

# Main Services Agreement («MSA»)

of Brame AG («Brame» or «Service Provider»), Neuhofstrasse 10, 8834 Schindellegi, dated October 2022

## 1 Scope

1.1 This MSA governs the User's use of the Service Provider's services («Services»), including but not limited to:

- Cloud Services;
- Consulting Services; and
- Customized Services.

1.2 This MSA shall also apply if the User uses the Services free of charge. If no explicit agreement has been concluded, the User agrees to the MSA as soon as he starts to use the Services of the Service Provider.

1.3 The Services are generally accessible to all companies and persons except direct competitors. Competitors are prohibited from accessing the Services unless the Service Provider consents to such access in advance.

1.4 Every order of a Service by the User is subject to verification and acceptance by the Service Provider.

1.5 The «Agreement» between the User and the Service Provider consists of the MSA, the Service Level Specifications («SLS») and the Privacy Policy and, in the case of chargeable Services, the Agreement is amended by an order form and its annexes (collectively, the «Agreement»).

## 2 Services

### 2.1 Cloud Services

2.1.1 Users can use interactive campaigns via templates or modules on the Service Provider's website and use features to launch their own marketing campaigns and generate leads («Cloud Services»).

2.1.2 The Service Provider may provide the Cloud Services or a part thereof free of charge at its own discretion and terminate them at any time without replacement.

2.1.3 Cloud Services paid for by the User shall be provided by the Service Provider in accordance with the terms of the Order Form. The

use of the Cloud Services is enabled for the User in accordance with this MSA and the current SLS.

2.1.4 In order to ensure the actuality and effectiveness of the Cloud Services, the Service Provider reserves the right to expand, change, amend or delete the Cloud Services at any time. This may not affect ongoing marketing campaigns of paying users.

### 2.2 Consulting Services

2.2.1 In addition to the Cloud Services, the Service Provider offers consulting, maintenance and support services («Consulting Services»). Among other things, the User can purchase «Customer Success Managers» («CSM») as consulting services (e.g. for support during setup, onboarding, strategy workshop or game design).

2.2.2 The scope of Consulting Services is specified in the Order Form.

### 2.3 Customized Services

2.3.1 Upon request, the Service Provider offers products tailored to the User for use, such as interfaces for connecting to the User's software and User-specific interactive campaigns («Customized Services»).

2.3.2 The scope of the Customized Services shall be specified in the Order Form. The Service Provider shall ensure that the Customized Services comply with the defined specifications and are performed at the agreed times. An on-time provision of Customized Services requires that no delays occur for which the User is responsible.

2.3.3 The Customized Services provided or parts thereof shall be tested by the User within thirty (30) days of their provision («Test Period») in order to ensure that they comply with the relevant specifications («Test»). The provisions on the Test pursuant to this clause shall not apply to Customized Services that are not intended to be tested. If a Customized Service does not meet its specifications, the Service Provider shall be granted two (2) attempts to remedy this circumstance. A Customized Service shall

be deemed accepted if no written complaint is made within the Test Period (by E-mail or other form of text).

- 2.3.4 Before a Customized Service has been provided, the User may at any time request the Service Provider to make an appropriate change. A change request must be confirmed by the Service Provider for it to be binding. The User acknowledges that any change may affect the schedule and costs.

### 3 Software Patches, Updates und Upgrades

Security-related patches and general updates are included in the respective package ordered. Upgrades and additional features are charged and can be ordered via an Order Form.

### 4 Costs, Fees

- 4.1 The costs and fees for the Services, change requests and other services shall be specified in the Order Form. In the absence of such specification, the Service Provider's standard rates pursuant to SLS shall apply.
- 4.2 All costs and charges are subject to any applicable value-added, sales or other taxes, duties or charges («Taxes») imposed on the Services. User shall be responsible for the payment of all Taxes associated with the use of the Services unless User provides Service Provider with a valid tax exemption certificate approved by the applicable taxing authority. If the Service Provider becomes liable for such Taxes, for whatever reason, the User undertakes to pay such amount to the Service Provider immediately, unless such amount has already been paid by the User. The Parties agree, where possible, on a reverse charge procedure to simplify the payment of Taxes.
- 4.3 The User is responsible for any bank or other charges incurred in the payment of the Services. All amounts are to be paid in full without set-off, deduction or withholding.
- 4.4 All costs and fees are due and payable in full within thirty (30) days of invoicing, or as otherwise specified in the Order Form. Annual or monthly charges for use of the Services will be invoiced in advance of the applicable period. After expiration of the payment period the user is in default without reminder. In the event of late payment,

the Service Provider may charge interest on overdue payments at a rate of 5% per annum from the date of the invoice until the Service Provider has received full payment of the amount due together with all accrued interest.

## 5 Rights of Ownership and Use

### 5.1 Software Platform and Products of Service Provider

5.1.1 The Service Provider's software architecture is structured in such a way that the Cloud Services, Customized Services, tools, features, etc. (together the «Products») used by the User run on the Service Provider's software platform or connect to it. The software platform and the Products represent the core technology of the Service Provider. Customized Services are therefore adaptations or modifications of existing Products and not new developments.

5.1.2 The Service Provider is and remains the sole owner of the software platform and the Products, including all related work (e.g. written documents, computer code, concepts, data, know-how, etc.) and all related property and intellectual property rights worldwide.

5.1.3 Any improvement, development, modification or change of any kind of the software platform and the Products, including all related works (e.g. written documents, computer code, concepts, data, know-how, etc.) created, produced, written, edited, modified, designed or put into practice by the Service Provider alone or jointly with the User or third parties during the term of the Agreement, as well as all related property and intellectual property rights worldwide shall be the sole and exclusive property of the Service Provider, without any claim for compensation by any User or third party that may be involved.

### 5.2 User Content

User shall be the sole owner of its own content, logos, marks, etc. and all intellectual property and proprietary rights therein, and shall retain all right, title and interest in such content and products. User grants Service Provider a limited right to use such content and products during the term of this Agreement, if and to the extent necessary to provide the Services to User.

## 5.3 Rights of Use for Services

- 5.3.1 During the term of the Agreement, Service Provider grants User a limited, revocable, non-transferable, non-sublicensable and non-exclusive right to use the software platform and Products for its business purposes in accordance with the MSA and Order Form. Unless otherwise agreed, the use is limited to the country in which the User has its seat.
- 5.3.2 The Service Provider expressly reserves any rights not explicitly granted and the User shall not establish any claims against the Service Provider.
- 5.3.3 Any open source software or third party software included in the Services shall be granted in accordance with the open source or third party license.

## 5.4 Usage Obligations

The User shall (i) cooperate with the failure analysis, (ii) promptly report or forward any complaints and claims related to the Services, (iii) not take any action that is likely to damage the reputation of the Service Provider, infringe the intellectual property rights of the Service Provider or expose the Service Provider to any liability or sanction, (iv) not modify or alter the Service Provider's Services and Products (including future versions) in any way (other than configuration options provided by the Service Provider) without the Service Provider's prior written consent, (v) not reverse engineer, disassemble or decompile, or attempt to reverse engineer, disassemble or decompile the Service Provider's Services and Products (including future versions), in whole or in part, (vi) not create derivative works from the Service Provider's Services or Products, (vii) not copy or otherwise reproduce, in whole or in part, the Services and Products of the Service Provider, (viii) not alter or remove any markings or copyright notices on the Services and Products of the Service Provider under any circumstances, (ix) not manipulate the Services, Products and infrastructure of the Service Provider, (x) not use the Services and Products for illegal, unfair or objectionable purposes, (xi) not distribute viruses, Trojan horses or other malicious code through the Services and Products, (xii) not scrape the Services and Products by means of automated scripts, and (xiii) not circumvent or attempt to circumvent

any technical limitations or restrictions of the Service Provider's Services or Products.

## 5.5 Warranty, Liability

- 5.5.1 Service Provider's Services and Products are provided "AS IS" and Service Provider makes no warranty to User other than that the Services and Products have been developed in a workmanlike manner and in accordance with applicable industry standards and do not contain time bombs, viruses, Trojan horses or other malicious software.
- 5.5.2 Regardless of the foregoing, Customized Services shall be subject to the defect rights set forth in Section 2.3.3, whereby the Service Provider may make two (2) attempts to remedy a claimed and existing defect. If the Service Provider fails to do so, the costs for the Customized Services shall be reduced accordingly. Any other warranty rights or, in the case of Customized Services, a warranty beyond the term of the agreement are expressly excluded.
- 5.5.3 In the case of free services, any liability of the Service Provider is excluded. In the case of chargeable services, the Service Provider's total liability to the User or the User's total liability to the Service Provider, whether in contract, tort, breach of statutory duty or otherwise, shall not exceed the amount of the Services ordered. If the Agreement is concluded for more than 12 months, the maximum liability amount is the pro rata amount for the term of 12 months. Neither party shall be liable to the other for any lost profits, revenue, data, goodwill or indirect, exemplary, incidental, special or consequential damages suffered by the other party. Nothing in this Agreement shall exclude or limit in any way liability for (i) any infringement of Service Provider's rights in the software platform and Products or (ii) gross negligence, willful misconduct, fraud, death or personal injury.
- 5.5.4 Service Provider shall fully indemnify User in the event that any action or proceeding is brought against User for infringement of any existing rights of any third party by Service Provider's Services or Products, provided that (i) User immediately notifies Service Provider of the claim and the threatened assertion of a claim, (ii) Service Provider is granted sole authority to investigate, defend or settle the claim, and (iii)

Service Provider is provided with requested assistance in investigating, preparing, defending and settling the claim, subject to reimbursement of User's reasonable expenses.

- 5.5.5 The User warrants and represents that the User's own Content or Third Party Content used by the User does not violate any applicable laws or intellectual property rights or other proprietary rights of third parties. The Service Provider is not liable for the User's content or third-party content used by the User. The User shall be solely responsible for such content and shall fully indemnify the Service Provider.

## 6 Confidentiality, Data

### 6.1 Confidentiality

- 6.1.1 The Parties agree to keep confidential all Confidential Information disclosed by one Party (the «Disclosing Party») to the other Party (the «Receiving Party»). Without limitation, all non-public information about Service Provider's Services, Products and Software Platform is Confidential Information. All other Confidential Information must be (i) designated as such by the disclosing party in writing or other tangible form at the time of disclosure and clearly marked as «internal», «confidential», «secret» or «proprietary»; (ii) upon initial disclosure by the disclosing party in oral or other intangible form, marked as «internal», «confidential», «restricted», or «proprietary» at the time of disclosure and placed in tangible form by the Disclosing Party and provided to the Receiving Party within thirty (30) days of the date of initial disclosure; or (iii) otherwise reasonably believed to be confidential at the time of disclosure.
- 6.1.2 Regardless of the foregoing, Confidential Information shall not include any information that (i) is now or hereafter generally available to the public through no fault of the Receiving Party; (ii) the Receiving Party can demonstrate was lawfully in its possession prior to its disclosure by the Disclosing Party to the Receiving Party; (iii) was independently developed by a Party without the use of Confidential Information; or (iv) a Party lawfully receives from a third party that has the right to disclose Confidential Information.

- 6.1.3 The parties agree to keep the Confidential Information strictly confidential and to take all reasonable precautions to prevent its unauthorized use or disclosure, and not to use the Confidential Information for any purpose other than the fulfillment of this Agreement.

### 6.2 Data

- 6.2.1 The Service Provider may collect data in connection with the provision of the Services. However, Personal Data may only be processed by the Service Provider for its own purposes in anonymized and aggregated form.
- 6.2.2 If and to the extent that the Service Provider's performance includes or requires the processing of Personal Data, the Service Provider shall (i) process such Personal Data as a data processor for and on behalf of the User as data controller and only in accordance with the User's instructions and/or directions; (ii) adopt and implement all technical and organizational security procedures and measures necessary or appropriate to maintain the security and confidentiality of the Personal Data it processes and to protect such Personal Data from unauthorized or unlawful processing, accidental loss, destruction or damage; and (iii) comply with all applicable data protection laws as a data processor. User represents and warrants that it is authorized to process all Personal Data in accordance with applicable data protection laws. If necessary, the parties shall conclude a data processing agreement which shall become an integral part of the Agreement.
- 6.2.3 The User may request the Service Provider to hand over the User Data until thirty (30) days after the end of the Agreement. The handover shall be free of charge, but without any claim to a specific form of compilation or presentation of this data. After the expiry of this period, the Service Provider shall no longer be obliged to retain or provide User Data and may thereafter delete or destroy all co-pieces of User Data in its systems or otherwise in its possession or under its control, unless the Service Provider has a contractual or legal obligation to retain them.

## 7 Term, Termination

- 7.1 The term of the agreement is specified in each case in the Order Form. The Agreement shall be renewed for the same term unless terminated by either party in writing (e.g. E-mail) at least sixty (60) days prior to the expiration of the term. The extension will be made at the then current prices of the service provider.
- 7.2 Either party shall have the right to terminate this Agreement in writing at any time (i) in the event of a material breach of this Agreement by the other party that is not cured within thirty (30) days after written notice of such breach; or (ii) in the event of use of the Services and Products not in accordance with this Agreement.
- 7.3 On termination of the Agreement or upon a good cause for termination (i) all rights of use and other rights granted to User under this Agreement shall terminate; and (ii) User agrees to immediately pay all outstanding charges, fees and amounts otherwise owed.
- 7.4 In case of free services, the agreement begins with the start of use and ends with the deactivation of the User account. The Service Provider may terminate or delete free services as well as the account of a User of free services at any time without replacement and without compensation.
- 7.5 The provisions of Clause 4 et seq. of this Agreement shall remain applicable after termination of this Agreement.

## 8 Miscellaneous

- 8.1 **Marketing.** The User agrees that the Service Provider may use the User's name and logo as well as case studies on its website and in other materials (flyers, brochures, presentations, use cases, newsletters, etc.) during the term of the Agreement and also after its termination and may name the User as a user or customer. The User may revoke this permission in whole or in part at any time by written notice (e.g. by E-mail).  
  
In addition, the User agrees to receive information about the Service Provider's products and offers (e.g. via E-mail) during and after termination of the Agreement. The instructions for «opting out» can be found in the corresponding notification.

- 8.2 **Entire Agreement.** This MSA together with the documents referenced herein constitute the entire agreement between Service Provider and User with respect to the Services. Any additional agreements are void, unless explicitly stated in an Order Form of the Service Provider.
- 8.3 **Severability Clause.** Should individual provisions of this Agreement be invalid or incomplete, or should fulfillment become impossible, this shall not affect the validity of the remaining parts of this Agreement. In this case, the Service Provider undertakes to immediately replace the invalid provision with a valid provision that comes as close as possible to the original intention in terms of its content.
- 8.4 **Assignment.** Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party (which consent shall not be unreasonably withheld); provided, however, that either party may assign this Agreement in its entirety (including all Order Forms) without the consent of the other party to its Affiliate or in connection with a merger, acquisition, corporate reorganization or sale of all or substantially all of its assets. Subject to the foregoing, this Agreement shall be binding upon and inure in its entirety to the benefit of any successors permitted by this Section.
- 8.5 **Amendments to this Agreement.** Any amendments to this Agreement shall be made in writing (whereby the electronic form of text shall satisfy the requirement of writing under this Agreement). Notwithstanding the foregoing, the Service Provider reserves the right to amend this Agreement or any documents referenced herein at any time by notifying the User (by e-mail). If the User does not object (by e-mail) within thirty (30) days after the notification, the User agrees to the changes.
- 8.6 **Applicable Law and Jurisdiction.** This Agreement and all agreements relating to the Services shall be governed exclusively by the laws of Switzerland (without giving effect to any principles of conflicts of laws or international treaties that would give rise to the application of conflict of laws principles). The exclusive place of jurisdiction for any disputes arising in connection with this Agreement shall be Zurich, Switzerland.