SOFTWARE USER LICENSE MAINTENANCE, UPDATES AND ASSISTANCE AGREEMENT

GENERAL TERMS AND CONDITIONS

1. Definitions

1.1. With regard to this contract, except for definitions stated elsewhere and not specifically mentioned herein, the terms listed in this article will be assigned with the following meanings and they will be always shown with capital letter, either in singular or plural form:

- General Terms and Conditions: means the documents provided to the Client; the Provider does not guarantee any other different use of the Software.
- Service: means the Software license maintenance, and consequently the issuance of Software error or malfunction corrections as soon as available; software updates released to the Client, as results of possible legislative, regulatory or administrative changes, that cause variations falling in the concept of ordinary administration, but that will not cause Software's new module or ex-novo designated Software;...
12.1. In exchange for providing Software and Service, the Client shall pay the Provider, or alternatively the Authorized Reseller, the amount stated in the application form or in the Commercial offer, according to the methods and terms set out therein. All prices must be considered without VAT according the law rate and possible extra expenses and duties. In the event of late payment with no need for any prior formal notice or of default, not without prejudice to any other different rights, late payment interest will accrue in favour of Namiral, or the Authorized Reseller, on all amounts not paid promptly, calculated on the basis of late payment interest principles, and contractual and precontractual interest principles, and contractual and precontractual obligations. The interest rates are fixed at 9% per annum, up to the maximum rate applicable under Italian law. The Client will be entitled to receive compensation for losses, including its use and business interests of the Client, or not to exploit this information for his/her own purposes or to disclose it to third parties or in the event of a breach of confidentiality agreements. The Client will be entitled to receive compensation for losses, including its use and business interests of the Client, or not to exploit this information for his/her own purposes or to disclose it to third parties or in the event of a breach of confidentiality agreements.

12.2. Violates the provisions contained in articles 15 to 22 of Reg. EU 2016/679, sending written notice to the Client in the manner set out in article 13 below. In any case of termination or Software delivery failure, the Provider and/or the Authorized Reseller will be entitled to require a damage compensation to the Client. In any event that the Provider changes its Software price list, it will be entitled to unilaterally amend the compensation stated on the application form and in the Commercial offer, prior written notice to be sent to the Client in the manner set out in article 13 below. In this case, the Client shall be entitled to withdraw from the Contract within 30 days from the receipt of the above communication, otherwise the amendments will be considered entirely accepted by the Client.

13. Communications

13.1. All communications among the parties in relation to the Contract, shall be considered valid if sent to the Party’s last known address, via registered letter, fax, or e-mail. In any case, correspondence sent via the postal service by the Client to the Provider must be sent to the following address: Namiral S.p.A., Via Caduti sul lavoro 4, 60019 – Senigallia (AN), or to another address provided to the Customer with at least 30 (thirty) days notice.

13.2. All electronic correspondence sent to the Provider must be sent to the following Certified E-mail Address: ufficiocommerciale@sicurezzapostale.it, or to another Certified E-mail Address provided to the Customer with at least 30 (thirty) days’ notice.

13.3. In case the Client purchases the Software through a Authorized Reseller, all communications shall be addressed to the latter.

14. Personal data processing

14.1. According to Reg. EU 2016/679, the Provider informs the Client that its personal data will be processed in connection with the relationship governed by the Contract in accordance with the provisions of Reg. EU 2016/679. The Client hereby accepts to the processing of personal data for the purpose of providing the Software and Service. Data will be processed according to the provisions of this Agreement, Italian law. For all matters not expressly regulated by this Contract, express reference shall be made to the general rules set out in the Italian Civil Code, as well as applicable regulations on the subject.

15. Express termination clause

15.1. The Provider, also through the Authorized Reseller, prior written notice to be sent in the manner set out in article 13 above, is entitled to terminate this Contract with immediate effect, according to art. 1456 c.c., and consequently revoke the Software license (unless the Client owns a perpetual Software license), if the Client:

a) Provides Software license to third parties, in any form or mode;

b) Communicates the authentication credentials for accessing the Software in Saas mode to any third party;

c) copies, also in favour of the Authorized Reseller.

14.2. The data shall mainly be processed using electronic and IT tools and stored in both IT and hard copy formats, as well as using any other suitable format, in compliance with the security measures adopted in accordance with that regulation. Provision of such data is mandatory, and the provision of incomplete or erroneous data may result in failure to execute the relationship governed by this Contract, in whole or in part.

14.3. The Client can, in any moment, exercise its rights towards the Provider in accordance with the articles 15 to 22 of Reg. EU 2016/679, sending written notice to Namiral’s DPO, dpo@namiral.com or dpo.namiral@sicurezzapostale.it.

14.4. The data are stored in data centres located in the European Union territory and in any case adhering to the current standard contractual clauses in force. The list of data centres is available as Annex 2 to the Data Protection Agreement.

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16. Jurisdiction and applicable law

16.1. Any disputes that may arise between the Parties with regard to interpreting the Contract and its subsequent amendments and supplements shall be submitted to the exclusive jurisdiction of the Court of Ancona, with the express exclusion of any other Court.

16.2. This contract shall be governed, interpreted and applied in accordance with Italian law. For all matters not expressly regulated by this Contract, express reference shall be made to the general rules set out in the Italian Civil Code, as well as applicable regulations on the subject.

17. General provisions

17.1. These General Terms and Conditions together with the application form and/or Commercial offer and/or Data Protection Agreement constitute essential and substantial part of an unique Contract.

17.2. The Client declares to be aware and to accept that the Provider shall be entitled

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to unilaterally amend, in any moment, these General Terms and Conditions and other documents that are part of this Contract, as well as the Software provision methods. The amendments shall be notified to the Client via e-mail or certified e-mail or by publishing them on the web platform, becoming effective after 30 days of being noticed or published. In case the Client is not intended to accept the amendments, it will be entitled to withdraw from the Contract according to the above effectiveness term, through written notice to be sent to the Provider, or to the Authorized Reseller, in the manner set out in Article 13 above.

17.3. The Provider can withdraw a Software with an advanced notice of 6 months, carrying on supplying the Software until the last day of validity, or support the Client through the migration to another software offered by the Provider. The Client acknowledges and accepts that as of the Software withdrawal date, it will be forbidden to use the Software. The Provider shall not be responsible for possible damages or compensation requests arising from the violation of the above ban.

17.4. The Provider shall store and process all data and information that the Client supplies, for the Software execution. The Provider guarantees that, at the purchasing date, the storage support where the Software are registered for a maximum period of 30 days from the date of the transportation document or, in case of immediate invoice, from the invoice date. In case of verified support’s bug, the provider will deliver Software to the client on a new support, replacing the previous one.

A. USER LICENSE ON-PREMISES MODE

The Provider guarantees that, at the purchasing date, the storage support where the Software are registered is free of any bug and it is in normal use conditions and perfectly functioning. The Provider is responsible for possible bugs of the support where the Software are registered for a maximum period of 30 days from the date of the transportation document or, in case of immediate invoice, from the invoice date. In case of verified support’s bug, the provider will deliver Software to the client on a new support, replacing the previous one.

B. SUPPORT WARRANTY

The Provider shall install every Software updates and releases supplied from the Provider, knowing that on the contrary the maintenance, updates and assistance service could be useless in whole or in part. Possible Software new releases, corrections or updates are subordinated to the same agreement established for the original Software and from this Contract.

C. PROGRAM INSTALLATION

Save as otherwise agreed, the Software installation is at Client’s expenses. In case the Client asks the Provider or authorized third parties for assistance and support on site, the Client will be charged with a fee according to hourly rate current on the intervention day.

D. COMPUTER TRANSFER – CLIENT DUTIES

In case the Client is intended to give the computer on which the Software is installed to third parties, it is obliged to prior uninstall the Software since the Software has been licensed to the Client exclusively.

E. SOFTWARE REQUIREMENTS

It is Client’s duty to verify that its own operating system is congruent with Software functions. The Provider is not responsible for a non-compliant operative system and does not supply operating system service, application or in general RDBMS (“Relational Database Management System”), used by the Client, and for which is expired the support period granted by the producer. In case that third parties software run on the Client computer together with the Software, the Provider can require the Client to disable such third parties software and to prove an eventual bug related to the Software after the disablement of the third parties software.

SECTION II

USER LICENSE IN SAAS MODE

A. USE

The SaaS Software user license can be used by the Client through internet network, for which provision the Client will enter into a separate agreement with a telecommunication operator. Installation, use and access can be performed only through the Provider Virtual machine.

B. CONTENT

The content is composed of all data and information that the Client supplies, authorizes for the Software access or upload in the Software.

The Client retains all rights and ownership of its content. The Provider does not claim any ownership rights to such content. The Provider will not access, view, or listen to any of the Client’s content, except as reasonably necessary to perform the Software execution.

The Client represents and warrants that he/she owns or otherwise controls all of the rights to the content that it submits; that the said content is truthful and accurate; and that use of the content supplied by the Client does not violate these General Terms and Conditions or any applicable laws.

The client acknowledges, and accept that it is responsible for the submissions provided and that it has full responsibility for the legality and copyright of the submissions.

It is strictly forbidden to the Client to send Spam. The Provider employs physical, electronic and managerial procedures to safeguard and help preventing unauthorized access to the Client’s content. The Provider chooses these safeguards based on the sensitivity of the information collected, processed and stored and the current state of technology. Although the Provider takes measures to safeguard against unauthorized disclosures of information, the Internet and the Software are not 100% secure so the Provider shall not guarantee that information collected or stored will be protected from all unauthorized access.

The client acknowledges and accepts that Software do not represent a documental storage tool. For this reason the Provider will keep available for the Client, until expiration date of the Contract and unless otherwise specified, the documents resulting from the Software, and only for the period of time specified in the product specifications.

On the Contract expiry date, the Client will have the possibility to implement an electronic storage or to autonomously download the documents. After this deadline, the Provider is authorized to cancel the content.
PRODUCT SPECIFICATIONS “Building in Cloud”

A. Definitions

In addition to Article 1 of the General Terms and Conditions, for the purposes of this agreement, the following definitions apply to any definitions indicated elsewhere and not expressly mentioned herein, the terms listed in this article shall be assigned the following meanings and shall always be used with a capital letter, both in the singular and plural:

- “User”: the person(s) who, following activation of the Service by the Customer, is/are invited to collaborate in the interactive activities offered by the Service;
- “Programme” or “Service”: as defined in the General Conditions, shall mean the Building in Cloud service.

B. Description of the Service

The Service is accessible via the Internet in “Software as a Service” mode at the address: www.namirial.com/Cloud). The Service is intended for users over 18 years of age, and is only accessible following registration for the Service or following an invitation to collaborate. In order to improve the quality of the activities carried out during the life cycle of a building or infrastructure, Authorised Users, therefore, can create, manage and share information, collaborating in synergy with each other.

C. Applicability of the Contract to Users and Responsibilities of the Customer

The Users authorised by the Customer to access the Service are obliged to comply with the terms of use of the Service set out in this Contract. It is understood that the Customer remains solely liable to the Provider in the event of any breach, even partial, by the Users of their obligations under this Contract.

D. Service subscriptions levels

Different subscription levels of the Service are available, which determine - the level at which the Service can be accessed;
- the availability of storage space, number of buildings, number of users;
- the cost of the Service itself.

The Customer shall select the desired Service level when activating the Service.

Free level of Service

The Customer may activate the Free version of the Service free of charge, the use of which shall be subject to the terms and conditions set out in this Agreement. This Level can be activated free of charge directly by the Customer through the Namiriail Shop (www.namirial.com). The Customer is allowed to subscribe to and use the Service free of charge.

The “Free” subscription level allows activation of a fixed number of buildings, storage space and users fixed and determined as indicated on the Namiriail Shop page at the time of subscription.

The “Free” subscription level does not allow activation of additional modules of the Service.

The subscriber of the “Free” level may decide to upgrade the Service to higher levels for a fee at any time during the validity of the subscription. The “Free” level of service may be used indefinitely, the only condition is that the subscriber accesses the Service at least once every 180 (one hundred and eighty) days.

Starting from the nineteenth day, before 180 (one hundred and eighty) days have elapsed without the subscriber accessing the Service, the subscriber will receive every 30 (thirty) days a notification from him/her of the imminent expiry of the subscription. After a final lapse of 180 (one hundred and eighty) days without the subscriber, notwithstanding the forwarding of the warning emails, having logged in or performing any action related to the Service, the account will be disabled and the subscriber will no longer be able to access the Service. The conditions set out in the section “Consequences of termination of the Service” will apply in this case.

The user may also independently terminate the subscription to the Service by disconnecting from the Service and from the “Settings” section, select the “Subscription” command, then select “Cancel subscription” option.

If the request to terminate the subscription is performed/executed correctly, the User will receive an email confirmation of the immediate termination of the subscription.

In this case, the Account will be disabled and the conditions set out in the “Consequences of Service Termination” section will apply.

E. Content posted by the Customer and/or Users

The Provider has no control over the contents posted by the Customer, including through the use of the Service.

Consequently, the Customer assumes, also on behalf of the Users, responsibility for the contents, materials and information of any kind that it or the Users may publish, transmit or disseminate or make accessible through the Service and is solely responsible, also from a financial point of view, for any damage caused directly and/or indirectly to third parties. Therefore, the Customer undertakes to indemnify and hold harmless the Supplier against any third party claims arising from or in any way connected with the use of the Service.

The Supplier reserves the right, at its sole discretion, in the event of any breach of the commitments provided for herein by the Customer and/or Users, even upon notice from third parties, to immediately suspend and/or interrupt access to the Service, as well as to delete or disable any material deemed harmful to legal provisions, without any liability to the Customer. However, the fact that the Provider does not publish, or does not delete a User’s content, does not mean that such content has been deemed acceptable by the Provider.

In any case, the Supplier invites the Customer, also through the Users, holding them otherwise liable to:

- not publish personal information or images that the Customer and/or Users wish to keep confidential or that may allow other Customers/Users to contact him/her directly, the Supplier invites the Customer, also through Users, not to publish data and/or information referable to third parties for which prior consent has not been obtained;
- not to publish information content material of any kind (audio, video, graphics, etc.) covered by copyright without the prior authorisation of the person having the right;
- not to publish content relating to minors or otherwise in breach of laws and regulations;
- not upload, post, send or in any other way transmit or disseminate any material that contains viruses or other codes, files or programmes created to interrupt, destroy or limit the operation of third-party software, hardware or telecommunications systems, interrupt the normal course of communications, interfere with or disrupt the services and/or servers connected with the services.

The Supplier will cooperate with the Public Authorities in all cases in which it is requested to provide the data and/or information necessary to trace the perpetrators of offences.

F. Consequences of the termination of the Contract

In the event of termination, for any reason whatsoever, of this Contract, the Supplier shall immediately deactivate the fixed in the Terms of use of Services, while the data and documents contained in the system shall nonetheless be maintained and made available for a subsequent (one hundred and eighty) days for possible reactivation of the account to be requested by email to the address: support@buildingincloud.net. Once this period has elapsed without the subscription making a request for reactivation of the data and documents, these will be permanently deleted and it will no longer be possible to request their reactivation.

G. Processing of personal data

This agreement for the processing of personal data is concluded between Namirial (hereinafter also “Data Processor”) and the Customer (hereinafter also “Data Controller” or “Controller”). This provision is therefore not applicable to Users.

1. Appointment

Pursuant to Art. 28 of EU Reg. 2016/679 (hereinafter also the “Regulation”), the Customer, acting as Data Controller, who is responsible for decisions regarding the purposes and methods of personal data processing, in the person of its legal representative, appoints Namirial, which it accepts, as the Data Processor for personal data processing carried out within the scope of the contractual agreements in force.

2. Duration, purposes, types of data, categories of subjects and place of processing

This appointment will have the same duration as the Terms of Use to which reference is made.

The Data Processor will carry out processing operations on common Data, specifically personal data (e.g. first name, last name, contact data (e-mail address, telephone number, e-mail content, etc.), information on employees’ salary and income situation. The categories of data subjects will be employees, customers and suppliers of the data controller.

The purposes of the processing are to be included in the scope of the services requested by the Customer contained in the Terms of use and in any subsequent agreements modifying and supplementing the same, which alternatively include:

A) After-sales service; B) Ongoing assistance.

3. Obligations of the Data Controller

The Data Controller declares that the data it transmits to the Data Processor:

i) are relevant and not excessive in relation to the purposes for which they were collected and subsequently processed; ii) are collected in compliance with all the prescriptions of the regulations in force on the processing of personal data; iii) are updated at the time of processing of the documents relating to employees’ payroll.

It is understood that it remains the Controller’s responsibility to identify the legal basis of the processing of the personal data of the persons concerned.

The Data Controller undertakes to hold the Data Processor harmless from any claims that may be made by the data subjects, on the basis of the rights attributed to them by Articles 15 and 20 of the Regulation, for unlawful processing of personal data, as well as from any other claim that may be made by the institutional bodies in charge of sanctions and controls on the basis of the personal data processed.

In the event of violations of the provisions of the regulations in force on the processing of personal data, also in the light of the civil and criminal implications provided for by the current legal system, the Customer must provide the Data Processor, with the right of the Data Processor to take legal action to satisfy the rights and interests harmed by said violations.

The Data Controller remains responsible for the processing of information implemented through application procedures developed according to its specifications and/or through its own IT or telecommunications tools.

4. Obligations of the Data Processor

The Data Processor undertakes to:

i. process personal data in accordance with the documented instructions of the Data Controller;

ii. ensure that the persons authorised to process personal data are committed to confidentiality and are adequately trained;

iii. take all measures required under Article 32 of the Regulation;

iv. comply with the conditions set out in point (d) of the Regulation when using another controller;

v. taking into account the nature of the processing, assist the Controller with appropriate technical and organisational measures, to the extent feasible, in order to comply with the Controller’s obligation to comply with requests for the exercise of the data subject’s rights under Chapter III of the Regulation;

vi. assist the Controller in ensuring compliance with the obligations set out in Articles 32 to 36 of the Regulation, taking into account the nature of the processing and the information available to the controller.

vii. make available to the Controller all the information necessary to demonstrate compliance with the obligations set out in this contract and the applicable legislation, allowing and contributing to audit activities, including inspections and in proceedings before the Supervisory and Judicial Authorities involving the Controller;

viii. at the Controller’s option, erase or return all personal data after the provision of services relating to the processing is terminated and delete existing copies, unless Union or Member State law requires retention of the data;
ix. to promptly notify the Controller any requests from data subjects, objections, inspections or requests from the Supervisory Authorities and the Judicial Authorities, and any other relevant information in relation to the processing of personal data.

Without prejudice to the general principles of personal data protection, the Data Processor shall fulfil its obligations to an extent proportionate to the purpose and aims pursued, also in relation to the efforts required and the risks for the rights and freedoms of the data subjects.

5. Authorisation for the appointment of Sub-Processors
The Controller authorises the use of Sub-Processors (hereinafter “Sub-Processor(s)”) for processing operations. The Controller ensures that the Sub-Processor(s) is (are) bound by a contract or other legal act under Union law in which personal data protection clauses are defined and that such clauses offer guarantees of protection that are not inferior to this contract.

6. Transfer to Third Countries
If the Controller intends to carry out transfers of personal data outside the EU, these may only take place if the conditions set out in Articles 44 et seq. of the Regulation are met.

7. Security Measures
Within the scope of the service provided, the Responsible Party shall adopt the security measures described in Annex 1 (“Service Level Agreement”) of the Terms of Use.

8. Provisions in case of termination of processing
Upon termination of the processing operations entrusted to the Data Processor, as well as upon termination for any reason of the processing by the Data Processor or of the underlying relationship, the Data Processor at the Controller’s discretion shall be obliged to: (i) return the processed personal data to the Controller or (ii) arrange for their complete destruction, except only in cases where the retention of the data is required by law or for other purposes (accounting, tax, etc.). In both cases, the Data Processor shall provide the Controller with a written declaration stating that no copy of the Data Controller’s personal data exists at the Data Processor’s premises.

9. Record of processing activities
The Data Processor, where the cases referred to in Article 30 of the Regulation apply, must keep a record pursuant to Article 30.2 of the Regulation of all categories of processing activities carried out on behalf of a data controller, containing:

i. the name and contact details of the Data Processor(s) and, where applicable, the Data Protection Officer;

ii. the categories of processing operations carried out on behalf of the Controller;

iii. where applicable, transfers of personal data to a third country or international organisation, including identification of the third country or international organisation and, for transfers referred to in the second paragraph of Article 49 of the Regulation, documentation of the appropriate safeguards;

iv. where possible, a general description of the technical and organisational security measures referred to in Article 32(1) of the Regulation.

Gratuity
It is understood that this appointment does not entail any right of the Data Processor to any specific remuneration and/or indemnity and/or reimbursement arising from this appointment. This appointment is expressly intended to revoke and replace any other appointment for the same data processing activity.

ONE-SIDED CLAUSES:
Pursuant to Articles 1341 and 1342 of the Civil Code the Customer declares that he/she has clearly and fully read the General Conditions (Mod. NAM SW010) and that he specifically and expressly know and accept the content of the clauses contained in the following articles: 3 (SUBJECT MATTER); 4 (CUSTOMER’S OBLIGATIONS); 5 (WARRANTIES); 6 (MAINTENANCE, UPDATE AND SUPPORT SERVICE); 7 (INTELLECTUAL PROPERTY); 8 (THIRD PARTY SERVICES); 9 (SUPPLIER’S LIABILITY); 10 (DURATION AND TERMINATION); 11 (CONFIDENTIALITY); 12 (CORRESPONDENCE); 15 (EXPRESS TERMINATION CLAUSE); 16 (COURT OF JURISDICTION AND APPLICABLE LAW); 17 (GENERAL PROVISIONS); of the clauses contained in Articles A (USE); B (SUPPORT GUARANTEE); D (TERMINATION OF ELABORATOR – CUSTOMER’S OBLIGATIONS); E (SOFTWARE REQUIREMENTS) set forth in Section I and in Articles A (USE) and B (CONTENT) set forth in Section II as well as the clauses contained in the appendix Product Specifications “Building in Cloud” referred to in articles C (Applicability of the Agreement to Users and Responsibilities of the Customer), E (Content published by the Customer and/or Users) and F (Consequences of the termination of the Agreement).