e-Learning for Individuals

Agreement for

Contract Ref. No.: IND-CONTRACT

This **Agreement** is made on (“Effective Date”)

**Between**

**Indigita SA,** a company registered in Switzerland with offices at Rue de Vermont 62, CH-1202 Geneva, Switzerland (“**Indigita**”), and

, domiciled at , with the email address:  (“**Client**”)

(individually or collectively hereinafter referred to as a “**Party**” or the “**Parties**”).

In all respect the masculine shall include the feminine and the singular shall include the plural and vice versa.

**The Parties hereby agree:**

# **Definitions**

“**Agreement**” means this Agreement including attached Schedules and any other agreed documents.

**“BRP Bizzozero & Partners SA”** is a company domiciled in Geneva, Switzerland, specialised in the management of cross-border risk, in particular through its Country Manuals. Indigita is a subsidiary company of BRP Bizzozero & Partners SA.

**“BRP Tax SA”** is a company domiciled in Geneva, Switzerland. It is a subsidiary company of BRP Bizzozero & Partners SA, created to consult the financial industry (private banks and wealth managers) to meet the new challenges in the field of taxation.

“**Business Day”** means any day which is not a Saturday, Sunday or public holiday in Switzerland, in the cantons of Zurich and Geneva.

**“Client”** means the person listed above.

**“Client Data”** means the data (including personal data) inputted by the Client or Indigita on the Client's behalf for the purpose of using the Services and Products or facilitating the Client’s use of the Services and Products.

“**Confidential Information**” means any information of a proprietary or confidential nature (including trade secrets, information of commercial value, the terms of this Agreement, the methods, concepts, contents and source code utilised by the Products and Services and any further information identified by the disclosing Party as confidential). Confidential Information shall not be deemed to include information that:

* is or becomes publicly known other than through any act or omission of the Parties;
* was in lawful possession of the Parties before the disclosure;
* is independently developed by the one of the Parties, which independent development can be shown by written evidence; or
* is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

“**Data**” means the digital content and underlying rules deriving from the country manuals of BRP Bizzozero & Partners SA and/or BRP Tax SA in their standard or customised form and any digital content of courses.

“**Documentation**” means user guides, operating manuals and specifications whether in print or machine-readable media provided as a standard documentation by Indigita in association with the Service.

**“Initial Subscription”** means the type of subscriptions set out in Schedule 2.

**“Normal Business Hours”** means from 9.00 am to 4.30 pm Central European Time, during Business Days.

“**Products**” means the online software applications provided by Indigita as part of the Services as specified in Schedule 1.

**“Services”** means the subscription services provided by Indigita to the Client under this Agreement and as described in the Documentation.

**“Standard Support Program”** means Indigita 's policy for providing support in relation to the Services, as described set out in Schedule 3.

**“User Subscription”** means the subscription purchased by the Client under this Agreement which entitles the Client to access and use the Services and the Documentation in accordance with this Agreement.

# **Services**

Indigita shall, during the course of the Agreement, provide the Services and make available the Documentation to the Client in compliance with the terms of this Agreement.

Indigita will, as part of the Services and at no additional cost for the Client, provide Support Services. Indigita may amend its support services in its sole discretion from time to time.

# **Subscriptions**

Subject to this Agreement, Indigita hereby grants to the Client a non-exclusive, non-transferable right to use the Services, the Products and the Documentation during the course of the Agreement.

The Client undertakes that:

* The Client will not grant to access and use of the Services, the Products and the Documentation to third parties;
* The Client shall keep a secure password for his use of the Services, the Products and Documentation. Indigita is not responsible for the misuse of passwords and usernames.

The Client shall not:

* copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Data, Products and/or Documentation (as applicable) in any form or media or by any means; and/or
* attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Products; and/or
* access all or any of the Data, Services and Documentation in order to build a product or service which competes with the Services, the Products and/or the Documentation; and/or
* use the Services, the Products and/or Documentation to provide services to third parties.

The Client shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services, the Products and/or the Documentation. In the event of any such unauthorised access or use, it shall promptly notify Indigita.

In the event of breach of the present clause, Indigita may be entitled to charge the Client for the unauthorised activity, charging an amount equivalent to the authorised use of the Services/ Data and Documentation, adding a penalty of fifty (50) per cent (%).

# **Intellectual property rights**

The Client acknowledges and agrees that Indigita and/or its licensors own all intellectual property rights in the Services, the Products and the Documentation.

# **Service warranty**

Indigita represents and warrants, that it has all necessary licences, permits, authorisations, approvals or consents necessary for the performance of its obligations under this Agreement.

Indigita is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet.

Indigita does not warrant the accuracy, correctness or the legal compliance of the Data.

# **Limitation of liability**

Indigita shall not be liable for any loss or damage that exceeds either 100’000 Swiss Francs (CHF) or the annual Service fee actually paid by the Client to Indigita for the course of the Agreement, whichever is the lower amount. To the extent permissible under applicable Swiss law, any further liability for loss or damage claims, whether in contract, negligence, business interruption or lost revenue, or for any incidental, punitive, indirect or consequential damages shall be excluded.

# **Responsibilities of the client**

The Client shall co-operate with Indigita and provide all necessary access to such information as may be required by Indigita in order to render the Services, including:

* ensure that its network and systems comply with the relevant specifications provided by Indigita from time to time; and
* be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Indigita’s data centre, and all problems, delays, delivery failures and all other loss or damage arising from or relating to the Client's network connections or telecommunications’ links or caused by the internet.

# **Fees and payment terms**

The Client will pay to Indigita the fees as set out in Schedule 2.

Where any payment by the Client to Indigita remains overdue for a period of thirty (30) days, Indigita shall be entitled, without prejudice to any other rights and, without liability to the Client, to disable the access to the Services and the Products. Indigita may charge an interest rate of five (5)% p.a. on overdue amounts.

# **Term and termination**

The term and termination are set out in Schedule 2.

This Agreement may be terminated by either Party without prejudice to any other rights and remedies by written notice to the other Party with immediate effect, if the other Party:

* has become insolvent or resolved to go into liquidation; and/or
* commits any material or persistent default of the Agreement, which is either incapable of remedy, or if capable of remedy, is not remedied to the reasonable satisfaction of the other Party within thirty (30) days of written notice requiring the default to be remedied.

Upon termination or expiration of the Agreement for any reason:

* all rights to use the Services by Client will immediately cease;
* the Client shall return to Indigita or destroy all copies of the Documentation in its possession and/or the Confidential Information of Indigita; and
* all invoices due to Indigita by Client shall remain due and payable.

#  **Confidentiality**

Each Party may be given access to Confidential Information from the other Party.

Each Party shall hold the other Party’s Confidential Information in confidence and not use the other Party's Confidential Information for any purpose other than the implementation of this Agreement.

Each Party shall take all reasonable steps to ensure that the other Party's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

Neither Party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

#  **Client data**

The Client owns all rights on the Client Data and has the sole responsibility for its legality, reliability, integrity, accuracy and quality.

The Client shall not input any nominative data on their end clients while using the Services and Products of Indigita.

In the event of any loss or damage to Client Data, Indigita will use reasonable commercial endeavours to restore the lost or damaged Client Data from the latest back-up maintained by Indigita, if applicable.

#  **Data Protection**

Indigita shall:

* comply with applicable data protection laws and regulations of the countries of establishment of the Parties (e.g. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, “GDRP”);
* bring into effect and maintain throughout the term all reasonable technical and organizational measures to protect against unauthorized or unlawful access to and processing of personal data and destruction or damage to personal data;
* only undertake processing of personal data to the extent reasonably required in order to comply with its obligations;
* within thirty (30) days of the termination or expiration of this Agreement, Indigita shall, upon Client’s request, delete or return to the Client all personal data.

Clause 12.1 shall remain applicable only if compliant with applicable Swiss law. Swiss law shall prevail in the event of conflicting regulations.

Indigita will promptly notify the Client of:

* any unauthorized or unlawful processing or any accidental loss, destruction, damage, alteration or disclosure of personal data as soon as it becomes aware, and
* any act or omission (of itself or any third party) of which Indigita becomes aware that could have an adverse effect on information technology security at the premises of the Client.

The purposes of the transfer to, and processing by, Indigita are described in Schedule 4 to this Agreement. Schedule 4 also contains the catalogue of the personal data to be transferred and/or processed for the purpose of this Agreement.

Indigita may use subprocessors to provide the Services. The list of relevant subprocessors under the present Agreement is indicated in Schedule 4. Indigita has the right to change subprocessors at any time, as long as the rights of the Client are preserved.

#  **Force majeure**

Neither Party will be in breach of this Agreement or in any way liable to the other for any failure or delay caused by any event or circumstances beyond its reasonable control, including but not limited to war, terrorism, natural disasters, fire, strike, provided that the other Party shall be entitled to terminate this Agreement by notice in writing if the default continues for more than 90 days.

#  **Notices**

All notices to be given pursuant to this Agreement shall be in writing, by registered mail at the address specified below:

* **Indigita:** Indigita SA, Attn: CEO, Rue de Vermont 62 CH-1202 Geneva, Switzerland

#  **General**

Neither this Agreement nor any rights or obligations hereunder may be assigned by the Client without Indigita’s prior written consent.

This Agreement and its Schedules constitute the entire agreement and understanding of the Parties, superseding all prior or contemporaneous agreements, and understandings, and may be amended only in writing signed by both Parties.

The clause 10) shall survive termination of this Agreement.

If any provision of this Agreement is void, unenforceable or unlawful for any reason, the validity of the remainder of the Agreement will not be affected and the Parties will promptly enter into negotiations in good faith to find a replacement for the provision which is of similar economic effect to both parties.

If any dispute arises between Client and Indigita with respect to any matters in relation with this Agreement, the following will be respected:

* the aggrieved Party may notify the other Party, setting forth in detail the nature of its dispute, and requesting a meeting to solve the dispute;
* if such dispute is not resolved amicably, then the Parties shall be entitled to commence legal proceedings.

This Agreement will be governed by in accordance with Swiss law. Any disputes, or questions between the Parties with respect to any matter arising out of or relating to this Agreement, which has not been solved by the informal resolution of disputes shall be finally and exclusively settled under the jurisdiction of the ordinary courts of Geneva, Switzerland.

|  |  |  |
| --- | --- | --- |
| Signed for and on behalf of the Client. |  | Signed for and on behalf of Indigita SA |
| Date  |  | Date |
|  |  |  |
| Name and Title |  | Name and Title |
|  |  |  |
| Signature |  | Signature |
|  |  | Name and Title |
|  |  |  |
|  |  | Signature |

1. **Description of Products**

## Indigita e-Learning

Indigita e-Learning products are designed to cover cross-border trainings and compliance topics for banks and independent portfolio/financial advisors. Subscriptions related to country specific courses can be accessed only if the Client subscribes to the related country manual of BRP Bizzozero & Partners SA.

The Client will access the course(s) and related quiz(es) through the Indigita’s LMS platform. A valid User Subscription is required to access the platform and the selected e-Learning content.

1. The Client, through this Agreement, is purchasing following content:

a) FinSA Course Advanced – 11 modules

1. **Fees**

## 1) Indigita e-Learning

|  |  |
| --- | --- |
| e-Learning courses and Platform | Annual subscription |
| FinSA Course Advanced – 11 modules | CHF 1’110 |
| Total | **CHF 1’110** |

* All prices and fees without VAT.

## 2) Initial duration and payment terms

The subscription starts at the Effective Date and ends on the 31/12/2021.

Indigita’s invoice will be addressed to the Client with the Agreement and become payable upon signature of the Agreement by the Client. Access to the Products and Services will be granted to the Client and become effective after payment of the invoice.

1. **Standard Support Program**

**General**

During the course of the Agreement, Indigita will provide the services described herein (hereinafter the “Support Services”) to maintain the Product in good working order.

**Helpdesk**

Indigita will respond within a reasonable timeframe to enquiries and support request sent to: **support@indigita.ch**

**Service Levels[[1]](#footnote-1)**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Priority | Definition | Reaction | Qualified Response | Target Resolution |
| 1 | **Very High:** the problem has serious consequences for normal business processes or IT processes related to core business processes. Urgent work cannot be performed. A workaround is not available for each circumstance. | 4 hours | 1 Working Day | 2 Working Days |
| 2 | **High:** the normal business processes are seriously affected. Necessary tasks cannot be performed. This is caused by incorrect or inoperable functions in the Product that are required immediately. | 1 Working Day | 2 Working Days | 4 Working Days |
| 3 | **Medium:** the normal business processes are affected. The problem is caused by incorrect or inoperable functions in the Product. | 2 Working Days | 5 Working Days | Next Release |
| 4 | **Low:** the problem has little or no effect on normal business processes. The problem is caused by incorrect or inoperable functions in the Product service that are not required daily or are rarely used**.** | n.a. | n.a. | Next release |

1. **Processing of Personal Data**

**Description of the Processing**

Indigita is performing the following processing activities on behalf, and on instructions, of the Client:

* Allowing access to the Services and Documentation to the Client;
* Responding to enquiries with regard to the Services;
* Handling any other queries in relation to the Subscription.

**Categories of Personal Data**

* Regular professional personal data (not sensitive), including first name, last name, professional email address and potentially other professional contact details as provided from time to time by the Client.

**Purposes**

* Employees and Contractors: to give access to the licensed Services, to fulfil support and maintenance services, to create reporting regarding usage of the Services or for compliance and security purposes.

**Records of Subprocessors**

List of approved Subprocessors:

|  |  |  |
| --- | --- | --- |
| Name | Address | Purpose of processing  |
| Infomaniak SA | 25 Eugène-Marziano 1227 Les Acacias | Hosting provider |

1. The following types of incidents are excluded from customer response levels as described above: (i) incidents regarding a release, version and/or functionalities of the Product developed specifically for customer; (ii) the root cause behind the incident is not a malfunction, but a missing functionality (“development request”) or the incident is ascribed to a consulting request (“how-to”). [↑](#footnote-ref-1)