

## Terms of Service

### 1. INTRODUCTORY PROVISION

- 1.1. These Terms of Service (“**Terms of Service**”) govern your access to and use of Hosted Services provided by us – **Design Forms, s.r.o.**, limited liability company incorporated under the laws of the Czech Republic, having its registered seat at Kuršova 974/4, 635 00 Brno, Czech Republic and registered in the Commercial Register kept with Regional Court in Brno under the file no. C 93787 (hereinafter the "**Provider**").
- 1.2. Your access to and use of the Hosted Services are conditioned on your acceptance of and compliance with these Terms of Service. By accessing or using the Services you (hereinafter the "**Customer**") agree to be bound by these Terms.

### 2. DEFINITIONS

- 2.1. Except to the extent expressly provided otherwise, in these Terms of Service:

"**Account**" means an account enabling a person to access and use the Hosted Services;

"**Authorized User**" means the Customer, any of its employees or members of the statutory bodies;

"**Available Source Code**" means Source Code published on the Platform;

"**Design Form Template**" means any of the online software application, which is or will be made available on the Platform for the purposes of provision of the Hosted Services to the Customer.

"**Developer**" means any person or entity, which holds the Intellectual Property Rights to the Design Form Template and authorized Provider to use the Design Form Template for the purposes of the provision of the Hosted Services;

"**Business Day**" means any weekday other than a bank or public holiday in the Czech Republic;

"**Business Hours**" means the hours of 09:00 to 17:00 of GMT+1 on a Business Day;

"**Customer Confidential Information**" means:

- (a) any information disclosed by or on behalf of the Customer to the Provider during the Term (whether disclosed in writing, orally or otherwise) that at the time of disclosure was marked as "confidential" or should have been reasonably understood by the Provider to be confidential; and
- (b) the Customer Data.

"**Customer Data**" means all data, works and materials uploaded to or stored on the Platform by the Customer; transmitted by the Platform at the instigation of the Customer; supplied by the Customer to the Provider for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of the use of the Hosted Services by the Customer;

"**Force Majeure Event**" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

**"Hosted Services"** means services of calculations for construction industry and other industries performed through Design Form Templates developed by Developers, which will be made available by the Provider to the Customer as a service via the Platform and in accordance with these Terms of Service;

**"Intellectual Property Rights"** means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

**"Personal Data"** has the meaning given to it in the Czech Data Protection Act (Act No. 101/2000 Coll., on protection of personal data) or in other regulation, which will replace Czech Data Protection Act;

**"Platform"** means the platform managed and operated by the Provider to provide the Hosted Services, including the Web, the application and database software for the Hosted Services, and the system and server software used to provide the Hosted Services;

**"Source Code"** means source code of the Design Form Template;

**"Subscription Fee"** means the fee for the provision of the Hosted Services during the Subscription Period, which will be published on the Platform in the time the Hosted Services are purchased by the Customer;

**"Subscription Period"** means the period of one (1) year or any other period published on the Platform in the time the Hosted Services are purchased by the Customer;

**"Term"** means with respect to any of the Hosted Services purchased by the Customer the period of time starting to run from the first day of the Subscription Period until the day the last of the Subscription Periods expires;

**"Update"** means a hotfix, patch or minor version update to any Platform software; and

**"Upgrade"** means a major version upgrade of any Platform software;

**"Web"** means web site "http://designforms.net/WebUser" operated on the internet domains "designforms.net" or on any other internet domains with the root domain "designforms.net".

### **3. PROVISION OF THE HOSTED SERVICES**

3.1. The Provider undertakes to provide the Customer with Hosted Services in the scale and for the Subscription Period as purchased and paid by the Customer. The Hosted Services shall be provided to the Customer throughout Customer`s Account on the Platform.

3.2. The right of the Customer to use the Hosted Services is subject to the following limitations:

- (a) the Hosted Services shall be provided only with respect to such Design Form Templates which will be paid by the Customer;
- (b) the Hosted Services may only be used by the Authorized Users, providing that the Customer may change, add or remove a designated named Authorized User; and
- (c) the Hosted Services must not be used at any point in time by more than the number of concurrent Authorized Users paid by the Customer.

- 3.3. The Provider may suspend the provision of the Hosted Services if any amount due to be paid by the Customer to the Provider under this Agreement is overdue.

#### **4. TERM OF PROVISION OF THE HOSTED SERVICES**

- 4.1. Hosted Services shall be provided for the Subscription Period, which will start to run on the day the Subscription Fee is paid by the Customer. In case the Subscription Fee is prepaid during the running Subscription Period, the subsequent Subscription Period shall start to run on the first calendar day after the lapse the running Subscription Period.

#### **5. SUBSCRIPTION FEE**

- 5.1. The Customer shall have the options to pay the Subscription Fee (i) either as one-time Subscription Fee for the single Subscription Period, or (ii) as auto-renewable Subscription Fee (the "**Auto-Renewable Subscription Fee**"), in which latter case the Subscription Fee for any subsequent Subscription Periods shall be deducted automatically from the Customer's credit card prior the lapse of the running Subscription Period.
- 5.2. The Provider shall have the right to request the increase to the Auto-Renewable Subscription Fee for the next Subscription Period by up to 20%. Such request must be sent via e-mail to the Customer no later than one (1) month prior the lapse of the running Subscription Period. If the Customer confirms the increase via email sent to the Provider no later than one (1) week prior the lapse of the running Subscription Period, the Auto-Renewable Subscription Fee shall be increased accordingly. If the Customer refuses the increase or does not accept the increase within the said period, Auto-Renewable Subscription Fee option shall be cancelled automatically and the running Subscription Period shall not be restored.
- 5.3. The Customer shall have the right to terminate Auto-Renewable Subscription Fee option. Such right must be exercised via e-mail notification sent to the Provider no later than one (1) week prior the lapse of the running Subscription Period.

#### **6. RIGHTS AND OBLIGATIONS OF THE CUSTOMER**

- 6.1. The Customer
- (a) must not assign its right to access and use the Hosted Services;
  - (b) must not permit any unauthorized person to access or use the Hosted Services;
  - (c) with exception of the results of the calculations the Customer must not republish or redistribute any content or material from the Hosted Services;
  - (d) must not make any alteration to the Platform;
  - (e) must not use the Services in any way that causes, or may cause, damage to the Hosted Services or impairment of the availability or accessibility of the Hosted Services;
  - (f) must not use the Hosted Services (i) in any way that is unlawful, illegal, fraudulent or harmful or (ii) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity;
  - (g) must not without the consent of the Provider use the Hosted Services for any purpose relating to the marketing, advertising, promotion, sale or supply of any product, service or commercial offering.

- 6.2. The Customer shall use reasonable endeavours, including reasonable security measures relating to Account access details, to ensure that no unauthorised person may gain access to the Hosted Services using an Account.
- 6.3. For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the Platform.
- 6.4. During the Term and provided that the Subscription Fee is duly paid the Customer and any and all Customers' obligations under these Terms of Service are duly fulfilled, the Customer shall have
- (a) the access to the Available Source Code of the Design Form Templates with respect to which the Subscription Fee is paid;
  - (b) the right to use the Available Source Code to amend the Design Form Templates with respect to which the Subscription Fee is paid and to use during the Term the Hosted Services with the amended Design Form Templates; and
  - (c) the right to use the Available Source Code to develop its own Design Form Template (the "**New Design Form Template**").
- 6.5. In addition to the general conditions under the Clause 6.4 hereof, the right to use the Available Source Code in order to develop New Design Form Template is subject to Customer entering with the Provider into the License Agreement for Developers in the wording as published on the Platform.

## **7. AVAILABILITY OF THE HOSTED SERVICES**

- 7.1. The Provider shall not be liable for the availability of the Hosted Services.
- 7.2. The Provider shall however use commercially reasonable endeavors to make the Hosted Services available twenty four (24) hours a day, seven (7) days a week, except for cases when downtime is caused directly or indirectly by any of the following:
- (a) a Force Majeure Event;
  - (b) a fault or failure of the internet or any public telecommunications network;
  - (c) a fault or failure of the Customer's computer systems or networks;
  - (d) any breach by the Customer of these Terms of Service;
  - (e) scheduled maintenance; or
  - (f) unscheduled maintenance in emergency cases.

## **8. MAINTENANCE**

- 8.1. The Provider shall be liable for the maintenance of the Platform including the implementation of its Updates and Upgrades.
- 8.2. The Provider shall where practicable give to the Customer at least 5 (five) Business Days' prior written notice of scheduled maintenance activities that are likely to affect the availability of the Hosted Services or are likely to have a material negative impact upon the Hosted Services.

8.3. The Provider may suspend the provision of the maintenance if any amount due to be paid by the Customer to the Provider is overdue.

8.4. The Provider shall not be liable for the maintenance of the Design Form Templates.

## **9. SUPPORT**

9.1. The Provider shall make available to the Customer a helpdesk in relation to the use of, and the identification and resolution of errors in, the Platform. The helpdesk services shall not include the provision of training services.

9.2. The helpdesk services shall be available only for written electronic requests such as e-mail requests or blog queries. The requests shall be processed within a reasonable period of time.

9.3. The Provider may suspend the provision of the support if any amount due to be paid by the Customer to the Provider under these Terms of Service is overdue.

9.4. The Provider shall not be responsible for the support with respect to the Design Forms Templates. The Provider shall however be responsible for establishing a communication line within the Platform, through which the Customer can raise written electronic requests for support relating to the Design Forms Templates directly to the respective Developers.

## **10. CUSTOMER DATA**

10.1. The Customer hereby grants to the Provider a non-exclusive licence to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Customer Data to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under this Agreement, together with the right to sub-license these rights to its hosting, connectivity and telecommunications service providers to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under this Agreement.

10.2. The Customer warrants to the Provider that the Customer Data or the use of the Customer Data by the Provider in accordance with these Terms of Service will not:

- (a) breach the provisions of any law, statute or regulation;
- (b) infringe the Intellectual Property Rights or other legal rights of any person; or
- (c) give rise to any cause of action against the Provider,

in each case in any jurisdiction and under any applicable law.

10.3. The Provider shall create a back-up copy of the Customer Data at least once per 30 (thirty) days and securely store each such copy for a minimum period of 30 (thirty) days. The Provider shall not be responsible for any data that will arise and will be lost during the period between the two consecutive back-up copies.

10.4. The Customer shall have the right to download the results of the calculations from the Platform.

## **11. PROVIDER'S CONFIDENTIALITY OBLIGATION**

11.1. The Provider must:

- (a) keep the Customer Confidential Information confidential;
- (b) not disclose the Customer Confidential Information to any person without the

Customer's prior written consent; and

- (c) use the same degree of care to protect the confidentiality of the Customer Confidential Information as the Provider uses to protect the Provider's own confidential information of a similar nature, being at least a reasonable degree of care.
- 11.2. This Clause 11 imposes no obligations upon the Provider with respect to Customer Confidential Information that:
- (a) is known to the Provider before disclosure and is not subject to any other obligation of confidentiality;
  - (b) is or becomes publicly known through no act or default of the Provider; or
  - (c) is obtained by the Provider from a third party in circumstances where the Provider has no reason to believe that there has been a breach of an obligation of confidentiality.
- 11.3. The restrictions in this Clause 11 do not apply to the extent that any Customer Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request.
- 11.4. The provisions of this Clause 11 shall continue in force for a period of 1 (one) year after the lapse of the Term, at the end of which period they will cease to have effect.

## **12. DATA PROTECTION**

- 12.1. The Customer warrants to the Provider that it has the legal right to disclose all Personal Data that it does in fact disclose to the Provider and that the processing of that Personal Data by the Provider for the purposes of provision of Hosted Services in accordance with these Terms of Service will not breach any applicable data protection or data privacy laws.

## **13. ACKNOWLEDGEMENTS AND WARRANTY LIMITATIONS**

- 13.1. The Customer acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of these Terms of Service, the Provider gives no warranty or representation that the Hosted Services and/or the Platform will be wholly free from defects, errors and bugs.
- 13.2. The Customer acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of these Terms of Service, the Provider gives no warranty or representation that the Hosted Services and/or the Platform will be entirely secure.
- 13.3. The Customer acknowledges that the Hosted Services are designed to be compatible only with that software and those systems specified as compatible on the Platform; and the Provider does not warrant or represent that the Hosted Services will be compatible with any other software or systems.
- 13.4. The Customer acknowledges that no warranty is given with respect to the correctness of the calculations resulting from the use of the Hosted Services and with respect to the compliance of such calculations with any statutory laws, technical standards and/or constructional standards. It is the full liability of the Customer to verify the correctness and the compliance of the calculations prior they will be used for whatsoever purposes.

## **14. LIMITATIONS AND EXCLUSIONS OF LIABILITY**

- 14.1. Nothing in this Agreement will:
- (a) limit any liabilities in any way that is not permitted to limit under applicable law; or
  - (b) exclude any liabilities that may not be excluded under applicable law.
- 14.2. The limitations and exclusions of liability set out in this Clause 14 and elsewhere in these Terms of Service are subject to Clause 14.1 and govern all liabilities arising under these Terms of Service or relating to the subject matter of these Terms of Service, except to the extent expressly provided otherwise in these Terms of Service.
- 14.3. The Provider shall not be liable for any damages and/or losses incurred by the Customer or any third party as the result of using the Hosted Services by the Customer. In this respect the Provider shall not be liable in particular for any direct damages/losses, indirect damages/losses or consequential damages/losses, loss of revenue or loss of profit.
- 14.4. Under any circumstances the aggregate liability of the Provider to the Customer under these Terms of Service shall not exceed the total amount paid and payable by the Customer to the Provider under these Terms of Service.

## **15. TERMINATION AND SUSPENSION**

- 15.1. Prior the expiration of the Term the Provider is entitled to terminate the provision of the Hosted Services with immediate effects by giving to the Customer written notice of termination in the following cases:
- (a) the operation of Design Form Template throughout the Platform shall appear to be in conflict with any laws, statutes or regulations;
  - (b) the operation of Design Form Template throughout the Platform shall infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law; or
  - (c) the cooperation between the Developer and the Provider relating to the Design Form Templates used by the Customer through Hosted Services is terminated or suspended from whatsoever reason.
- 15.2. In case of termination under Clause 15.1 the Customer shall be entitled for the refund of the part of the Subscription Fee relating to the remaining part of the Subscription Period.
- 15.3. The Provider shall be further entitled to terminate the provision of the Hosted Services with immediate effects by giving to the Customer written notice of termination in cases the Customer violates any of its duties under these Terms. In case of termination under this Clause 15.3 the Customer shall not be entitled for any refund of the Subscription Fee or the parts thereof.

## **16. GOVERNING LAW AND JURISDICTION**

- 16.1. This Agreement shall be governed by and construed in accordance with the law of the Czech Republic.
- 16.2. The courts of the Czech Republic shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.