Software as a Service (SaaS) Agreement

This Agreement was last revised on November 4, 2024 and replaces all previous versions.

This Agreement is made between YourSky.blue LLC as the "Provider" of service and the company/physical person agreeing to these terms, referred to as the "Customer".

This Agreement shall be effective upon the Customer's acceptance during the subscription process or upon receipt of the Customer's first subscription payment, whichever occurs first.

Both parties agree as follows:

Services

- The actual software solutions provided as a service to the Customer are indicated in the subscription purchased.
- The number of users granted access to the service may vary depending on the subscription plan.

Access to the services

- System is normally available 24/7 under best effort.
- Normal maintenance windows are reserved on Saturday from 9:00 to 12:00 CET.
- Exceptional urgent maintenance might be performed at any time based on actual needs without prior notice.
- During maintenance the service might experience limited availability or temporarily be switched off.

Provider Responsibility

- During the subscription period, the Customer will have access to the services purchased on a public cloud available online under best effort service level agreement.
- Provider's responsibility is limited to:
  - Host the service solution online.
  - Monitor and update the service solution and infrastructure to maintain good quality of service.
  - Provide initial administration instructions to connect to the purchased service solution.
  - Notify the Customer of any major changes that would affect his access to the solution.
  - Provide technical operating support limited to restore the normal course of the service function.
  - Specific customer requests, enhancements, assistance, trainings, root cause analysis, data recovery, extensive troubleshooting of performance issues or any other support requests that exceeds restoration of the normal course of the service function are not covered by the standard subscription of the service. However in some exceptional cases, the Provider might proposed them to the Customer either on a time and material basis or for a fixed price or for an additional subscription fee or be offered.

Customer Obligations

Customer shall:

- Maintain valid email address to enable important email notifications from the Provider.
- Ensure the payment information and contact address remain up to date.
- Pay on time to ensure uninterruptible usage of the service and/or avoid any redemption fees.
- Access the solution through its own internet connection and support any related costs to connect to the Provider service cloud.
- Have adequate knowledge to use the solution or get external training.
- Use the solution solely for its intended usage.
- Configure the solution to adapt it for his own need.
- Ensure each user he grants access to the solution will comply with relevant subset of this Agreement.
- Respect and enforce the limits (number of users, projects number, release frequency, …) according to the volume granted in its subscription or increase its subscription to a higher volume limit before the condition occurs.
- Take adequate measures to secure system's configuration, data, accesses, limit permissions, perform backup or copy of relevant information.
- Make best effort to protect the security of the solution and privacy of the credentials provided and you agree to inform us immediately of any unauthorized use.

Customer Data

We are committed to safeguarding the safety and confidentiality of your information, adhering strictly to Swiss and European data protection laws.

Your personal data is covered by our privacy policy available at **https://yoursky.blue/legal/privacy-policy?marketplace=aws**.

Regarding data that you processed or store within our solutions:

- The Customer is the sole controller for all processing data and is legally responsible for all the data that he provides or manages through the solution.
- Customer's data is never shared with any Third parties or Governments. It is processed and hosted within our multi-cloud infrastructure, exclusively located in Switzerland and operated solely by Swiss providers, all of whom are subject exclusively to Swiss laws.
- Customer's data is protected against eavesdropping through encryption during transmission and at rest.
- The Provider has no means to assist the Customer, any Third party or Governments regarding the processing of Customer's data.
- Once a subscription is terminated, the Customer's data including configuration will be taken offline and the customer will no longer be able to access them. All customer's data will be definitively erased after a redemption period of 7 days. During the redemption period, data recovery is possible but it is subject to a fee of CHF 250 excluding taxes. In addition, all specific requests will incurs the standard time and material fee. No data recovery will be possible after the redemption period.
- For the Software Health Indicator solution, the Customer's software indications will remain visible in our list of software even when a subscription is terminated. However, we reserve the right to delete them or report them accordingly.

Subscription period and renewal

- The commencement date is established when the service is activated and made available to the Customer, defined as when the Customer is notified that the service is ready for use, regardless of the Customer's first actual use of the service. This commencement date marks the start of the billing cycle.
- Any difficulties in accessing the service must be reported to the Provider within a reasonable timeframe. Such reporting, however, does not entitle the Customer to an adjustment of the commencement date, which remains at the Provider's sole discretion.
- Service subscription can be either: Monthly (based on calendar month), Yearly (based on calendar), later referred as "period".
- The commencement date defines the subscription anniversary. The payment date would be defined as the closest possible date within the next period (eg: Monthly with commencement on 30th January would be renewed on 28th February, then on 30th March and so on…).

- The service subscription must be paid at the beginning of the period and entitles the Customer to use the subscribed service for the whole period.
- Unless cancelled before the last day of the period, the subscription will automatically renew for another period of the same length.
- The permissible volume (such as number of users, projects, …) is indicated in the subscription. During a period, the Customer shall never exceed the number of users allowed by its subscription. It is Customer's responsibility to estimate it accurately and contact us to purchase an extension before it is needed. Failure to comply might result in invoice correction for the period or service suspension.
- The volumes are controlled periodically and shall never exceed the maximum permissible volumes allowed by the subscription. It is Customer's responsibility to contact us for an upgrade. We make the Customer aware that there is no hard limit built in the software to prevent exceeding them.

Billing and Payment

- All our prices are indexed after Swiss Francs (CHF). As a convenience, we also offer to pay directly in other major currencies. In case of significant evolution with the exchange rates we might adjust and apply new prices with the next billing period.
- Payment will use the billing information provided by the Customer.
- Subscription renewal will be attempted automatically and use the latest information provided by the Customer. It is Customer's responsibility to prevent payment failure by keeping up to date payment information and contacting us to proceed to any relevant change.
- Issue with payment during subscription renewal would entitle the Customer to a maximum 24 hours window to solve the payment issue before the subscription is considered as cancelled.
- A cancelled subscription can be reactivated within a grace period of 120 hours by paying the usual renewal subscription fee. Even if the service was unavailable during the grace period, the reactivation does not grant any right for reimbursement or any period extension. Without payment during the grace period, all the Customer data would then be erased without possible recovery.

Taxes

- All prices listed on our websites are excluding taxes.
- The amount of tax may vary depending on the geographical location of the Customer. For accurate information on applicable taxes in your region, please consult the tax authorities of your jurisdiction or refer to this **tax guide**.
- The Customer is responsible for the payment of all applicable taxes. If taxes are to be collected by us, they will be added to the total amount of the order and clearly indicated on the invoice or collected at a later date.
- In accordance with current tax legislation, certain transactions or Customers may be eligible for an exemption from certain taxes. Exemption criteria will be specified as needed.
- A change in the rates of legal taxes is a mandatory criterion and does not entitle to early termination. We reserve the right to adjust prices accordingly.

Termination

- To avoid automatic renewal, the Customer shall terminate a service by cancelling its subscription before the period ends.
- If the Provider has to terminate a service, the Customer will be given at least 1 month notice.
- The Provider may suspend or terminate the Customer's access to the Services without notice to the Customer if he determines (in his sole discretion) that the Customer has violated this Agreement or that the Customer's activities or transactions expose the Customer, the Provider or other Customers to unacceptable risks.

Reimbursement

- Any refund will incur administrative fees amounting to 10% of the refunded amount, with a minimum of CHF 250 excluding taxes.

Limitation of Liability

- The amount of liability is limited to the maximum amount not consumed within the subscription period (eg: if 65% of a subscription has elapsed, the maximum liability would be 35% of the subscription fee).
- Neither party shall be held liable for any form of indirect liability.
- Neither party shall be held liable for performance delays or for non-performance due to causes beyond its reasonable control, except for payment obligations.

Dispute Resolution

If a dispute arises between the parties relating to the interpretation or performance of this Agreement or the grounds for the termination, the parties will attempt to negotiate a resolution in a good faith:

1. **Initial Communication**: The parties will first seek to resolve the dispute through email correspondence, clearly stating the nature of the dispute and the desired resolution.
2. **Online Meeting**: If the dispute is not resolved through initial resolution within ten (10) business days, the parties shall arrange an online meeting within fifteen (15) days of the written request by either party to discuss the matter further.
3. **Jurisdiction**: If the dispute remains unresolved after the online meeting, the parties agree to submit to the exclusive jurisdiction of the competent courts located in Conthey, Switzerland

Governing law and jurisdiction

- This Agreement shall be governed by the laws of Switzerland. The parties agree to submit to the exclusive jurisdiction of the competent courts located in Conthey, Switzerland, for any matters arising from or related to this Agreement.

Miscellaneous

- Special requests are subject to prior approval or a custom offer and will be billed according to the agreed-upon terms of that offer or at an hourly rate of CHF 250, excluding taxes.
- This Agreement terms of Service may change at any time. The Customer would be notified of the change per email. The new Agreement will apply at the next renewal date unless the Customer cancels his subscription before its renewal.