWC as described in the Service Specifications. SWC is not responsible for performance or security issues encountered with the Cloud Services that result from Customer failure to accept the application of Patches that are necessary for the proper function and security of the Services. Except for emergency or security related maintenance activities, SWC will coordinate with Customer the scheduling of application of Patches, where possible, based on SWC's next available standard maintenance window.

## **7. FEES AND TAXES**

- 7.1. All fees payable to SWC are due within 30 days from the invoice date. Once placed, Customer's order is non cancellable and the sums paid non refundable, except as provided in this Agreement or Customer's order. Customer will pay any sales, value-added or other similar taxes imposed by applicable law that SWC must pay based on the Services Customer ordered, except for taxes based on SWC's income. Also, Customer will reimburse SWC for reasonable expenses related to providing any Professional Services. Fees for Services listed in an order are exclusive of taxes and expenses.
- 7.2. Customer understands that Customer may receive multiple invoices for the Services Customer ordered. Invoices will be submitted to the Customer's department stated in the Purchase Order (PO) / the order of the Customer. Service fees are specified in the order and have to be paid after purchasing and contracting in advance for the specified period in the Services Specification and / or the Customer's order (Purchase Order).
- 7.3. Customer agrees and acknowledges that Customer has not relied on the future availability of any Services, programs or updates in entering into the payment obligations in Customer order; however, the preceding does not relieve SWC of its obligation during the Services Period to deliver Services that Customer has ordered per the terms of this Agreement.

## **8. SERVICES PERIOD; END OF SERVICES**

- 8.1. Services provided under this Agreement shall be provided for the Services Period defined in Customer order, unless earlier suspended or terminated in accordance with this Agreement or the order. If stated in the Service Specifications, certain Cloud Services that are ordered will Auto Renew for additional Services Periods unless (i) Customer provide SWC with written notice no later than thirty (30) days prior to the end of the applicable Services Period of Customer intention not to renew such Cloud Services, or (ii) SWC provides Customer with written notice no later than ninety (90) days prior to the end of the applicable Services Period of its intention not to renew such Cloud Services.
- 8.2. Upon the end of the Services, Customer no longer have rights to access or use the Services, including the associated SWC Programs and Services Environments; however, at Customer request, and for a period of up to 30 days after the end of the applicable Services Period, SWC will make available Customer Content then in the Services Environment for the purpose of retrieval by Customer. At the end of such 30 day period, and except as may be required by law, SWC will delete or otherwise render inaccessible any of Customer's Content that remain in the Services Environment.
- 8.3. SWC may temporarily suspend Customer password, account, and access to or use of the Services if Customer or Customer Users violate any provision within the 'Rights Granted', 'Ownership and Restrictions', 'Fees and Taxes', 'Use of the Services', or 'Export' sections of this Agreement, or if in SWC's reasonable judgment, the Services or any component thereof are about to suffer a significant threat to security or functionality. SWC will provide advance notice to Customer of any such suspension in SWC's reasonable discretion based on the nature of the circumstances giving rise to the suspension.



SWC will use reasonable efforts to re-establish the affected Services promptly after SWC determines, in its reasonable discretion, that the situation giving rise to the suspension has been cured; however, during any suspension period, SWC will make available to Customer Customer Content as existing in the Services Environment on the date of suspension. SWC may terminate the Services under an order if any of the foregoing causes of suspension is not cured within 30 days after SWC's initial notice thereof. Any suspension or termination by SWC under this paragraph shall not excuse Customer from Customer obligation to make payment(s) under this Agreement.

- 8.4. If either of the Parties breaches a material term of this Agreement and fails to correct the breach within 30 days of written specification of the breach, then the breaching party is in default and the non-breaching party may terminate the order under which the breach occurred. If SWC terminates the order as specified in the preceding sentence, Customer must pay within 30 days all amounts that have accrued prior to such termination, as well as all sums remaining unpaid for the Services under such order plus related taxes and expenses. Except for non-payment of fees, the non-breaching party may agree in its sole discretion to extend the 30 day period for so long as the breaching party continues reasonable efforts to cure the breach. Customer agrees that if Customer is in default under this Agreement, Customer may not use those Services ordered.
- 8.5. Provisions that survive termination or expiration of this Agreement are those relating to limitation of liability, indemnification, payment and others which by their nature are intended to survive.

## **9. NONDISCLOSURE**

- 9.1. By virtue of this Agreement, the parties may have access to information that is confidential to one another ("Confidential Information"). The Parties each agree to disclose only information that is required for the performance of obligations under this Agreement. Confidential information shall be limited to the terms and pricing under this Agreement, Customer Content residing in the Services Environment, and all information clearly identified as confidential at the time of disclosure.
- 9.2. A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.
- 9.3. The Parties each agree not to disclose each other's Confidential Information to any third party other than as set forth in the following sentence for a period of three years from the date of the disclosing party's disclosure of the Confidential Information to the receiving party; however, SWC will hold Customer Confidential Information that resides within the Services Environment in confidence for as long as such information resides in the Services Environment. The Parties each may disclose Confidential Information only to those employees, agents or subcontractors who are required to protect it against unauthorized disclosure in a manner no less protective than required under this Agreement. SWC will protect the confidentiality of Customer Content residing in the Services



Environment in accordance with the SWC security practices defined as part of the Service Specifications applicable to Customer order. In addition, Customer Personal Data will be treated in accordance with the terms of Section 10 below. Nothing shall prevent either party from disclosing the terms or pricing under this Agreement or orders placed under this Agreement in any legal proceeding arising from or in connection with this Agreement or from disclosing the Confidential Information to a governmental entity as required by law.

## **10. DATA PROTECTION**

- 10.1. SWC's Cloud Services is not designed to process personal data. If applicable (if personal data needs to be processed via the cloud service) the Customer is fully responsible to take care about this personal data. SWC will act as a data processor, and will act on Customer instruction concerning the treatment of Customer Personal Data residing in the Services Environment, as specified in this Agreement and the applicable order. Customer agrees to provide any notices and obtain any consent related to Customer use of the Services and SWC's provision of the Services, including those related to the collection, use, processing, transfer and disclosure of Personal Data.
- 10.2. The Service Specifications applicable to Customer order define the administrative, physical, technical and other safeguards applied to Customer Content residing in the Services Environment, and describe other aspects of system management applicable to the Services. Customer is responsible for any security vulnerabilities, and the consequences of such vulnerabilities, arising from Customer Content, including any viruses, Trojan horses, worms or other programming routines contained in Customer Content that could limit or harm the functionality of a computer or that could damage, intercept or expropriate data.
- 10.3. Customer may not provide SWC access to health, payment card or similarly sensitive personal information that imposes specific data security obligations for the processing of such data unless specified in Customer order and a respective agreement. If available, Customer may purchase services from SWC designed to address particular data protection requirements applicable to Customer business or Customer Content.

## **11. WARRANTIES, DISCLAIMERS AND EXCLUSIVE REMEDIES**

- 11.1. SWC warrants that it will perform (i) Cloud Services in all material respects as described in the Service Specifications, and (ii) Professional Services in a professional manner in accordance with the Service Specifications. If the Services provided to Customer were not performed as warranted, Customer must promptly provide written notice to SWC that describes the deficiency in the Services (including, as applicable, the service request number notifying SWC of the deficiency in the Services).
- 11.2. SWC DOES NOT GUARANTEE THAT (A) THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT SWC WILL CORRECT ALL SERVICES ERRORS, (B) THE SERVICES WILL OPERATE IN COMBINATION WITH CUSTOMER CONTENT, OR WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEMS, SERVICES OR DATA NOT PROVIDED BY SWC, AND (C) THE SERVICES WILL MEET CUSTOMER REQUIREMENTS, SPECIFICATIONS OR

EXPECTATIONS. CUSTOMER ACKNOWLEDGE THAT SWC DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. SWC IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. SWC IS NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION OR SECURITY OF THE SERVICES THAT ARISE FROM CUSTOMER CONTENT OR THIRD PARTY CONTENT. SWC DOES NOT MAKE ANY REPRESENTATION OR WARRANTY REGARDING THE RELIABILITY, ACCURACY, COMPLETENESS, CORRECTNESS, OR USEFULNESS OF THIRD PARTY CONTENT OR SERVICES, AND DISCLAIMS ALL LIABILITIES ARISING FROM OR RELATED TO THIRD PARTY CONTENT OR SERVICES.

- 11.3. FOR ANY BREACH OF THE SERVICES WARRANTY, CUSTOMER EXCLUSIVE REMEDY AND SWC'S ENTIRE LIABILITY SHALL BE THE CORRECTION OF THE DEFICIENT SERVICES THAT CAUSED THE BREACH OF WARRANTY, OR, IF SWC CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALY REASONABLE MANNER, CUSTOMER MAY END THE DEFICIENT SERVICES AND SWC WILL REFUND TO CUSTOMER THE FEES FOR THE TERMINATED SERVICES THAT CUSTOMER PRE-PAID TO SWC FOR THE PERIOD FOLLOWING THE EFFECTIVE DATE OF TERMINATION.
- 11.4. TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND ALL OTHER WARRANTIES OR CONDITIONS, WHETHER EXPRESS OR IMPLIED, ARE EXPRESSLY EXCLUDED, INCLUDING FOR SOFTWARE, HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

## **12. LIMITATION OF LIABILITY**

- 12.1. NOTHING IN THIS AGREEMENT SHALL LIMIT SWC'S LIABILITY FOR PERSONAL INJURY OR DEATH CAUSED BY THE NEGLIGENCE OF SWC, OR SWC'S LIABILITY IN THE TORT OF DECEIT. NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUE OR PROFITS (EXCLUDING FEES UNDER THIS AGREEMENT), DATA, OR DATA USE. SWC'S AGGREGATE LIABILITY FOR ALL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR CUSTOMER ORDER, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL BE LIMITED TO THE TOTAL AMOUNTS ACTUALLY PAID TO SWC FOR THE SERVICES UNDER THE ORDER GIVING RISE TO THE LIABILITY IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY LESS ANY REFUNDS OR CREDITS RECEIVED BY CUSTOMER FROM SWC UNDER SUCH ORDER.

### 13. INDEMNIFICATION

- 13.1. Subject to the terms of this Section 13 (Indemnification), if a third party makes a claim against either Customer or SWC ("Recipient" which may refer to Customer or SWC depending upon which party received the Material), that any information, design, specification, instruction, software, service, data, hardware, or material (collectively, "Material") furnished by either Customer or SWC ("Provider" which may refer to Customer or SWC depending on which party provided the Material) and used by the Recipient infringes the third party's intellectual property rights, the Provider, at the Provider's sole cost and expense, will defend the Recipient against the claim and indemnify the Recipient from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by the Provider, if the Recipient does the following:
- a. notifies the Provider promptly in writing, not later than 30 days after the Recipient receives notice of the claim (or sooner if required by applicable law);
  - b. gives the Provider sole control of the defense and any settlement negotiations; and
  - c. gives the Provider the information, authority and assistance the Provider needs to defend against or settle the claim.
- 13.2. If the Provider believes or it is determined that any of the Material may have violated a third party's intellectual property rights, the Provider may choose to either modify the Material to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, the Provider may end the license for, and require return of, the applicable Material and refund any unused, prepaid fees the Recipient may have paid to the other party for such Material. If such return materially affects SWC's ability to meet its obligations under the relevant order, then SWC may, at its option and upon 30 days prior written notice, terminate the order.
- 13.3. The Provider will not indemnify the Recipient if the Recipient (a) alters the Material or uses it outside the scope of use identified in the Provider's user or program documentation or Service Specifications, (b) uses a version of the Material which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Material which was made available to the Recipient, or (c) continues to use the applicable Material after the end of the license to use that Material. The Provider will not indemnify the Recipient to the extent that an infringement claim is based upon any information, design, specification, instruction, software, service, data, hardware or material not furnished by the Provider. SWC will not indemnify Customer for any portion of an infringement claim that is based upon the combination of any Material with any products or Services not provided by SWC. SWC will not indemnify Customer to the extent that an infringement claim is based on Third Party Content or any Material from a third party portal or other external source that is accessible to Customer within or from the Services (e.g., data from the LOD cloud, a social media post from a third party blog or forum, a third party Web page accessed via a hyperlink, etc.).

SWC will not indemnify Customer for infringement caused by Customer actions against any third party if the Services as delivered to Customer and used in accordance with the terms of this Agreement would not otherwise infringe any third party intellectual property rights. Provider will not indemnify Recipient for any intellectual property infringement claim(s) known to Recipient at the time Services rights are obtained.

13.4. The term “Material” defined above does not include Separately Licensed Third Party Technology. Solely with respect to Separately Licensed Third Party Technology that is part of or is required to use the Cloud Services and that is used: (a) in unmodified form; (b) as part of or as required to use the Cloud Services; and (c) in accordance with the usage grant for the relevant Cloud Services and all other terms and conditions of this Agreement, SWC will indemnify Customer for infringement claims for Separately Licensed Third Party Technology to the same extent as SWC is required to provide infringement indemnification for Materials under the terms of the Agreement.

13.5. This Section 13 provides the parties’ exclusive remedy for any infringement claims or damages.

#### **14. THIRD PARTY WEB SITES, DATA, CONTENT, PRODUCTS AND SERVICES**

14.1. The Services may enable Customer to link to, transmit Customer Content to, or otherwise access, other websites, data, content, products, services, and information of third parties. SWC does not control and is not responsible for such Web sites or any such content, data, products, services and information accessible from or provided through the Services and Customer bear all risks associated with access to and use of such Web sites and third party content, data, products, services and information.

14.2. Any Third Party Content made accessible by SWC in or through the Services Environment is provided on an “as-is” and “as available” basis without any warranty of any kind. Third Party Content may be indecent, offensive, inaccurate, infringing or otherwise objectionable or unlawful, and Customer acknowledge that SWC is not responsible for and under no obligation to control, monitor or correct Third Party Content; however, SWC reserves the right to take remedial action if any such content violates applicable restrictions under Section 6.2 of this Agreement, including the removal of, or disablement of access to, such content.

14.3. Customer acknowledges that: (i) the nature, type, quality and availability of Third Party Content may change at any time during the Services Period, and (ii) features of the Services that interoperate with third parties such as LOD cloud sources (as e.g. DBpedia et al) or social media as e.g. Twitter™, etc. (each, a “Third Party Service”), depend on the continuing availability of such third parties’ respective application programming interfaces (APIs) for use with the Services. SWC may update, change or modify the Services under this Agreement as a result of a change in, or unavailability of, such Third Party Content, Third Party Services or APIs. If any third party ceases to make its Third Party Content or APIs available on reasonable terms for the Services, as determined by SWC in its sole discretion, SWC may cease providing access to the affected Third Party Content or Third Party Services without any liability to Customer. Any changes to Third Party Content, Third Party Services or APIs, including their

availability or unavailability, during the Services Period does not affect Customer obligations under this Agreement or the applicable order, and Customer will not be entitled to any refund, credit or other compensation due to any such changes.

- 14.4. Any Third Party Content that Customer stores in Customer Services Environment will count towards any storage or other allotments applicable to the Cloud Services that Customer ordered.

## **15. SERVICES TOOLS AND ANCILLARY PROGRAMS**

- 15.1. SWC may use tools, scripts, software, and utilities (collectively, the “Tools”) to monitor and administer the Services and to help resolve Customer SWC service requests. The Tools will not collect or store any of Customer Content residing in the Services Environment, except as necessary to provide the Services or troubleshoot service requests or other problems in the Services. Information collected by the Tools (excluding Customer Content) may also be used to assist in managing SWC’s product and service portfolio, to help SWC address deficiencies in its product and service offerings, and for license and Services management.
- 15.2. As part of the Cloud Services, SWC may provide Customer with online access to download certain Ancillary Programs for use with the Services. If SWC does not specify separate terms for such Ancillary Programs, then, subject to Customer payment obligations, Customer have the non-exclusive, non-assignable, royalty free, worldwide limited right to use such Ancillary Programs solely to facilitate Customer access to, operation of, and/or use of the Services Environment, subject to the terms of this Agreement and Customer order, including the Services Specifications. Customer’s right to use such Ancillary Programs will terminate upon the earlier of SWC’s notice (which may be through posting on an URL designated by SWC), the end of the Cloud Services associated with the Ancillary Programs, or the date on which the license to use the Ancillary Programs ends under the Separate Terms specified for such programs

## **16. SERVICE ANALYSES**

- 16.1. SWC may (i) compile statistical and other information related to the performance, operation and use of the Services, and (ii) use data from the Services Environment in aggregated form for security and operations management, to create statistical analyses, and for research and development purposes (clauses i and ii are collectively referred to as “Service Analyses”). SWC may make Service Analyses publicly available; however, Service Analyses will not incorporate Customer Content or Confidential Information in a form that could serve to identify Customer or any individual, and Service Analyses do not constitute Personal Data. SWC retains all intellectual property rights in Service Analyses.

## **17. EXPORT**

- 17.1. Export laws and regulations of Austria / the European Union (EU) and any other relevant local export laws and regulations apply to the Services. Customer agrees that such export laws govern

Customer's use of the Services (including technical data) and any Services deliverables provided under this Agreement, and Customer agrees to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations). Customer agree that no data, information, software programs and/or materials resulting from Services (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

- 17.2. Customer acknowledges that the Cloud Services are designed with capabilities for Customer and Customer Users to access the Services Environment without regard to geographic location and to transfer or otherwise move Customer Content between the Services Environment and other locations such as User workstations. Customer is solely responsible for the authorization and management of User accounts, as well as export control and geographic transfer of Customer Content.

## **18. FORCE MAJEURE**

- 18.1. Neither of the Parties shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; pandemic; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancelation of any export, import or other license); or other event outside the reasonable control of the obligated party. Both Parties will use reasonable efforts to mitigate the effect of a force majeure event. If such an event continues for more than 30 days, either of the Parties may cancel unperformed Services and affected orders upon written notice. This Section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or Customer obligation to pay for the Services.

## **19. GOVERNING LAW; JURISDICTION; DISPUTE RESOLUTION**

- 19.1. This Agreement shall be governed by and construed exclusively in accordance with the laws of Austria, excluding its conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Prior to initiating litigation in relation to this Agreement, the Parties will make a good faith attempt to resolve their dispute through direct negotiation. However, following any unsuccessful negotiation, all disputes or claims arising out of or in connection with this contract, including disputes relating to its validity, breach, termination or nullity, shall be finally settled under the Rules of Arbitration (Vienna Rules) of the Vienna International Arbitral Centre (VIAC) of the Austrian Federal Economic Chamber by one or three arbitrators appointed in accordance with the said Rules. The seat of arbitration and venue of the proceedings shall be Vienna, Austria.

## **20. NOTICE**

- 20.1. Any notice required under this Agreement shall be provided to the other party in writing. If Customer have a dispute with SWC or if Customer wish to provide a notice under the Indemnification Section of this Agreement, or if Customer become subject to insolvency or other similar legal proceedings, Customer will promptly send written notice to: Semantic Web Company GmbH, Mariahilfer Strasse 70/8, 1070 Vienna, Austria, Europe, marked for the attention of the Customer Support Department and the CFO of the Semantic Web Company GmbH.
- 20.2. To request a termination of Services in accordance with this Agreement, Customer must submit a service request to SWC at the address specified in Customer order or the Service Specifications.
- 20.3. SWC may give notices applicable to SWC's Cloud Services customer base by means of a general notice on the SWC portal for the Cloud Services, and notices specific to Customer by electronic mail to Customer e-mail address on record in SWC's account information or by written communication sent by first class mail or pre-paid post to Customer address on record in SWC's account information.

## **21. ASSIGNMENT**

- 21.1. Customer may not assign this Agreement or give or transfer the Services (including the SWC Programs) or an interest in them to another individual or entity. If Customer grants a security interest in any portion of the Services, the secured party has no right to use or transfer the Services or any deliverables. The foregoing shall not be construed to limit the rights Customer may otherwise have with respect to Separately Licensed Third Party Technology licensed under open source or similar license terms.

## **22. OTHER**

- 22.1. SWC is an independent contractor and the Parties agree that no partnership, joint venture, or agency relationship exists between the Parties. The Parties each will be responsible for paying our own employees, including employment related taxes and insurance. Customer shall defend and indemnify SWC against liability arising under any applicable laws, ordinances or regulations related to Customer termination or modification of the employment of any of Customer employees in connection with any Services under this Agreement. Customer understands that SWC's business partners and other third parties, including any third party firms retained by Customer to provide consulting or implementation services or applications that interact with the Cloud Services, are independent of SWC and are not SWC's agents.



SWC is not liable for, bound by, or responsible for any problems with the Services arising due to, any acts of any such business partner or third party, unless the business partner or third party is providing Services as an SWC subcontractor on an engagement ordered under this Agreement and, if so, then only to the same extent as SWC would be responsible for SWC resources under this Agreement.

- 22.2. If any term of this Agreement is found to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with another term consistent with the purpose and intent of this Agreement.
- 22.3. Except for actions for non-payment or breach of SWC's proprietary rights, no action, regardless of form, arising out of or relating to this Agreement may be brought by either party more than two years after the cause of action has accrued.
- 22.4. SWC Programs and Services are not designed for or specifically intended for use in nuclear facilities or other hazardous applications. Customer agrees that it is Customer responsibility to ensure safe use of SWC Programs and Services in such applications.
- 22.5. Customer shall obtain at Customer sole expense any rights and consents from third parties necessary for Customer Content, and Third Party Content, as well as other vendor's products provided by Customer that Customer uses with the Services, including such rights and consents as necessary for SWC to perform the Services under this Agreement.
- 22.6. Customer agrees to provide SWC with all information, access and full good faith cooperation reasonably necessary to enable SWC to provide the Services and Customer will perform the actions identified in Customer order as Customer responsibilities.
- 22.7. Customer remains solely responsible for Customer regulatory compliance in connection with Customer use of the Services. Customer is responsible for making SWC aware of any technical requirements that result from Customer regulatory obligations prior to entering into an order governed by this Agreement. SWC will cooperate with Customer efforts to determine whether use of the standard SWC Services offering is consistent with those requirements. Additional fees may apply to any additional work performed by SWC or changes to the Services.
- 22.8. SWC may audit Customer use of the Services (e.g., through use of software tools) to assess whether Customer use of the Services is in accordance with Customer order and the terms of this Agreement. Customer agrees to cooperate with SWC's audit and provide reasonable assistance and access to information. Customer agrees that SWC shall not be responsible for any of Customer costs incurred in cooperating with the audit.
- 22.9. The purchase of Cloud Services, Professional Services, or other service offerings, programs or products are all separate offers and separate from any other order. Customer understands that

Customer may purchase Cloud Services, Professional Services, or other service offerings, programs or products independently of any other order. Customer obligation to pay under any order is not contingent on performance of any other service offerings or delivery of programs or products.

## **23. ENTIRE AGREEMENT**

- 23.1. Customer agree that this Agreement and the information which is incorporated into this Agreement by written reference (including reference to information contained in a URL or referenced policy), together with the applicable order, is the complete agreement for the Services ordered by Customer and supersedes all prior or contemporaneous agreements or representations, written or oral, regarding such Services. Nothing in this Agreement excludes or limits SWC's liability for deceit or fraudulent misrepresentation.
- 23.2. It is expressly agreed that the terms of this Agreement and any SWC order shall supersede the terms in any purchase order, procurement internet portal, or other similar non-SWC document and no terms included in any such purchase order, portal, or other non-SWC document shall apply to the Services ordered. In the event of any inconsistencies between the terms of an order and the Agreement, the Agreement shall take precedence. Except as otherwise permitted in Section 5 (Service Specifications), Section 10 (Data Protection) and Section 14 (Third Party Web Sites) with respect to the Services, this Agreement and orders hereunder may not be modified and the rights and restrictions may not be altered or waived except in a writing signed or accepted online through the SWC Store by authorized representatives of Customer and of SWC. No third party beneficiary relationships are created by this Agreement.

## ANNEX 1

# TO CLOUD SERVICE AGREEMENT FOR END USERS

## SERVICE SPECIFICATION

### Contracted Services

Product and version	Service	Number of Months
PoolParty Enterprise Server, Graphwise for M365 modules	Cloud Service	12 months

Total compensation will be invoiced after execution of the Agreement, payable 30 days net from invoicing.

Remark: Annual Cloud Service fees include (i) infrastructure, (ii) license (provision) fee, and (iii) maintenance and support fees.

### Further Service Specification

- Backup of the whole Service Environment & the Customer Content on a daily basis and available for recovery for 12 calendar days – there are additional backup mechanisms in the Service Environment that can be configured by the Customer (Data / Content Snapshots). For further details see the Software Documentation.
- 99% availability of the cloud service (remark: this service is NOT a 24/7 availability service).
- The Cloud Service will always use latest available PoolParty Release and latest Java release, and PoolParty installation and configuration uses best practices security as well as secure Standard Operating Environments (SOEs) – thereby items as follows are covered:
  - Removing or disabling unneeded software and operating system components and functionality from a system reduces its attack surface.
  - Removal of unneeded software, operating system components and hardware
  - Disabling of unused or undesired functionality in software, operating systems and hardware
  - Use of data execution prevention functionality, preferably hardware based, when available
  - Implementation of access controls on relevant objects to limit users and programs to the minimum access required
  - Removing or otherwise disabling unused accounts
  - Renaming or deleting default accounts

- Replacing default passphrases.
  - Users do not have the ability to install or disable software
  - Users cannot disable or bypass security functionality the latest version of applications and operating systems as soon as possible.
- No Ancillary Programs provided for this Service.
  - Limits on storage for this service: 40GB HDD (Cloud Service and Backup)
  - No limits on users for this service.
  - The Software Documentation is available online via: <https://help.poolparty.biz/>

## Service Levels

### Hours of Operation

SWC will operate daily from Monday to Friday, from 09.00am to 05.00pm CE(S)T, excluding Austrian public holidays where alternative arrangements will be made and published.

SWC shall advise and support the Customer via support desk on business days between 09.00am and 05.00pm CE(S)T, excluding Austrian public holidays, on problems of a simpler nature so that the Customer is able to eliminate smaller-scale errors on its own. Where it is not possible to resolve simpler problems or errors the Customer has raised with SWC immediately in the context of the support desk, SWC shall get back and provide information within specified response times of the Customer's ticket created in the support desk. SWC shall be at liberty to provide the information requested by the Customer by e-mail as well.

This advice and consultation shall not be deemed in lieu of training the Customer's employees or in lieu of consulting the Software documentation. In cases in which the hotline service is used repeatedly for similar problems, SWC is entitled to premise further contract advice or consulting on additional training measures (which shall attract a charge) lying outside this Agreement.

## Response Priority and Response Time

The table below shows the priority assigned to faults according to the perceived importance of the reported situation (type of incident). The priority assignment is to refer to the response time to the Authority. Furthermore the notification channel that should be used per incident type is given.

Table 1- Response Priority

Category	Description
1	Operation-Impeding Defects: an error or defect which hampers the software / functions of the software in a crucial (business critical) fashion.
2	Significantly handicap operations: an error or defect which hampers the functions of the software in a significant fashion.
3	(Non critical) operating issues: an error or defect which hampers the functions of the software in a minor fashion.

Table 2 shows the required response times for the individual priority ratings during the hours of operations.

Table 2: Priority Level Response Time

Category	Response Time	Notification Channel to be used
1	4 Hours	Email & Phone (Ticket created by SWC)
2	8 Hours	Email & Ticket (Ticket created by Customer)
3	6 workdays	Ticket (Ticket created by Customer)

Note: all given response times in this document are valid only during given hours of operations.