

## Platform Terms of Use

### 1 Definitions

**“Academic Institution”** means any institution like a university or school, whether public or private, which is teaching pupils or students with the goal of education releasing certifications.

**“Acceptor”** means any Client that acquires Cloud services and products from a Software Provider or other Third Party Products from the Offeror in the TotalOne Platform by accepting an Offering.

**“Affiliate”** means any legal entity in a group of companies which are ultimately owned or controlled by a parent company. “Affiliate” includes the parent company.

**“Agreement”** means the Platform Terms of Use hereof, as to be agreed upon by "click" or signing, as the case may be, together with any Homerun Order and any integrating parts to it as well as any additional other contract terms accepted when registering and setting up a Tenant, such as but not limited to the User Registration terms, a Homerun Order, etc.

**“Client”** means an Academic Institution, a Corporate Body, a Government Body, an NGO, a Private Individual or a Student, that accepted these Platform Terms of Use and accordingly with a valid Tenant, who can enter the TotalOne Platform as a Visitor, Acceptor, Offeror or Homerun Partner and who might add its customers to the TotalOne Platform under its sole discretion which then will be Clients as well.

**“Client Data”** means any information, content, such as Offerings data, Third Party Product description data, Client’s legal terms and conditions, price, payment and other commercial data, bank data, credit card details, contact and other personal data, user registration and log-in data provided by the Client and processed by Homerun and uploaded by the Client onto the TotalOne Platform. Client Data includes links to its own, affiliated or third party websites. Client Data includes, but is not limited to, the data of clients, members and employees of the Client.

**“Corporate Body”** means any corporate body governed by private law having legal capacity.

**“Data Subject”** means any individual person or legal entity entitled to rights and legal complaints and remedies under applicable data protection laws.

**“Government Body”** means any administrative unit or corporate body organized under public law or any corporate body governed by private law with a government, administrative unit or corporate body under public law holding more than 50 percent of its shares and voting rights having legal capacity.

**“Homerun”** means Homerun Management AG, a stock corporation duly organized and existing under the laws of Switzerland under ID-Number CHE-225.598.282, whose registered office is at Zugerstrasse 32, 6340 Baar / Zug, and acting in accordance with the laws of Switzerland.

**“Homerun Content”** means any text, image, video, audio, design, logo, graphic, script, name, etc., which Homerun posts, publishes or makes available on or through the TotalOne Software, Homerun Website and TotalOne Websites and / or the TotalOne Platform, whether or not this Homerun Content is protected under any applicable Intellectual Property laws, and which is owned by Homerun or lawfully licensed or contracted by third party owners to Homerun.

**“Homerun Order”** means an Order for Cloud service Third Party / Offeror Products facilitated and pre-configured through the Homerun’s TotalOne Software or for a Homerun Support Agreement. Homerun Orders are placed by the Homerun Partner on behalf of its customers or directly by the Client, subject to this Agreement, by accepting these Platform Terms of Use and the commercial and other conditions referred to in the Order online, by email or in written form.

**“Homerun Partner”** means the Client of Homerun, typically the Offeror, integrator, data center provider, etc., which has signed a Homerun Partner Agreement or simply fulfilled the online Homerun Partner sign up process and so is entitled to add its own customers to the TotalOne Platform and use the TotalOne Platform to sell its own products and services with preferred conditions to the Homerun community.

**“Homerun Products”** means the TotalOne Software and other related services or products, such as Homerun support services outlined in a Homerun Support Agreement.

**“Homerun Support Agreement”** means an agreement for the provision of certain support services by Homerun according to the commercial and legal support terms either published on the Homerun Website by Homerun and included by clicking the acceptance button or agreed upon by mutual agreement between Homerun and the Client. In any case, Homerun shall only be obliged to provide support services to the client if such support is agreed upon separately by underwriting or "click".

**“Homerun Website”** means the website where the OnTotalOne Tenant can be accessed, and where commercial terms, Homerun, the TotalOne Platform and other information as well as the applicable Platform Terms of Use are published from time to time.

**“NGO”** means any Corporate Body qualifying as non-profit organization with a non-commercial business purpose to help e.g. humans, animals or nature.

**“Offering”** means the offer of any Platform Product through the TotalOne Platform.

**“Offeror”** means any Client placing an Offer which might lead to an acceptance including, but not limited to, Homerun Partners, Software Providers and other Clients.

**“Pay-as-you-go Model”** means the Homerun temporary usage model for Clients and Homerun Partners for access to and use of the TotalOne Software depending on time (one time, daily, monthly, quarterly or annually fraction), number of Users and Platform Product price.

**“Platform Contract”** means any contract between the Offeror and the Acceptor by confirmation or acceptance of the TotalOne Platform Order by the Acceptor, without involvement of Homerun.

**“Platform Fee”** means the fee applicable to Homerun Partners and Clients depending, as the case may be, inter alia on the time period of the chosen subscription in the Pay-as-you-go Model, the number and types of Users of the TotalOne Software and the TotalOne Platform.

**“Platform Parties”** means the Offeror and the Acceptor of Third Party Products in the TotalOne Platform once they have concluded the Platform Contract.

**“Platform Product”** means any Third Party Product or Homerun Product listed in the TotalOne Platform by the Client or Homerun.

**“Platform Terms of Use”** means the terms and conditions hereof applying to the membership, partnership, offerings and all transactions and contracts of Clients on the TotalOne Platform including, but not limited to, as the Acceptor or as the Offeror. The Platform Terms of Use must be accepted when login into the Tenant and will apply as soon as the Client enters the TotalOne Platform as a Visitor, a potential Acceptor, an Offeror or a Homerun Partner.

**“Privacy Policy”** has the meaning assigned to it in the Privacy Policy accessible on the Homerun Website and the TotalOne Website.

**“Private Individual”** means any private person having legal capacity.

**“Software Provider”** means Third Party Software Provider with the Tenant, offering software or software services such as, but not limited to, Microsoft, Amazon Web Services, Google, etc., facilitated by the TotalOne Software providing installation, configuration and / or administration services. The Client contracts directly with the Software Provider or authorized Homerun Partner, Offeror, etc., for their services and software offered in the TotalOne Platform.

**“Student”** means any Private Individual that has an inscription at an Academic Institution dated not more than 3 months prior to the Offer.

**“Tenant”** means a user / group of users, identified via a common Domain / Directory, that have common access to a software instance, TotalOne Platform, and associated privileges. Every tenant is provided with a dedicated share of the software instance and supporting infrastructure including data, configuration, user management, individual functionality and non-functional properties. Tenants are hosted on OnTotal.One Domain in multiple data center regions of the world. During the creation of the tenant, the Primary contact of the Client defines in which region of the world the tenant is installed. Associated subcompanies, customers and / or clients are also hosted in the same tenant.

**“Third Party Product”** means hardware, software, services, licenses, pay-as-you-go services, SaaS, IaaS, Cloud services, etc., offered on the TotalOne Platform

including the related product description, commercial and legal sales conditions other than Homerun Products.

**“TotalOne App”** means the innovative and efficient online Platform that delivers user, groups, computer and server management, online shop, licence management and billing solutions for IT resellers and IT service providers, provided by Homerun.

**“TotalOne Billing System”** means the TotalOne Billing System software as part of the TotalOne Software used to bill completed Homerun Orders and TotalOne Platform Orders and Contracts.

**“TotalOne Platform”** means the TotalOne App when used by Homerun Partners, Clients or Homerun to offer or purchase Platform Products under the terms of this Agreement.

**“TotalOne Platform Order”** means an Order for Third Party Products placed by the Acceptor towards the Offeror related to an Offering posted in the TotalOne Platform according to the commercial and legal conditions posted by the Offeror.

**“TotalOne Platform Products”** means any IT service, software, hardware, etc., that is sold or purchased on the TotalOne Platform by the Client under the terms and conditions of the Offeror.

**“TotalOne Website”** means the website where the OnTotal.One Tenant can be accessed, and where the TotalOne Platform, commercial terms and other information as well as the applicable Platform Terms of Use are published from time to time.

**“Transaction”** means any transaction made by the Offeror through the use of the TotalOne Platform including Cloud installations, acquisition of Third Party Products and services as well as any other transactions directly concluded with the Client inter alia, such as let, sale as a service, license, lease, etc. “Offeror” includes Homerun Partners, Software Providers and Clients.

**“User”** means an individual authorized by the Client to access and use the TotalOne Platform and /or TotalOne Platform Products on behalf of the Client with the authorizations according to the User Categories as allocated in the User Management Vault.

**“User Category”** means different Users with different authorizations to perform activities on the TotalOne Platform and /or TotalOne Platform Products. With the allocation under a specific Category by the Client in the Management Vault, the respective rights and obligations of that User Category are accepted by the Client.

**“User Management Vault”** means the Client allocates and withdraws User authorizations to his own staff or external personnel according to the User Categories. Unless specifically authorized to, Homerun has no access to and no rights to the Client’s User Management Vault and personal data of the Client’s Users.

## 2 Acceptance of Terms, Changes

2.1 These Platform Terms of Use are accepted by clicking the respective online-acceptance button in the TotalOne Sign up page and / or when sending a Homerun Order. Together with the Homerun Order and the other terms integrated by reference ("Agreement").

2.2 Acceptance of these Platform Terms of Use and all its referenced or linked guidelines, policies and conditions herein, entitles the Client and its registered Users, to access and use the TotalOne Platform, as a Visitor, an Acceptor, an Offeror or a Homerun Partner, according to this Agreement. The Homerun Partner conditions are separate from these Platform Terms of Use and must be agreed in addition.

2.3 Homerun reserves the right to change any of the terms and conditions of these Platform Terms of Use or any other terms and conditions, guidelines or policies applying to the use of the TotalOne Platform at any time and in its sole discretion. Any changes will be effective upon posting of the new version of the Platform Terms of Use on the Homerun Website and / or the TotalOne Website. All notice of changes will be published on the Homerun Website for thirty ("30") days. The Client is responsible to review the changes and - in case of non-acceptance - to terminate the use of the TotalOne Platform. Continued use of the TotalOne Platform following announcement of the changes, shall constitute Client's acceptance of these changes and the new version.

## 3 Client Registration, Power of Attorney

3.1 Use of the TotalOne Platform is limited to Clients and Users that lawfully can exert the rights and obligations for the Clients and Users, as specified in this Agreement and the User Category. For instance, minors or persons without the respective Client authorization or individuals / entities on an export restriction list, are not entitled to sign up for the Tenant or to register as a User.

3.2 Registration as a Client requires the provision of a business, company or entity name as well as the real name(s) of the registering individual(s) as (a) User(s), function(s), company / entity registered address, email-address, phone number and a valid credit card number or bank account at the legal domicile of the Client as requested in the User registration form.

3.3 The Client authorizes Homerun to list it as a User according to the User Categories as defined by Homerun. The Client manages (for instance assigns, updates, cancels User rights, etc.) Users on its own responsibility and independently and with no access from Homerun in the User Management Vault.

3.4 The Client is responsible for password and login confidentiality for its Tenant and for its Users. The Client is for itself and its Users responsible to restrict access to its locations and computers. The Client shall accept full responsibility for all activities that occur under its Tenant, Users and passwords.

3.5 Homerun will grant access to the TotalOne Platform only to identified Clients and Users authorized by the Client through the User Management Vault process.

3.6 It is in the sole discretion of Homerun to deny, block, withdraw, cancel or restrict access of the Client and / or the User to the TotalOne Platform at any time, if Homerun is of the reasonable view that identification and login security of the User is not confirmed or if the User or the Client infringes other terms of the Agreement or any applicable law or court orders.

3.7 Every Client grants Homerun a Power of Attorney to order products from, agree upon, modify or terminate agreements with and in general to act as his Attorney in fact towards other Clients including but not limited to providers of Third Party Products or any other providers of services on the TotalOne Platform. Such Power of Attorney shall be limited by the authorizations given to Homerun from such Client by its Offers, Acceptances or other determinations on the TotalOne Platform.

## 4 Term, Termination

4.1 The Term of the Agreement and the license to get access and use the TotalOne Software shall be for the duration as chosen in the Homerun Order ("Term") starting from the date of online-acceptance of the Agreement by the Client or the date of the last email or signature ("Effective Date").

4.2 Ordinary Termination of the Agreement by the Client will be sent through email by (an) authorized User(s) and will become effective through confirmation of receipt by Homerun.

4.3 Termination does not give the Client the right to a refund of prepaid unused fees.

4.4 In case of an ordinary Termination of the Agreement by the Client, Homerun will provide the Client with a summary of the Client's Homerun Orders, TotalOne Platform Orders and any Third Party Products acquired through the TotalOne Platform.

4.5 Termination for cause by either Party shall be reserved.

## 5 Fees

5.1 The TotalOne Software is temporarily leased to the Client solely for the purpose and under the terms of this Agreement according to the Pay-as-You-Go Model and payment terms chosen and accepted by the Client when signing up for the Tenant and placing Homerun Orders by clicking the respective button.

5.2 The Platform Fee does not include any fees and payment obligations which are incurred by the Client directly from Software Providers, Offerors, Homerun Partners, other Clients or other third parties. All these contracts and transactions are agreed and executed directly between the Client and the Software Provider,

Offeror, Homerun Partner, other Client, Third Party, etc., with no involvement or obligation of Homerun whatsoever.

5.3 The Platform Fee is payable immediately and due upfront 14 days after the Client getting access to the TotalOne Platform. In case Homerun did not receive the payment on the respective 14th day Homerun will send a warning email. After sending of this warning email the Client will be treated in "default". In case of such a default or an insolvency of the Client Homerun is not obliged to set another grace period but is entitled, at its sole discretion, to immediately block or suspend the access to the Tenant and/or terminate the Agreement.

5.4 Support Fees under any of the published support models can be chosen at any time by clicking the respective order button on the Homerun Website.

5.5 In case of non-payment of fees, apart from a temporary blocking of the Tenant, Homerun shall be entitled to terminate the Agreement with immediate effect.

## 6 Client Representations and Warranties

The Client represents and warrants:

a. that it is duly organized, validly existing and in good standing under the laws of the country, where the Client business is registered and that the products and services the Client provides, are legal and registered (if applicable) in each country where the Client's business is performed.

b. that it has all requisite rights, power and authority to enter into an agreement with Homerun for the participation in the TotalOne Platform and to perform its obligations thereunder.

c. that it is lawfully entitled to the Content provided, uploaded and made available or disclosed to Homerun and / or other clients or published on the TotalOne Platform, that its disclosure and publication does not infringe any applicable laws, third party IPR or other rights, and that the Content is always accurate, up-to-date, not misleading and complete.

d. to strictly comply with this Agreement and all other terms and conditions and guidelines applicable on the use of the TotalOne Platform and all applicable laws on the Client's business, its Transactions and its membership in the TotalOne Platform.

e. that it shall use the Tenant, the Homerun Website, the TotalOne Website and the TotalOne Platform only for a lawful purpose and in a lawful manner. The Client shall not use the Tenant in any way that damages or impairs the Homerun Website, the TotalOne Website and the TotalOne Platform or its performance, availability and accessibility, or in an illegal, fraudulent, harmful way, or in connection with an illegal, fraudulent or harmful activity.

f. not to use the Tenant, the Homerun Website and the TotalOne Website to copy, store, host, transmit,

send, use publish or distribute any material which consists of or is linked to any spyware, computer viruses, Trojan horses, worms, keystroke loggers, rootkits or other malicious computer software or other security risks. The Client shall take all reasonable organizational and technical precautions in order to prevent infiltration of the Tenant, the TotalOne Software, the Homerun Website and the TotalOne Website with security risks and specifically the aforementioned malicious software.

g. to respect and comply with Homerun's Intellectual Property for the TotalOne Software and to respect and comply with any other Client's Intellectual Property Rights with respect to their respective Platform Product.

h. not to conduct any systematic or automated data collection activities (including without limitation data mining, data extraction and data harvesting) on or in relation to the Homerun Website, the TotalOne Website and the TotalOne Platform.

i. not to access or otherwise interact with the Homerun Website, the TotalOne Website and the TotalOne Platform using any robot, spider or other automated means, except for the purpose of search engine indexing;

k. not to use collected, personal data, other data or Content from the TotalOne Platform, for any direct marketing activity (including without limitation email marketing, SMS marketing, telemarketing and direct mailing) and to comply with any data protection rules and regulations applicable to any data processed with the TotalOne Platform including but not limited to the European GDPR.

## 7 Client Content

7.1 The Client will be provided with the right to upload and disclose own Content, including links to the TotalOne Platform.

7.2 The Client shall grant to Homerun a royalty-free, perpetual, irrevocable and fully sub-licensable right to use, reproduce, modify, adapt, publish, perform, translate, create derivative works from, distribute and display such Content on its TotalOne Platform which is included in the Platform Fee.

7.3 Client shall not upload and publish to the TotalOne Platform any Content which - in the reasonable discretion of Homerun - must be considered to be false, misleading, offensive, hateful, libelous, spam or which violates Homerun's or any third party's (including other Clients) Intellectual Property Rights, infringes this Agreement, any data protection or secrecy laws, violates any contractual secrecy, or privacy obligations, or other contract obligations towards any person or entity, or does constitute a violation of any applicable law or binding court order, binding authority orders or good industry practice.

7.4 In case if the Client, in the reasonable view of Homerun, infringes these terms of para 7 or any other terms of the Agreement, Homerun reserves the right to

screen, remove or edit any such infringing Content. In addition Homerun is entitled - at its sole discretion - to temporarily block or suspend the Tenant or to suspend or terminate the Agreement with immediate effect.

7.5 Homerun is entitled to report any illegal Content to the competent courts and government authorities. In order to cooperate with requests of government authorities and courts and to ensure the integrity of its operations, Homerun may access and disclose any information it considers necessary or appropriate, including but not limited to Client or User content, Platform Terms of Use details, IP addressing and communication information and content, usage and access history and any Client Content.

7.6 Homerun is not responsible for reviewing or evaluating any of the Client's Content and does not warrant nor in any way support Client Homerun Offerings and related Content or any other content (including links). Homerun does not assume any responsibility or liability for such Client Content or linked Client or Third Party Content.

## **8 Intellectual Property Rights**

8.1 The Client shall receive a non-exclusive, revocable, non-transferable, non-sublicensable license to use the TotalOne Software with all its features not limited in place during the term of the Agreement solely for the Client's own internal business purposes. The license includes the right to view pages from the Homerun Website and the TotalOne Website in a web browser, to download pages for caching in a web browser, to print pages from the Websites, to stream audio and video files from the Websites (if any) and use Homerun web services by means of a web browser and to upload Content and Offerings only as described in this Agreement onto the Homerun Website, the TotalOne Website and the TotalOne Platform.

8.2 Homerun shall exclusively remain entitled to all intellectual property rights of Homerun including, but not limited to, the TotalOne Software, Homerun Products and the Homerun Content. Intellectual Property Rights ("IPR") shall include, but is not limited to, patent rights and the comprehensive copyright with all rights to the TotalOne Software, included programs, documents, hardware, methods and information which have been provided within the preparation and performance of this Agreement including warranty, support and other services (if applicable) as well as to license or other contractual rights of other Clients and third parties.

8.3 In particular, the duplication of the TotalOne Software without Homerun's express consent, any handing over or disclosure of the Software to non-authorized staff of the Client or to third parties without written expressed consent or the development of similar software, by using the TotalOne Software as a model for its development, is prohibited by this Agreement and by operation of law. The Client may not and will not encourage, assist or authorize any other entity or person, to copy, modify, reverse engineer, decompile or

disassemble or otherwise tamper with the TotalOne Software, whether in whole or in part, nor create any derivative works of the TotalOne Software.

8.4 The Client shall not modify or remove any copyright notices of Homerun.

8.5 Any use of the Homerun's TotalOne Software or Platform which exceeds the provisions included in this Agreement will require the prior written approval of Homerun. In the event that such use takes place without this approval, Homerun reserves the right to termination for cause including damage claims.

8.6 The transfer of the TotalOne Software License provided in 8.1, to a third party, including an Affiliate, requires the conclusion of a new or a change to this Agreement in writing or by online-acceptance or an approval of Homerun (by email or in writing).

8.7 The Client shall remain fully entitled to all its pre-existing lawfully owned or licensed Intellectual Property Rights with regard to the Content posted on the TotalOne Platform.

## **9 Additional Platform Conditions**

### **9.1 Homerun's Role and Limited Liability**

9.1.1 Homerun's role is to offer the TotalOne Platform for Clients and to help them to efficiently configure, install and manage Cloud-based IT systems worldwide and to support the Homerun Clients to offer, sell or buy Third Party Products through the TotalOne Platform.

9.1.2 Homerun is not involved in the negotiations between the Offeror and / or Software Provider and the Acceptor and is not a party to the Transactions on the TotalOne Platform. It is in the sole responsibility of the Platform Parties to execute their part of the Transaction independently from Homerun and the TotalOne Platform. Homerun's liability is limited to the provision of the TotalOne App and, as the case may be, further Homerun Products. Homerun is the counterparty of each Client only with regard to the use of the TotalOne App and, as the case may be, Homerun Products. The provision of Cloud solutions and / or of any other Third Party Products is not the obligation of Homerun but lays within the responsibility and liability of the respective Software Provider and / or Offeror on the TotalOne Platform.

9.1.3 Homerun expressly excludes any responsibility and liability, if transactions between the Acceptor and the Offeror fail or are being rescinded, cancelled or terminated for whatever reasons or are legally invalid or null and void under any applicable law.

9.1.4 Homerun reserves the right to change the appearance, design and functionality and all other aspects of the TotalOne Platform from time to time.

9.1.5 Homerun has the right, but no obligation, to preview any Content before it is posted, refuse or edit Content before it is posted or request changes to it. In

addition, Homerun has the right but no obligation to monitor any content, transactions and other activity performed on or associated with Homerun, the Homerun Website, the TotalOne Website and the TotalOne Platform, as Homerun deems appropriate. Homerun also may investigate any reported violation of this Agreement, applicable laws or other applicable terms and conditions or any legal obligations and reported Client, third party or authority complaints. Homerun may take any action as it deems appropriate, including, but not limited to, removing of Content from the Homerun Website, the TotalOne Website or the TotalOne Platform, temporarily blocking the access to the Tenant, suspend the Agreement or terminate the Agreement with immediate effect.

## **9.2 Platform Contracts**

9.2.1 The Offeror may offer Third Party Products for sale in the TotalOne Platform to the Offeror's commercial and legal terms and conditions provided as a part of the Offeror's Offering and the Acceptor may order such Offerings to the specified commercial and legal terms and conditions by clicking the respective Platform Order and acceptance button. The Platform Parties are solely responsible for the conclusion of a binding and valid contract.

9.2.2 The contract between the Offeror and the Acceptor is only between them as the Platform Parties. Apart from providing the TotalOne Platform to facilitate or mediate contract closures, Homerun is not a part and not involved whatsoever in the conclusion and execution of the transactions. Homerun does neither warrant nor guarantee that the Platform Contract is legally valid or binding, nor that the Parties will honor their obligations under their contracts.

## **9.3 Taxes**

9.3.1 It is the Client's (Offeror's, Software Provider's and Acceptor's) sole responsibility to determine whether sales taxes, goods taxes, VAT, export, import tax, withholding tax, customs duties, consumption, use or excise tax or any other applicable tax or duty ("Tax") of any competent country impacted by the Platform Contract and the Transactions between the Platform Parties, apply.

9.3.2 It is the Client's (Offeror's, Software Provider's and Acceptor's) sole responsibility to declare in the Offering and to collect, report and remit to a competent authority any Tax assessed, incurred or required to be collected or paid for any reason in connection with any Offering, advertisement or Sale of Third Party Products by the Offeror on or through Homerun or otherwise in connection with any action, inaction or omission of the Client or any affiliate of the Client or of any of the Client's respective employees, agents, contractors or representatives.

## **9.4 Compliance with Export Regulations**

Clients, including their Affiliates, directors, officers, employees, representatives, consultants, agents, etc.,

shall strictly comply with all applicable export and re-export restrictions and regulations of all applicable laws, specifically, but not limited to, those of Switzerland, the United States of America and the European Union. Homerun shall be entitled to block or remove Offerings or Contracts, or block or terminate the Tenant or Agreement with immediate effect, if Homerun reasonably comes to the conclusion that such Offerings or Contracts are infringing, likely to infringe or are trying to circumvent Swiss, US, EU or any other applicable export restriction law.

## **9.5 Disputes between Clients**

Issues and disputes between the Clients and the Platform Parties, including contract negotiation, mediation and litigation, are resolved directly between them according to the legal conditions agreed in their Contract or as under applicable law, with no involvement or mediation whatsoever by Homerun.

## **9.6 Platform Indemnification**

Since Homerun is not involved in the Platform Offerings, negotiations, Contracts and related Transactions or other dealings between Clients, if a dispute or litigation arises between one or more of them, any Client shall fully indemnify Homerun and its Affiliates, employees, officers, directors, representatives and agents from all and any damages, claims, demands of every kind and nature (including any court costs and reasonable attorney's fees) arising out of or connected with these disputes, litigation, claims, etc., between the Clients.

## **9.7 Links to Websites**

The TotalOne Platform may contain links to other Clients, Software Provider or other third party websites. Homerun does not control the content of these websites. Unless specifically stated on the Homerun Website and / or the TotalOne Website to the contrary, Homerun is not affiliated with these Clients, TotalOne Platform Members, Homerun Partners, Software Providers, etc., and other third parties and does not endorse or sponsor their websites, products or services, their Client Content or other content. All linked information is provided "as is" without any express or implied warranties or endorsement, including, but not limited to, implied warranties of merchantability, accuracy of information, fitness for a particular purpose or non-infringement. In no event shall Homerun be liable for any special, indirect, punitive or other damages resulting from any use or content, or errors, or omissions in the information on the Homerun Website and / or the TotalOne Website or on websites to which Homerun or the TotalOne Platform provides links or for links of other Clients, TotalOne Platform Members, Homerun Partners, Software Providers or other third party websites.

## **10 No Warranties**

10.1 **For Homerun:** Homerun provides the TotalOne Platform "as is" and disclaims all warranties, express, implied, arising by statute or otherwise, including, but not limited to, any warranty of merchantability or quality, fitness for any particular purpose.

10.2 Homerun will from time to time, in the sole discretion of Homerun, fix bugs or errors and maintain the Software through patches, automated or manual updates at any time and without notice to the Client. This is included in the Agreement.

10.3 Irrespective of the foregoing, the TotalOne Platform access and use is provided to the Client with no warranty as to the uninterrupted or error-free functioning, availability and performance of the TotalOne Platform.

10.4 **For the TotalOne Platform and Website information:** Homerun does not warrant or represent the completeness, accuracy and up-to-datedness of any Client Content, Homerun or other information or publication on the TotalOne Platform, the Homerun Website and the TotalOne Website.

10.5 **For Software Provider services and Platform Offerings:** Homerun does not warrant the accuracy, completeness, up-to-datedness or availability of the TotalOne Software Provider or Platform Offering and related Client or Software Provider content. As with all other forms of advertising, Clients and potential Acceptors must rely on their own judgment regarding the value of a Third Party Product for their business. Homerun does not make any warranty of any kind regarding the TotalOne Platform Third Party Products, content and information.

10.6 Homerun also expressly disclaims all warranties, guaranties, services or products descriptions and other conditions regarding Third Party Products, Software Provider services and products and any other professional services offered, sold or performed through or on the TotalOne Platform.

## 11 Indemnity

The Client agrees to indemnify and hold Homerun and its employees, officers, directors, agents, consultants and Affiliates fully harmless (including reasonable attorney's fees and court costs) from any claim, request or demand, made by any Third Party, any Software Provider, Acceptor, Offeror, Homerun Partner, other Client or any of their respective employees, officers, directors, agents, consultants or Affiliates, due to or arising out of the Client's (or any of its Affiliates, officers directors, employees, agents, consultants) breach of the Agreement or violation of any law, or the rights of another Homerun Client, a Software Provider, Acceptor, Offeror, Homerun Partner or any Third Party. If Homerun waives or fails to react or respond to such a breach or violation in a single case, this does not mean that Homerun waives its legal rights to respond or act to subsequent or similar breaches or violations.

## 12 Support Services

12.1 The Client may request from Homerun a specific support service and accordingly Homerun offers a Homerun Support Agreement. By clicking on the respective button as referenced on the Homerun

Website and / or the TotalOne Website, by the Homerun Order form or by signing the respective paper agreement, the Support Terms are accepted by the Client. The Support Agreement will be separately accepted by Homerun by signature, email or in written form.

12.2 In case of a valid Homerun Support Agreement, Homerun shall provide the services outlined therein: e.g. fix bugs, errors, inconsistencies and provide direct customer-specific support during the hours and in the time as agreed in the Homerun Support Agreement.

12.3 Client shall notify Homerun of any bugs, errors, malfunctions or inconsistencies by providing notice including a description of the problem through Homerun's online ticketing-system.

12.4 Termination of the Agreement includes termination of the Homerun Support Agreement. Termination of the Homerun Support Agreement does not include termination of this Agreement.

## 13 Liability

13.1 To the extent permitted by law, Homerun's liability for any direct losses, claims or other direct damages incurred by the Client in connection with this Agreement, shall not exceed in the aggregate the most recent three (3) months of fees received by Homerun from the Client.

13.2 Homerun excludes any other liability for damages due in particular to the non-performance of contractual obligations, for punitive, indirect, incidental, or consequential damages (such as, but not limited to, lost profit, lost savings, lost goodwill, claims of third parties, etc.) and for damages caused by corruption or loss of data, whether based in contract, negligence, tort, strict liability or any other theory of recovery.

13.3 The liability for personal injuries caused by culpable action and the liability according to Swiss law are exempted from these restrictions.

13.4 Homerun shall not be liable for damages caused by auxiliary personnel.

## 14 Electronic Communication

14.1 All communication between the Client, acting through its registered Users, and Homerun will be through electronic means. The Client consents to receive communication from Homerun, other Clients, Software Providers, etc., electronically, such as emails, texts, mobile push notices, notices, publications and messages on the Homerun Website, the TotalOne Website, the TotalOne Platform or through other Homerun channels.

14.2 The Client agrees that this Agreement and all agreements, notices, publications, messages and other communications will be provided to the Client electronically and that the electronic format satisfies and complies with any applicable legal requirements, including but not limited in the country of the Client, that

such communication, agreement or contract be in writing.

#### 15 Use of Third Party Services

By accessing the TotalOne Software and the TotalOne Platform, the Client may also use products or services of one or more third parties, such as, but not limited to, a credit card operator, wireless carrier or mobile Platform vendor, etc. Client's use of these Third Party Products and Services may be subject to separate policies, terms of use and fees of such third parties.

#### 16 Severability

Should any individual provision of the Agreement be or become void or invalid, the remaining provisions will continue to apply. The void or invalid provision shall be replaced in such a case by an effective provision which is as close as legally possible to the intent of the ineffective provision.

#### 17 Assignment of Rights

17.1 Homerun may assign or transfer this Agreement or single rights under this Agreement to an Affiliate or a Third Party by giving notice to the Client either by email or by announcement on the Homerun Website and / or on the TotalOne Website.

17.2 The Client may assign or transfer this Agreement or single rights under this Agreement to an Affiliate or a Third Party only after written acceptance by Homerun.

#### 18 Entire Agreement

Subject to an additional Homerun Partner Agreement, this Agreement, including all Homerun Orders, shall constitute the entire agreement between the Parties in relation to the Clients access and use of the Homerun Website, the TotalOne Website and the TotalOne Platform and shall supersede all previous agreements between the Parties in this respect.

#### 19 Dispute Resolution, Arbitration

19.1 In the event of any claim or dispute arising out of or in connection with the present Agreement, the Parties shall first refer the dispute to proceedings under the International Chamber of Commerce's ("ICC") Mediation Rules.

19.2 If the dispute has not been settled pursuant to the said Rules within 60 days following the filing of a Request for Mediation or within such other period as the Parties may agree in writing, such dispute or claim shall thereafter **be finally settled under the Rules of Arbitration of the International Chamber of Commerce ("ICC")** by three arbitrators appointed in accordance with the ICC Rules of Arbitration, **excluding any State courts.**

19.3 **Place of Arbitration shall be in Zug, Switzerland.** Arbitration language shall be **English.**

#### 20 Applicable Law

This Agreement shall be subject to **Swiss Law**, including the rules on International Private Law ("IPL") and excluding the provisions of the Vienna Convention (the United Nations Convention of Contracts for the International Sale of Goods concluded in Vienna on 11 April 1980).

#### Homerun Management AG

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