

WIS@key General Terms & Conditions

In addition to the provisions of any proposal to a Client, the following terms and conditions shall apply to the products and services provided by WIS@key. In the event of any discrepancy between these Terms and Conditions and a proposal accepted by a Client, these Terms and Conditions shall apply unless explicitly stated in the proposal that it is the intention of the parties to modify the General Terms and Conditions.

1. Definitions:

- 1.1 **Products and Services** means any products and services produced and provided directly by WIS@key excluding any products and services produced by third parties, even if provided by WIS@key to the Client.
- 1.2 **Client** means the person with whom WIS@key agrees to provide Products and/or Services through the implementation of a Proposal. WIS@key and the Client may be referred to herein as “parties”.
- 1.3 **Proposal** means a clearly defined set of activities agreed upon by WIS@key and the Client for the provision of Products and Services.
- 1.4 **Staff** means all WIS@key personnel, subcontractors, consultants and persons used by WIS@key for the provision of the Products and Services.

2. WIS@key’s Undertaking:

WIS@key will provide its Products and Services in accordance with the specifications agreed upon by the parties in a proposal signed by them. The warranties related to the Products shall be defined in the proposal or in the corresponding licenses or documentation of the Products in question. Any Services provided by WIS@key shall be undertaken in accordance with professional standards of care taking into consideration the specific circumstances and the limitations of the environment in which they are provided and of the resources made available by the Client to provide them.

3. Intellectual Property Rights

- 3.1 Client acknowledges that WIS@key, its vendors and licensors, retain all intellectual property rights and title (including any patent, copyright, trademark and other rights) in and to all of WIS@key’s and vendors’ and licensors’ Confidential Information, trade secrets or other proprietary information, Products, and the ideas, concepts, techniques, inventions, processes, software or works of authorship developed, comprising, embodied in, or practiced in connection with the Products or Services provided by WIS@key hereunder (all of the foregoing “Works”), including without limitation all modifications, enhancements, configurations, upgrades, and interfaces to the WIS@key designated hardware and software supporting such Services (the “Service Components”). WIS@key and vendors and licensors reserve and retain all intellectual property rights and title associated with Works created by WIS@key and vendors and licensors and derivatives of such Works, including without limitation all Works or derivatives developed or created by WIS@key, vendors and licensors or their personnel or contractors during the course of performing the Services for, or providing the Products to, Client. Any Software provided by WIS@key, including its operation, code, architecture and implementation, as well as the look and feel of the Software are the valuable intellectual property of WIS@key, vendors and licensors. Any such Software is protected by Swiss Copyright laws and international treaty provisions.
- 3.2 The Client shall only exercise intellectual property rights explicitly granted to it under this agreement or under any third party products or services agreements or licenses consented to and required for the purposes of this Agreement.

4. Payment Terms.

- 4.1 All fees as set forth in the proposal agreed upon by the parties shall be invoiced in accordance with the corresponding payment schedule. All recurring fees shall be due and payable by Client and will be automatically invoiced by WIS@key on an annual basis unless otherwise specified in the Proposal. Client shall pay each invoice within thirty (30) days after receipt at WIS@key’s address set forth above (or as communicated in the future by WIS@key) in Swiss francs if the pricing proposal was made in Swiss francs or ~~in~~ (USD ~~or~~ & EUR) ~~and~~ should be paid into the relevant bank account that will be mentioned on the invoice..
- 4.2 WIS@key’s fees for the Products and Services provided hereunder as of the Effective Date are set forth in the corresponding Proposal. During the term of this Agreement, Client may purchase or license additional Products and Services subject to the terms of this Agreement at WIS@key’s then current fees by submission of a purchase order to

WIS@key incorporating or making reference to this Agreement. Any modifications to the fees shall be based on their commercial reasonability and negotiated in good faith by the parties. Any increase of fees done by third parties regarding their products and/or services shall be automatically reflected in the fees payable by Client if payable through WIS@key.

4.3 Any fees agreed upon and payable to WIS@key or through WIS@key do not include fees related to shipping and packaging, taxes or duties of any kind at a local or national level, royalties, bank fees, or travel and accommodation expenses.

5. Client Obligations:

5.1 **Payment:** Client shall pay all fees agreed upon in a timely manner and shall use its best endeavours to ensure that such payment is undertaken in the most efficient and cost effective manner for WIS@key.

5.2 **Regulatory Compliance:** Client shall, wherever applicable, comply with all relevant regulations and obtain at its own expense any pertinent licenses or permits required for the provision of the Products and Services, including, but not limited to those required for the provision of digital certification services, the heightened legal recognition of digital signatures and digital certificates, as well as those required for the importation, exportation, re-importation, re-exportation, and use of any restricted products required (e.g. cryptographic or dual use products). WIS@key shall under no circumstances be liable for any rejections or delays in the attainment of permits, licenses or regulatory compliance in any manner required for the provision of the Products and Services.

5.3 **Parallel Contracts:** As part of and as a requirement for the provision of the Products and Services, Client may be required to negotiate and sign with WIS@key or third parties specific contracts. Client shall use its best reasonable endeavours to negotiate and sign such contracts in a manner that does not impede or in any way obstruct the timely provision of the Products and Services.

5.4 **Access to Premises and Property:** The Client warrants that WIS@key shall have, free of charge, unimpeded access to all premises and property of the Client or any third parties in respect of which access is required for the performance of the Services and implementation of the project. The Client will be responsible for any damage to such premises or any property thereon resulting from such access and will indemnify WIS@key and each of the Personnel in respect of liability for any such damage, unless such damage is caused by the default or negligence of WIS@key of any Subcontractors or the Personnel of either of them.

5.5 **Services, Facilities and Property of the Client:** The Client shall assist WIS@key without charge to obtain all pertinent data and information required and shall give such assistance as shall reasonably be required by WIS@key for the carrying out of its duties under this Contract. The Client shall give its decision on all sketches, drawings, reports, recommendations and other matters properly referred to it by WIS@key for decision in such reasonable time as not to delay or disrupt the performance by WIS@key of its Services under the Contract.

5.6 **Client Lack of Compliance and Delays:** Lack of compliance with the Proposal requirements by the Client or third parties represents an implied acceptance by the Client in any consequent delays in terms of WIS@key's deadlines for implementation. In the event that such non-compliance risks a delay of more than 2 months or the total paralysis of the implementation, WIS@key may decide to continue the implementation or not. In any case, the Client agrees that any such delay or total paralysis shall enable WIS@key to be paid immediately for any work undertaken to date, regardless of the payment schedule agreed upon.

5.7 **Fees for Client Delays Hindering other Work of WIS@key Staff:** In the event that any action item agreed upon delays the work of WIS@key consultants in a manner that restricts them from performing other work unrelated to the Client's project then the Client shall be required to pay the fees of such consultants corresponding to the delay caused by the Client. (e.g. unavailability of Client staff to meet with WIS@key staff, delay of meetings during a trip to the Client's premises, country, etc.).

5.8 **Solicitation of Staff by Client:** The Client including any of its group companies or divisions or in any other form of legal structure regardless of its geographical location shall desist from offering employment to the Staff. However, should such an eventuality arise due to some unforeseen circumstances, during the term of this agreement, then the client shall give WIS@key three (3) months written notice to that effect, and after the said three (3) months, the Client shall pay WIS@key twelve (12) months professional charges of such personnel, at the time of notice, as compensation.

5.9 **Country Access and Travel Arrangements:** When travel is required by WIS@key Staff for the provision of the Products and Services, Client shall use its best efforts to ensure to:

5.1.9 provide Staff with work permits and such other documents as shall be necessary to enable WIS@key to execute

its obligations under this proposal;

- 5.1.9 arrange for the Staff and, if appropriate, their eligible dependents to be provided promptly with all necessary entry and exit visas, residence permits, exchange permits and any other documents required for their stay in the Client's country.
- 5.1.9 facilitate and/or undertake the necessary actions to ensure prompt clearance through Customs of any property required for the Services and of the personal effects of the Staff and their eligible dependents in order to comply with the deadlines agreed upon by the parties in the corresponding project plan; and
- 5.1.9 issue to employees, agents, consultants, and representatives all such instructions as may be necessary or appropriate for the prompt and effective provision of the Products and Services.

6. Indemnification

- 6.1 **Indemnification of Client by WIS@Key:** WIS@Key hereby agrees to defend at its own expense or, at its own discretion, settle any claim or action brought against Client for WIS@Key's infringement of the intellectual property rights of third parties and indemnify Client against any and all damages, costs (including, without limitation, attorneys' fees), judgements, awards or liability, that a court may award against Client under any such claim or action arising from WIS@Key's non-compliance with its Data Centre practices and policies or the infringement of intellectual property rights.
- 6.2 **Indemnification of WIS@Key by the Client:** The Client shall keep WIS@Key, both during and after the term of this Contract, fully and effectively indemnified against all losses, damage, injuries, deaths, expenses, actions, proceedings, costs and claims, including, but not limited to, legal fees and expenses suffered by WIS@Key or any Third Party where such loss, damage, injury or death is the result of a wrongful action, negligence or breach of Contract by the Client or its employees or agents.

7. Third Party Products and Services:

WISEKEY MAKES NO WARRANTY, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE AND DISCLAIMS ANY AND ALL LIABILITY FOR ANY GOODS, SERVICES OR SOFTWARE NOT PRODUCED BY WISEKEY BUT REFERRED THROUGH WISEKEY OR PROVIDED BY THIRD PARTIES FOR THE PURPOSES OF COMPLIANCE WITH THIS CONTRACT OR OTHERWISE.

8. Limitation of Liability:

WITH THE EXCEPTION OF THE INDEMNIFICATION OBLIGATIONS IN CLAUSES 6.1 OF THESE TERMS AND CONDITIONS, WISEKEY SHALL NOT HAVE ANY RESPONSIBILITY OR LIABILITY WHATSOEVER FOR ANY COSTS FOR THE ACQUISITION OF SUBSTITUTE PRODUCTS, LOSS OF PROFIT, BUSINESS, REVENUES, CONTRACTS OR ANTICIPATED SAVINGS, OR FOR ANY SPECIAL, CONSEQUENTIAL INCIDENTAL, OR INDIRECT DAMAGES INCURRED OR SUFFERED BY THE CLIENT, HOWEVER CAUSED, ARISING OUT OF THIS AGREEMENT. IN NO EVENT SHALL WISEKEY BE LIABLE FOR ANY AMOUNT GREATER THAN THAT RECEIVED UNDER THIS AGREEMENT FROM THE CLIENT.

9. Notice

Unless otherwise explicitly agreed herein all notices, demands or other communications under this Agreement must be given or made in writing and must be delivered personally, sent by fax, electronic mail, or by registered postal mail to:

WIS@Key SA
29, route de Pré-Bois
Case postale 853
CH-1215 Geneva 15
Switzerland
Fax: +41 22 5943001
Email: info@wisekey.ch

10. Applicable Law

This agreement shall be governed and interpreted in accordance with the laws of Switzerland and the parties consent to the exclusive jurisdiction of the courts of the Canton of Geneva.

11. Severability

If any section, sentence, clause or phrase of this agreement should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this agreement. In the event that any part of this agreement is held to be invalid by a court of competent jurisdiction, WIS@key reserves the right to amend, repeal, add, replace, modify any other provisions or terminate this agreement.

12. Confidentiality

12.1 **Definition of Confidential Information:** Confidential Information shall mean any information, communication or data, in any form whether oral, written, graphic, electromagnetic forms or otherwise, relating to either party or to their business or affairs, including but not limited to technical specifications, methods, know-how, technology, security systems, security procedures and policies, as well as software and information ascertainable by inspection or analysis of samples and the nature of the business relation between the parties including the terms, subject matter and any business model the subject of the business relation disclosed to one party by the other party or by a third party on behalf of the other party, whether before or after the date of this Agreement, but shall exclude any part of such disclosed information or data which:

- i. is or becomes common knowledge without a breach of this agreement by the parties;
- ii. the receiving party can show that:
 - a) it was in its possession or known to it by being in its use or being recorded in its files or computers or other recording media prior to receipt from the disclosing party and was not previously acquired by the receiving party from the disclosing party under an obligation of confidence or
 - b) it has been developed by or for the receiving party at any time independently of any information disclosed to it by the disclosing party;
- iii. the disclosing party gives prior written approval for its disclosure;
- iv. the receiving party obtains or has available from a source other than the disclosing party without breach by the receiving party or such source of any obligation of confidentiality or non-use towards the disclosing party;
- v. is hereafter disclosed by the disclosing party to a third party without restriction on disclosure or use; or
- vi. is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided, however, that the receiving party shall provide prompt notice thereof to the disclosing party to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure.

12.2 **Obligation to Disclose Confidential Information between Parties:** Each party shall disclose and provide to the other such Confidential Information as the disclosing party deems is necessary for the purpose of the provision of the Products and Services.

12.3 **Obligation to Maintain Confidentiality:** Both parties shall maintain the other party's confidential information in confidence and shall exercise in relation thereto no lesser security measures and degree of care than those which the receiving party applies to its own similar type of confidential information which the receiving party warrants as providing adequate protection against unauthorised disclosure, copying or use. The receiving party shall ensure that disclosure of such confidential information is restricted to those employees, directors, auditors, and professional advisers of the receiving party or any of its subsidiaries having the need to know the same for the purpose of this agreement. All confidential information, copies thereof, including, but not limited to, that which is stored electronically, shall be returned to the disclosing party upon termination of this agreement. The receiving party shall delete the information stored on electronic media in a sufficiently secure manner once the corresponding information has been delivered to and received by the disclosing party.

13. Termination

This Agreement shall have the duration indicated in the Proposal agreed upon by the parties. Termination shall occur in accordance with the provisions agreed upon therein.

14. Assignment

The parties hereby agree that this Agreement may be assigned by WIS@key to a third party, provided appropriate notification is given by WIS@key to Client of such assignment.