

## FIBRES Terms of Service

### 1 Parties

- A) FIBRES Online Ltd, a company incorporated in Finland with its registered principal office at Fredrikinkatu 61 A 54, FI-00100 Helsinki, Finland, business identity code 2365512-2 (“**Supplier**”); and
- B) Customer, as defined below.

By clicking the “I accept” button displayed as part of the ordering process, or by signing a Service Agreement referring to these Terms of Service, you agree to the following terms and conditions governing the Customer’s use of Supplier’s FIBRES online service (hereinafter also referred to as the “**Service**”). You are entering into this Agreement on behalf of a company or other legal entity and you represent that you have the authority to bind such entity to these terms and conditions, in which case the term the “**Customer**” shall refer to such entity. If you do not have such authority, you are not representing a company or other legal entity, or if you do not agree with these terms and conditions, you must not click the “I accept” button and may not use the Service.

These Terms of Service (“**Terms of Service**”) for Service, together with a possible Service Agreement where applicable, constitute a legal agreement between the Customer and Supplier, with respect to Service (hereinafter referred to as the “**Agreement**”).

Customer and Supplier are hereinafter individually referred to as “**Party**” and jointly as “**Parties**”.

### 2 Introduction

- 2.1 FIBRES (also the “**Service**”) is a software application for organizational strategic planning and management. It is a cloud-based application, i.e. enabled by a shared pool of third-party computing resources (such as networks, servers, and storage) connected to the Internet. FIBRES is owned and controlled by Supplier. The Customer’s use of the Service is governed by this Agreement and any other applicable terms and conditions referred to in this Agreement.
- 2.2 The Agreement constitutes a binding agreement between the Customer and Supplier, defining the Customer’s and Supplier’s rights and responsibilities with respect to the Service.
- 2.3 The main features of the Service are described at FIBRES website. The Customer acknowledges and agrees that Supplier may or may not develop and change the Service upon its sole discretion.
- 2.4 The Service may contain information, data, text, photographs, videos, audio clips, written posts and comments, et cetera, generated, provided, or otherwise made accessible on or through the Service either by the Customer or users of the Service as well as by third parties in certain cases (collectively, “**Content**”).

### 3 Subscription, Payments, and Termination

- 3.1 In order to use the Service the Customer, by accepting this Agreement as a part of the subscription process or by signing a Service Agreement, subscribes to a restricted-access application (in technical terms, to a share of the underlying software instance) for a group of users authorized by the Customer (“**Account**”). Within the Account, the Customer may create new authorized users into the Customer’s Account. Authorized users may be added to the Customer’s account by the Customer’s administrative users. Addition of any users to Customer’s Account may have a pricing effect.
- 3.2 The Customer may currently have up to one (1) user that may use the Service without a fee. Please note that the pricing model and the user restrictions may change in future.
- 3.3 If the Customer has more than one (1) user in the Customer’s Account, the Customer’s use of Service is subject to a monthly or yearly use fee defined in the price list presented on the FIBRES website, unless otherwise expressly agreed. Supplier shall be entitled to make changes to its price list. Changes in the price list will take effect on the first day of the second calendar month following the calendar month during which the price list changes were introduced. The Customer shall have a right to terminate this Agreement at the time of the price change becoming effective if the Customer does not accept the change. The Customer agrees to provide Supplier with correct and accurate billing information and keep such information up-to-date at all times.
- 3.4 The applicable user restrictions and subscription models as well as applicable subscription periods offered by Supplier from time to time are described on the FIBRES website. Supplier may, at its sole discretion, set certain limitations to the maximum amount of users and the minimum fees for each subscription model. Such maximum amounts of users and minimum subscription fees for each subscription model shall be defined in Service or on the FIBRES website. In case Customer wishes to exceed the maximum amount of authorized users, Customer shall contact Supplier and such upgrade to the maximum amount of users shall be agreed on separately between Customer and Supplier.
- 3.5 The subscription periods available for the Customer are described in Service or on the FIBRES website. The service fee for the entire subscription period the Customer has chosen shall be charged by Supplier in advance by invoice or by credit card. All charges and fees are non-refundable. The subscription shall renew automatically, with same terms, after each subscription period until the Customer has terminated the subscription. In case the Customer wishes to upgrade the Customer’s subscription in accordance with available subscription models, by for example adding authorized users, such upgrade may be conducted at any time during any subscription period. After the upgrade, Supplier shall be entitled to invoice the additional charges and fees for the upgrade immediately after the Customer has made the upgrade. The fees and charges for any upgrades shall be charged prorated, i.e. in proportion to the time of the subscription period remaining at the time of the upgrade.
- 3.6 Unless otherwise agreed in writing, the prices specified in this Agreement are exclusive of value added tax. Value added tax shall be added to the prices in accordance with the then current regulations. The Customer shall pay all taxes imposed by applicable law on the payments to Supplier (except for the taxes based on Supplier’s income) and all payments will be made without deduction, withholding, counterclaim or set-off of any kind or nature. All payments shall be made in Euro, unless otherwise agreed by the Parties in writing. The payment term is 14 days net from the date of invoice, unless otherwise agreed, or in the case the Customer pays with a credit card, the Customer’s card will be billed immediately upon payment. Interest on delayed payments accrues in accordance with the Interest Act of Finland (633/1982, as amended).

- 3.7 Unless otherwise agreed between the Parties, the Customer's subscription and the right to use the Service shall be valid until the Customer terminates the subscription. The Customer may terminate the Customer's subscription of the Service or reduce the number of users at any time by cancelling the subscription, or part thereof, by written request (email is sufficient) to Supplier and/or depending on FIBRES development status, even via administrative functions of the Service. The Customer's subscription will end in total or partially at the end of the subscription period during which the Customer terminated the Customer's subscription or part thereof. Full or partial termination may also be carried out at a later date of the Customer's choosing.
- 3.8 Supplier may terminate, suspend or restrict the Customer's subscription or access to the Service if Supplier believes that the Customer has breached this Agreement or if Supplier for whatever reason is compelled to terminate, suspend or restrict the use of the Service. In such case, the Customer accepts and acknowledges that Supplier may terminate, suspend or restrict the use of the Service without any liability to the Customer.
- 3.9 If the Customer's payment is overdue, Supplier has the right to suspend or terminate the Customer's access to the Service, including disabling access by any and all previously enabled users in the Customer's Account of the Service. However, before suspending or terminating the Customer's access to the Service, Supplier shall give the Customer a notice of payment delays and a 14 days' period to cure the payment delay.
- 3.10 In the event of suspension or termination by either Party, the Customer's Account will be disabled and the Customer may not be granted access to the Customer's Account or any Content in the Customer's Account, and Supplier may delete the Customer Content (as defined below in section 7.4) from the Customer's Account, although residual copies of information may remain in our system for some time for backup purposes. In the event of such suspension or termination, Supplier will use reasonable efforts to deliver the Customer Content as an export file to the Customer at the Customer's request.
- 3.11 If the Customer terminates the Customer's Account, the Customer may request Supplier to delete Customer Content in the Customer's Account of the Service, and Supplier will make all reasonable efforts to do so.
- 3.12 Either Party may terminate this Agreement with immediate effect, if the other Party to this Agreement commits any material breach of this Agreement and fails to remedy such breach within thirty (30) days after written notice. In case this Agreement is terminated, cancelled, revoked or expired for whatever reason or cause, Customer's Account and any related right to use the Service shall be terminated, cancelled or revoked accordingly and with immediate effect.
- 3.13 In case of termination, suspension, restriction, cancellation, or change in the subscription of the Service, for any reason, the Customer is not entitled to any refund of already made payments. Possible changes in use fees related to an aforementioned situation are only valid from its effective date onwards.

## **4 Right to Use**

- 4.1 Supplier grants to the Customer a non-exclusive, non-transferable, revocable right to use the Service strictly in accordance with this Agreement during the validity of the Customer's subscription to the Service.
- 4.2 The Customer shall be responsible for the Customer's use of the Service and compliance with this Agreement.

- 4.3 The Customer agrees to use the Service only for purposes permitted by this Agreement and any applicable laws, regulations and guidelines.
- 4.4 The above mentioned notwithstanding, the right to use any third party open source software included in the provision of the Service is subject to respective open source terms, as further defined within Section 7.2 below.
- 4.5 When using the Service the Customer agrees to:
- a. comply with applicable laws, this Agreement, relevant guidelines as issued by Supplier and good manners; and
  - b. be responsible for all users in the Customer's Account understanding and complying with the terms of this Agreement, with FIBRES Terms of Use, and with FIBRES Privacy Policy.
- 4.6 The Customer agrees not to reproduce, duplicate, copy, sell, resell or otherwise commercially exploit any portion of the Service, without the express permission by Supplier.
- 4.7 The Customer shall be solely liable for all Customer Content and shall ensure that such Content does not breach any applicable laws or any intellectual property rights of third parties.

## **5 Restrictions to the Use of Service**

- 5.1 The Customer may use the Service only and strictly in accordance with the terms of this Agreement.
- 5.2 Unless otherwise permitted in this Agreement, the Customer may not:
- a. circumvent or attempt to circumvent any usage control features of the Service;
  - b. probe, scan or test the vulnerability of the Service; or
  - c. disrupt other users of the Service or use the Service for phishing or spamming.
- 5.3 Only Users authorized by the Customer are allowed to access and use the Service. The Customer shall use all reasonable endeavours to prevent unauthorised access to, or use of, the Service. In the event of or if the Customer has reason to suspect any unauthorized access or use of the Service, or if any password has been revealed to a third party, the Customer shall promptly notify Supplier.
- 5.4 Each Party shall comply with the export laws and regulations of applicable jurisdictions in providing and using Service. Without limiting the generality of the foregoing, the Customer shall not make Service available to any person or entity that: (i) is located in a country that is subject to a European Union, United Nations or U.S. government restriction or embargo, including being identified as prohibited or restricted parties on a European Union, United Nations or U.S. government list; or (ii) is engaged in activities directly or indirectly related to the proliferation of weapons of mass destruction.

## 6 Customer Service and Support

- 6.1 The Customer may contact Supplier in order to receive support and answers regarding problems or questions concerning the Service. Unless otherwise expressly agreed, Supplier uses reasonable efforts to answer to the Customer's initial contact within 12 hours after receiving the Customer's message (answers will be provided during ordinary business days and hours in Finland), however answer or solution to any issue is not guaranteed.
- 6.2 By submitting ideas, feedback or proposals, excluding any questions or support requests which are done by the Customer solely for the purpose of receiving support for the use of the Service, ("**Feedback**") to Supplier, the Customer acknowledges and agrees that (i) Supplier may have similar development ideas to the Feedback; (ii) the Customer's Feedback does not contain confidential or proprietary information of the Customer or any third party; (iii) Supplier is not under any obligation of confidentiality with respect to the Feedback; (iv) Supplier may freely use, distribute, exploit, and further develop and modify the Feedback for any purpose; and (v) the Customer shall not be entitled to any compensation of any kind from Supplier.

## 7 Intellectual Property Rights

- 7.1 The Customer acknowledges and agrees that Supplier and its licensors own all rights, title and interest, including any copyright, patent, design right, trademark, database right and any other intellectual property rights (whether registered or not, and wherever in the world those rights may exist) ("**Intellectual Property Rights**") in and to the Service. Except for the Customer's limited right to use the Service in accordance with this Agreement, Supplier and its licensors reserve all rights, title and interest in and to the Service, including all Intellectual Property Rights pertaining to the Service.
- 7.2 The Service may include, or be accompanied with, certain third party software and materials licensed under open source license terms. The Customer accepts and acknowledges that Intellectual Property Rights to such software and materials belong to third parties. Rights and obligations relating to such software and materials, including warranties, the rights to use, modify and redistribute are governed by the terms and conditions of the each respective license terms.
- 7.3 Nothing in this Agreement (or any other terms and conditions referred to in this Agreement) grants the Customer any right or license to use, in any manner whatsoever, any Supplier or its licensors' trade names, trademarks, service marks, logos, domain names or any other commercial designations or distinctive brand features.
- 7.4 All title to and interest in intellectual property rights relating to the Content Customer or Customer's users enter into the Service ("**Customer Content**") shall remain with the Customer or a third party licensor, as the case may be. The Customer hereby grants to Supplier a non-exclusive, worldwide, royalty free and irrevocable right to use the Customer Content for the purpose of providing the Service to the Customer and the Customer's users. Supplier shall not share or disclose Customer Content to third parties outside Customer's users without Customer's request or prior written approval. In addition, the Customer hereby grants to Supplier a non-exclusive, worldwide, royalty free, perpetual and irrevocable right to use any anonym and aggregate data included in Customer Content and/or related to the Customer's use of the Service and the Content, for the purposes of further developing the Service, creating statistics, analyses and other material and Content on the basis of such data and for offering such statistics, analyses and materials and Content within and via the Service. Notwithstanding the foregoing, Supplier shall not share or disclose to third parties any Customer Data which is considered to be confidential.

## **8 Indemnification**

- 8.1 The Customer agrees to defend and indemnify Supplier, its directors, employees, subcontractors, partners and agents from and against all third party claims and all liabilities, assessments, losses, costs or damages resulting from or arising out of (i) the Customer's breach of this Agreement, (ii) the Customer's infringement or violation of any Intellectual Property Rights, other rights or privacy of a third party, (iii) misuse of the Service by a third party where the misuse was made possible by the Customer's failure to take reasonable measures to protect the Customer's subscription to the Service against misuse, or (iv) the Customer Content.
- 8.2 Supplier shall at its own expense defend, indemnify and hold the Customer harmless against all claims and actions alleging that the Service or any part thereof infringes any intellectual property rights or other rights of a third party, provided that the Customer (i) notifies Supplier promptly in writing of such claims and actions; (ii) permits Supplier to defend or settle the claims and actions; and (iii) gives Supplier all reasonable information and assistance available and the necessary authorizations.

## **9 No Warranty and Limitation of Liability**

- 9.1 Supplier has no other obligations or liabilities than those that have expressly been agreed upon in this Agreement or otherwise between the Parties.
- 9.2 Neither Party shall be liable for any indirect or consequential damages. Supplier's total aggregate liability under or in connection with this Agreement shall be limited to the aggregate price paid by the Customer for Service for the last 6 months preceding the occurrence for which damages are claimed.
- 9.3 Nothing contained herein shall be deemed to limit the Parties' liability towards the other Party in the event of and to the extent that the liability results from wilful misconduct or gross negligence.
- 9.4 The limitations of liability set out in this section shall not apply to breach of confidentiality obligations set out in this Agreement or in cases of Supplier's breach of Supplier's obligations regarding processing of personal data contained in section 11 of this Agreement. In case of breach of confidentiality obligations or breach of obligations relating to processing of personal data, Supplier's total aggregate liability shall be limited to aggregate price paid by the Customer for Service for the last 24 months preceding the occurrence for which damages are claimed.
- 9.5 The Service may create or generate certain reports, statistics and materials on the basis of Customer Data and Content. For clarity, Supplier shall not be liable towards the Customer for accuracy, reliability or validity of such reports, statistics and materials. Any decisions the Customer makes on the basis of the use of the Service or any reports, statistics, materials and Content created or generated by the Service or available via the Service shall be the sole responsibility and liability of Customer.

## **10 Liability for Defects**

- 10.1 Supplier is only liable for defects in the Service in accordance with this Section 10 provided the impairments are not due to the restrictions in availability (SLA) described in Section 12.1.

- 10.2 A defect will be deemed to exist if the use of Service or access to Content is unintentionally suspended or considerably restricted. In such case, the Customer will be released from paying charges until the defect is corrected.
- 10.3 The Customer must inform Supplier of any defect in writing or by email immediately. Failing to do so frees Supplier of any compensation in accordance with Section 10.2.

## 11 Customer Data

- 11.1 In connection with the use of the Service, the Customer or the Customer's users may enter various data into Service, as a part of Customer Content. The data the Customer or the Customer's users have entered into Service shall be referred to collectively as "**Customer Data**". Such Customer Data may include for example personal data on Customer's users, or the Customer's commercial data.
- 11.2 The intellectual property rights and the title to Customer Data shall belong to the Customer and the Customer shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of Customer Data.
- 11.3 The Customer shall ensure that the use of the Customer Data does not infringe any third party intellectual property rights or violate any applicable laws or legislation.
- 11.4 Supplier does not have any duty to monitor any Customer Content or Customer Data.
- 11.5 The Customer hereby authorizes Supplier and its subcontractors to process and store Customer Data for the purposes of providing the Service as well as for managing the customer relationship and developing the Service.
- 11.6 In addition to processing of Customer Data, Supplier and its subcontractors process data on contact details, payment information and identification data on the Customer and its employees and other representatives ("**Account Data**"). The purposes of processing the Account Data as well as practices relating to the processing and storing of Account Data are defined in FIBRES Privacy Policy.
- 11.7 When processing Customer Data or Account Data, Supplier undertakes to comply with the confidentiality obligations set forth in this Agreement and undertakes to ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- 11.8 If Supplier processes data considered as personal data as a part of Customer Data on behalf of the Customer:
- a. the Parties record their intention that the Customer shall be considered as the data controller and Supplier shall be a data processor in respect of such personal data;
  - b. the Customer acknowledges and agrees that the personal data included in Customer Data may be transferred to or stored outside of Finland in order to provide the Service and perform Supplier's other obligations under this Agreement; however, the personal data included in Customer Data shall not be transferred to or stored in a country outside of the European Economic Area;
  - c. the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to Supplier so that Supplier may lawfully use, process and transfer the personal data in accordance with this Agreement on behalf of the Customer;

- d. the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
  - e. Supplier shall process the personal data only in accordance with the terms of this Agreement as well as any lawful instructions reasonably given by the Customer from time to time;
  - f. each Party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage; and
  - g. Supplier shall promptly provide such information to the Customer, as the Customer may reasonably require, to allow Customer to comply with the rights of data subjects, including access rights, or with information notices served by any data protection authorities.
- 11.9 Unless otherwise agreed in writing, Supplier shall provide the Customer with the Customer Data upon the Customer's written request within 30 days of Customer's written request. Customer Data shall be delivered in an electronic form commonly in use. Supplier shall have the right to charge for the collection, processing and delivery of the information in accordance with its then current price list.
- 11.10 Supplier shall within reasonable time delete all personal data processed by Supplier for the purposes of providing the Service under this Agreement after the termination of this Agreement.
- 11.11 Supplier reserves the right to use volume and statistical information relating to Customer Data or Service usage, provided that such information is in anonymous and aggregate format, for Service improvement, marketing purposes, creating statistics and analyses, and for other commercial purposes.
- 11.12 In relation to personal data included in Customer Data, the Customer shall be responsible for complying with all applicable data protection laws and shall be responsible for the protection of data subjects, including obtaining all necessary permissions and authorizations to enable Supplier' provision of the Service according to this Agreement. The Customer shall indemnify and hold Supplier harmless for all third party claims relating to Customer Data.
- 11.13 To the extent Supplier requires or requests the Customer's contact person to provide Supplier with any information (such as name, address and email address), the Customer agrees to ensure that truthful and complete information is provided and such information is updated.

## 12 Other Terms

- 12.1 The Service will be available for use (system uptime) 24 hours a day, 365 days a year with 97% availability on average ("**SLA**"). If maintenance work is necessary and if the Service is not available for maintenance reasons, we will duly inform the Customer. Disruptions to the Service for maintenance reasons will not be counted as part of SLA time. Supplier will not be responsible for internet/network-related downtimes and, in particular, for downtimes in which the Service cannot be accessed due to technical or other problems outside our area of influence, e.g. force majeure, or fault of third parties.

- 12.2 This Agreement, the related Terms of Use, and the related Privacy Policy, constitute the whole legal agreement between the Customer and Supplier and governs the Customer's use of the Service, and completely replaces any prior agreements between the Customer and Supplier in relation to the Service. Each Party confirms that, in entering into this Agreement it has not relied upon any representations or statements not expressly incorporated herein.
- 12.3 Neither Party shall be liable for delays and damages caused by an impediment beyond its control, which it could not have taken into account at the time of the conclusion of this Agreement, and the consequences of which could not reasonably have been avoided or overcome by such Party. Strike, lock-out, boycott and other industrial action shall constitute a force majeure event also when the Party concerned is the object or a party to such an action.
- 12.4 The Customer agrees that if Supplier does not exercise or enforce any legal right or remedy which is contained in this Agreement (or which Supplier has the benefit of under any applicable law), this will not be taken to be a formal waiver of Supplier's rights and that those rights or remedies will still be available to Supplier.
- 12.5 If any court of law, having the jurisdiction to decide on this matter, rules that any provision of this Agreement is invalid, then that provision will be removed from this Agreement without affecting the rest of this Agreement. The remaining provisions of this Agreement will continue to be valid and enforceable.
- 12.6 Each Party shall keep in confidence all material and information received from the other Party and marked as confidential or which should be understood to be confidential, and may not use such material or information for any purposes other than those set out in this Agreement. The confidentiality obligation shall, however, not apply to material or information, (a) which is generally available or otherwise public; (b) which the receiving Party has received from a third party without any obligation of confidentiality; (c) which was in the possession of the receiving Party prior to receipt of the same from the other Party without any obligation of confidentiality related thereto; (d) which the receiving Party has independently developed without using material or information received from the other Party; or (e) which the receiving Party is required to provide due to law or regulation by the authorities.
- 12.7 The Service may include links to third party sites (i.e. other sites than the Service) and services on the Internet that enable the Customer to interact with sites or services that are owned and controlled by third parties and that are not part of the Service. The Customer must review and agree to the terms and conditions of these sites and services before using these sites or services. The Customer accepts and acknowledges that Supplier has no control over the third party sites or services and assumes no responsibility for the services provided or material created or published on these third party sites or services. A link to a third party site does not imply that Supplier endorses the site or the products or services referenced in the site.
- 12.8 This Agreement and the rights granted in this Agreement may not be assigned or transferred by the Customer without the prior written approval of Supplier. Supplier may transfer this Agreement fully or partially to a third party in case of sale or transfer of business to which this Agreement relates to.
- 12.9 Supplier reserves the right to offer additional services. External development partners and other third parties may also offer Content, applications, features, or services via FIBRES which the Customer may choose to acquire and/or to integrate into the Customer's Account. The price of these Content, applications, features, and services will be determined separately. The Customer will enter into separate agreements for use for these Content, applications, features, and services when applicable.

- 12.10 Supplier reserves the right, at its sole discretion, to modify the Service, these Terms of Service, FIBRES Terms of Use and FIBRES Privacy Policy at any time with or without prior notice. In case Supplier makes substantial changes to the Service, these Terms of Service, Terms of Use or Privacy Policy, Supplier will provide the Customer with a prior notice of such changes. The Customer's continued use of the Service constitutes the Customer's consent to any changes or modifications in the Service, Terms of Use and Privacy Policy.
- 12.11 Supplier has the right to use the Customer's trade name and logo as a reference in its marketing related to the Service.
- 12.12 This Agreement shall be governed by the laws of Finland, excluding its choice of law provisions. The Convention of contracts for the International Sale of Goods (CISG) shall not apply to this Agreement.
- 12.13 Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or validity thereof, shall be primarily solved through negotiations. If the Parties fail to resolve the dispute through negotiations within 14 days from the start of the negotiations, the dispute shall be finally settled by arbitration in accordance with the Arbitration Rules of the Arbitration Institute of the Central Chamber of Commerce of Finland. The arbitration tribunal shall consist of one (1) arbitrator to be appointed by the said Committee. The award shall be final and binding and enforceable in any court of competent jurisdiction. The arbitration shall be held in Helsinki, Finland. The language of the arbitration shall be English. The arbitral proceedings and award shall be confidential.

Either Party, before or during any legal proceedings, may apply to a court having jurisdiction for a temporary restraining order or preliminary injunction where such relief is necessary to protect its interests pending completion of the legal proceedings.

Either Party may file a suit for a claim based on undisputed receivables to the District Court of Helsinki.