



# 1 Agreement on compliance with the framework conditions for *swiss hosting*

## 1.1 Agreement

\_\_\_\_\_ (Hosting/Cloudpartner) hereby guarantees its customer (licensee) \_\_\_\_\_ that the requirements listed below for the use of the *swiss hosting* label are met. However, the hosting/cloud partner does not thereby acquire the right to label its own offers with *swiss hosting*.

## 1.2 Conditions of use for the logo

The following conditions must be met before a license holder can market their services with the *swiss hosting* logo:

1. The license holder and its management must be legally and physically situated in Switzerland (see Art. 49 (1) Markenschutzgesetz [Trademark Protection Act]).
2. Hosting services relating to
  - offered applications
  - data
  - factual data (business information, financial data, research results etc.)

must be located in/running at a data center located within Switzerland. Data protection and data security requirements must be subject to Swiss law.

3. If the license holder offers software as a service (SaaS), only those for which the host also meets the requirements mentioned above can carry the *swiss hosting* logo. The license holder shall obtain written assurance of this from the host.
4. Access to the hosting environment and/or the data for operation from abroad and administration by the host must be protected in such a way that data remains entirely in Switzerland and cannot be accessed or claimed by a foreign organization or government, no matter whether directly or indirectly. This also applies to foreign companies within the Group.
5. In the case of mixed offerings (where hosting located both within Switzerland and abroad is possible), the logo may only be used for offerings that fully meet the criteria. The intended audience must be able to clearly distinguish between the offerings that do and do not meet the criteria.

By entering into the present agreement, the hosting/cloud partner confirms to the licensee that the above criteria are met. If the hosting/cloud partner no longer meets the requirements during the term of the agreement, it must inform the licensee immediately.

In case of doubt, swiss made software GmbH reserves the right to specify the criteria for assessing the character of the services at its own discretion and to prohibit the use of the logo in borderline cases with immediate effect.



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### **1.3 Sanctions for breaching this agreement**

Improper use of the *swiss hosting* label is a punishable offense (see Art. 64, Markenschutzgesetz [Trademark Protection Act]; Art. 23 UWG [Unfair Competition Act]). Use of the *swiss hosting* logo without concluding this user agreement with swiss made software GmbH is prohibited (Art. 67 of the Markenschutzgesetz [Trademark Protection Act]).

If swiss made software GmbH deems that the license holder or its hosting / cloud partner has deliberately misused the logo, then swiss made software GmbH may make this knowledge public at its discretion.

If a partner to this agreement violates a provision in accordance with section 1.1 and/or 1.2, it shall owe swiss made software GmbH a contractual penalty of CHF 25,000.

Payment of the contractual penalty does not release the contractual partner from fulfilling the criteria for using the logo. The right to make further claims is reserved.

Termination of this agreement will not lead to a waiver of the sanctions in accordance with this section 1.3.

### **1.4 Responsibility and trust**

The obligations under this agreement come into force with the confirmation of the conclusion of this agreement by swiss made software GmbH and are valid for one year.

The agreement can be terminated by either party at the end of the calendar year, otherwise their contract will be automatically extended for a further year.

If the conditions cease to be met during the year, the license holder must inform swiss made software immediately and remove the logo. The annual fee will not be refunded either in whole or in part.

Each party is entitled to terminate the agreement for good cause at any time without notice. Good cause is deemed to exist in particular where the other party breaches the contractual obligations incumbent upon them and has been asked to cease this breach of the agreement by giving 30 days' notice, but this has been to no avail.

The license holder is also entitled to terminate the agreement with immediate effect if the license holder violates the rights associated with this logo or supports third parties in an attack on the logo.

### **1.5 Third party rights and infringements**

swiss made software GmbH is unaware of any legal defects in the logo. However, it does not guarantee the legal validity of the logo. Further, it offers no warranty that the use of the logo does not infringe the rights of third parties or cause damage to third parties.

### **1.6 Miscellaneous**

The hosting / cloud partner undertakes not to register and/or use any mark that is confusingly similar to the logo either during this term or after termination of this agreement. Logos with a different color but a similar shape can also be considered



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confusingly similar. The license holder will transfer the rights to such marks to swiss made software GmbH free of charge upon first request.

Should a provision of this agreement be invalid or incomplete, the legal validity of the remaining provisions shall remain unaffected. In the event of an invalid provision, this is to be replaced with a valid provision that comes close as possible to the economic purpose intended by both parties. This applies analogously in the case of any provisions being incomplete.

In addition, the contract can be adapted to the criteria in point 1.2 in particular by means of unilateral notification by e-mail from swiss made software GmbH with 30 days' notice to the end of each month. If the licensee is worse off as a result of this adjustment, he/she has an extraordinary right of termination which he/she must exercise before the changes come into effect, otherwise the adjustment is deemed to have been approved. If the right of termination is exercised, the logo must be completely removed immediately and swiss made software must be informed of this without being asked.

Otherwise, changes and/or additions to this contract must be made in writing.

Translated with [www.DeepL.com/Translator](http://www.DeepL.com/Translator) (free version) This agreement is subject to Swiss law in form and content.

This agreement has been produced in German and English. The English version is a courtesy translation, and while all care has been taken to ensure that it is an accurate translation, in the event that there are any discrepancies between the German and English texts, the German text shall be definitive.

The exclusive place of jurisdiction for all disputes arising from and in connection with this agreement is Basel.

Date: \_\_\_\_\_

City: \_\_\_\_\_

Signature: \_\_\_\_\_

Company: \_\_\_\_\_