

## FLOCKLER'S SAAS SERVICE TERMS AND CONDITIONS

### 1. Scope of Application

- 1.1. These terms and conditions shall be applied to the publishing platform service delivered as a software as a service via Internet by Flockler Oy, a limited liability company registered in Tampere, Finland and/or its affiliates ("Supplier") to its customers ("Customer").
- 1.2. The plan, prices and possible specific conditions shall be agreed between the parties when the Customer signs up to the Service, through separate subscriptions of the Customer in the Service or as otherwise made available to alter the subscription plans of the Service by the Supplier, and such choices form an integral part of the agreement between the parties.
- 1.3. The Customer accepts these terms and conditions when beginning use of the Service, and possible additional terms concerning the additional parts of the Service when beginning use of such additional parts, as a legally binding agreement between the Customer and the Supplier. The Supplier shall have the right to alter the terms and conditions applied to the Service and to its additional parts. By continuing use of the Service after the alteration of the terms and conditions, the Customer accepts the altered terms and conditions.

### 2. Definitions

- 2.1. "Service" shall mean all software made available by Supplier via Internet connection to the Customer according to these terms and conditions for use as a Software-as-a-Service ("SaaS") which allows the Customer to create and curate content on Site(s) manually or set up rules to publish content automatically from supported social media services, the combinations of which may be altered from time to time at the Supplier's sole discretion.
- 2.2. "Site/Sites" shall mean the website of the Customer in respect of which the Service is used and made available to use for the Customer. The Service may be used on the Site(s) by using API, embed code or CMS plugin, in cases of which third parties chosen by the Customer may participate in technical execution of such sites.

- 2.3. "Subscription" shall mean the Customer's subscription of the Service to which the charges of the Supplier apply and such charges will be charged from the Customer's valid credit card on a thirty (30) days basis in advance.

### 3. Provision of the Service

- 3.1. The Service, its software, and the right of use to the Service is delivered "as is" and "as available". The Service is based under many circumstances on software code of data systems. It is generally characteristic of software codes that they are not error-free, which for example may cause occasional stoppage or other problems, errors, misuses and deficiencies in the Service.
- 3.2. The Service shall be made available for ongoing use on a 24/7 basis, excluding temporary service breaks which may result from maintenance, updates or repair tasks or operations needed for ensuring or restoring the availability, performance, retrievability, data security, or manageability of the Service, or other similar type of occasional breaks.
- 3.3. The Service is intended to be further developed. The Supplier has the right, but not obligation, to update and change the Service and its parts. However, without Customer's consent the Supplier shall be entitled to make changes that materially affect the contents of the Service or service level only if such changes (i) are necessary to prevent a data security risk related to the Service, (ii) are necessary due to changes in the terms and conditions of software or services provided by third parties in relation to the Service; or (iii) are necessary due to law or regulation by authorities.
- 3.4. The Supplier will produce and deliver the Service with reasonable skill and care and in accordance with good industry practice and applicable protocols.
- 3.5. The Supplier will ensure that all materials provided by the Customer in the Supplier's possession or control are kept secure in accordance with recommended industry standards prevailing at that time and no less secure than Supplier's treatment of its own confidential or proprietary information.
- 3.6. The Supplier will host the Site(s) in relation to its Service.

- 3.7. If provided by the Supplier to a specific plan and expressly agreed between the parties, the Supplier will provide the Service and support in accordance with the applicable Flockler Service Level Agreement ("Flockler SLA") in force from time to time in relation to the Service. In such cases, the Supplier's liability due to any temporary breaks shall always be limited to credits according to the terms and conditions of the then current Flockler SLA.
- 3.8. The Supplier's sole responsibility is to provide the Service for use of the Customer. The Supplier will have no liability for any services or software of third parties used on/for the Site(s), irrespective of the way such services or software is used.

#### **4. Use of Service**

- 4.1. The Customer shall give adequate and correct information at all times to the Supplier and to the Service as such information is necessary for performing the Service, and otherwise contribute in the best possible way to the execution of this agreement.
- 4.2. The Customer shall be solely responsible for its actions and the actions of its users while using the Service and the contents of its transmissions through the Service and otherwise for all actions using its passwords or any of them. Without prejudice to the generality of the foregoing, the Customer agrees:
- a) not to upload or distribute in any way files that contain viruses, trojans, worms, time bombs, logic bombs, corrupted files, or any other similar software or programs that may damage the operation of the Service or another's computer;
  - b) not to use the Service for illegal purposes;
  - c) not to misuse the Service; and
  - d) save where material is user-generated content which is not pre-moderated prior to going live on the Site (and Customer will have no obligation to pre-moderate user-generated content displayed on the Site), not to upload, post, promote or transmit through the Service any unlawful material of any kind or nature.

#### **5. Term**

- 5.1. This agreement shall commence on the date the Customer begins to use the Service and accepts these terms and conditions and shall continue in effect as long as the Customer's Subscription to the Service is in force.
- 5.2. This agreement terminates automatically if the Customer does not subscribe the Service after or during the trial period (if any), or if the credit card given to the Service is not chargeable for any reason whatsoever.
- 5.3. The Customer may terminate the Subscription at any time in the Service however without receiving a refund of the already paid charges for the Service. The Supplier may terminate this agreement with ninety (90) days notice period.

#### **6. Charges and Payment Terms**

- 6.1. In the Supplier's sole discretion and to the extent solely defined by the Supplier, the Supplier may from time to time provide a limited trial period to the Service free of charge, with a plan specified by the Supplier and with Customer signing up to the Service, in which the trial period shall not be in any case more than thirty (30) days if not otherwise agreed. After such trial period, if any, the Customer has to subscribe the Service by choosing a plan and agreeing to related charges in the Service in order to be able to continue using the Service.
- 6.2. Adding a compatible and valid credit card of the Customer to the Service and accepting the charges to be charged from such credit card is a prerequisite for subscribing the Service.
- 6.3. The recurring charges for the Service or its additional parts are agreed between the parties according to the then current price-list of the Supplier when subscribing the Service or when altering the contents of the Service.
- 6.4. The recurring charges are charged once a month in advance for the next thirty (30) days period.
- 6.5. The Supplier shall have the right to change the recurring charge of the Service by notifying the Customer in writing of the change and grounds of such change at least thirty (30) days prior to the effective date of such change. The price change shall not have an effect on the charges of the invoicing periods commenced prior to the effective date

of such change. If the Customer does not accept the change of the recurring charge of the Service, the Customer may terminate the Subscription of the Service.

- 6.6. If the Customer requests, the Supplier agrees to provide hourly work and project work to the Customer at the Supplier's then current rates on a time and materials basis which shall be agreed separately in writing and invoiced separately.

## **7. License Grants and Restrictions**

- 7.1. Subject to Customer paying the related charges for the Service and subject to these terms and conditions, the Supplier hereby grants to the Customer, a non-exclusive, non-transferable and non-sub-licensable license for the duration of this agreement to access and use the Service via the internet in object code form only on a software as a service basis, solely for its internal business purposes in accordance with the terms and conditions set out herein. The Service is to be used by the Customer solely for the purpose of producing and running the Site and associated activities for its own business and not for any other purpose and not on behalf of any other organisation unless authorised by Supplier in writing.
- 7.2. Customer shall not, directly or indirectly, (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms of the Service; (ii) modify, translate, or create derivative works based on the Service; (iii) rent, lease, distribute, sell, resell, assign, or otherwise transfer rights to the Service; or (iv) otherwise replicate or seek to replicate the functionality or look and feel of the Service.
- 7.3. If the Service or any related software contains software or software components manufactured or produced by a third party, the Customer commits itself to accept and follow, in addition to these terms and conditions, the right of use, license and contract terms of the supplier or manufacturer in question. To open source software shall primarily be applied the open source terms and conditions in question, and to standard software primarily the terms and conditions of the standard software in question if not otherwise agreed in writing. The terms of these licenses are delivered with the com-

ponents in question, they are available from the Supplier or through the site [www.opensource.org](http://www.opensource.org).

## **8. Intellectual Property Rights & Customer Data**

- 8.1. The Customer hereby acknowledges that the title, copyright and all other intellectual property rights in and to the Service including without limitation the source code of the software are the property of the Supplier or its licensors. The Supplier or its licensors has exclusive ownership of all enhancements, alterations, modifications, fixes, patches, workarounds and other additions to the Service. Customer hereby acknowledges and agrees that all intellectual property in and to the Service, software and software source code vests in the Supplier and that nothing in this agreement shall operate to transfer, or is intended to operate or transfer, any right, title or interest in or to the Service save to the extent of the license set out in clause 7. The Supplier reserves any rights not expressly granted herein.
- 8.2. The Customer owns any content, data, information and material originated by the Customer that the Customer submits or compiles in the course of using the Service ("Customer Data"). The Supplier has no ownership rights in or to the Customer Data, however the Supplier shall have, for the provision of the Service, the right of use of such Customer Data for the purposes stipulated in this agreement. The Customer shall be solely responsible for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to the Customer Data.

## **9. Infringement of Third Party Intellectual Property Rights**

- 9.1. Subject to the provisions of this clause 9, the Supplier will indemnify, defend and hold the Customer harmless from and against any possible claims, direct damages and verifiable costs, including reasonable legal fees and expenses, arising from any claim that the Service infringes any third party's intellectual property rights.
- 9.2. The Supplier will have no liability to the Customer under this clause 9 for any third party claim that the Service infringes any intellectual property rights of such third party

that: (i) arises out of Customer's use of the Service contrary to these terms and conditions or the written instructions given by the Supplier or other misuse by the Customer or its users; (ii) other software or product used by the Customer; or (iii) a change or correction to the Service made by the Customer or by a third party; or (iv) could have been avoided by use of the then-current release of the Service or if the Customer had followed the Supplier's reasonable written instructions.

9.3. As a condition to such indemnity obligation as set out in this clause 9, the Customer shall (i) promptly provide to the Supplier written notice of such claim, (ii) provide to the Supplier, at the Supplier's expense, with all reasonable assistance in defending against such claim, (iii) permit the Supplier to have complete control of the defence or settlement of such claim, provided that (a) the Customer may participate in such defence with counsel of its own choice at its expense and (b) no settlement or other agreement resulting in any financial or other liability on behalf of the Customer shall be agreed to by the Supplier without the prior written consent of the Customer and (iv) not make any commitment towards a third party on behalf of the Customer unless agreed in writing by the Customer.

9.4. In addition, should a claim for infringement be made, or in the Supplier's reasonable opinion is likely to be made, the Supplier may at its sole option and at its expense either: (i) replace the same with non-infringing software of equivalent function and performance; or (ii) modify the Service so that it becomes non-infringing without materially detracting from function or performance.

9.5. THIS CLAUSE 9 STATES THE SUPPLIER'S ENTIRE LIABILITY, AND THE CUSTOMER'S SOLE REMEDIES, FOR CLAIMS FOR INFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.

## 10. Termination for Breach and Insolvency

10.1. The Supplier may terminate this agreement immediately if:

- a) the other party commits a material breach of any provision of these terms and conditions which is not remediable or, if remediable, is not

remedied within two (2) business days after the non-breaching party has given written notice to the breaching party requiring such breach to be remedied; or

- b) if the other party is unable to pay its debts or becomes insolvent or an order is made or a resolution passed for the administration, winding-up or dissolution of the other party (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of the assets of the other party or the other party enters into or proposes any composition or arrangement with its creditors generally or anything analogous to the foregoing occurs in any applicable jurisdiction.

10.2. On termination of this agreement, subject to clause 11.5., Supplier will cease to use, and will destroy, all Customer Data and all other materials provided to Supplier by Customer in relation to this agreement.

10.3. Notwithstanding the termination or expiration of this agreement, it is acknowledged and agreed that those rights and obligations which by their nature are intended to survive such termination or expiration will survive.

## 11. Data Protection and Backup

11.1. The Service is sought to be produced by using commonly-known secure technical solutions.

11.2. The Customer acknowledges that use of the open network contains data security risks. The Customer is liable for data security and protection of the terminal devices, as well as other costs related to such devices, needed for use of the Service.

11.3. The Customer accepts and consents that the information given to the Service by the Customer shall be transferred to the Service and shall be saved to the server managed by the Supplier. The Customer shall give personal details and contact details to the Service. In protection of the personal data the privacy policy of the Supplier shall be followed. Personal data will not be transferred



outside the European Union or European Economic Area.

- 11.4. The Customer acknowledges that supplying data to the Service, its storage, usage and transfer may not be protected from attempts of misuse by a third party.
- 11.5. The Supplier shall retain the Customer Data for a period of ninety (90) days after expiration or termination of this agreement. The Customer may request a copy of the Customer Data from the Supplier, and, if the Customer requests, Supplier agrees to provide an unformatted copy of the Customer Data to the Customer at the Supplier's then current rates on a time and materials basis. After ninety (90) days, the Supplier may delete and destroy all Customer Data without notice or further liability to the Customer.
- 11.6. The Supplier is responsible for taking backups of the Customer Data stored in the Service, for checking the functionality of the backups and for ensuring that Customer Data can be recovered from the backups. The Supplier shall be responsible for taking backups at least once during Supplier's normal working day, and for maintaining the backups in suitable manner for a period of ninety (90) days. In all other respects the Customer shall be responsible for taking backups regarding the Customer Data.

## 12. Confidentiality

- 12.1. Neither party shall not disclose to third parties nor use for any purpose other than for the proper fulfillment of its rights and obligations under these terms and conditions any confidential information received from the other party in whatever form under or in connection with this agreement without the prior written permission of the disclosing party. The above obligations will not apply to information which (i) was in the possession of the receiving party prior to disclosure hereunder; (ii) was in the public domain at the time of disclosure or later became part of the public domain without breach of the confidentiality obligations herein contained; (iii) was disclosed by a third party without breach of any obligation of confidentiality owed to the disclosing party; or (iv) was independently developed by personnel of the receiving party having no access to the said information; or (v) is

required to be disclosed pursuant to applicable laws, including without limitation securities laws, or other order or requirement of a court, administrative agency, or other governmental body.

## 13. Limitation of Liability

- 13.1. The maximum liability of the Supplier under this agreement, to the extent permitted by the mandatory legislation, for damages shall not exceed under any circumstances the paid amounts to the Supplier by the Customer under this agreement during the six (6) months preceding the occurrence. IN NO EVENT WHATSOEVER SHALL NEITHER PARTY BE LIABLE FOR ANY INDIRECT OR CONSEQUENTIAL DAMAGES OR CLAIMS FOR LOST PROFITS UNLESS THE DAMAGES ARE A RESULT OF WILLFUL MISCONDUCT OR GROSS NEGLIGENCE.
- 13.2. The above limitations of liability shall not apply to any non-authorised use of the Service or infringement of any intellectual property rights of the Supplier or its licensor(s).

## 14. Applicable Law

- 14.1. This agreement is governed in accordance with the laws of Finland without reference to its choice of law rules.

## 15. Dispute Resolution

- 15.1. Customer having a domicile in a member state of the European Union agrees that all disputes arising out of or in connection with this agreement shall be finally settled in the District Court of Helsinki.
- 15.2. Customer having a domicile outside a member state of the European Union agrees that all disputes arising out of or in connection with this agreement shall be finally settled by arbitration in accordance with the Rules for Expedited Arbitration of the Finland Chamber of Commerce. The arbitration shall be conducted in Helsinki, Finland in the English language. The award shall be final and binding on the parties and enforceable in any court of competent jurisdiction.
- 15.3. Nothing herein shall be deemed to preclude the Supplier from seeking injunctive relief against the Customer or filing legal ac-

tions for payment of outstanding and past due debts in any court of competent jurisdiction.

**16. Miscellaneous**

- 16.1. In the event that any provision of these terms and conditions is determined to be fully or partially void or unenforceable by any court of competent jurisdiction, the other provisions of these terms and conditions shall remain in force.
- 16.2. The rights of each party under these terms and conditions may be exercised as often as necessary, are cumulative and not exclusive of rights or remedies provided by law, and may be waived only in writing and specifically.
- 16.3. The Supplier may assign this agreement, either wholly or in part, without the written consent of the Customer.