

**VERSION APRIL 2018**

**HETRAS STANDARD TERMS & CONDITIONS  
SOFTWARE AS A SERVICE (SAAS)**

**PREAMBLE**

P.1 Scope: These Terms and Conditions apply for all legal transactions, which AC Project GmbH (hereinafter referred to as Hetras) will conclude with the customer, using the „Hetras Subscription Agreement“. These Terms and Conditions also apply for other legal transactions when agreed between the contractual parties. If any individual agreements have been made in writing between the contracting parties, those individual agreements have priority over these general agreements on a case-by-case basis. Any customer’s contractual conditions do not apply. We hereby expressly object to any counter provisions by the customer, referring to his own Terms and Conditions.

P.2 Software: The Software is provided as a SaaS- or Cloud-solution. The customer is able to use the software, which is stored and hosted on the provider’s servers or on servers of contracted providers commissioned by Hetras, for his own purposes and to process and store data by using the software, via an internet connection, for the duration of this contract.

P.3 Modification: AC Project GmbH is entitled, through simple notification, to change or supplement these terms and conditions if the changes or supplements are necessary and as long as the changes or supplements will not inflict a substantial disadvantage on the customer. A change is necessary if it is necessary to comply with the legal requirements. The customer notes this with approval. The currently valid version of this document is available online at: <http://hetras.com/imprint>

P.4 Definition: Except to the extent expressly provided otherwise, the terms when used in this agreement shall have the meanings set forth in Schedule/Appendix 1

P.5 Structure of this document:

Paragraph I	- Administrative
Paragraph II	- Data Protection, electronic funds transfer
Paragraph III	- Specific obligations of the contractor
Paragraph IV	- Specific obligations of the customer
Paragraph V	- Miscellaneous
Schedule 1	- Definitions

P.6 Related Documents:

- DPA (Data Processing Agreement)
- SLA (Service Level Agreement)
- Product Description

- Data Protection Declaration

## I. ADMINISTRATIVE

**I.1 CONTRACTUAL OBJECT:** The ongoing operation and delivery of the software environment, Hetras™, for use by the current hotel operated by the customer being supplied by Hetras is the Contractual object. The operation of the SaaS-Services is based on this contact.

Hetras grants to Customer and Customer accepts from Hetras and for the duration of the Term, a limited, non-exclusive, non-transferable, right to access and use and permit Authorized Users to access and use the Services solely for Customers internal business use. The Customer may allow Authorized Users to use the services for this purpose and is responsible for Authorized Users' compliance with the agreement.

### I.2 Term (Duration, Cancellation)

- a. If nothing else has been agreed in the order form, the contract shall enter into force on the day on which the order form has been received by Hetras. The contract ends because of cancellation. The contract can be terminated by complying with a notice period of 90 days respective at the end of each quarter, this cancellation can be made by either Party.
- b. Hetras shall be entitled to adjust the prices above for inflation. The „Consumer price index from Statistik Austria, CPI 2015“ counts as having been agreed as basis for the calculation. The reference month for calculation is the month of contract signature.
- c. Hetras is entitled to lower or to raise the third-party costs described in the order forms if the respective third-party provider lowers or raises the costs. Example: If *BI Tool* raises the costs by 5 percent, the contractor is entitled to also raise the costs by 5 percent.

### I.3 ACCOUNTING

- a. Invoice recipient. The invoice recipient is the customer. (All services are invoiced to the customer directly).
- b. Accounting period: The accounting period is equal to the chosen payment model in the order form. If nothing else has been agreed in the order form (for example: if a monthly or yearly accounting period was agreed on), the accounting period is quarterly. If the contracting parties agreed a yearly accounting, the accounting period ends on last day of the calendar year. The invoices are due for payment in advance. The first settlement starts if the setup process is completed. Hetras will invoice the full fees from date of using the software. 50% of the monthly costs will be due for payment from using the software, the remaining 50% will be payable once customer accepts software implementation or latest after 3 months.
- c. Payment terms: 14 days from invoice date
- d. Sales Taxes: The customer declares to be a company, which will be evidenced by a tax number. The contract will only be concluded if the customer discloses such tax number. If the customer is located in Austria, the invoice will include the statutory sales tax. If the customer is located in another

European Union country, the invoice will be raised net of tax as intra community service provision and will be marked as reverse charge. If the customer is located in a non-EU-country and if the service is not tax-relevant in Austria, the invoice will not include VAT, however it will be marked as reverse charge, provided that the legal requirements are met and customer has submitted a "Certificate of Business-Registration" to Hetras. The customer is obligated to pay VAT if a tax inspection proves that the transaction is taxable. If the customer has not submitted a valid "Certificate of Business-Registration" and/or a valid VAT-Number, the statutory sales tax will be included to the invoice.

- e. Withholding taxes: National Withholding Taxes, also called retention taxes, will be borne by the customer in addition to the invoice amount. The customer is not entitled to deduct the Withholding Tax from the invoice amount. For example: The invoice amount is EUR 100. In accordance to the national tax regulations which are applicable for the customer, a Withholding Tax in the amount of 10% has to be paid. The customer has to pay the full invoice amount (EUR 100) to Hetras and the Withholding tax in the amount of EUR 10 to the relevant tax authority.
- f. Setup-Fee: In case a Setup-Fee was agreed the following applies: If nothing else has been agreed, the Setup-Fee will be due for payment within 14 days after date of invoice. Accounts are rendered after the setup process is completed and after the agreed training. If nothing else has been agreed, Hetras is entitled to charge the system setup and the costs for the training separately.
- g. Account adaptations / Credits: Any changes concerning the number of rooms leads to adjustments of the monthly costs. If the customer raises the number of rooms, the changed monthly costs will be due for payment on the first of the month following the date of changes. If the customer lowers the number of rooms, the changed monthly costs will be due for payment on the first of the month following the date of changes. If any credits arise out of the room changes, the customer can decide between getting the credits repaid within 30 days or getting a deduction on the next settlement.
- h. Currency: The agreed invoicing currency is in Euro, if not specifically agreed differently between parties. The Currency conversion is based on the exchange rate on the day of the invoice.

## **II. Data Protection, Storage of data, electronic funds transfer**

**II.1 Data protection law(s):** Both contract parties are committed to complying with the data protection clause which applies in each case. Both contract parties know that the EU-GDPR and the national data protection laws are to be complied. Storage and processing of personal data will take place under applicable law. Furthermore, both contract parties agree on safety standards to prevent unauthorized users from accessing data.

- a. The contracting parties note with approval that they have to comply with the provisions of the General Data Protection Regulation (Directive 95/46/EC). The customer expressly agrees that the EU-GDPR will be applied.
- b. In the following, we distinguish between "Customer Master Data" and "Order Data". The term "Order Data" describes those data which are processed by Hetras, on behalf of the customer. The "Order Data" are processed in accordance with Data Processing Agreements, which was concluded

pursuant to Art. 28 GDPR. The term “Customer Master Data” describes those data, which relate to the customer.

- c. Hetras store “Customer Master Data” as personal data within the meaning of Article 4 (1) GDPR. Those customer master data are required for the fulfillment of this contract (Art. 6 para. 1 lit. b GDPR). Customer master data are: Name of the customer’s company, Legal form, company register number (FN), VAT number (UID), Data of subsidiaries, contact persons, address, Phone number, Fax number, E-mail Address, etc.
- d. Customer Master Data are stored and used to fulfill our services and for the implementation of contractual measures (Art. 6 Para. 1 lit. b. GDPR). The legal base for the processing of data in order to comply with the legal obligations is Art. 6 Para. 1 lit. c. GDPR. The legal base for the processing of data in order to protect our legitimate interests is Art. 6 Para. 1 lit. f. GDPR. Furthermore, we store and process Customer Master Data if it is necessary within the scope of statutory requirements. The legal bases for the storage and processing of Customer Master Data are provisions of the Austrian Civil Code (ABGB), the Austrian Fiscal Code (BAO) und the Money laundering Act (Geldwäscherichtlinie).
- e. Information: If you are a current or former employee of our customer and if you assume that hetras has stored Information about you (Name, E-mail address) as a contact partner, please contact us at: [gdp@hetras.com](mailto:gdp@hetras.com). We will provide you with all relevant and necessary information and we will delete or correct the data in accordance with the GDPR (Art. 16, Art. 17, Art. 21 GDPR) or other applicable laws.
- f. Transparency and Accountability (Art. 5 para. 2 GDPR): Type and extent of the stored personal data are described in these contracts.
- g. Purpose Limitation (Art 6 Para. 4 GDPR): Personal Data will only be processed in order to fulfill the contract, for example, if it is necessary for the accounting. This data can be used as a tool in the enforcement of claims. The email address of the customer can be used for the transmission of invoices, information material or for other correspondence. The customer master data will be processed in order to provide this data to the customer. The customer can process this data by using his own or external applications. This data will be stored for the purpose of analysis and long-term statistics. Type and extent of the stored personal data are described in the Data Protection Declaration.
- h. Hetras does not store any personal data which is not listed in this agreement, the Data Processing Agreement or the Data Protection Declaration.
- i. Data processing location: The data processing is performed in the data processing center of the Amazon Web Services, located in EU-Region (Frankfurt, London, Dublin).
- j. Privacy by Design / Privacy by Default (Art 25 GDPR); If the customer uses Hetras Software based on the standard settings, the legal requirements are complied with.
- k. Transmission in order to fulfill the contract: Customer Master Data: Customer Master Data will only be transferred if it is necessary to fulfill the contract. The Customer Master Data will be transferred to:
  - AC Project GmbH Subsidiaries (Shiji Deutschland GmbH)
  - AWS Amazon Web Services

- m) If the customer's headquarter is not located in a European Country, the customer agrees that Hetras is allowed to transfer the data (Customer Master Data and Order Data) to the Country in which the customer's headquarter is located; however, this shall apply only if
  - the transmission of data is necessary in order to fulfill the contract.
  - the transmission of data is required for the pursuit of legal claims.
- n) Data Portability (Art. 20 GDPR): Hetras will provide stored data in electronically readable form within the meaning of Art. 20 GDPR. Hetras does not warrant that those provided data can be imported into other applications.
- o) Right to submit a complaint to the supervisory authorities: The customer notes that he is entitled to submit a complaint to the supervisory authorities. The competent supervisory authority is:

Datenschutzbehörde der Republik Österreich  
Wickenburggasse 8  
1080 Vienna

Tel: +43 1 52 152-0  
Email: [dsb@dsb.gv.at](mailto:dsb@dsb.gv.at)  
URL [www.dsb.gv.at](http://www.dsb.gv.at)

- p. Hetras is entitled to terminate all business relationships with the customer without observing a notice period, if the customer uses the technical services provided by Hetras, in a manner that violates the Data Protection Law. This is the case when the customer records sensitive data and uses Hetras to store and process those data. Sensitive data are data of natural persons revealing their racial or ethnic origin, their political opinions, their union membership, their religious or philosophical beliefs, their health or their sex life.

## II.2 PCI-DSS

- a) Hetras™ is a PCI-DSS certified company. The customer notes that with approval, Hetras™ is obligated to constantly extend its PCI certification.
- b) With regard to the processing of PCI Data, the contractual parties agreed on a separate agreement.
- c) The Contractor shall assume the responsibility to ensure that the transferred credit card holder data and the sensitive authentication data will only be processed in accordance with the applicable Payment Card Industry Data Security Standards (currently V 3.2), within its area of responsibility. The contractor transfers, processes and stores this data in accordance with the requirements of the latest version of PCI DSS and shall be liable for the security.
- d) The customer notes with approval that the compliance with security standards and security guidelines is part of the PCI-DSS certification.

## II.3 Non-disclosure

- a) Both contracting parties agree on not passing on any business information or technical information concerning the other party to third parties. Information which is generally known or available is excluded from this contract. The transmission of information to affiliated companies or subcontractors is permitted, provided that the transmission is necessary for the proper provision of the performances agreed on and provided that the transmission is permitted by law.
- b) Notwithstanding the agreements pursuant to Point II.1 and II.2. Hetras is allowed to disclose information to government authorities and state authorities if the disclosure was ordered by an ordinary court or by a competent public authority.

**III. Specific obligations of Hetras**

III.1 The contractor recognises that the availability of the application and associated services and interfaces are business-critical to the customer and warrants that all efforts will be made on the part of the contractor to provide a consistent supply of the services detailed in this agreement

**III.2 Service Level Agreement, Accessibility to Service, Support,**

- a) Hetras points out to the customer that the functionality of the SaaS-Services can be affected by factors that are beyond Hetras’s sphere of influence. Hetras will neither be liable for lack of availability of it’s services nor for other restrictions or errors which arise from such factors. The following factors are beyond Hetras’s sphere of influence:
  - Any actions of third parties who do not act by order of Hetras
  - a fault or failure of the internet or any public telecommunications network
  - denial of service attacks or similar attacks or
  - a fault or failure of the Customer's computer systems or networks
  - any unforeseen cause beyond Hetras reasonable control or any force majeure events set forth in this Agreement.
- b) The customer is obligated to report functional failure and other technical problems of the system immediately and as precisely as possible.
- c) Hetras shall use commercially reasonable efforts to make the Services available on a 24x7 basis (twenty-four hours per day, seven days per week) during the Term. Hetras guarantees the following availability to the customer:

Hetras™	99,70% pa.
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A scheduled system back-up or other on-going maintenance as required and scheduled in advance shall not be considered as lack of availability.

Hetras will monitor performance indicators on the systems and network infrastructure (its own and that of third party suppliers) to gauge the overall performance of its hosting services, and will take reasonable steps to address systems and network infrastructure as required to maintain satisfactory performance of the Software.

d) Hetras expressly agrees to provide a support for program- and application questions. Furthermore, the contractor expressly agrees to provide a 24-hour on-call service for technical emergencies.

e) Hetras is obligated to take all appropriate measures to avoid data loss. The contractor has been instructed that despite this care the loss of data is possible. Only if the loss of data is due to gross negligence of Hetras, the contractor will assume the liability directly. The same applies to the availability of the software.

f) Hetras is obligated to exclusively use certified systems and certified data centres for the operation of the software Hetras™.

### **III.3 Updates, Warranty and binding commitments**

a) Hetras shall maintain the Software and/or Services and provide all patches and fixes to the Software and/or Services at no additional cost. Provided, however, said maintenance shall not include any major releases of new versions of the Software, additional functionality, or custom programming, which Provider, at its discretion, may provide at an additional cost as otherwise agreed between the parties.

b) Hetras warrants that the software has the complete functionality as described. Any changes concerning the scope of service caused by software releases will be announced 5 (five) days in advance by e-mail. If the time of day is undisclosed, the updates will be made at 6 am (06:00) CET. In case that the software release causes any significant restriction on the scope of service, the customer is entitled to terminate the contract with an 8-week period of notice. This right does not apply if the significant restriction on the scope of service is caused by third party provider.

c) The Customer acknowledges that complex software is never wholly free from defects, errors and bugs, security vulnerabilities and subject to the other provisions of this Agreement, Hetras gives no warranty or representation that the Services will be wholly free from defects, errors and bugs or uninterrupted and will be entirely secure. Customer acknowledges that Hetras does not control the transfer of data over communications facilities, including the internet, and that the service may be subject to limitations, delays, and other problems inherent in the use of such communications facilities. Hetras is not responsible for any delays, delivery failures, or other damage resulting from such problems. Neither party shall be liable to the other party in respect of any loss of profits or anticipated savings or any loss of revenue or income or any loss of use or production, or any loss of business, contracts or opportunities or any losses arising out of a Force Majeure Event or in respect of any special, indirect or consequential loss or damage.

- d) In no event shall Hetras be liable for any damages in excess of the total amount paid and payable by the Customer to Hetras under this Agreement in the 12-month-period preceding the commencement of the event or events.
- e) The contractor is obligated to install and develop required hotfixes if any software errors or security holes became known. The contractor needs to inform the customer about the installation of those Hotfixes by e-mail. The contractor need to notify the customer of any defects corrected and amendments implemented.
- f) Hetras is not allowed to pass on customer data or stored data to third parties. Furthermore, he is obligated to engage his employees and providers to sign a secrecy declaration, in which they declare to keep silence about all information concerning the customer. Excluded from this are information which are in the public domain.
- g) Hetras is obligated to issue internal security guidelines and to comply with them. In this respect reference is made to point II.2
- h) In case of termination, for whatever reason, Hetras is obligated to delete all stored customer data with prior notice and permission from the customer. In this respect reference is made to point II.1c
- i) This obligation is enhanced as follows. In case of termination the contractor is obligated to create a plan for the export of all stored data along with the customer. Those exported data either be stored on a mobile drive or in an online storage. The customer will be able to import or to retrieve those data for 60 days. The data will be deleted upon expiry of that period of time. Deletion shall be confirmed to the customer in writing.

#### **Paragraph IV - Specific obligations of the customer**

##### **IV.1 Obligations of the customer**

- a) The customer is responsible for punctual payment. If the customer is in full or partial default of payment for more than 30 days, the contractor is entitled to discontinue its services.
- b) The customer is obligated to comply with applicable legislation during the use of the software. It is not allowed to use the software to store sensitive personal data as meant in the data protection law in particular. Example: It is not permitted to store the sexual orientation or the denomination of guests. If the contractor is sentenced to pay an administrative penalty due to such an offence, the customer is obligated to reimburse the payment and all related costs within 14 days. The contractor is allowed to cancel the contract if the customer violates legal requirements during the use of the software
- c) The customer is liable for the misuse of user names and passwords. 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 Services.



- d) The customer undertakes to observe the PCI Agreement described in point 7
- e) The customer undertakes to use the provided user names and passwords responsibly and to prevent abuse by employees.
- f) Viruses and Security. It is Customer's responsibility to have and maintain in place virus protection software and security for all of its systems and data, which such security includes firewalls, passwords, physical security, and access control policies. If Customers's systems have persistent connections to the Internet, or transmit credit card or gift card transactions over the Internet, or use Provider or 3<sup>rd</sup>-party-SSL to transmit credit card or gift card transactions, or otherwise have persistent connections to any network where there is potential for unauthorized access, Client acknowledges that the security and protection of the network and the data and applications on that network, including protections against unauthorized access, is solely and entirely Client's responsibility. A properly configured firewall is required for each site using a persistent connection to the public Internet or any private network where there is a potential for unauthorized access to the Provider Network. Client acknowledges that, to be effective, virus protection software, system passwords, and other security software require periodic and routine updates, which Client must obtain from its supplier or the manufacturer, as appropriate. Hetras disclaims any warranty, express or implied, that, after the initial installation by Hetras of any Hetras-proprietary software, the software or Customers data will remain virus-free. Support or services hereunder necessitated by computer viruses, or by any failure or breach of Client's security for its systems or data, including, without limitation, damage caused by persons lacking authorized access, are not covered under this agreement, and will be supplied only upon Customer request and on a reasonable efforts basis, on a time-and-materials basis at standard Hetras rates. Customer waives any claims hereunder against Hetras to the extent arising from Customers failure to have or maintain current virus protection, or to the extent arising as a result of a failure or breach of Customers security for its systems or data, or as a result of any unauthorized access to Customers systems. If requested by Customer, Hetras shall provide, on a reasonable efforts and on a time-and-materials basis, support or services to address damage caused by, but not limited to, any of the following: Customers failure to have current virus protection; Customers failure to maintain virus protection; damage arising as a result of a failure of Customers security for its systems or data; damage arising as a result of a breach of Customers security for its systems or data; or damage as a result of any unauthorized access to Customers systems. Such support and services shall be billed at the prevailing standard Hetras rates.

#### **IV.2 Intellectual Property Right.**

- a) Customer acknowledges that all right, title, and interest in and to the Services and the Software, together with its codes, derivative works, organization, structure, interfaces, any documentation, data, trade names, trademarks, trade secrets, proprietary information or other related materials is, and at all times shall remain, the sole and exclusive property of Hetras. Except the right to use the Services, as expressly provided herein, this Agreement does not grant to Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered) or any other rights or licenses with respect to the Services or the Software.

- b) Customer shall not remove or modify any program markings or any notice of Hetras or its licensors' proprietary rights. Client shall not attempt, or directly or indirectly allow any Authorized User or other third party to attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, reverse compile, disassemble, reverse engineer, download, transmit or distribute all or any portion of the Services and/or Software in any form or media or by any means.
- c) The provisions of this paragraph IV.2 shall survive termination of this Agreement.

#### **Paragraph V - Miscellaneous**

- V.1 This customer contract may transfer to the respective legal successors of the contract partners with a 60-day notice period. The contractor shall be entitled to transfer this contract to associated companies.
  - V.3 Alterations and additions to this contract agreed by the parties must be made in writing.
  - V.4 If any provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).
  - V.5 Hetras is entitled to advertise with the fact that the customer is using the software, if the customer concludes a contract with Hetras. In this context, Hetras is entitled to use the customer's Logo in an appropriate way. All uses beyond this must be coordinated with the customer. It is permissible that Hetras advertises online with the customer using its software.
  - V.5 Hetras guarantees that Hetras is the owner of the software and that the allocation of the software does not infringe the rights of use of a third party.
  - V.6 The contracting parties mutually waive the right to set-off their claim against the claim of the other party.
  - V.7 Austrian Law shall apply for legal disputes which may arise from or in connection with this Agreement, unless the application of national law is mandatory.
  - V.8 The application of the "UN-purchase Law" is excluded. Place of jurisdiction is the district court Salzburg, regardless of the height of the amount in dispute.
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## Schedule 1- Definitions

"**Authorized User**" means an employee of the Client or such other person identified by the Client who has been authorized by the Client to access the Service.

"**Charges**" means the following amounts:

- (a) the amounts specified in Part 2 of Schedule 2
- (b) amounts calculated by multiplying the Provider's standard time-based charging rates (as notified by the Provider to the Customer before the date of this Agreement) by the time spent by the Provider's personnel performing the Support Services; and
- (c) such amounts as may be agreed in writing by the parties from time to time;

"**Client Data**" means all data, works and materials: uploaded to or stored on the Platform by the Client; transmitted by the Platform at the instigation of the Client; supplied by the Client 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 Services by the Client;

"**CPI**" refers to the Consumer Price Index identified on the cover page of this Agreement (or the most equivalent successor index thereto if the foregoing ceases to be published).

"**Effective Date**" means [the date of execution of this Agreement];

"**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);

"**GDPR**" has the "REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL" available on <https://eur-lex.europa.eu/legal-content/DE/TXT/?uri=celex%3A32016R0679> ;

"**Services**" means subscription to access and use the Software and any services that the Provider provides to the Customer, or has an obligation to provide to the Customer, under this Agreement.