

# **DESelect**

## **GENERAL TERMS AND CONDITIONS**

### **1. General**

These general terms and conditions govern the relationship between DESelect BV (hereinafter referred to as the “Vendor”) and its customers (hereinafter each individually referred to as the “Customer”). These terms and conditions may be amended from time to time. The Vendor shall promptly inform the Customer of any substantial changes to its general terms and conditions.

### **2. SaaS**

#### **2.1. Object**

The Customer and Vendor agree to enter into a software as a service agreement (hereinafter referred to as the “Agreement”). During the subscription period, the Customer will receive a non-exclusive, non-transferable right to access and use the Solution (as defined hereinafter) solely for its internal business operations subject to the terms of this Agreement.

The Customer acknowledges that this Agreement is a services agreement and the Vendor shall not deliver copies of the Solution to the Customer as part of the SaaS services.

### **3. Customer’s obligations**

The Customer cannot use the Solution for other purposes than as specified in this Agreement.

The Customer shall not distribute, sell, license or sub-license, let, trade or expose for sale the Solution to a third party.

The Customer shall ensure that the Solution retains all Vendor’s copyright notices and other proprietary legends and all trademarks or service marks of the Vendor.

### **4. Definitions**

Following definitions and abbreviations may apply:

- **Agreement:** the general terms and conditions and the specific terms and conditions (contained in the Proposal (as defined hereinafter)).
- **Campaign Selection:** The process of selecting customers and related data from a database for a marketing campaign.
- **Customer:** the customer as defined in the Proposal containing the specific terms and conditions.
- **DE:** Data Extension, the name used for tables of data inside the Salesforce Marketing Cloud.
- **Metadata:** Data that references objects in the Customer's SFMC, though not the actual customer data stored therein. For example: The name of a selection.
- **Object Code:** Work in a machine readable form that is not convenient to human understanding of the program logic, and that can be executed by a computer using the appropriate operating system without compilation or interpretation.
- **SFMC:** Salesforce Marketing Cloud, cloud-based marketing software provisioned by Salesforce.com inc.
- **Proposal:** A document containing the specific terms and conditions (including, but not limited to, a description of the Solution in view of the specific context of the Customer and for which purposes it may be used in relation thereto).
- **Services:** The whole of provisioning the Solution and the support with any issues directly related to the Solution by the Vendor towards the Customer.
- **Solution:** The cloud-based software referred to as "DESelect" which is developed and maintained by the Vendor, and provisioned to the Customer.
- **Support Services:** The provisioning of support with issues related to the solution by the Vendor towards the Customer.
- **Vendor:** DESelect BV, a limited liability company under Belgian law, with office at Olijftakstraat 12, 2060 Antwerp, Belgium, registered in the register of legal entities of Antwerp under number BE0737366383.
- **Working Day:** A regular business day in Belgium, with the exception of Saturdays, Sundays and public holidays.

## 5. Solution

## **5.1. Specifications**

The Solution is an app integrated into Salesforce Marketing Cloud (SFMC) that facilitates the making of campaign selections for marketers.

Inside the application, an interface<sup>[1]</sup> will allow users to create a new campaign selection based on data extensions (DEs) stored inside the SFMC:

- The user can base selections on any data available stored in any type of DE or data view. The user may also specify relations between different DEs, for example through a unique identifier.
- Based on selected DEs, the user can define selection criteria to adequately filter the campaign selection.
- The user can define different types of aggregations, custom values to be used for personalization, and deduplication rules.
- Based on the selected DEs, the user can define which columns will be used to populate a target DE, which can be used for campaigns directly within SFMC.
- Admins inside SFMC may define which users gain access to the Solution.

## **5.2. Set-up**

In order to allow the Vendor to set-up the Solution within the SFMC environment of the Customer, the Customer will provide the Vendor with at least one SFMC user account with full access for the DESelect activation and support.

The Vendor aims to set-up the Solution within ten (10) Working Days (or as otherwise agreed on in the Proposal) as from the moment the Customer has provided (i) the above SFMC user account with the required access and (ii) all other requested or required information needed by the Vendor to start with the set-up. After set-up, no SFMC user account is needed anymore, though, temporary access to an account may be requested to resolve support issues.

## **5.3. Future Releases**

The Vendor may at certain times release new features that aim to improve the overall user-friendliness and functionality of the Solution at no additional cost for the Customer.

## **5.4. Support**

The Customer can report issues via the website section dedicated to support services.

In the case of issues, the Vendor will use commercially reasonable efforts to promptly respond to each case, and will use commercially reasonable efforts to promptly resolve each case. Actual resolution time will depend on the nature of the case and the resolution. A resolution may consist of a fix, workaround or other solution in the Vendor's reasonable determination.

The Customer may indicate the priority of issues and will describe issues to its best effort, including: Steps taken prior to the issue, screenshots, description of the issue, information regarding the browser or operating system used, remedial actions already attempted by the Customer, and any other information the Vendor may consider relevant to resolve the issue.

If needed, the Customer will provide the Vendor access to its SFMC environment through a user account with the specific goal of resolving issues or, if applicable, will ensure any of its affiliates or suppliers responsible for the administration of its SFMC environment can provide the necessary access.

## **5.5. Data deletion**

The Vendor does not delete data. It does not delete folders, data extensions or rows within data extensions.

However, it is possible that a user selects a data extension as a target data extension that contains rows, which would then be overwritten when the query is executed. Note this is not specific to the Solution but is the case for the standard SFMC platform as well.

The Vendor cannot be held liable for any loss or overwriting of data due to the Customer.

## **5.6. Uptime**

An uptime of 99.5% is guaranteed. In case of prolonged outages lasting more than 24 hours, the subscription will be extended at no additional cost to the Customer with the duration of the downtime as sole and exclusive remedy for the Customer.

Excluded from the definition of 'outage' in the previous sentence is:

- Any planned downtime of which Vendor gives 24 or more hours' notice via email and/or on-screen message within DESelect. Vendor will use commercially reasonable efforts to schedule all planned downtime during the hours from 6.00pm Friday to Sunday 11pm GMT.
- Any period of unavailability lasting less than 15 minutes.

- Any unavailability caused by circumstances beyond Vendor's reasonable control, including, without limitation, force majeure, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Vendor's employees), denial-of-service attacks or third-party Internet service provider failures or delays.

## **5.7. Security**

The Vendor warrants that the Solution complies and will comply with, as a minimum, the details set out in the Vendor's [security documentation](#), which is incorporated into this Agreement by reference.

The Vendor shall indemnify the Customer against any and all losses, liabilities, costs and damages that the Customer may incur as a result of a breach of the above warranty in relation to security measures for the Solution, and in relation to losses or damage caused to the Customer's SFMC environment as a result of the Customer's use of the Solution, to the extent said damage is not due to user error (e.g. the user overwrites data in a data extension).

# **6. Miscellaneous**

## **6.1. Intellectual Property**

The Vendor maintains full ownership of all intellectual property rights contained in or related to the Solution. The Customer does not have and/or may not claim any intellectual property rights other than the non-exclusive Object Code license granted herein.

## **6.2. Third Party Intellectual Property**

The Vendor shall indemnify the Customer against any and all losses, liabilities, costs and damages that the Customer may incur as a result of any claim that the Customer's possession and use of the Solution infringes any intellectual property rights of any third party.

Should any such claims be made against the Customer by a third party, then the Customer will inform the Vendor within 30 days so that the Vendor may defend against the claim.

## **6.3. Reference**

The Vendor may use the Customer's logo and name on its website in the specific context of the Customer's use of the Solution, in order to allow the Vendor to promote its Services, provided that the Customer has provided permission in advance as to the way that the Customer's name and logo is to be

used. The Customer may revoke this permission at any time and for any reason, and shall promptly inform the Vendor thereof.

#### **6.4. Timing & Duration**

The Agreement goes into effect as soon as both parties have signed and lasts for 12 months.

All subscriptions shall automatically renew for an additional 12 months, unless either party gives the other notice of non-renewal at least 60 days before the end of the relevant subscription term. The per-unit pricing during any automatic renewal term shall be the same as that during the immediately prior term unless the Vendor has given the Customer written notice of a price increase at least 90 days before the end of such prior term, in which case the pricing increase shall be effective upon any such renewal and thereafter. Any such pricing increase shall not exceed 4% of the pricing for the relevant services provided in the immediately prior subscription term.

#### **6.5. Early termination**

Each party may terminate the Agreement with immediate effect at any time upon sending a written notice to the other party in one of the following situations:

- (a) if either party is bankrupt, or subject to any other insolvency proceeding (whether voluntary or involuntary), receivership, administrative receivership, assignment for the benefit of creditors, and/or liquidation; and/or
- (b) if either party commits a material (unremedied) breach of the Agreement, fraud or anything of a similar nature.

#### **6.6. Breach of contract**

Prior to any claim for termination of this Agreement for breach of contract, the defaulting party will have the opportunity to remedy any such alleged breach (to the extent remediation is possible and makes sense).

If a party fails to comply with any provision of this Agreement, the other party will deliver written notice thereof to the defaulting party specifying the non-compliance. The defaulting party will have fifteen (15) days (or shorter, if the circumstances reasonably require so) after receipt of such notice to remedy the non-compliance. With respect to non-compliance with payment obligations under this Agreement, the defaulting party will have fifteen (15) days after receipt of the written notice to fulfill the outstanding payment obligations.

If the defaulting party fails to remedy such breach within the aforementioned period, the other party may terminate this Agreement with immediate effect upon written notice to the defaulting party.

Any (implicit or explicit) waiver by any party for a breach of any provision of this Agreement shall not be deemed a waiver of any subsequent breach, whether of a similar or dissimilar nature.

### **6.7. Obligations on termination**

Upon termination of this Agreement for whatever reason, either party shall, at the request of the other party, return any document, material, database, equipment, license or software containing confidential information to the other party. If, for any reason, such document, material, database, equipment, license or software cannot be returned, such party shall destroy all the confidential information belonging to the other party and delete such confidential information from any memory devices.

The right of the Customer to use the Solution is immediately terminated upon termination, for any reason whatsoever, of this Agreement.

Any Metadata that has been stored by the Vendor on behalf of the Customer shall be stored for another sixty (60) days following termination of this Agreement. After the aforementioned period, the Metadata shall be deleted from the Vendor's databases.

The termination of this Agreement shall not release the parties from their obligations to pay the sums due under this Agreement to the other party or from the obligation to perform any other duty or to discharge any other liability that has been incurred prior thereto under the Agreement.

### **6.8. Feedback**

The Vendor may request the Customer to provide feedback, which the Customer will provide in a timely manner. This feedback may take the form of a survey, public review, or similar. The Vendor may use said feedback in any way in order to improve the quality of the Solution and the provision of Services.

### **6.9. Invoicing and Payment**

Fees are due and payable within 30 days from the invoice date. The Customer is responsible for providing complete and accurate billing and contact information to the Vendor and notifying the Vendor of any changes to such information.

A late payment interest of 1% per month shall apply in case the Customer does not pay the fees within the 30 days payment term, and shall be due as from the first day following the 30-day payment term.

The Customer is responsible for covering any bank transfer costs, currency exchange costs, taxes, or other costs associated with the payment other than the subscription fee itself.

All amounts are due in euros.

All pricing is exclusive of VAT.

## **6.10. Warranty**

The Solution is provided by the Vendor on an “as is” basis, and is only fit for the purposes contained in this Agreement. It is therefore the responsibility of the Customer to ensure that the Solution meets its own individual requirements.

Notwithstanding the above, the Vendor aims to meet the Customer’s expectations to its best efforts. The Customer may notify the Vendor within thirty (30) days if it believes its expectations have not been met. Upon such notification, the Vendor will use best efforts to meet these expectations.

## **6.11. Limitations of liability**

6.11.1. **Limitation of Liability.** Subject to the “Exclusion of Indirect Damages” section below and except in case of fraud or willful misconduct, the Vendor’s liability with respect to any single incident arising out of or related to this Agreement (whether in contract or tort or under any other theory of liability) shall be limited to the amount of fees paid by the Customer hereunder in the twelve (12) months immediately preceding the relevant incident, provided that in no event shall the Vendor’s total aggregate liability arising out of or related to this Agreement (whether in contract or tort or under any other theory of liability) exceed the maximum amount that is covered by its liability insurance (i.e. 500,000 EUR).

6.11.2. **Exclusion of Indirect Damages.** Subject to section the “Limitation of Restrictions” section below, in no event shall either party have any liability to the other party under or in relation to this Agreement, whether in contract, tort or under any other theory of liability for:

(a) any financial damages as a result of loss or damage to property, economic loss, cost of replacement services, loss of profits, loss of revenue, loss of orders, loss of goodwill, and/or loss resulting from damage to image or reputation in each case whether direct or indirect, or

(b) any indirect or consequential loss or damage arising from or related to this Agreement, howsoever caused and whether or not such losses are foreseeable, even if that party has been advised (or is otherwise aware) of the possibility of such losses in advance.

## **6.12. Data Protection**



For the purposes of this Section, “Personal Information” means any information collected by the Vendor in connection with this Agreement (i) that identifies or can be used to identify, contact, or locate the person to whom such information pertains, or (ii) from which identification or contact information of an individual person can be derived. Personal Information includes, but is not limited to: name, address, phone number, fax number, email address, social security number or other government-issued identifier, and credit card information. Additionally, to the extent any other information (such as, but not necessarily limited to, a personal profile, unique identifier, biometric information, and/or IP address) is associated or combined with Personal Information, then such information also will be considered Personal Information. Any Personal Information collected or accessed by Vendor in the performance of the Services in accordance with this Agreement shall be limited to that which is strictly necessary to perform such Services or to fulfill any legal requirements, and such Personal Information shall only be processed by Vendor in accordance with Schedule 1. The Vendor shall indemnify the Customer against any and all losses, liabilities, costs and damages that the Customer may incur as a result of any failure by the Vendor to comply with Schedule 1 or any applicable law relating to the processing of Personal Information.

### **6.13. Re-assignment**

The Vendor may re-assign the rights and obligations under this Agreement to an affiliated company (e.g. in case the founders incorporate a new company in light of internal reorganization).

The rights and obligations under this Agreement can only be re-assigned by the Customer with prior written consent by the Vendor.

### **6.14. Confidentiality**

The receiving party shall keep in strict confidence all Confidential Information disclosed or made available to it by the disclosing party, its employees, agents, consultants or subcontractors, and any other Confidential Information concerning the other party’s business, customers, potential customers, or its products the receiving party may obtain. The receiving party shall restrict disclosure of such confidential material to such of its employees, agents, consultants or subcontractors as need to know it for the purpose of inter alia discharging each party’s obligations to the other party, and shall ensure that all relevant employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those that bind the receiving party. “Confidential Information” shall mean any information, however conveyed or presented, that relates to the business, affairs, operations, customers, processes, budgets, pricing policies, product information, strategies, developments, trade secrets, know-how, methods, technology, technical data, personnel and suppliers of the Customer and the Vendor, together with all information derived by either party from any such information and any other information clearly designated by a party as being confidential to it (whether or not it is marked "confidential") or that should reasonably be considered confidential or is in relation to other matters connected with the Solution or the Customer’s SFMC environment, and information concerning the Customer’s relationships with actual or potential clients, customers, suppliers and the needs and requirements of such persons.

This clause will survive termination of this Agreement.

### **6.15. Force majeure**

In the event either party is unable to perform its obligations under the terms of this Agreement because of events or circumstances reasonably beyond its control, including but not limited to, acts of God (*force majeure*), cyberattacks, equipment or transmission failure, such party shall not be liable for damages to the other for any damages resulting from such failure to perform.

### **6.16. Severability**

In case any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall, to the extent permitted by law, not in any way be affected or impaired thereby.

### **6.17. Governing law and dispute resolution**

- 6.17.1. **Governing law.** This Agreement is subject to Belgian law. No effect shall be given to any other choice of law or to any conflict-of-laws rules or provisions that would result in the application of the laws of any country other than Belgium.
- 6.17.2. **Dispute resolution.** The parties agree to negotiate in good faith to resolve any dispute between them regarding this Agreement. If the negotiations do not resolve the dispute to the reasonable satisfaction of the relevant Parties, then each such Party will nominate one senior officer as its representative. These representatives will, within 10 business days of a written request by any such party involved in that dispute, call such a meeting and will attempt in good faith to resolve the dispute. If the dispute cannot be resolved by such senior officers in such meeting, the parties agree that they will, if requested in writing by either such party, meet within 10 business days after such written notification for one day with an impartial mediator and consider dispute resolution alternatives other than litigation. If an alternative method of dispute resolution is not agreed upon within, 10 business days after the one-day mediation, either such Party may begin litigation proceedings. This procedure will be a prerequisite to any party issuing legal proceedings in respect of any dispute regarding this Agreement. If the above described alternative method of dispute resolution was not successful, the competent court shall be the enterprise court of Antwerp, Belgium.

In so far as the Vendor processes any Personal Information on behalf of the Customer, the Vendor shall:

- a) process the Personal Information on behalf of the Customer only for the purposes of performing this Agreement in accordance with documented instructions contained in this Agreement, or received from the Customer from time to time;
- b) not publish or otherwise disclose or permit the disclosure of any of the Personal Information to any third party unless specifically authorized to do so in writing by the Customer;
- c) taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing, implement appropriate technical and organizational measures to ensure the security of the Personal Information and to prevent the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to the Personal Information. In particular, the Vendor shall consider and use as appropriate: the pseudonymization and encryption of the Personal Information; the ability to ensure the ongoing confidentiality, integrity and availability of the Personal Information; the ability to restore availability and access to the Personal Information in a timely manner in the event of a physical or technical incident; and a process for regularly testing, assessing and evaluating the effectiveness of such measures for ensuring the security of the processing;
- d) obtain prior written consent from the Customer before transferring the Personal Information to any subcontractors in connection with the provision of the Services, such transfers to be underwritten contractual terms that reflect the terms of this Schedule 2 in particular providing sufficient guarantees to implement appropriate technical and organizational measures to ensure a level of security of the Personal Information that is appropriate;
- e) take reasonable steps to ensure the reliability of any staff who have access to the Personal Information and ensure that such staff are contractually committed to strict terms of confidentiality;
- f) ensure that only those of Vendor's staff who need to have access to the Personal Information are granted access to such data and only for the purposes of the performance of this Agreement;
- g) at the choice of the Customer, delete or return all the Personal Information to the Customer after the end of the provision of the Services or use of the Solution, and delete existing copies;
- h) make available to the Customer all information necessary to demonstrate compliance with the obligations set out in this Schedule 2 and allow for and contribute to audits, including inspections, conducted by the Customer or our authorized representatives for this purpose;
- i) notify the Customer immediately in the event of a breach of the Personal Information;
- j) notify the Customer promptly (and in any event within 24 hours) if it receives:
  - (i) a request from a data subject to have access to that person's Personal Information;
  - or

(ii) a complaint or request relating to the Customer's obligations under applicable data protection legislation; or

(iii) any other communication relating directly or indirectly to the processing of any Personal Information in connection with this Agreement;

k) provide the Customer with full co-operation and assistance in relation to any complaint or request made in respect of any Personal Information, including by:

- a. providing the Customer with full details of the complaint or request;
- b. complying with a data access request within the relevant timescales set out in the applicable data protection legislation but strictly in accordance with the Customer's instructions;
- c. providing the Customer with any Personal Information it holds in relation to a data subject making a complaint or request within the timescales required by the Customer; and
- d. providing the Customer with any information requested by the Customer;

l) permit the Customer or its external advisers (subject to reasonable and appropriate confidentiality undertakings) to inspect and audit Vendor's data processing activities and those of its agents, subsidiaries and subcontractors and comply with all reasonable requests or directions by the Customer to enable the Customer to verify and procure that the Vendor is in full compliance with its obligations under this Agreement; and

m) not transfer Personal Information outside the European Economic Area without the prior written consent of the Customer and, where the Customer consents to such transfer, to comply with:

- a. the obligations under applicable data protection legislation by providing an adequate level of protection to any Personal Information that is transferred; and
- b. any reasonable instructions notified to it by the Customer.