



## SHAMAN B.V. SOFTWARE-AS-A-SERVICE

### *Terms and conditions for Shaman version July 10<sup>th</sup>, 2018*

The service “Shaman” is offered over the internet in the form of Software-as-a-Service by the company Shaman B.V., registered with the Chamber of Commerce under number 64284409, (hereinafter: Shaman B.V.). The use of Shaman is subject to the below terms and conditions. Using Shaman constitutes acceptance of these terms and conditions.

Deviations from these terms and conditions is possible only by means of written confirmation by Shaman B.V.

#### **Article 1. Agreement**

1. Shaman B.V. will send the offer for the provision of the service Shaman to the Customer. The offer will be deemed accepted the Customer once it has been signed by the Customer and returned to Shaman B.V. Returning such a signed copy of the offer will be considered an irrevocable offer of the Customer to conclude an agreement based on the terms and conditions thereof and will not constitute a binding agreement between Shaman B.V. and the Customer. Shaman B.V. will only be bound by the offer if the offer has been countersigned for acceptance by a duly authorized person of Shaman B.V., which forms the agreement (hereinafter: the Agreement).
2. These terms and conditions will be applicable to the offer, the agreement and all subsequent orders for the service Shaman by the Customer.
3. In the event of a conflict between the terms and conditions contained in the offer (excluding its appendices) and these terms and conditions, the former will prevail. In any event, these terms and conditions will override any different or additional terms or conditions contained or referred to in the offer by the Customer or any other document or correspondence from the Customer.
4. No addition, alteration or substitution of these terms and conditions will bind Shaman B.V. or form part of any agreement unless they are expressly accepted in writing by a person authorized to sign on behalf of Shaman B.V.
5. Shaman B.V. explicitly rejects the applicability of the (general) terms and conditions of the Customer.
6. Upon conclusion of the agreement, Shaman B.V. will provide the information required to access the service Shaman and the (online) documentation produced by Shaman B.V. specifying how the service should be used, as may be amended Shaman B.V. from time to time.

#### **Article 2. Descriptions of the service**

1. The service consists of the availability of and access to the software known as “Shaman” as a web-based application (i.e. through the Internet) as further described in the offer.
2. Shaman B.V. is not obliged to restore corrupted or lost data, to the extent such data cannot be restored or retrieved using its backup procedure.
3. The Customer acknowledges that the service is provided as a generic, web-based service for all customers of Shaman B.V. Shaman B.V. therefore does not guarantee that the service meets the specific requirements and objectives of the Customer.

#### **Article 3. Access to the service**

1. The service Shaman is offered for the purpose of office automation within the Customer’s organization, using the tools available from Shaman. The Customer chooses itself how to employ the tools, for which specific purposes and which employees will use the service.
2. The software and hardware requirements in order to access the service, if any, are described in the offer. As far as third party technology or software is required for access to and/or use of the service Shaman,



these will be specified in the offer. The Customer is solely responsible for obtaining all the appropriate licenses to use any third party software or hardware.

3. An internet connection is necessary for obtaining access to the service Shaman. The Customer is solely responsible for having and keeping an internet connection and/or other telecommunications networks. Sending data and information via the internet and/or other telecommunications networks is the sole responsibility and risk of the Customer.
4. Users may use the service Shaman during the term of the agreement within Customer's organization and for internal purposes only. The Customer may only allow use of the service Shaman by its own employees duly authorized by the Customer, which include temporary employees and individual contractors who are performing services for the company of the Customer. The Customer is not permitted to allow use of the service Shaman by any third party not covered by this clause.
5. Access to the service is personal. A user may not grant access to the service to a person not authorized by the Customer. The Customer hereby warrants that only authorized users will make use of the service Shaman.
6. The user must secure access to its account using the username and password against third parties. In particular the user must keep the password strictly confidential. Shaman B.V. may assume that all actions undertaken from the accounts after logging in with username and password is authorized and supervised the Customer. This means that the Customer is liable for these actions, unless and until the Customer have notified Shaman B.V. that someone else knows the password.

#### **Article 4. Availability and maintenance**

1. Shaman B.V. uses its best efforts to have the service available at all times but makes no guarantees about uninterrupted availability.
2. Shaman B.V. actively maintains Shaman. In case maintenance is reasonably expected to negatively impact availability, Shaman B.V. shall carry out such maintenance at night (between 23:00 and 07:00 local time). Maintenance is announced in advance whenever possible. Emergency maintenance can take place at any time and without prior announcement.
3. Shaman B.V. may from time to time adapt Shaman. The feedback of Customer and suggestions are welcome but ultimately Shaman B.V. decides which adaptations to carry out (or not). Shaman B.V. shall announce planned adaptations at least thirty days in advance.

#### **Article 5. Upgrades**

1. The software used for Shaman is standard and is, at the discretion of Shaman B.V., regularly updated.
2. Shaman B.V. aims to install upgrades with minimal adverse impact on the Customer. Shaman B.V. will timely inform the Customer if an upgrade leads to adverse consequences for the Customer.

#### **Article 6. Terms of use**

1. Users may use the Service during the term of the Agreement within the Customer's organization and for internal purposes of the Customer only
2. It is not permitted to use Shaman for any purpose that violates Dutch or other applicable law or regulation. This includes (among others) the storage or transmission of data using the service that is slanderous, libelous or racist.
3. In particular it is not permitted to use Shaman in a manner that causes a nuisance or hindrance for other users. This includes (among others) the use of personal scripts or programs for up- or downloading large amounts of data or the excessively often accessing the service.
4. Should Shaman B.V. discover that the Customer or the users authorized by the Customer violate(s) any of the above, or receive a complaint alleging the same, then Shaman B.V. may intervene to end the violation.



5. If in the opinion of Shaman B.V. the continued functioning of the computer systems or network of Shaman B.V. or third parties is actually or under threat of being damaged or jeopardized, for example through excessive transmission of e-mail or other data, leaks of personal data or virus activity, Shaman B.V. may take all steps it deems reasonably necessary to end or avert such damage or jeopardy.
6. Shaman B.V. is at all times entitled to file a criminal complaint for any offenses committed through or using the service.
7. Shaman B.V. may recoup from the Customer all damages it suffers as a result of Customer's violation of these terms of use. The Customer agrees and hold harmless Shaman B.V. from all third-party claims arising out of violation of these terms of use.

#### **Article 7. Intellectual property**

1. The service Shaman, the accompanying software as well as all information and images on the website is the intellectual property of Rainmakers Holding B.V. Shaman B.V. has been granted an irrevocable, exclusive and perpetual worldwide right and license, to use and/or sublicense the intellectual property of Rainmakers Holding B.V. None of these items may be copied or used without prior written permission of Rainmakers Holding B.V., except and to the extent permitted by mandatory law. Nothing in these terms and conditions and/or the agreement is intended to transfer all or part of such rights.
2. Information the Customer stores or processes using the service is and remains the property of the Customer (or the property of its suppliers). Shaman B.V. receives a limited license to use this information for the service, including for future aspects thereof. The Customer can cancel this license by removing the information in question and/or terminating the agreement. The Customer will indemnify the Provider for any claim of an alleged infringement of the rights of a third party to the extent that the violation is caused by the data of Customer.
3. If the Customer sends information to Shaman B.V., for example a bug report or suggestion for improvement, the Customer grants Shaman B.V. a perpetual and unlimited license to use this information for the service. This does not apply to information the Customer has expressly marked as confidential.
4. Shaman B.V. shall refrain from accessing data the Customer stores or transfers using Shaman, unless this is necessary for a good provision of the service or Shaman B.V. is forced to do so by law or order of competent authority. In these cases Shaman B.V. shall use its best efforts to limit access to the information as much as possible.

#### **Article 8. Compensation for the service**

1. The use of Shaman is subject to a fee which is due every year. The fee is based on the number of users of the service. The fee must be paid in advance annually.
2. Payment is possible by making a wire transfer to the account of Shaman B.V., or as explained further on the website.
3. All fees and prices on the website, offers, brochures and other materials are subject to change as a result of (typographical) errors.
4. Shaman B.V. may adjust its fees annually according to the then-current Dutch CPI index for business services (as published on [www.cbs.nl](http://www.cbs.nl) or a successor site). Adjustment of the fees shall be made by giving notice to the Customer in writing or by electronic means (email). Notice shall be provided at least one (1) months before the changed fees take effect.
5. All fees are payable within thirty (30) days from the date of invoice presented to the Customer by Shaman B.V. All amounts due shall be paid in full without any deduction, abatement, set off or withholding of any kind by the Customer.
6. Any payments owing to Shaman B.V. pursuant to the fees not remitted within the period specified above shall be subject to the statutory interest rate in the Netherlands. The Customer shall reimburse Shaman



B.V. for all reasonable costs incurred by it in collecting any late payments or interest, including attorney's fees, court costs and collection agency fees.

7. If the Customer fails to pay the fees in accordance with the terms of this article, Shaman B.V. may, at its sole discretion, suspend delivery of the service and/or support services until the overdue amounts have been paid in full, without further notice without incurring any obligation or liability to Customer. The rights granted in this article are in addition to any other rights that Shaman B.V. may have under the Agreement or at law.
8. All fees and other amounts payable by the Customer under this Agreement are exclusive of taxes and assessments. The Customer is responsible for all service, use and excise taxes, and any other similar taxes, duties and charges of any kind arising in respect of the Service imposed by any federal, state or local governmental or regulatory authority on any amounts payable by the Customer hereunder.
9. If Shaman B.V. is (in the future) required to withhold any tax or charge pursuant to any applicable law or regulation, Shaman B.V. shall be entitled to include and add such tax or charge to the fee for the service before invoicing to the Customer. In such a case, the Customer is responsible for submitting appropriate information or documentation about such taxes or charges.
10. Because the service is started directly at the express request of the Customer, a payment cannot be refunded under the Distance Selling Act.

#### **Article 9. Limitation of liability**

1. Except in case of intentional misconduct or gross negligence the liability of Shaman B.V. shall be limited to the amount paid by the Customer in the three (3) months prior to the moment the cause of the damage occurred.
2. Shaman B.V. in no event is liable for indirect damages, consequential damages, lost profits, missed savings or damages through business interruption.
3. Damages may only be claimed if reported in writing to Shaman B.V. at most two (2) months after discovery.
4. In case of force majeure Shaman B.V. is never required to compensate damages suffered by the Customer. Force majeure includes among others disruptions or unavailability of the internet, telecommunication infrastructure, power interruptions, riots, traffic jams, strikes, company disruptions, interruptions in supply, fires and floods.

#### **Article 10. Data Protection**

1. Shaman B.V. allows the Customer to process personal data. Shaman B.V. acts as a processor as that term is defined in the General Data Protection Regulation (GDPR); the Customer is the controller. Shaman B.V. will only process personal data in the context of the service Shaman on behalf of and upon the instructions of the Customer.
2. The parties will comply with the GDPR by signing the data processing agreement which is provided by Shaman B.V. and forms integral part of the agreement between Shaman B.V. and the Customer.
3. The Customer warrants to adhere the GDPR and any other (international) laws protecting privacy. The Customer guarantees the legality of the use of personal data processed by the Provider in the context of the service.
4. The Customer indemnifies and hold harmless Shaman B.V. against all claims by third parties in connection with the GDPR and any other (international) laws protecting privacy.

#### **Article 11. Term and termination**



1. The agreement enters into force as specified in article 1, but in any case as soon as the Customer first use the service and then remains in force for a minimum term of one (1) year, unless agreed otherwise in the offer. After this period the agreement is silently renewed with successive terms of the same period.
2. The Customer can terminate the agreement by the end of the term indicated above with a notice period of one month.
3. Shaman B.V. may terminate the agreement if the Customer breaches any material obligation under the agreement and fails to cure such breach within thirty (30) days after reasonable notice of the breach has been delivered to the Customer.
4. Shaman B.V. may terminate the agreement with immediate effect upon written notice, if one or more of the following situations arise: (i) the Customer is declared insolvent or has asked suspension of payment; (ii) the Customer's business is wound up or discontinued; or (iii) the Customer lost control of its assets or parts thereof due to receivership or otherwise and has not regained control thereof within one (1) month.
5. Upon the termination or expiry of the agreement the Customer shall pay to Shaman B.V. all amounts due on the date of termination and shall immediately and permanently cease to use, in any manner whatsoever, Shaman.
6. Termination of the agreement shall not affect any rights of Shaman B.V. or liabilities of the Customer accrued as of the date of termination. For the avoidance of doubt, termination of the agreement, for whatever reason, shall not affect any payments received under the agreement by Shaman B.V. for the service performed up to the date of termination
7. Upon request and payment of an additional fee Shaman B.V. may provide the Customer with a copy of the data stored using the service, upon the termination or expiry of the agreement.
8. Article 7 (Intellectual Property), article 9 (Liability), article 10 (Data Protection), and article 14 (Governing law and jurisdiction) hereof and all other provisions of the terms and conditions necessary to give effect thereto will survive the termination of all or any part of the agreement

#### **Article 12. Changes to terms**

1. Shaman B.V. may change or add to these terms and conditions as well as any prices at the start of a new payment period (as defined in article 8 (compensation)).
2. Shaman B.V. shall announce through the service changes or additions at least thirty (30) days before their taking effect.
3. If the Customer does not want to accept a change or addition, the Customer can terminate the agreement until the date the changes take effect. Use of Shaman after the date of effect shall constitute the acceptance of the Customer of the changed or added-to terms and conditions.

#### **Article 13. Miscellaneous provisions**

1. For any clause in these terms and conditions that demand that a statement must be done "in writing" to be legally valid, a statement by e-mail or communication through the Shaman service shall be sufficient provided with sufficient certainty the authenticity of the sender can be established and the integrity of the statement has not been compromised.
2. The version of any communication of information as recorded by Shaman B.V. shall be deemed to be authentic, unless the Customer supplies proof to the contrary.
3. The Customer hereby acknowledges and accepts that Shaman B.V. can use the trademarks of Customer in presentations, marketing materials, client lists and financial reports.
4. In case any part of these terms and conditions are declared legally invalid, this shall not affect the validity of the whole of the agreement. The parties shall in such an event agree on one or more replacement provisions that approximate the original intent of the invalid provision(s) within the limits of the law.



5. Shaman B.V. may make use of third parties for the implementation and execution of the agreement without prior permission of the Customer.
6. Shaman B.V. is entitled to transfer its rights and obligations under this agreement to a third party as part of an acquisition of Shaman or the associated business activities.
7. The Customer may not assign its rights or delegate its duties under this agreement either in whole or in part without the prior written consent of Shaman B.V. Any attempted assignment or delegation without such consent will be void.
8. If the agreement and/or the terms and conditions are translated into another language, only the English text shall be binding and controlling for all matters relating to the meaning or interpretation of the agreement and/or the terms and conditions.

#### **Article 14. Governing Law and Jurisdiction**

1. Dutch law applies to this agreement.
2. Except to the extent determined otherwise by mandatory applicable law all disputes arising in connection with Shaman shall be brought before the competent Dutch court for the principal place of business of Shaman B.V.