Terms and Conditions

Updated February 2025

These terms and conditions (the "**T&Cs**") regulate the relationship between you ("**you**" and/or the "**Customer**") and Audiencerate Italia S.r.l., Foro Buonaparte 51 Milan (MI), Italy ("**AR**") from which you are procuring Offerings and it governs the terms and conditions of the use of Offerings purchased through either Microsoft AppSource or Azure Marketplace (as defined below).

(The Customer and AR may also be referred to individually as a "**Party**" and collectively as the "**Parties**")

These T&Cs is the Parties' entire agreement on this subject and merges and supersedes all related prior and contemporaneous agreements. By agreeing to the terms of these T&Cs, you represent and warrant that you have the power and the authority to accept and comply to these T&Cs, and you also agree to be bound by its terms.

These T&Cs apply to all Orders entered into under these T&Cs.

Capitalized terms have the meanings given under Clause 10 "Definitions."

1. LICENSE

1.1. **License grant.** Offerings are licensed and not sold. Upon acceptance of an Order, and subject to Customer's compliance with these T&Cs, AR grants Customer a nonexclusive and limited license to use the ordered Offerings.

The Services may contain certain components that are subject to *open source software* licences.

The use of such components may be subject to additional terms and conditions that constitute an integral part of these T&Cs.

1.2. **Duration of Licenses.** Licenses granted on a subscription basis expire at the end of the applicable subscription period set forth in the Order, unless renewed.

1.3. **End Users.** Customer will control access to and use of the Offerings by End Users and is responsible for any use of the Offerings that does not comply with these T&Cs.

1.4. **Affiliates.** The Customer may request the Services for the use of its Affiliates, remaining, however, the only party liable under these T&Cs and the only one who can assert the rights deriving from it.

1.5. **Reservation of Rights.** AR reserves all rights not expressly granted in these T&Cs. Offerings are protected by copyright and other intellectual property laws and international treaties. No rights will be granted or implied by waiver or estoppel. Rights to access or use Offerings on a

device do not give Customer any right to implement AR's patents or other intellectual property in the device itself or in any other software or devices.

1.6. **Restrictions.** Except as expressly permitted in these T&Cs, Documentation or an Order, Customer must not (and is not licensed to):

   a) copy, modify, reverse engineer, decompile, or disassemble any Offering, or attempt to do so;

   b) use an Offering for any unlawful purpose;

   c) distribute, sublicense, rent, lease, or lend any Offerings, in whole or in part, or use them to offer hosting services to a third party.

1.7. **License transfers.** Customer may only transfer, upon notification, fully-paid, perpetual licenses to (i) an Affiliate or (ii) a third party solely in connection with the transfer of hardware to which, or employees to whom, the licenses have been assigned as part of (A) a divestiture of all or part of an Affiliate or (B) a merger involving Customer or an Affiliate.

Upon such transfer, Customer must uninstall and discontinue using the licensed Offering and render any copies unusable. Customer must notify AR of a License transfer and provide the transferee a copy of these T&Cs and any other documents necessary for the understanding of the terms and conditions for use of the licence. Any transfer in violation of this Article 1.7 shall be considered void.

2. **PRIVACY:** AGREEMENT FOR APPOINTMENT AND INSTRUCTION OF THE DATA PROCESSOR (art. 28 of EU Regulation 2016/679)

2.1. **Applicable legal provisions**

The Parties to these T&Cs hereby undertake to comply with the legal provisions on personal data processing, including the General Data Protection Regulation (EU) 2016/679 (GDPR), in relation to all activities carried out under these T&Cs.

2.2. **Definition of roles: Data Controller and Data Processor**

The Customer is the Data Controller, while Audiencerate Italia S.r.l. qualifies as Data Processor.

2.3. **Processing activities of data subject to T&Cs**

In performance of these T&Cs, the Data Controller is authorised to process personal data (e.g. identification, contact, geolocation, accounting and tax data, IP addresses, information relating to the activities carried out and the preferences expressed by the data subjects, as well as data of particular and/or judicial nature, if provided by the Customer and relating to its users), which are necessary for the proper execution of contractual obligations and to the extent of this purpose, related to the software licence. The Data Controller declares to have collected personal data, to have access to and to process them in compliance with all the provisions of EU Regulation 2016/679 and/or of the legislation applicable to this case (by way of example but

not limited to, with reference to the collection and tracking of the data subject's consent). The Data Controller undertakes to indemnify and hold harmless the company of the Data Processor from any damage, injury, cost, expense, charge that the latter shall suffer and/or have to pay to third parties due to the Data Controller's breach of applicable law.

The Data Processor and their DPO may be contacted at the addresses specified in these T&Cs or otherwise communicated.

2.4. Purposes of personal data processing covered by the T&Cs

The Data Processor is authorized to process data for the sole purpose of managing the software licensed to the Customer, including the related activities of support and maintenance, evolutionary intervention, statistical analysis on the performed activities (through the use of anonymous, non-personal information) and those necessary to comply with applicable legal obligations, any other purpose being prohibited. In the processing activities, the Data Processor operates in accordance with the general principles of lawfulness, fairness, transparency, purpose limitation, minimisation, accuracy, storage limitation, integrity, confidentiality, accountability, privacy by design and privacy by default.

2.5. Rights of data subjects and authorisation to appoint Sub-Processors

The Data Controller uses the software licensed by the Data Processor, entering data subjects' personal information, after making them aware of the processing nature, through appropriate information and consent, if requested by collection and processing purposes. If the Data Processor receives requests from data subjects to exercise their rights, the Data Processor shall promptly notify the Data Controller.

The Data Processor is authorised, in general terms, to appoint Sub-Processors, delegating them specific processing activities, appointing them by means of a special deed in line with the requirements of this document and ensuring that the appointee complies with all applicable legal provisions on the matter. The complete list of Sub-Processors is available on the Data Processor's website.

2.6. Storage of personal data and deletion obligations

The Data Processor hereby undertakes to keep the data no longer than necessary for compliance with the contractual obligations: once the relationship with the Data Processor has ended, the Customer undertakes to make a copy of the information entered in the software and to delete any information contained therein. The Data Controller hereby acknowledges that, in case of non-deletion, the Data Processor shall terminate the contractual relationship, retaining no copy of the data, unless such retention is required by law and, in any case, limited to the information subject to the latter obligation.

The Data Processor stores the data within the European Economic Area (EEA): should they engage Sub-Processors for data transfer outside the EEA, they ensure that this will be done in compliance with the provisions of EU Regulation 2016/679 (e.g. based on adequacy decisions or standard contractual clauses).

2.7. Confidentiality of personal data processed in the name and on behalf of the Data Controller

The Data Controller undertakes to ensure compliance with the confidentiality and security obligations set out by law, by appointing, training and instructing the persons authorised to process data within the organisation.

2.8. Register of data processing

The Data Processor undertakes to keep and update a register describing the processing carried out in the name and on behalf of the Data Controller as well as to process the data solely for the purpose and according to the instructions received.

2.9. Technical and organizational security measures

The Data Processor shall ensure that the processing is carried out by taking the necessary and appropriate security measures – technical and organizational – in order to minimize any risk of destruction or loss, even accidental, modification, disclosure and/or unauthorized access, even accidental or unlawful, or of processing that is not allowed or compliant with the purposes of the data collection.

In case of personal data breach, the Data Processor shall inform the Data Controller within 24 hours of becoming aware of it, providing information on the nature of the breach, the data subjects and the type of data involved.

2.10. Obligations of the Data Controller

The Data Controller undertakes to record in writing the instructions on data processing given by the Data Processor.

2.11. Termination of processing operations

Upon termination of the contractual relationship, the Data Processor shall delete any data processed in the name and on behalf of the Data Controller, without prejudice to the retention obligations set out in specific legal provisions.

3   CONFIDENTIALITY

3.1   **Non-Disclosure Agreement.** The Parties will treat all Confidential Information exchanged between the Parties under these T&Cs in accordance with the separate nondisclosure agreement ("**NDA**") executed by the **P**arties. If no separate NDA is in effect, the following provisions apply to the Parties' exchange of Confidential Information.

3.2   **Confidential Information.** "Confidential Information" is non-public information that is designated "confidential" or that a reasonable person should understand is confidential, including, but not limited to, Customer Data, Support Data, the terms of these T&Cs, and Customer's account authentication credentials. Confidential Information does not include information that: (1) becomes publicly available without a breach of a confidentiality obligation; (2) if it is required in accordance with any legal or other regulatory provision or if requested by a competent authority.

3.3   **Protection of Confidential Information.** Each Party will take reasonable steps to protect the other's Confidential Information and will use the other Party's Confidential Information only for purposes of the Parties' business relationship. Neither Party will disclose Confidential Information to third parties, except to its Representatives, and then only on a need-to-know basis under nondisclosure obligations at least as protective as these T&Cs. Each Party remains responsible for the use of Confidential Information by its Representatives and, in the event of discovery of any unauthorized use or disclosure, must promptly notify the other Party.

3.4   **Duration of Confidentiality obligation.** These obligations apply: (1) for Customer Data, until it is deleted by AR; and (2) for all other Confidential Information, for a period of five years after a Party receives the Confidential Information.

4   SERVICE LEVEL AGREEMENT (SLA)

4.1   AR may offer further availability and support obligations for an Offering. Such service level agreement ("**SLA**") will be made available by AR to Customer.

5   REPRESENTATION, WARRANTIES AND <u>INDEMNITY</u>

5.1   AR continuously represents and warrants that:

a)   it has full rights and authority to enter into, perform under, and grant the rights in, these T&Cs;

b)   its performance will not violate any agreement or obligation between AR and any third party;

c)   the Offering will substantially conform to the Documentation;

d)   based on the information available to AR, the Service:

(i)   will not infringe or violate any third party patent, copyright, trademark, trade secret, or other proprietary right; or

(ii)   will not contain viruses or other malicious code that will degrade or infect any products, services, software, or Customer's network or systems while performing under these T&Cs;

e)   will comply with law, including Data Protection Laws and Anti-Corruption Laws, and will provide training to its employees regarding Anti-Corruption Laws.

5.2   **Disclaimer.** Except as expressly stated in these T&Cs, the Offering is provided as is. To the maximum extent permitted by law, AR disclaims any and all other warranties (express, implied or statutory, or otherwise) including merchantability or fitness for a particular purpose, whether arising by a course of dealing, usage or trade practice, or course of performance.

5.3   **Indemnity.** The Customer agrees to indemnify AR and its Affiliates against any claim, action, suits or third-party action arising from or relating to: a breach of this Contract or the user terms and conditions made by the Customer and/or the Customer's Affiliate (the '**Claim against AR'**), and shall indemnify AR and its Affiliates for all legal expenses incurred and for damages

and other costs finally awarded against AR and/or its Affiliates (as well as amounts paid by AR or its Affiliates) in connection with, or as a result of, a Claim against AR. AR shall provide the Customer with prompt written notice of any Claim against AR.

6   LIMITATION OF LIABILITY

6.1   For the use of each Offering, each Party's liability to the other under these T&Cs is limited to direct damages finally awarded in an amount not to exceed the amounts Customer was required to pay for the Offerings during the term of the applicable licenses, subject to the following:

   a)   Subscriptions. For Offerings ordered on a subscription basis, AR's maximum liability to Customer for any incident giving rise to a claim will not exceed the amount Customer paid for the Offering during the 12 (twelve) months before the incident or $20.000,00 (twenty thousand/00), whichever is greater.

   For Offerings ordered on a subscription basis, AR's maximum liability to Customer for any unauthorized access, use, or disclosure of Customer Data due to a breach of AR's obligations under Section II (6) (Security), AR's maximum liability to Customer will not exceed two times (2x) the amount Customer paid for the Offering during the 12 months before the incident or $20.000,00 (twenty thousand/00), whichever is greater.

   b)   Free Offerings and distributable code. For Offerings provided free of charge and code that Customer is authorized to redistribute to third parties without separate payment to AR, AR's liability is limited to direct damages finally awarded up to $1.000,00 (one thousand/00).

   c)   No Indirect Damages. In no event will either Party be liable for indirect, incidental, special, punitive, or consequential damages, or loss of use, loss of profits, or interruption of business, however caused or on any theory of liability.

   d)   Exceptions. No limitation or exclusions will apply to liability arising out of either Party's: (1) confidentiality obligations under Section 3 (except for liability related to Customer Data, which will remain subject to the limitations and exclusions above); (2) defense obligation under Section 7; (3) violation of the other Party's intellectual property rights; or (4) gross negligence, willful misconduct, or fraud.

7   PRICING AND PAYMENT

7.1   Microsoft will invoice and charge the *fees* due for using the Service by the Customer under the terms of the Microsoft Commercial Marketplace Terms of Use and applicable Order.

8   TERM AND TERMINATION

8.1   **Term.** These T&Cs is effective until the Order is in place or until terminated by a Party, as described below. The term for each Order will be set forth therein.

8.2 **Termination for cause.** Without limiting other remedies, it may have, either Party may terminate these T&Cs or any Order immediately on notice if (i) the other Party materially breaches the T&Cs or an Order, and fails to cure the breach within 30 (thirty) days after receipt of notice of the breach; or (ii) the other Party becomes Insolvent. Upon such termination, the following will apply:

a) All licenses granted under these T&Cs will terminate immediately.

b) All amounts due under any unpaid invoices will become due and payable immediately. For metered Offerings billed periodically based on usage, Customer must immediately pay for unpaid usage as of the termination date.

c) If AR is in breach, Customer will receive a credit for any subscription fees, including amounts paid in advance for unused consumption for any usage period after the termination date.

8.3 **Suspension.** AR may suspend use of the Offering without terminating these T&Cs during any period of material breach. AR will give Customer reasonable notice before suspending the Offering. Suspension will only be to the extent reasonably necessary.

8.4 **Average Consumption.** Annual plans purchasable through the Marketplace for the use of the Offerings, relies on usage forecasts and estimation of cloud infrastructure costs. In case AR determines that Customer's usage of the Offerings significantly exceeds the average consumption and results in disproportionate cloud infrastructure costs, AR reserves the right to require Customer to reduce their consumption within reasonable limits (the "**Consumption Request**") and apply additional charges for excessive consumption. On receiving the Consumption Request a Customer has 30 (thirty) days to comply. Should a Customer refuse to comply, or fail to comply, AR reserves the right to (i) suspend the usage of the Offerings, and (ii) considering these T&Cs in breach, terminate these T&Cs, according to Clause 10.2., considering the 30 (thirty) days provided by the same Clause already expired, and take appropriate actions.

8.5 **Refund.** For Offerings ordered on a subscription basis that are $100.000,00 (hundred thousand/00) or more, if AR breaches any of the foregoing warranties and those breaches remain uncured for 30 (thirty) days, Customer may terminate these T&Cs and AR will provide Customer a full refund of all fees paid to AR.

9 MISCELLANEOUS

9.1 **Entire Agreement**. These T&Cs supersedes all prior and contemporaneous communications, whether written or oral, regarding the subject matter covered in these T&Cs. If there is a conflict between any parts of these T&Cs, the following order of precedence will apply:

a) Order;

b) these T&Cs;

c) Service Level Agreement (SLA); and

d)   Documentation, if applicable.

9.2   **Independent contractors.** The Parties are independent contractors. Customer and AR each may develop products independently without using the other's Confidential Information.

9.3   **Amendments.** Unless otherwise agreed in a writing signed by both Parties, AR commits to notify any substantial changes to these T&Cs during the term of these T&Cs.

9.4   **Assignment.** Either Party may assign these T&Cs without the consent of the other Party to an Affiliate in case of a merger, reorganization, acquisition, or other transfer of all or substantially all of such Party's assets. Any other proposed assignment of these T&Cs must be approved by the non-assigning Party in writing. Assignment will not relieve the assigning Party of its obligations under the assigned agreement. Any attempted assignment without required approval will be void.

9.5   **Severability.** If any part of these T&Cs is held to be unenforceable, the rest of the T&Cs will remain in full force and effect.

9.6   **Waiver.** Failure to enforce any provision of these T&Cs will not constitute a waiver. Any waiver must be in writing and signed by the waiving Party.

9.7   **Notices.** Notices must be in writing and will be treated as delivered on the date received at the address, date shown on the return receipt, email transmission date, or date on the courier or fax confirmation of delivery. Notices to AR must be sent to the address stated in the Order. Notices to Customer will be sent to the individual at the address Customer identifies on its account as its contact for notices.

9.8   **Applicable law.** The T&Cs, and all matters arising directly or indirectly from the T&Cs, shall be governed by, and construed in accordance with, the laws of Italy. The Parties agree to submit to the exclusive jurisdiction of the Courts of Milan in respect of any dispute which arises out of the T&Cs.

9.9   **Government procurement rules.** By accepting these T&Cs, Customer represents and warrants that: (1) it has complied and will comply with all applicable government procurement laws and regulations; (2) it is authorized to enter into these T&Cs; and (3) these T&Cs satisfies all applicable procurement requirements.

9.10   **Compliance with laws.** AR will comply with all laws and regulations applicable to its provision of the Offerings. AR will obtain and maintain any approvals, licenses, filings, or registrations necessary to its performance, and will comply with all law (including law related to export, corruption, money laundering, or any combination of these). Customer must also comply with laws applicable to their use of the Offerings.

9.11   Lists of examples following "including", "e.g.", "for example", or the like are interpreted to include "without limitation," unless qualified by words such as "only" or "solely." These T&Cs will be interpreted according to its plain meaning without presuming that it should favor either Party. Unless stated or context requires otherwise:

a)   all internal references are to these T&Cs and its Parties;

b) URLs are understood to also refer to successors, localizations, and information or resources linked from within websites at those URLs;

c) a Party's choices under these T&Cs are in its sole discretion, subject to any implied duty of good faith;

d) "written" or "in writing" means a paper document only, except where email is expressly authorized;

e) "days" means calendar days;

f) "may" means that the applicable Party has a right, but not a concomitant duty,

g) "partner," if used in these T&Cs or related documents, is used in its common, marketing sense and does not imply a partnership;

h) "current" or "currently" means "as of the Effective Date" but "then-current" means the present time when the applicable right is exercised or performance rendered or measured;

i) a writing is "signed" when it has been hand-signed (i.e., with a pen) or signed via an electronic signature service by a duly authorized representative of the signing Party.

10. **DEFINITIONS**

"**Affiliate**" means any legal entity that controls, is controlled by, or is under common control with a Party.

"**Anti-Corruption Laws**" means all laws against fraud, bribery, corruption, inaccurate books and records, inadequate internal controls, money-laundering, and illegal software, including the U.S. Foreign Corrupt Practices Act.

"**Confidential Information**" has the meaning set out in Clause 3.

"**Consumption Request**" has the meaning set out in Clause 8.4.

"**Control**" means ownership of more than a 50% interest of voting securities in an entity or the power to direct the management and policies of an entity.

"**Customer Data**" means all data, including all text, sound, software, image or video files that are provided to AR or its Affiliates by, or on behalf of, Customer and its Affiliates through use of the Offering. Customer Data does not include Support Data.

"**Data Protection Law**" means any law applicable to AR or Customer, relating to data security, data protection and/or privacy, including Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to processing of personal data and the free movement of that data ("GDPR"), and any implementing, derivative or related legislation, rule, regulation, and regulatory guidance, as amended, extended, repealed and replaced, or re-enacted.

"**Documentation**" means all user manuals, handbooks, training material, requirements, and other written or electronic materials AR makes available for, or that result from use of, the Offering.

"**End User**" means any person Customer permits to use an Offering or access Customer Data.

"**Insolvent**" means admitting in writing the inability to pay debts as they mature

"**Offering**" means all services, websites (including hosting), solutions, platforms, and products identified in an Order and that AR makes available under or in relation to these T&Cs, including the software, equipment, technology, and services necessary for AR to provide the foregoing. Offering availability may vary by region.

"**Order**" means an ordering document used to transact the Offering via the Marketplace.

"**Personal Data**" means any information relating to an identified or identifiable natural person.

"**Representatives**" means a Party's employees, Affiliates, contractors, advisors and consultants.

"**Standard Contractual Clauses**" means the standard data protection clauses for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection, as described in Article 46 of the GDPR.

"**Subcontractor**" means any third party: (1) to whom AR delegates its obligations under these T&Cs, including a AR Affiliate not contracting directly with Customer through an Order; or (2) who, in performing under a contract between it and AR or a AR Affiliate, stores, collects, transfers or otherwise processes Personal Data (obtained or accessed in connection with performing under these T&Cs) or other Customer Confidential Information.

"**Support Data**" means all data, including all text, sound, video, image files, or software, that are provided to AR by or on behalf of Customer (or that Customer authorizes AR to obtain from an Offering) through an engagement with AR to obtain technical support for the Offering covered under these T&Cs.

"**Use**" means to copy, download, install, run, access, display, use or otherwise interact with.