

General Terms

These General Terms (hereinafter referred to as the "Terms") set forth the general terms under which services will be provided by Takinobori Lda (hereinafter referred to as the "Service Provider"). The specific services to be rendered will be detailed in separate Service Agreements (hereinafter referred to as the "Agreements") established under these Terms. These Terms are intended to promote mutual understanding, cooperation, and efficiency between the Service Provider and its clients (hereinafter referred to as the "Clients").

The Terms are comprehensive, covering all aspects of the service relationship, including but not limited to the scope of work, performance standards, term of service, and obligations upon and post-termination.

By proceeding with the services outlined in the corresponding Agreement, the Client accepts and agrees to abide by these Terms.

1. Service Provider

Takinobori Lda, hereinafter referred to as the "Service Provider", is a company duly incorporated under the laws of Portugal, with its registered office at Rua Fernandes Martins Lote 11, 2º Esquerdo, 3030-300 Coimbra, Portugal. The Service Provider can be reached at +351 21 020 3111, +41 44 797 57 20, or via email at legal@takinobori.com.

2. Scope of Work

Under these Terms, the Service Provider agrees to offer various services as detailed in separate Agreements that will be established between the Service Provider and its Clients.

The specific nature, scope, and deliverables associated with these services will not be detailed in these Terms but will be clearly defined in the corresponding Agreement.

All services provided by the Service Provider will adhere to the Terms unless otherwise specified in the individual Agreement.

3. Performance Standards

The Service Provider is committed to providing high-standard services as agreed upon in individual Agreements. These Agreements will detail the specifics of service levels and quality assurance measures.

Periodic reviews will be conducted to ensure adherence to these performance standards. In the event of deviations, the Service Provider will initiate an internal review and launch a remediation plan, during which we aim to collaborate with the Client to assess the situation effectively. No compensation will be provided for deviations from performance standards.

In case of substantial changes or unforeseen incidents that may necessitate revisions to performance standards, the Service Provider will promptly communicate with the Client to mutually agree upon necessary changes.

4. Term of Service

The specific term of service, including the commencement and expiry dates, and any terms for renewal, will be detailed in the respective Agreement signed under these Terms.

5. Termination

Either party may terminate their Agreement, provided it complies with the terms and notice periods defined in the "Term of Service" section of these Terms. The Service Provider reserves the right to terminate any Agreement immediately, without prior notice, under certain circumstances, always in compliance with applicable laws and regulations.

One such circumstance is a material breach of the Agreement by the Client. A material breach refers to a failure to fulfil their obligations under the Agreement, which is significant enough to cause substantial harm to the Service Provider or deprive it of a benefit it reasonably expected to receive. Examples of a material breach may include, but are not limited to, the violation of confidentiality obligations, non-compliance with applicable laws and regulations, or engaging in illegal activity.

Another circumstance is the misuse of the services provided by the Service Provider. Misuse refers to the inappropriate, incorrect, or unlawful use of the services. This includes, but is not limited to, using the services in a way that violates these Terms, infringes on the rights of others, or uses the services for illegal activities. If misuse occurs, the Client will receive written notification and must correct the misuse within a specified grace period. The length of the grace period will be determined by the nature and severity of the violation or breach, but will generally not exceed 30 days unless otherwise specified in the written notification.

The Service Provider also reserves the right to terminate the Agreement if the Client persistently fails to make necessary payments within the agreed time frame, if the Client engages in activities that threaten the reputation or operation of the Service Provider, or if a significant event such as bankruptcy or change of control occurs that affects the viability of the Agreement.

In the event of termination for any reason, the Client remains obligated to fulfil any obligations incurred prior to the termination, including payment for all services rendered up until the end of the contract term, regardless of the date of termination.

6. Obligations Upon and Post-Termination

Upon termination or expiration of any Agreement, the Client must promptly pay for all services performed and expenses incurred by the Service Provider up to the termination date. The treatment of confidential or proprietary information upon termination will follow the specific stipulations outlined in these Terms, including separate provisions for data.

Certain obligations will survive and continue to bind the parties after termination or expiration of any Agreement. These include, but are not limited to, obligations related to Intellectual Property, Confidential Information, Liability, and any other obligations that should reasonably be expected to persist beyond the term of the Agreement. The specific clauses throughout these Terms will guide data retention and handling post-termination.

7. Amendments

All amendments to any Agreement must be in writing, signed by authorised representatives from both the Service Provider and the Client. A written notice detailing the proposed changes should be provided by the party seeking amendment. The amendments become effective on the date agreed upon by both parties, as specified in the amendment document.

Unless explicitly stated, amendments do not alter the other terms of the Agreement. Should there be significant changes in control or circumstances for either party, the terms of the Agreement may be reassessed and amended accordingly.

8. Fees, Payment Terms, and Termination Payments

The charges for services provided by the Service Provider, including fee structure, additional expenses, invoicing, and payment schedule, late payments, and taxes, will be specified in each Agreement. All payments for services will adhere to the terms and conditions outlined in these Terms unless otherwise specified in the individual Agreement.

In the event that the Client fails to make payment by the due date, late payment interest may be charged by the Service Provider on the overdue amount. The rate of interest will be as set by European Union Regulation or the maximum rate permissible under applicable law, whichever is lower. The interest will accrue daily from the due date until the date of actual payment of the overdue amount, whether before or after judgement. The Client must pay the Service Provider interest on any overdue amount together with the overdue amount itself. If the Client fails to make a payment due to the Service Provider by the due date, then, without limiting the Service Provider's remedies under law, the Client shall pay the interest due on the late payment, and the Service Provider may suspend all Services until payment has been made in full.

In the event of termination of any Agreement, for any reason whatsoever, the Client shall be obligated to remit full payment for all services rendered by the Service Provider up to the effective date of termination. Any outstanding invoices, fees, or expenses resulting from services provided under the respective Agreement shall be paid in full within 15 days from the termination date.

The Service Provider reserves the right to issue a final invoice detailing all unpaid services and expenses upon termination. This final invoice shall be payable in accordance with the specific payment terms outlined in the respective Agreement under which the services were provided. The termination of any Agreement does not absolve the Client of any outstanding financial obligations related to the services provided under said agreement.

9. Performance Standards and Response Times

The Service Provider is committed to providing a high standard of service, which includes the commitment to respond to service requests in a timely manner. These response times are determined by the type of service being provided:

For managed services: The Service Provider will aim to respond to standard requests within a target of nine (9) business days and urgent requests within a target of three (3) business days. These targets exclude periods of reduced service notice.

For consulting services: The Service Provider will aim to respond to standard inquiries within a target of eighteen (18) business days and urgent inquiries within a target of three (3) business days.

These are target response times and actual response times may vary due to unforeseen circumstances. It is important to note that unless explicitly specified in the individual Agreement, no compensation or penalties will apply to the Service Provider for any delays in achieving these response times.

10. General Confidentiality Obligations

Throughout the duration of any Agreement, both the Service Provider and the Client acknowledge that they may receive sensitive information related to the business operations of the other. This information could include, but is not limited to, business strategies, financial details, technical data, and more.

This section describes the obligations of both parties related to maintaining the confidentiality of such information, except for certain types of business data defined and discussed separately in section 11, "Collection, Management, and Use of Business Data". Both parties commit to preserving the strict confidentiality of this information, utilising it solely for the execution of the Agreement and revealing it only to their internal personnel who need it to fulfil their Agreement-associated duties. Any breach of this confidentiality may lead to termination of the Agreement and potential legal ramifications.

Notably, these terms of confidentiality exclude information as defined in section 11, "Collection, Management, and Use of Business Data". The specific provisions outlined in section 11 supersede the general confidentiality obligations defined in this section.

Neither party may disclose any confidential information to third parties without securing prior written consent from the other, unless required by law, for legitimate business interests, or unless the information is as defined in section 11, "Collection, Management, and Use of Business Data". This limitation also applies to the internal dissemination of information, with access permitted only to employees whose Agreement-related roles necessitate it.

Upon termination or expiration of any Agreement, the Client must promptly return or destroy all confidential information in their possession that does not fall under the definition in section 11, "Collection, Management, and Use of Business Data". Any use of this information post-termination or post-expiration is strictly prohibited. The obligation to maintain its confidentiality persists indefinitely unless the confidential information becomes publicly available or is no longer secret or proprietary due to reasons beyond the control of the parties involved. However, these obligations do not apply to information as defined in section 11, for which the Service Provider may continue to use, store, and analyse for the maximum period allowed under applicable law.

In the event of a change in control at the Client's company, the Client must take necessary steps to prevent the new controlling party from accessing any confidential information without securing prior written consent from the Service Provider. This clause does not apply to the information as defined in section 11, 'Collection, Management, and Use of Business Data'. Any breach of this clause may lead to termination of the Agreement and potential legal proceedings.

11. Collection, Management and Use of Business Data

During the provision of services under these Terms and the corresponding Agreement, the Service Provider may have access to, and collect various types of, the Client's business operations-related data ("Business Data"). This data may include, but is not limited to, workflows, controls, decisions, business terminologies, and rules.

Once collected or documented, this Business Data comes under the control and management of the Service Provider. Occasionally, the Service Provider may enter data on behalf of the Client if it reasonably believes it aligns with the Client's intentions. The Client should explicitly communicate any data they do not wish to be entered into the Service Provider's systems.

The Service Provider reserves the right to store, analyse, and utilize this Business Data for a variety of internal purposes, including refining its services, fostering innovation, and conducting research. The Service Provider may store this data in various locations as deemed necessary for its operations. The retention period for this data will be the maximum allowed under applicable law.

The Service Provider commits to employing stringent measures to ensure the security and confidentiality of the Business Data in compliance with applicable data protection laws. In the unlikely event of accidental sharing of Business Data between clients, the Service Provider cannot be held liable, provided it has employed industry-standard data protection measures.

The Service Provider may also share de-identified, generalised Business Data with third parties for the purpose of providing its services or conducting research. In circumstances where sharing of non-de-identified, non-generalised Business Data with third parties becomes necessary, the Service Provider will do so in accordance with applicable data privacy and data security regulations, and only with parties who agree to maintain the same level of data protection.

Certain types of data may be stored in formats or systems where deletion is not feasible or possible. In such cases, it's the Client's responsibility to understand the potential permanence of their data input and comply with any regulations or laws that require data deletion.

The Service Provider will retain the Business Data for the maximum period allowed under applicable law, both during the validity of these Terms and post-termination or expiration. During the term of the corresponding Agreement, the Client will retain the right to access or modify the Business Data. However, this right may cease upon termination or expiration of the Agreement.

The Client is advised against inputting any information into the Service Provider's systems that they do not wish to be used in this manner, and to communicate their intentions clearly to the Service Provider. Despite the Service Provider's stringent data security standards, absolute data security cannot be guaranteed under all circumstances. By using the Service Provider's services and providing Business Data, the Client acknowledges and consents to the use, storage, and sharing of their data in accordance with this clause. This consent cannot be withdrawn unless required by applicable law.

12. Information Security Obligations

The Service Provider and the Client agree to implement and maintain security measures to safeguard confidential and proprietary information as per applicable laws and regulations. The Client bears sole responsibility for the security of their data during and prior to transmission.

While the Service Provider applies robust data protection measures for the Client's data under its control, it cannot guarantee complete protection against data corruption, loss, destruction, or exfiltration. In circumstances where laws and regulations mandate data deletion, if such deletion is not technically feasible for the Service Provider, the Client is responsible and liable for ensuring such deletion. The Service Provider will not compensate for such cases.

Should a security incident occur under the Service Provider's control, it will promptly act to manage and rectify the situation in compliance with applicable laws and regulations, and inform the Client within the legally stipulated timeframe.

The Service Provider ensures its staff and subcontractors adhere to data protection and information security requirements. In providing the Services, the Service Provider may engage third-party service providers for various activities, including but not limited to processing, storing, archiving, distributing, analysing, or other uses of the Client's data. The Client consents to this arrangement, understanding that the Service Provider will select third-party service providers that comply with applicable data security laws and regulations. However, the Service Provider does not assume liability for these third parties' actions or omissions.

Despite any other provisions in these Terms, the Service Provider will not be liable for, nor provide any compensation in relation to, a security breach, incident, or any other event, regardless of its nature. The Client retains audit rights under reasonable conditions that do not disrupt the Service Provider's operations.

13. Intellectual Property

For the purposes of these Terms, "Intellectual Property" refers to all pre-existing and newly created patents, trademarks, copyrights, trade secrets, and know-how, including related applications and registrations.

All Intellectual Property rights related to the services under these Terms, including Intellectual Property created during its execution, remain the sole and exclusive property of the Service Provider.

For Intellectual Property created during the execution of these Terms but not related to the services provided, the ownership shall remain with the respective original owners.

In case of joint projects, the ownership of jointly created Intellectual Property will be determined on a case-by-case basis, considering the respective contributions and subject to a separate agreement.

The Service Provider may grant the Client a non-exclusive, non-transferable, and non-sub licensable license to use specific Intellectual Property for the limited purpose of using the Services. The Client shall not modify, reverse engineer, or create derivative works of such Intellectual Property.

If a party believes its Intellectual Property rights have been infringed upon, it should promptly notify the other party. The alleged infringer will have a reasonable period to remedy the infringement. The Client agrees to indemnify and hold harmless the Service Provider from any third-party claims arising from the misuse of Intellectual Property.

Upon termination of these Terms, the Client shall cease all use of Intellectual Property provided under these Terms and shall delete, destroy, or return all copies of such Intellectual Property. Any foreground Intellectual Property created during the term of these Terms remains the property of the Service Provider unless explicitly agreed otherwise in writing.

In the event of a significant organisational change within the Client's company, the Client agrees to secure written consent from the Service Provider before transferring or assigning any licenses to a new controlling party. Failure to comply with this provision is considered a material breach of these Terms.

14. Compliance with Laws and Regulations

Both the Service Provider and the Client guarantee their compliance with all applicable local, national, and international laws, regulations, and ordinances, including, but not limited to, those related to data protection, privacy, intellectual property, and digital services. This includes maintaining necessary licenses, permits, or certifications and avoiding any violations that could affect the fulfilment of their contractual obligations.

If laws or regulations relevant to the Services under these Terms change, both parties agree to inform each other promptly. They commit to renegotiating any affected terms of these Terms in good faith to ensure continued compliance.

15. Limitation of Liability and Indemnity

To the maximum extent permitted by law, the Service Provider, its affiliates, officers, employees, agents, suppliers, and licensors shall not be liable for any indirect, consequential, special, punitive, or incidental damages or loss of any kind, whether foreseeable or unforeseeable, (including, but not limited to, claims for loss of data, data breaches, or issues related to the implementation, management, use, or functionality of services or products provided), arising out of or relating to these Terms, or the use or inability to use the Services or products, under any legal theory (contract, tort, or otherwise), even if the Service Provider has been advised of the possibility or likelihood of such damages.

The Client agrees to indemnify, defend, and hold harmless the Service Provider, its affiliates, officers, employees, agents, suppliers, and licensors from and against all losses, expenses, damages and costs, including reasonable attorneys' fees, resulting from any violation of these Terms or any activity related to the Client's account (including negligent or wrongful conduct), by the Client or any other person accessing the Services using the Client's account.

The Client releases and forever discharges the Service Provider, its affiliates, officers, employees, agents, suppliers, and licensors from any and all obligations, liabilities, claims, and demands in excess of the foregoing limitation.

16. Exclusion of Warranties

The Service Provider provides its services, consulting, development work, and products "as is" and "as available," without warranty of any kind, either express or implied, including but not limited to warranties of title, non-infringement, merchantability, or fitness for a particular purpose. This includes no warranty regarding the success or efficacy of consulting services, the function or performance of products or development work provided, the security or reliability of data storage, or that services will be uninterrupted, error-free, or entirely secure.

While the Service Provider strives to provide the highest quality of service and to act in good faith and with competence at all times, it does not guarantee specific outcomes from its services, consulting, products, or development work.

The Service Provider assumes no responsibility for any errors, omissions, outcomes, or results associated with its services, consulting, products, or development work.

Some jurisdictions may not allow the exclusion of implied warranties, so some of the above exclusions may not apply.

17. Force Majeure

"Force Majeure" refers to any event beyond the reasonable control of a party affecting its ability to perform obligations under these Terms. This includes, but is not limited to, acts of God, severe weather conditions, unanticipated geological or ground conditions, epidemics, pandemics, war, terrorism, civil disturbance, industrial disputes, and changes in laws, regulations, rules or rulings of government, courts, or any competent authority.

A party is not liable for failure or delay in fulfilling its obligations due to Force Majeure. If affected, the party will promptly inform the other, outlining the nature and expected duration of the event. The affected party will endeavour to resume performance as soon as possible. All deadlines or schedules under these Agreements will be extended accordingly.

18. Dispute Resolution

All disputes, controversies, or claims arising out of or relating to these Terms or the Agreement, regardless of their nature and including their interpretation, breach, termination, or validity, shall be resolved in accordance with the following provisions and the laws of Portugal, without regard to its conflict of laws principles.

Good faith negotiations shall be the first approach to resolving any dispute. If these negotiations do not resolve the issue, either party may initiate mediation, a form of alternative dispute resolution, in accordance with Law No^o 29/2013 of 19 April 2013. Mediation shall be carried out by a mediator who is an impartial and independent third party, with no power to impose a course of action on the parties, but who helps them reach a final agreement on the disputed matter. The mediator should be enrolled in a public mediation system or in the list of conflict mediators managed by the Ministry of Justice, as per the requirements of the Mediation Law.

If the parties cannot mutually agree on a mediator within a reasonable time, a mediator will be selected from the list maintained by the Ministry of Justice. If agreement still cannot be reached, the parties agree to have the Ministry of Justice appoint a mediator.

If mediation does not resolve the dispute, the parties agree to submit the dispute to voluntary arbitration under the rules of Law No^o 63/2011 of 14 December 2011. The arbitration will be conducted in Portugal, and the decision of the arbitrator will be final and binding on both parties. The arbitrators should be chosen by the parties from the list of arbitrators maintained by the Ministry of Justice.

If the parties cannot mutually agree on an arbitrator within a reasonable time, an arbitrator will be selected from the list maintained by the Ministry of Justice. If agreement still cannot be reached, the parties agree to have the Ministry of Justice appoint an arbitrator.

The agreement obtained through mediation or arbitration shall be enforceable provided it fulfils the criteria laid down by law. In case of unresolved disputes post-mediation or arbitration, they shall be exclusively and finally resolved by the competent courts of Portugal. Both parties hereby irrevocably consent and submit to the personal jurisdiction of these courts and waive any objection based on improper venue or forum non conveniens.

19. Relationship of the Parties

The Service Provider and the Client enter into the Agreement as independent contractors, with no partnership, joint venture, employer-employee, agency, or franchisor-franchisee relationship established. Nothing in the Agreement or these Terms shall be interpreted or construed as creating or establishing any relationship of agency, partnership, joint venture, or any duty or obligation between the parties other than as independent contractors with respect to each other. Neither party shall have the right, power, or authority to incur obligations or liabilities on behalf of the other or to bind the other party in any respect. Each party is solely responsible for its own business operations, including any financial or other obligations arising from its business, and each party will bear its own costs and expenses in relation to the performance of its obligations under the Agreement.

The Agreement is non-exclusive and both parties retain the right to enter into similar agreements with others.

Both parties commit to conducting their business operations in accordance with all applicable laws, rules, regulations, and industry standards. This includes any activity, practice, or conduct that would constitute an offence under the laws, regulations, and codes of practice applicable in their respective jurisdictions. Each party is individually accountable for its actions, operations, and adherence to legal and industry standards, and any legal or other issues arising from a party's business operations are that party's sole responsibility.

By proceeding with the services outlined in the Agreement, the Client acknowledges and accepts the terms of this relationship.

20. General Provisions

These Terms bind and benefit both the Service Provider and the Client and their successors or permitted assigns. Any modifications to these Terms must be in writing and signed by both parties. Any deviation from these Terms by either party must be acknowledged and agreed upon in writing.

In case of significant changes such as mergers, corporate reorganisation, or a sale of most assets, the Service Provider can transfer these Terms and its associated obligations without requiring the Client's consent. However, in all other circumstances, the transfer of these Terms does not relieve the original party of its obligations. The Client must inform the Service Provider in writing within 15 days if a change in control occurs.

These Terms and any disputes or claims arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of Portugal.

These Terms, including any exhibits, schedules, and attachments, supersede all prior agreements, understandings, or communications, regardless of their format. These Terms prevail over any conflicting terms or conditions provided by the Client.

If any part of these Terms is found to be invalid or unenforceable, the remaining parts will still apply. The parties will negotiate in good faith to modify these Terms to reflect the original intent as closely as possible.

All notices or communications under these Terms must be in writing, addressed to the parties at the addresses mentioned in the Agreement, or to a later designated address. These notices are effective upon receipt by the receiving party.

By proceeding with the services outlined in the Agreement, the Client acknowledges and accepts these provisions.