General Terms and Conditions of Swat.io GmbH

(Hereinafter the "**GTC**")

Status 10/13/2021

General Provisions

1. Scope

1.1. Swat.io GmbH with its registered office in Vienna, registered in the commercial register of the Commercial Court of Vienna under FN 348798p (hereinafter referred to as "**Swat.io**"), provides all services to its customers (hereinafter referred to as the "**Customer**" and each Customer together with Swat.io the "**Parties**") on the basis of these General terms and Conditions, in each case in the version valid at the time of conclusion of the Contract.

1.2. These GTC are binding for all current and future business transactions between the Parties, even if no express reference is made to them. Deviations from these GTC, supplementary agreements or any conflicting terms and conditions of the Customer are only effective if confirmed in writing by Swat.io.

1.3. The provisions of these GTC may be amended by Swat.io at any time without stating reasons, whereby such amendments shall be announced at least 30 days before they come into force on the website of Swat.io and by sending the text of the Contract to the email address last notified by the Customer. If the Customer does not object to the changes within 30 days of receipt of the aforementioned announcement in writing by email to legal@swat.io, the changes shall be deemed accepted. In the event of an objection by a Customer within the specified period, the contractual relationship between this Customer and Swat.io shall continue in accordance with the GTC in the version prior to the announced change, whereby Swat.io is entitled to terminate the Contract without stating reasons by giving 14 days' notice to the last day of the month.

2. Self-Service and Enterprise customers

2.1. The contractual relationship between the Parties (hereinafter the "**Contract**") for the use of the social media management software operated by Swat.io (hereinafter the "**Platform**") can be carried out via Swat.io's website (hereinafter the "**Self-Service**") or, at Swat.io's option, with certain customers in direct contact with Swat.io's customer service (hereinafter the "**Enterprise Customers**").

2.2. These GTC contain
    (i)   General provisions printed in this section of the GTC and applicable to all customers,

(ii)   Provisions that apply exclusively to customers who conclude the Contract via Self-Service (items 12 to 16 of these GTC) as well as

(iii) Provisions that apply exclusively to Enterprise customers (items 17to 20of these GTC).

3.   Licensing rights

3.1. During the term of the Contract, the Customer is entitled to use the Platform worldwide as Software as a Service for his own purposes.

3.2. The right to sublicense, the right to edit and any right of exploitation are excluded.

4.   Obligations of the Customer

4.1. In order to be able to use the Platform to its full extent, the Customer must use the latest (browser) technologies or enable their use. If older technologies are used, the Customer may not be able to use the Platform to its full extent.

4.2. The Customer undertakes to use the Platform exclusively for its intended purpose and not to misuse it and, when using it, to refrain from actions that could harm and/or endanger Swat.io and/or restrict the availability of the Platform for other users.

4.3. The Customer is obliged to provide Swat.io in a timely and complete manner with all information and documents required for the provision of the service. This also applies to information that only becomes known during the provision of the service. The Customer shall bear the costs arising from the fact that work has to be repeated or delayed by Swat.io as a result of its incorrect, incomplete or subsequently changed information.

4.4. The Customer shall indemnify and hold Swat.io harmless for any damages resulting from a breach of the user's and/or the Customer's obligations under this clause 4these GTC.

5.   Data protection

The processing of personal data by Swat.io as processor of the Customer shall be carried out on the basis of the Data Processing Agreement, available at https://www.swat.io/de/legal/ (hereinafter the **"Data Processing Agreement"**). The Customer agrees to the applicability of the Data Processing Agreement between the Parties.

6. Warranty

6.1. In the event of malfunctions of the Platform, Swat.io will endeavor to rectify the error within a reasonable period of time or to provide the Customer with alternative solutions. However, Swat.io does not provide any warranty for a specific functionality and/or a specific scope of functions.

6.2. The use of the Platform depends largely on the technical access possibilities on social media platforms. Swat.io has no influence on the access possibilities to these social media platforms. Swat.io therefore provides no guarantee that the integration of certain social media platforms into the Platform is possible.

6.3. Unless otherwise agreed, the Customer shall only be entitled to a reduction of the fee if the use of the Platform was not possible for less than a total of 99% per calendar year for reasons within the sphere of Swat.io. The Customer is obliged to prove the existence of reasons within the sphere of Swat.io. Planned maintenance work that is notified to the Customer at least 2 days in advance shall not be taken into account in the calculation.

6.4. Swat.io does not guarantee the legal admissibility of the use of the Platform by the Customer, in particular with regard to data protection, administrative law, competition law and intellectual property law. The assessment of the legal admissibility of the execution of the Contract is the responsibility of the Customer.

7. Liability

7.1. Swat.io is only liable for damages caused by gross negligence or intent. Swat.io's liability for slight negligence - with the exception of personal injury - is excluded. The burden of proof for the existence of grossly negligent or intentional causation of damage is borne by the Customer.

7.2. Swat.io shall not be liable for damages and delays caused by force majeure, labor disputes and natural disasters or other circumstances beyond Swat.io's control.

7.3. Claims for damages by the Customer shall become time-barred six months after knowledge of the damage and the damaging party.

7.4. The liability provisions in this item 7these GTC also apply to the Data Processing Agreement.

8. Third-party services

Swat.io is entitled to perform the service itself or to use third Parties to perform the services.

9. Confidentiality

9.1. The Customer undertakes to keep confidential all information that becomes known to him on the basis of the Contract; this also applies after expiry of the Contract.

9.2. In particular, all information concerning the Platform and the commercial conditions agreed in the Contract (prices, discounts, etc.) must be kept secret.

This does not apply to information

– that is generally known or easily accessible;
– that are already demonstrably known to the Customer when the Contract was concluded;
– which the Customer is legally obliged to disclose;
– which the Customer must disclose in order to protect his interests in the course of legal proceedings.

9.3. The Customer shall also impose this obligation on its employees and other third Parties to whom the Customer discloses information to be kept secret (e.g., agencies providing support).

10. Online dispute resolution

10.1. The European Commission provides a platform for out-of-court online dispute resolution (ODR platform), which can be accessed at htttp://www.ec.europa.eu/consumers/odr. You can reach us by email at legal@swat.io.

10.2. We do not participate in the dispute resolution process.

11. Final provisions

11.1. These GTC, the Contract as well as the Data Processing Agreement are subject to Austrian law, excluding the UN Convention on Contracts for the International Sale of Goods and the conflict of laws rules of private international law.

11.2. For all disputes between the Parties, the exclusive jurisdiction of the court with subject-matter jurisdiction at the registered office of Swat.io is agreed. Notwithstanding the foregoing, Swat.io is entitled to sue the Customer at his general place of jurisdiction.

11.3. The place of performance for deliveries and services of Swat.io is the registered office of Swat.io.

11.4. For declarations within the scope of these GTC, the Contract and all related contracts (e.g., Data Processing Agreement), communication by email shall be deemed to be in writing within the meaning of § 886 ABGB (Austrian Civil Code), even without a qualified electronic signature within the meaning of the eIDAS Regulation.

11.5. Should individual provisions of these GTC be or become invalid or unenforceable, this shall not affect the validity and enforceability of the remaining provisions. An invalid or unenforceable provision shall be replaced by the Parties in accordance with the standards of good faith in such a way that the economic purpose intended by it is achieved in the best possible way. The same shall apply to the filling of unidentified loopholes in the provisions.

Self-Service

The provisions of this chapter apply exclusively to the conclusion of contracts via Self-Service:

12.   Conclusion of Contract, subject matter of Contract

12.1. The Contract is concluded via Self-Service.

12.2. All prices, descriptions, the presentation during the ordering process in Self-Service as well as all advertising communication of Swat.io - especially on the website - are only an invitation to place an order by the Customer and are non-binding.

12.3. By sending the order in Self-Service, the Customer submits a binding offer to conclude a Contract with Swat.io. The acceptance of this offer and thus the conclusion of the Contract took place through the presentation of a notification about the activation of the Customer for the Platform.

13.   Trial Access

13.1. Swat.io may, at its sole discretion, offer trial access to the Platform for a limited period of time (hereinafter the **"Trial Access"**).

13.2. The use of the Trial Access is free of charge.

13.3. The Customer is not entitled to conclude several Trial Accesses without the consent of Swat.io.

13.4. The Trial Access is limited to the period shown in Self-Service for the respective Trial Access. If no trial period is specified in Self-Service, the Trial Access is limited to one month.

13.5. Swat.io does not promise any specific scope of services for the Trial Access.

14.   Contract period

14.1. The activation for the use of the Platform via Self-Service takes place via the conclusion of contracts for a limited period of time (hereinafter the **"Subscription"**) against payment. The time limit of the Subscription (hereinafter the **"Subscription Period"**; e.g., one month, one year) and the fee to be paid by the Customer for the Subscription (hereinafter the **"Subscription Price"**) are described in the online shop during the ordering process. The Subscription begins on the day of the order confirmation.

14.2. Subscriptions are concluded for the Subscription Period selected during the order process in the online shop. After the expiry of a Subscription Period, the term of the Subscription is extended by a further Subscription Period, unless the Customer or Swat.io terminates

the Subscription before the expiry of the respective Subscription Period (at the latest at the end of the respective Subscription Period) or objects to such an extension.

14.3. The Customer may object to the extension of the Subscription Period by a further Subscription Period by making a corresponding declaration via the user account.

14.4. The objection to the extension of the Subscription Period by a further Subscription Period by Swat.io shall be made in writing by email (to the email address last notified by the Customer).

14.5. Premature termination of the Subscription by the Customer is excluded. The right of termination for good cause remains unaffected. For Swat.io, good cause exists in particular if
   – the performance of the service becomes impossible for reasons for which the Customer is responsible or is further delayed despite the granting of a grace period of 10 working days;
   – the Customer persistently violates essential provisions of the contract;
   – the economic performance of the Customer deteriorates massively or if insolvency proceedings against the Customer are dismissed for lack of assets;
   – the Customer violates the guidelines of the social networks used via the Platform;
   – the Customer disseminates content via the Platform that is likely to harm the reputation of Swat.io (e.g., violence, harassment, hateful content, nudity and sexual content, exploitation, dangerous or fraudulent goods and activities or promotion of violent organizations, politically extreme or ideologically questionable views, fake news);
   – Swat.io intends to cease operation of the Platform; or
   – the Customer objects to the use of a (further) sub-service provider or processor by Swat.io or one of its sub-service providers or processors.

14.6. Swat.io is entitled at any time to refuse Customers and/or cancel their Subscription if the contractual relationship with the Customer is likely to damage the reputation of Swat.io (e.g., political or ideological groups, violent organizations and Customers who are exposed to negative reporting for other reasons).

14.7. In the event of the termination of a Subscription, Swat.io will store the Customer's data required for the operation of the Platform for a further four months in order to facilitate the Customer's continued use of the Platform following the conclusion of a new Subscription, if any. During this period, the Customer is entitled at any time to demand the immediate deletion of this data by Swat.io.

15. Functionality, downgrade and upgrade

15.1. Swat.io offers various software packages on the Platform (hereinafter each individually the "**Software Package**"). The Software Packages have the scope of functions described on the Swat.io website.

15.2. The functional scope of the individual Software Packages depends on which version of the Software Package (hereinafter referred to as the **"Version"**) the Customer has ordered.

15.3. The Versions are subject to quantitative restrictions in their use (e.g., number of users, number of channels), whereby the limits of these qualitative restrictions can be increased against payment (e.g., by adding further users or channels). The increase of these quantitative limits takes place via the Customer's user account. In the event of an increase during the Subscription Period, the Subscription Price owed for the increase shall be calculated on a pro rata basis. A reduction of the quantitative restrictions always becomes effective at the end of the current Subscription Period.

15.4. The Customer can change from one Version to a higher Version at any time via the user account, in which case the Subscription Price is calculated proportionally. The Subscription Period and its end shall remain unchanged by such a change.

15.5. A change to a lower Version is only possible at the end of a Subscription Period via the user account.

15.6. Swat.io provides customer support services in accordance with the terms and conditions (e.g., support and response times) described for the respective Software Package and the Version selected by the Customer on the Swat.io website.

16. Renumeration

16.1. The Customer owes payment of the agreed Subscription Price.

16.2. The Subscription Price is due in advance for each Subscription Period.

16.3. If the Subscription Price is not paid in advance, Swat.io is entitled to refuse the provision of services. If Swat.io still provides the service, this shall not prevent the Customer from paying the Subscription Price. Swat.io is entitled at any time up to the point of payment of the Subscription Price to refuse the provision of the service and to exclude the Customer from using the Platform.

Enterprise customers

The provisions of this chapter apply exclusively to Enterprise Customers:

17. Conclusion of Contract, subject matter of Contract

17.1. Potential Enterprise Customers receive a written offer from Swat.io (hereinafter referred to as the **"Offer"**) for the use of the Platform in which the respective scope of functions is described on the basis of individual Software Packages.

17.2. Swat.io is bound by the Offer during the commitment period stated in the Offer. If no commitment period is specified in the Offer, a commitment period of 14 days is deemed to be agreed. If the Customer accepts the Offer after the binding period has expired, this constitutes an Offer to Swat.io, which can be accepted by Swat.io by express declaration or also implied (e.g., by sending an invoice). Subsequent amendments to the Contract require written confirmation by Swat.io.

17.3. The services of Swat.io include the granting of the rights to use the Platform, the provision of the Platform and its hosting as well as the provision of customer service during the agreed support hours.

18. Scope of functions

18.1. The use by the Customer, his employees, partners and other persons economically attributable to the Customer (e.g., freelancers) is limited in scope according to the Software Packages purchased by the Customer and to the other parameters stipulated in the Contract - in particular the number of channels and the number of users.

18.2. Swat.io provides Customer support services in accordance with the terms agreed in the Contract (e.g., support and response times).

19. Renumeration

19.1. The Customer owes payment of the fee agreed in the Contract.

19.2. The fee is due at the time agreed in the Contract. If no due date has been agreed, Swat.io is entitled to invoice the fee amount annually in advance. Unless otherwise agreed, the fee is due 30 days after invoicing the Customer and is payable to the account specified in the invoice.

19.3. In the event of default in payment by the Customer, Swat.io is entitled to charge interest on arrears from the respective due date at the rate of 9.2 percentage points above the base interest rate. Furthermore, in the event of default in payment, the Customer undertakes to reimburse Swat.io for reminder and collection costs as well as all costs necessary for appropriate legal action. This includes in any case two reminder letters by an authorized

collection agency as well as a reminder letter from a lawyer commissioned with the collection.

20. Contract period

20.1. The Contract is concluded for the agreed duration (hereinafter the "**Contract Term**") and is extended after expiry of the Contract Term by a further Contract Term, unless the Customer or Swat.io objects to such an extension in writing at least three months before expiry of the respective Contract Term. In the case of a Contract Term of less than six months, the objection must be made at least 21 days before the expiry of the Contract Term. The Customer's objection must be sent by email to sales@swat.io.

20.2. If Swat.io objects to the extension of the Contract, Swat.io will send the objection by email to the email address usually used by the Customer for communication with Swat.io.

20.3. The ordinary termination of the Contract is excluded.

20.4. The Parties are entitled to dissolve the Contract for good cause with immediate effect. For Swat.io, an important reason exists in particular if
   – the performance of the service becomes impossible for reasons for which the Customer is responsible or is further delayed despite the granting of a grace period of 10 working days;
   – the Customer persistently violates essential provisions of the Contract;
   – if the economic performance of the Customer deteriorates massively or if insolvency proceedings against the Customer are dismissed for lack of assets;
   – the Customer violates the guidelines of the social networks used via the Platform;
   – the Customer disseminates content via the Platform that is likely to harm the reputation of Swat.io (e.g., violence, harassment, hateful content, nudity and sexual content, exploitation, dangerous or fraudulent goods and activities or promotion of violent organizations, politically extreme or ideologically questionable views, fake news);
   – Swat.io intends to cease operation of the Platform; or
   – the Customer objects to the use of a (further) sub-service provider or processor by Swat.io or one of its sub-service providers or processors.

20.5. In the event of termination of a Contract, Swat.io will store the Customer's data required for the operation of the Platform for a further four months in order to facilitate the Customer's continued use of the Platform following the conclusion of a new Contract, if any. During this period, the Customer is entitled at any time to demand the immediate deletion of this data by Swat.io.