

The service "Tidal Control" is offered over the internet in the form of Software-as-a-Service by the company Tidal Control B.V. The use of Tidal Control is subject to the below terms and conditions. Using Tidal Control constitutes acceptance of these terms and conditions. Deviations from these terms and conditions is possible only by means of written confirmation by Tidal Control B.V.

## 1. DEFINITIONS

1. In these Terms and Conditions, the following definitions apply:

**Tidal:** Tidal Control B.V., with its registered office in 's-Hertogenbosch and with Chamber of Commerce number 90964101.

**Tidal Control:** A software as a service offered and operated by Tidal

**General Terms and Conditions:** General Terms and Conditions entitled "Terms and Conditions Tidal".

**Documentation:** the description of the functionality and possible uses of Tidal Control made available online by Tidal

**Defect:** a demonstrable and reproducible defect in Tidal Control as a result of which Tidal Control's functionality differs fundamentally from its description in the Documentation and/or the Contract.

**User:** an employee of the Client or a person engaged by the Client who uses Tidal Control;

**Hosting Environment:** the servers (including the corresponding and additional facilities), belonging to the supplier on which Tidal Control is installed, and which is accessible via the internet or another network.

**Incident:** a malfunction, not caused by a Defect, as a result of which Tidal Control is (partly) not available.

**Credentials:** the authentication data referred to in Article 5.1 of the Terms and Conditions, such as a username and password that enable access to Tidal Control.

**Office Hours:** 08:00 to 17:00 (Central European Time/Central European Summer Time) on Monday to Friday, except for generally recognised holidays and public holidays.

**Contract:** a document which declares that the General Terms and Conditions and the Tidal Control Terms and Conditions apply, and which describes the Documentation and the Work.

**Client:** the party that purchased a license on Tidal Control from Tidal

**Tidal Control Terms and Conditions:** these terms and conditions that apply to the use of Tidal Control.

**Agreement:** The General Terms and Conditions, the Tidal Control Terms and Conditions and the Contract together with any other documents and conditions which are applicable in the relationship between Tidal and the Client ('Additional Conditions') and to which the Contract expressly refers.

**Service Level:** The agreed upon measures of performance for Tidal Control.

**License Period:** The agreed upon period of a license for Tidal Control.

## 2. AMENDMENT TO THE TERMS AND CONDITIONS / FORMATION OF THE AGREEMENT

1. Tidal may, within reason, make amendments to these Terms and Conditions at any time. Amendments will be notified to the Client in writing or by email. Amendments will only become effective 30 days after the Client has been notified of them or at a later date indicated in the notification. If the Client continues to use Tidal Control after this date, the Client consents to the amended Terms and Conditions.
2. In addition to Article 3.1 of the General Terms and Conditions, the Agreement will come into being at the moment that the Client and/or Users use Tidal Control.

## 3. TIDAL CONTROL

1. Tidal will provide Tidal Control to the Client as stated in the Contract. Tidal will carry out the following Work as part of the service for the duration of the Agreement:
  - a. making and keeping Tidal Control and Client's data available within the Hosting Environment. If the Contract states that the Hosting Environment will be hosted, maintained and/or managed by a Tidal supplier, availability will be dependent on that supplier.
  - b. taking appropriate technical and organisational measures in the Hosting Environment to protect Tidal Control and the

Client's data against loss and damage and against any unauthorised access or use.

- c. providing User support to the Client, during Office Hours, for the use of Tidal Control.
- d. if and to the extent determined in the Contract, making a back-up of the Client's data that are processed using Tidal Control.
- e. if and to the extent determined in the Contract, providing workarounds if access to the Hosting Environment in which the Tidal Control is installed is temporarily or permanently impossible.

## 4. ACCESS TO AND EXTENT OF USE OF TIDAL CONTROL

1. Tidal grants the Client the non-exclusive and non-transferable right to Tidal Control within the geographical area specified in the Contract for the duration stipulated in the Contract and under the terms of the Agreement.
2. Unless agreed otherwise in the Contract, the Client may only use Tidal Control for processing data from its own organisation. The Client will not use Tidal Control for the benefit of any third party and/or enable a third party to use Tidal Control unless agreed otherwise in the Contract. The Client may not transfer, issue or disclose the Credentials or allow inspection by or make them available to a third party unless they are provided to third parties to whom the Client is entitled to provide Tidal Control under the Contract.
3. Tidal is authorised to take technical measures to protect Tidal Control or with a view to agreed limitations to the duration or scope of Tidal Control. The Client is not authorised to remove or bypass the technical measures in Tidal Control.
4. Tidal is entitled to alter the nature and the extent of Tidal Control by, among other things, offering an altered or new version of Tidal Control or by using an altered or different Hosting Environment. Tidal is entitled to maintain, alter or add to the functionalities or properties of Tidal Control.
5. Tidal is entitled to put Tidal Control out of operation, either wholly or in part, for maintenance purposes or for security reasons. Tidal will not put Tidal Control out of operation for longer than is necessary and will render it inoperable outside Office Hours if possible and, to the extent possible in the given circumstances, it will do so after notifying the Client.
6. In principle, Tidal provides Tidal Control without restrictions in respect of demands made on the Hosting Environment. If the Client places excessive demands on and/or makes unauthorised use of the Hosting Environment, Tidal will notify the Client of this and the Client must then cease and desist from placing excessive demands on or making unauthorised use of the Hosting Environment. Tidal is entitled to suspend provision of Tidal Control if the Client does not cease placing excessive demands on and/or making unauthorised use of the Hosting Environment after Tidal has notified the Client thereof as referred to in this paragraph.
7. If and to the extent that the Client is entitled under the Contract to confer on third parties the user right to Tidal Control referred to in this article, the Client will be fully responsible and liable to Tidal for those third parties' use of Tidal Control and the Client will guarantee that those third parties use Tidal Control in accordance with the applicable terms and conditions. The Client indemnifies Tidal against any claims by third parties relating to their use of Tidal Control unless such claims are the result of intent or wilful recklessness on the part of Tidal's executive staff. This indemnity includes all loss suffered and legal and other costs incurred by Tidal in connection with such claims.

## 5. CREDENTIALS AND ONLINE USE OF TIDAL CONTROL

1. The Credentials are personal, non-transferable and secret. The Client guarantees that every User will take all reasonable measures to prevent the Credentials from becoming known to unauthorised persons and that it will immediately notify Tidal if it discovers any form of unauthorised use of the Credentials or any other breach of the security measures regarding Tidal Control.
2. Once a User has logged in using the Credentials, the User gains access to those parts of Tidal Control for which the User is authorised.
3. If Tidal discovers or reasonably suspects that unauthorised persons are using or can use the Credentials ("Unauthorised Use"), or if the Client notifies Tidal of such use by email, Tidal will immediately block such access to Tidal Control by the Credentials concerned. Tidal will immediately notify the Client about the Unauthorised Use and/or the blocking of the Credentials and it will confirm this in writing or by email as soon as possible

thereafter. After the Credentials have been blocked, the User must request replacement Credentials.

4. If the Unauthorised Use of the Credentials can be attributed to the User, the Client must reimburse Tidal with the reasonable administrative costs incurred in relation to the blocking and replacement of those Credentials, and the Client will be liable for any damage suffered as a result of the Unauthorised Use.
5. The Client will ensure that Users use the Credentials carefully. The Client is responsible for the consequences of Users' use of the Credentials and is liable to Tidal for any damage resulting from the use of the Credentials in breach of the Tidal Control Terms and Conditions. The Client indemnifies Tidal against any claims in this regard by third parties, unless such claims are the result of intent or wilful recklessness on the part of Tidal's executive staff. This indemnity includes all loss suffered and legal and other costs incurred by Tidal in connection with such claims.
6. Tidal is entitled to immediately terminate Users' access to and use of Tidal Control temporarily or permanently, wholly or in part, if:
  - a. Tidal is obliged to do so pursuant to an applicable rule of law or judicial decision.
  - b. the Client or a User act in breach of the SaaS Terms and Conditions.
  - c. a third-party act in breach of the Tidal Control Terms and Conditions via a User's account.
7. Tidal is entitled to remove data placed or stored by Clients and/or Users in Tidal Control and/or the Hosting Environment either wholly or in part if
  - a. in Tidal's opinion they are inappropriate, insulting, offensive or hurtful.
  - b. they are based on untruths or are unlawful,
  - c. they infringe the rights of third parties or Tidal, such as copyrights, trademark rights or other intellectual property rights; or
  - d. they infringe the privacy of third parties, e.g., the non-authorised publication of Personal Data or other data of other Users or third parties.
8. If access to and the use of Tidal Control is terminated pursuant to paragraph 6 of this article, Tidal will not owe any payment to the Client.
9. Access to and the use of Tidal Control will be terminated, as referred to in paragraph 6 of this Article, by sending an electronic notice of termination to the Client or by withdrawing the Credentials as a result of which Users will no longer be able to access and use Tidal Control.

**6. SUPPORT**

1. Unless determined otherwise in the Contract, Tidal or a third party appointed by Tidal will maintain a support function during Office Hours for providing, on Users' requests, information and advice about the use of Tidal Control and support in resolving or remedying Incidents or Defects.
2. Unless determined otherwise in the Contract, the Client will report Incidents and Defects electronically to Tidal's support function or the third party appointed by Tidal at support@tidalcontrol.com; any report made by a Client must, where possible, be accompanied by a documented example of the Incident or Defect. If required, and at the request of Tidal or the third party appointed by Tidal, the Client will collect as much data as possible to enable the cause of the Incident or Defect to be established as soon and as clearly as possible.
3. Tidal or the third party appointed by Tidal will handle any Incident or Defect reported as such if the Incident or Defect is demonstrable and reproducible.
4. During Office Hours, Tidal or the third party appointed by Tidal will respond to a report and will start to remedy the Incident or the Defect in accordance with the agreed upon Service level.
5. Work carried out by Tidal for the Client as a result of Users' and/or the Client's:
  - a. inexpert use of Tidal Control or non-compliance with Tidal's instructions.
  - b. use contrary to these Tidal Control Terms and Conditions; or
  - c. use of Tidal Control other than that described in the Documentation
 will be invoiced to the Client at Tidal's then applicable rates.
6. The provisions of this article and the Contract regarding the level of Tidal Control do not affect the Client's obligation to take appropriate measures itself and to maintain them to prevent and limit the consequences of: Incidents, Defects and/or the corruption or loss of data or other occurrences.

**7. THE CLIENT'S OBLIGATIONS**

1. The Client has the following obligations in addition to those set out in Article 6 of the General Terms and Conditions.
2. The Client itself is responsible for establishing and retaining a data communications connection with the internet or another network required to gain access to the Hosting Environment at which Tidal Control is hosted.
3. The Client must take appropriate technical and organisational measures to protect its equipment, infrastructure and data communications connection against viruses, malware and similar threats, and to prevent use of Tidal Control resulting in third persons gaining access to Tidal Control and/or the Hosting Environment.
4. The Client itself is responsible for the choice of Tidal Control, the use and application of Tidal Control, the data processed with Tidal Control, and decisions taken on the basis thereof.
5. The Client will ensure and guarantee that Users comply with the terms and conditions applicable to Users' use of Tidal Control and that they adhere to procedures laid down and instructions for use issued by Tidal in providing Tidal Control. The Client indemnifies Tidal against any claims by third parties relating to Users' use of Tidal Control unless such claims are the result of intent or wilful recklessness on the part of Tidal's executive staff. This indemnity includes all loss suffered and legal and other costs incurred by Tidal in connection with such claims.

**8. FEES / PAYMENT**

1. Notwithstanding Article 11.1 of the General Terms and Conditions, the fees for Tidal Control will be charged in advance for each payment period referred to in the Contract. If the Client does not pay the fees owed within the agreed period, the Client will be in default without any notice of default being required, in which case:
  - a. the Client will no longer be entitled to use Tidal Control.
  - b. Tidal will be entitled to deactivate access to and the use of Tidal Control remotely; and
  - c. Tidal will also be entitled to suspend its Work and other obligations without prejudice to its rights pursuant to Article 13 of the General Terms and Conditions.

**9. INTELLECTUAL PROPERTY RIGHTS**

1. The following provisions on intellectual property rights apply in addition to Article 9 of the General Terms and Conditions.
2. All intellectual property rights in respect of Tidal Control and the Documentation are vested in Tidal or its licensors and they will not be transferred to the Client based on these Terms and Conditions. The Client acknowledges these rights and will refrain from infringing them, directly or indirectly, in any way.
3. All intellectual property rights to the Client's data are vested in the Client or its licensors. The Client indemnifies Tidal against action taken by third parties against Tidal for an (alleged) infringement of their intellectual property rights due to storage of the data in the Hosting Environment.
4. No statement of copyright, logo, figurative mark or any other reference to Tidal or its licensor(s) may be removed from the Documentation.
5. Tidal is entitled to post the name and logo of the Client or its clients, to which user rights to Tidal Control have been granted, on its website and/or to post a reference list and to make this available, for information, to third parties.
6. Tidal is entitled to have an annual audit carried out on the Client's and Users' compliance with the Agreement regarding the use of Tidal Control. This audit will be carried out by an independent third party. The costs of it will be borne by Tidal unless the report shows that the Client and/or its Users has/have acted contrary to the Agreement.

**10. LIABILITY**

1. The limitations on liability set out in this article apply in addition to the limitations on liability contained in Article 14 of the General Terms and Conditions.
2. Notwithstanding Article 14.2 of the General Terms and Conditions, Tidal's liability will be limited to an amount equal to one (1) License period payable to Tidal for Tidal Control pursuant to the provisions of the Contract, except in the event of intent or wilful recklessness on the part of Tidal's executive staff. This limitation on liability applies in full in the event of liability to a number of Clients; in that case the amount paid by Tidal to all Clients jointly will not exceed one (1) License period payable to Tidal for Tidal Control pursuant to the provisions of the Contract.

3. Tidal is never liable for damage resulting in any way from inter alia:

- inexpert, careless use and/or the Client's use of Tidal Control in breach of these Terms and Conditions, the Documentation and/or the Agreement; or
- corrupt or lost data or other information of the Client.

4. Tidal does not guarantee that:

- Tidal Control satisfies the Client's purposes regarding its use of Tidal Control.
- Tidal Control will be provided without interruption and without Incidents or Defects; or
- all Incidents or Defects can be remedied.

5. Tidal is not responsible for Incidents or otherwise for malfunctions or faults in the access to or use of Tidal Control or for non-availability of Tidal Control due to malfunctions or faults in the computer equipment, software or data communications connections of the Client or third parties engaged by the Client. Nor is Tidal responsible for retrieving or recovering data affected by Incidents, Defects or any other occurrence whatsoever. The Client will bear financial responsibility for any damage suffered or costs incurred by it as a result of or in relation to the occurrences referred to in this paragraph 5.

**11. CONFIDENTIALITY**

- In addition to Article 8 of the General Terms and Conditions, the Client must keep information provided by or on behalf of Tidal and which is classified as confidential, and information and data that by their nature are confidential, secret from third parties, apart from parties involved with the Agreement. The same exceptions provided in Article 8.1 and Article 8.2 of the General Terms and Conditions apply to this obligation of confidentiality.
- The Client will take all the measures required to safeguard the secrecy of the information and/or data and to prevent the information and/or data from being published or otherwise disclosed.
- The Client is not entitled to use any information made available to it by Tidal for any purpose other than that for which it was obtained.
- In line with Article 8.7 of the General Terms and Conditions, the Client will impose these obligations on third parties engaged by it.

**12. PROCESSING OF PERSONAL DATA**

- To the extent that Tidal processes personal data from the Client in the context of Tidal Control, the Client determines the purpose and means of the processing and will thus act as a controller and Tidal as a processor within the meaning of the GDPR. Paragraph 4 up to and including 7 of Article 16 of the General Terms and Conditions will not be applicable and the remaining paragraphs of article 16 of the General Terms and Conditions will be applicable along with the following determined in this Article 12.
- The Annex personal data processing which is attached to these Terms and Conditions shall be filled out by the Client and be returned along with the acceptance of the Contract. The provisions in paragraph 3 of this Article 12, the Contract and the Annex personal data processing attached to these Terms and Conditions, together form the data processing agreement as referred to in the GDPR, which data processing agreement forms an integral part of the Agreement.
- To the extent Tidal acts as a processor, the following applies:
  - Tidal will solely process personal data on the documented instructions of the Client and for the performance of the Services in conformity with the Agreement, unless Tidal is required by law to process personal data, in which case Tidal will inform the Client about this legal requirement, unless the provision of such information is prohibited by law.
  - Tidal will take appropriate technical and organisational measures to protect the personal data against destruction, loss, alteration or unauthorised disclosure of, or access thereto.
  - Tidal is obliged to keep the personal data which the Client makes available or accessible to Tidal secret and ensures that all persons authorised by Tidal to process the personal data are bound by this confidentiality requirement.
  - Tidal will reasonably assist the Client in complying with its obligations regarding (i) responding to requests of data subjects, wishing to exercise their rights and (ii) complying with its obligations as laid down in Articles 32 up to and including 36 of the GDPR. Costs that Tidal incurs for such assistance shall be for the Client's account.

e. Tidal informs the Client without undue delay upon becoming aware of a personal data breach within the meaning of the GDPR. The client informs Tidal prior to the use of Tidal Control of an e-mail address which Tidal should use for such notification.

f. Tidal is entitled to engage third parties for the (support of) performance of the Work. Tidal will subject these third parties to contractual agreements in order to safeguard the careful processing of personal data in conformity with the GDPR. Tidal will inform the Client on the addition or replacement of engaged third parties. Tidal will, upon request, inform the Client prior to the use of Tidal Control about the engaged third parties.

g. Tidal is entitled to – in conformity with paragraph 3 sub f of this Article 12 – (have) process(ed) the personal data outside the Netherlands if necessary for the (support of) performance of the Work. If Tidal transfers personal data – for which the Client is controller within the meaning of the GDPR – to a third party situated in a country outside the European Economic Area (EEA), without adequate level of protection for the processing of personal data, the following applies: the Client hereby grants Tidal the power of attorney to enter model contracts in order to comply with the transfer requirements pursuant to the GDPR. To the extent that the before mentioned power of attorney is not sufficient or not valid, the Client will without delay fully cooperate with Tidal to ensure that such transfer meets the requirements of the GDPR.

h. The Client shall within two weeks upon termination of the Work, request Tidal to return or delete the personal data. In case of the absence of such request, Tidal is entitled to permanently delete the personal data.

i. Tidal enables the Client to, after prior consultation with Tidal, with reasonable intervals, demonstrate Tidal's compliance with the requirements as laid down in this paragraph 3, (i) by providing the – to be assessed by Tidal – necessary information and (ii) by allowing audits by the Client or a – after joint consultation – designated third party. Tidal reserves the right to set reasonable conditions to the audits and to charge the Client for costs incurred by Tidal due to the audit.

4. The Client ensures the lawful provision of the personal data to Tidal in the context of Tidal Control and will comply with all legal obligations which the Client is Subject to pursuant to the Applicable Privacy Legislation.

**13. COMMENCEMENT DATE, DURATION AND END**

- Unless stated otherwise in the Contract, the Agreement is entered into for an initial period of one (1) year. Notwithstanding Article 13.1 of the General Terms and Conditions, the Client may not terminate the Agreement during this initial period or during ensuing periods. After this initial period, the Agreement will be tacitly extended every year for one (1) year unless the Client has given notice to terminate the Agreement from the end of the then applicable period.
- The Client gives notice by sending a registered letter to Tidal at least one (1) month before the end of the agreed period.
- Tidal is also entitled to dissolve the Agreement in its entirety, extrajudicially and with immediate effect, without any demand or notice of default being required if Tidal cannot be expected to maintain the Agreement due to issues of independence in relation to Tidal. This also applies if dissolution of the Agreement is advised or required by a supervisory authority of Tidal or if maintaining the Agreement any longer could entail an infringement of applicable legislation and regulations by Tidal.
- If the Agreement is terminated, the Client must cease using Tidal Control immediately.
- Article 13.4 of the General Terms and Conditions also applies to termination based on paragraphs 2 or 3 of this article.
- If the Agreement is terminated, the parties will discuss termination of Tidal Control, the timetable for transferring the services to the Client or to another service provider, and the transfer of the Client's data. If Tidal Control is terminated even though the Client's data have not yet been transferred, Tidal will be entitled to invoice the Client for the reasonable costs of storing the Client's data.
- At the Client's request Tidal will provide support to the Client, to which Tidal's customary fees will apply, for transferring the services to the Client or to another service provider and for transferring the Client's data. Tidal is not liable for any damage resulting from such transfer

**Instructions**

Client hereby instructs Processor to carry out all Processing Activities as required for the provision of the Services. Possible additional specific instructions should be recorded in writing.

**Personal Data**

Tidal will receive, or be provided access or insight to, the following (categories of) data that directly or indirectly relate to a person:

#	Category
1.	
2.	
3.	
4.	
5.	
6.	
7.	

**Categories of Data Subjects**

The Personal Data as included above concern the following groups of persons:

#	Name
1.	
2.	
3.	
4.	
5.	
6.	
7.	