

Passbolt Pro Edition Subscription Terms

This Agreement (“Terms” or “Terms of Service” or “Service Agreement” or “Subscription Terms”) is between you (the “Customer”) and Passbolt SA, a private company organised under the laws of the Grand Duchy of Luxembourg with registered office in 9 Avenue des Hauts-Fourneaux, L-4362 Esch-Sur-Alzette, Luxembourg, hereinafter referred to as “Passbolt” or “we” or “us”.

If you are entering this Agreement on behalf of a company, or another legal entity, then “Customer” or “you” means the legal entity you represent. You warrant that you are fully authorized and empowered to bind such entity, and its affiliates, to these Terms.

By clicking on the “I agree” (or similar button or checkbox) that is presented to you in the purchase flow at the time of your order or by sending to Passbolt a purchase order (the “Order”), you are unconditionally consenting to be bound by this Agreement.

1. General Terms and conditions

1.1. Types of Products, Services and method of delivery. This Agreement governs your relationship with Passbolt Pro Edition (the “Service”), composed of commercially available Software products (the “Software”), associated materials such as documentation (the “Other Materials”), and the associated support services (the “Support Services”). All deliveries under this Agreement will be electronic.

1.2. Scope of the Agreement. This Agreement governs your initial purchase as well as any future purchases (the “Subscription”) made by you that reference this Agreement. Products and Support Services are made available on a limited license or access basis, subject to the terms and conditions of this Agreement.

1.3. Customer responsibilities towards Authorized Users. Individuals authorized by the Customer to access the Service (an “Authorized User”) may submit personal information such as passwords or files (“Customer Data”). The Customer will (a) inform all Authorized Users of all policies and practices that are relevant to their use of the Services; and (b) ensure the transfer and processing of Customer Data is lawful; and (c) respond to and resolve any dispute by an Authorized User related to Customer Data.

2.1. Software Download. Subject to the terms and conditions of this Agreement and for the duration specified in the Order, Passbolt will make the Software available to you electronically via download. Customer will be provided access to the subsequent versions of Passbolt Pro Edition including any Major Release, Minor Release and/or Patch ("Software Update") for the duration specified in the Order.

2.2. Subscription Key License. The Software requires a code generated by Passbolt SA in order to operate (the "Subscription Key"). The Customer understands and agrees that Customer's ability to use the Software is determined by the Subscription Key provided to Customer. Subject to the terms and conditions of this Agreement, Passbolt hereby grants to the Customer a limited, non-exclusive, non-transferable, non-sublicensable license ("Subscription License") to use a Subscription Key. The Subscription Key will be delivered to the email address specified in your Order when Passbolt has received payment of the applicable fees.

2.3. Subscription Key Validity. The Subscription Key License validity is subject to the terms and conditions of this Agreement, including the correct number of Authorized User seats and duration specified in the Order. The Software may, in the absence of any renewal of the Subscription Key, be disabled automatically upon the expiration of the term specified in the Order.

2.4. Subscription Key usage restrictions. Customer agrees not to: (i) Use the Subscription Key other than for licensed purposes; (ii) Transfer, sell, rent, lease, distribute, sublicense, loan or otherwise transfer the Subscription Key in whole or in part to any third party. Customer agrees to: (a) Treat the Subscription Key as Confidential Proprietary Information as outlined in "Confidentiality" section; (b) Make a reasonable number of copies of the Subscription Key for backup and/or archival purposes.

2.5. Software License. The Software is Open Source software: you can redistribute it and/or modify it under the terms of the GNU Affero General Public License as published by the Free Software Foundation, either version 3 of the License, or (at your option) any later version. (Ref. <https://www.gnu.org/licenses/agpl-3.0.en.html>).

2.6. Third Party Library License. The Software includes third party libraries, which may be subject to separate Open Source licenses, compliant with Open Source Initiative (OSI) definition. The Customer agrees that different and individual provisions for redistribution and modification of such libraries may apply.

2.7. Other Materials License. Except where otherwise noted, the Other Materials are distributed under Creative Commons Attribution-ShareAlike 4.0 International Public License (Ref. <https://creativecommons.org/licenses/by-sa/4.0/legalcode>).

with respect to the Software after delivery of the Software, the Other Materials and the Subscription Key. Unless you contracted a separate Software Installation Agreement or with Passbolt SA, you are responsible for the installation of any Software.

3. Support terms

3.1. Access to support. Access to support is subject to a valid Subscription, including the payment of the applicable fees, and the respect of the terms and conditions of this Agreement. Passbolt will provide reasonable commercial efforts to respond to the Customer questions and issues with the Software ("Support Issue"), according to the support plan ("Plan") selected in the Order. Support issues may be placed via the communication channels mentioned in your Plan.

3.2. Support restrictions. Support Services are provided to the Customer solely for Customer's internal use and the Customer may not use the Support Services to supply any consulting, support or training services to any third party.

3.3. Response time. Passbolt will use reasonable efforts to respond to Support Issue during the next business day at the latest, or the response time specified in your Plan, whichever is the earliest.

3.4. Modified software support. Passbolt shall have no obligation to support versions of the software that have been modified by Customer or any other third party.

3.5. Customer Cooperation. The Customer deploys its own personnel and/or agents within the context of providing a reasonable solution to a Support Issue. These personnel shall have the necessary knowledge, expertise and experience. The Customer agrees to provide Passbolt with reasonable access to Customer Proprietary Information, such as application configuration files and logs, to the extent that such access is necessary for the resolution of Support Issue. Passbolt may terminate its support obligations to the Customer in the event that the Customer does not reasonably comply with written specifications, instructions, request for information from Passbolt support engineers regarding any Support Issue.

4. Fees, Payment and Taxes

4.1. Fees. The Customer agrees to pay Passbolt the applicable Subscription fees stated on the Order.

4.2. Fee changes. Passbolt may modify the Subscription fees in its sole discretion and at any time. Passbolt will provide you with reasonable prior notice of any change in Subscription fees to give the Customer an opportunity to terminate your Subscription before such change becomes effective.

periodic basis (Billing Cycle). Billing cycles are set on a regular basis, typically monthly or yearly, as specified in the Order. Subscription shall be invoiced upon execution of the applicable Order.

4.4. Payment. All invoices will be paid in euro (EUR) or the lawful currency stipulated in the Order. All invoices are due upon receipt and will be paid within thirty (30) days of the date of the invoice. Payments will be made without right of set-off or chargeback. All amounts paid are non-refundable.

4.5. Late fees. Any amount not paid when due may be subject to interest calculated at the most recent European Central Bank refinancing rate plus 10 points, plus a fixed collection penalty of 40 EUR per invoice, or, the maximum rate permitted by law, whichever is greater, determined and compounded on a daily basis from the date due until the date paid.

4.6. Taxes. All amounts payable by Customer to Passbolt under this Agreement are exclusive of any tax, levy, VAT or other relevant governmental charge that may be assessed by any jurisdiction and Customer agree to pay such Taxes. If, as a result of any tax or levy, Customer is required to withhold any amount on any payment to Passbolt, then the amount of the payment to Passbolt shall be automatically increased to totally offset such tax, so that the amount actually remitted to Passbolt, net of all taxes, equals the amount invoiced or otherwise due. Customer will promptly furnish Passbolt with the official receipt of payment of these taxes to the appropriate taxing authority. If Customer is tax exempt, Customer shall provide Passbolt with a certificate of exemption acceptable to the taxing authority.

5. Confidentiality

5.1. Each party (the “Receiving Party”) understands that the other party (the “Disclosing Party”) has disclosed or may disclose information relating to the Disclosing Party’s technology or business (hereinafter referred to as “Proprietary Information” or “Confidential Information” of the Disclosing Party).

5.2. The Receiving Party agrees: (i) not to divulge to any third person any such Proprietary Information, (ii) to give access to such Proprietary Information solely to those employees or agent with a need to have access thereto for purposes of this Agreement, and (iii) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that the party takes with its own proprietary information, but in no event will a party apply less than reasonable precautions to protect such Proprietary Information. The Disclosing Party agrees that the foregoing will not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public without any action by, or involvement of, the Receiving Party, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction

of the Disclosing Party.

5.3. Disclosure to legal authorities. The Receiving Party may also disclose Confidential Information if so required pursuant to a regulation, law or court order but only to the minimum extent required to comply with such regulation or order. Where possible the Receiving Party will provide advance notice to the Disclosing Party so that the Receiving Party have a reasonable time to contest such order.

6. Privacy

6.1. Privacy Policy Our Privacy Policy (<https://www.passbolt.com/privacy>) explains the way we handle and protect your personal data and privacy in relation to your use of the Service and your browsing of the passbolt.com web site. By agreeing to the present Terms and Conditions and to be able to use the Service, you also agree to our Privacy Policy.

7. Ownership & Intellectual property

7.1. Ownership. No ownership right is conveyed to you, irrespective of the use of terms such as "purchase" or "sale".

7.2. Intellectual property rights. The passbolt name and the passbolt logo are registered trademarks of Passbolt SA in The European Union Intellectual Property Office (EUIPO). The Software and Other Materials are protected by copyright, trademarks and other intellectual property rights. You agree not to change or delete any proprietary notices.

7.3. Feedback and submission of ideas. From time to time, you may choose to submit comments, questions, ideas, description of processes, or other information to Passbolt ("Feedback"). Passbolt may in connection with any of its products or services freely use, copy, disclose, license, distribute and exploit any Feedback in any manner without any obligation, royalty or restriction based on intellectual property rights or otherwise.

8. Warranty disclaimer and Limitation of Liability

8.1. Warranty disclaimer. The Service is provided "AS-IS" and "AS AVAILABLE" without any warranties of any kind. Passbolt and its subsidiaries, affiliates, and licensors hereby disclaim all warranties, expressed or implied, including, without limitation, all purportedly applicable warranties of merchantability, reliability, security, fitness for a particular purpose, title, and non-infringement, to the fullest extent permitted by law. You expressly agree that the use of the Service is at your sole risk.

Passbolt may make improvements and changes to the Service at any time without notice. Passbolt may at its sole discretion, terminate the Service without cause or notice.

subsidiaries, affiliates, and licensors shall not be liable for any loss or use, loss or inaccurate data, failure of security mechanisms, interruption of business, costs of delay or any indirect, special, incidental, reliance or consequential damages of any kind (including lost profits), regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise, even if informed of the possibility of such damages in advance.

To the maximum extent permitted by law, no suppliers of any third party components included in the products will be liable to you for any damages whatsoever.

8.3 Indemnification. You agree that Passbolt, and any parents, subsidiaries, officers, employees, or third party contractors cannot be held responsible for any third party claim, demand, or damages, including reasonable attorneys' fees, arising out of your use of this Service.

8.4. Damage Cap. Passbolt aggregate liability to you shall not exceed the amount actually paid by you to Passbolt in the 12 months immediately preceding the claim. This section (Damage Cap) shall not apply to amounts owed by you under any orders.

9. Termination

9.1. Termination notice. You may terminate the Agreement at any time with notice to Passbolt (by for example writing to contact@passbolt.com). You will not be entitled to any credits or refunds as a result of convenience termination for prepaid Service. Any refunds or credits given will be at the sole discretion of Passbolt.

9.2. Suspension. The Customer understands and agrees that in case of breach by Customer of the terms stipulated in this Agreement Passbolt will have the right to suspend or terminate the access to the Service that such suspension will not give rise to any modification of the amount of the Subscription fee due or to any extension of the Subscription term.

9.3. Bankruptcy. Either party may also terminate the Agreement if the other party ceases to operate, declares bankruptcy, becomes insolvent or is otherwise unable to meet its financial obligations.

9.4. Surviving provisions. Some provisions of the Terms shall survive termination, including without limitation: general conditions, confidentiality provisions, ownership and intellectual property provisions, warranty disclaimers, limitations of liability, payment and taxes provisions, governing law and disputes provisions.

10. Modifications to this Agreement

replace any of the terms and conditions contained in this Agreement at any time. We will make reasonable efforts to notify you in case material changes to this Terms.

10.2. Response to modifications. After a change in the term you have 30 days to respond (a) by informing us that you agree to the new terms or prices, (b) by informing us that you disagree, in which case we may on a case to case basis agree to continue providing you with the Service under the previous terms and/or prices, or (c) by giving us notice that you terminate this agreement regardless of the remaining duration you had agreed to under the previous terms. Continuation of use after 30 days will constitute agreement to the new terms.

11. Additional provisions

11.1. Severability. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

11.2. Previous agreements. Both parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed or otherwise agreed to by each party, except as otherwise provided herein.

11.3. Non-Waiver of Rights. The failure of any Party to insist upon or enforce performance by the other Party of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement will not be interpreted or construed as a waiver or relinquishment of such Party's right to assert or rely upon such provision, right or remedy in that or any other instance; rather, such provision or right shall be and remain in full force and effect.

11.4. Assignment. We may assign these Terms in their entirety, without your consent, to a corporate affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of our assets.

12. Governing law

12.1. Governing Law. The Agreement between Passbolt and the Customer shall be governed by, and construed in accordance with, the laws of the Grand Duchy of Luxembourg.

13. Mediation and Disputes

13.1. Disputes. Any disputes that may arise between Passbolt and the Customer on the basis of an agreement concluded between Passbolt and the Customer or as a result of further agreements that arise from such an agreement, shall be settled through arbitration in

Automation Disputes, with its registered office in The Hague, without prejudice to the right of either of the parties to request an injunction in summary arbitral proceedings and without prejudice to the right of either of the parties to take precautionary legal measures (see <http://www.sgoa.eu/English/>).

13.2. Mediation. Before instituting arbitral proceedings either of the parties shall commence ICT-Mediation proceedings in accordance with the ICT-Mediation Regulations of the Foundation for the Settlement of Automation Disputes in The Hague. ICT-Mediation proceedings in accordance with these regulations are aimed at mediation by one or more mediators. The other party shall undertake to actively participate in any ICT-Mediation proceedings that are instituted, and shall in any event be legally obliged to attend at least one joint meeting between the mediators and the parties, in order to ensure that this extrajudicial form of dispute resolution has a chance of success. Either of the parties shall be at liberty to terminate the ICT-Mediation proceedings at any time following an initial discussion between the mediators and the parties. The provisions of this clause shall not prevent either of the parties from requesting an injunction in summary (arbitral) proceedings or from taking precautionary legal measures where they deem this to be necessary (see www.sgoa.org and www.sgoa.eu).

Do you have a question about the terms and conditions? Get in touch!

[contact us](#)

Date of Last Update

This agreement was last updated on July 1st, 2019.