

## GENERAL CONDITIONS - LE SPHINX DEVELOPPEMENT

**Le Sphinx Développement**, a limited liability company (SARL) with a capital of 100,000 €, registered with the Annecy Registry of Trade and Companies under number 398 616 342, whose registered office is at Parc Altais in Chavanod (74650), publishes software solutions for surveys and data analysis.

The solutions published by Le Sphinx Développement are software tools for conducting surveys and studies, from the simplest to the most complex. Le Sphinx Développement also provides its Customers with various study and training services.

After having examined the functional and technical qualities of the solution ordered and ensured its suitability for its needs, the Customer met with Le Sphinx Développement (hereinafter "the Publisher") to enter into a Contract subject to these General Conditions.

The General Conditions automatically apply to the Contract and govern the use of all software solutions published by the Publisher.

### 1. DEFINITIONS

Terms beginning with a capital letter in the General Conditions, whether used in the singular or plural, shall have the meaning ascribed to them below.

**Subscription:** the conditions applicable to the use of the Solution in SaaS mode as defined in the Purchase Order.

**Customer:** the company indicated on the Purchase Order.

**Order:** the document completed by the Customer and received by the Publisher constituting the Contract, under which the Publisher provides the Solution or a Service to the Customer in accordance with the offer chosen by the Customer, as applicable, and the General Conditions.

**Account:** the personal space of the Customer protected by identifiers giving access to the Full SaaS Offer, Customer Platform or Dedicated or Shared Hosting.

**Contract:** the Contract comprises the Purchase Order and the General Conditions.

**Documentation:** the document describing the technical and functional characteristics of the Solution along with any Prerequisites.

**Data:** information of any kind (questionnaires, results of surveys, studies, images, video, etc.) specific to the Customer.

**Personal Data :** In the meaning of Law No. 78-17 of January 6, 1978 amended "Data Protection Act" and Regulation (EU) No. 2016/679 called "General Data Protection Regulation" (together "Applicable Law"). Protection of Personal Data ), any information that relates directly or indirectly to an identified or identifiable living individual.

**Initial Term:** the number of months/years specified on the Purchase Order.

**Full SaaS:** a modality of provision of the Solution allowing the Customer to access the Solution remotely or via an internet connection. Modality included in the Full SaaS Offer.

**Dedicated Hosting:** storage of the Customer's Data on a Server of the Publisher that only hosts the Customer's specific account.

**Shared Hosting:** storage of the Customer's Data on a Server shared with other customers.

**Major Update:** new version of the Solution.

**Minor Update:** patches containing functional additions that are periodically made available.

**Offer:** the formula for provision of the Solution chosen by the Customer when placing the Order.

**On Premises:** a modality of provision of the Solution, with an installation of the Solution on the Customer's terminals. Modality included in the On-Premises Offer.

**Party:** the Customer and/or the Publisher.

**Customer Platform:** the Customer's server.

**Prerequisite:** the technical environment the Customer must first comply with for optimal use of the Solution, and in particular concerning the choice of internet browser.

**Service:** the services ordered by the Customer and performed by the Publisher.

**Servers:** the Publisher's servers.

**Solution:** the Publisher's software solutions ordered by the Customer, regardless of the provision modalities and options purchased.

**Price:** means the price stated in the Purchase Order.

**User:** anyone under the responsibility of the Customer (staff, service provider, etc.) and using the Solution.

## **2. DOCUMENTS**

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The Contract represents all the commitments existing between the Parties. It supersedes any prior oral or written agreement relating to the subject of the Contract.

The contractual documents are, in descending order of priority (1) the Purchase Order, (2) the General Conditions, (3) the Documentation relating to the Solution. In case of conflict, the higher-ranking document shall prevail for the obligation in question.

An estimate accompanied by the General Conditions and Documentation, if any, is sent to the Customer by the Publisher which specifies:

- the Service to perform and/or the characteristics of the Solution,
- the cost of the Service or Offer,
- the Service schedule,
- the price increases applied (in case of non-compliance of the number of variables or number of questionnaires in particular)

The estimate is valid for three (3) months from the date of issue. Within this period, the Customer must return the Purchase Order to the Publisher, initialled and signed.

By signing the Purchase Order, the Customer acknowledges having read and accepted these General Conditions.

## **3. PURPOSE**

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The Contract defines the terms and conditions according to which:

- The Publisher provides the software solution and/or Services to the Customer.
- The Customer subscribes to the licence and/or subscription offer and orders Services from the Publisher.

## **4. EFFECTIVE DATE, TERM, RENEWAL AND TERMINATION**

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### **4.1 Effective date**

The Contract enters into force from the date indicated on the Purchase Order, for the initial Term stipulated on the Purchase Order.

For the Full SaaS Offer, the Contract enters into force when the Customer Account is opened.

The Order constitutes a binding commitment on the part of the Customer.

### **4.2 Term**

The initial Term is specified on the Purchase Order, whatever the Solution or Service ordered.

At the end of the initial Term:

- regarding the Full SaaS Offer, the Customer who wishes to renew its Subscription must place a new Order.
- regarding the On-Premises Offer for a temporary licence, the Customer who wishes to renew its licence must place a new Order.
- regarding the Dedicated and Shared Hosting, the Customer who wishes to renew must place a new Order.

For study Services, a provisional schedule is specified when the Order is placed. This schedule is only indicative to the extent that it depends on the collaboration and communication of documents by the Customer, and its availability.

### **4.3 Termination**

Without prejudice to their other rights under the Contract, each Party may terminate the Contract with immediate effect subject to written notice in the following cases:

- In case of non-performance or poor performance of one of the obligations of these General Conditions by a Party, and in particular in case of failure or late payment by the Customer, which it fails to remedy within twenty (20) calendar days of receipt of written notice outlining the failure or breach and requiring its remedy (if possible).

- If there is a delay or non-performance of the Contract of more than three (3) months due to force majeure.

In case of termination for non-payment, the Customer is liable for all instalments due until the end of the Contract.

#### **4.4 Terms specific to the training Services**

Once the Order is placed, any request for registration of a participant must be sent to the Publisher in writing. In the case of a request by email, the Publisher makes a provisional reservation. Registrations are accepted within the limit of available places. Registration for training is only effective upon receipt of a duly completed registration form.

The Publisher reserves the right at all times to make any changes it deems useful to its training programmes. It reserves the right to change the intervening parties without notice and to remove one or more training categories.

If, on the day of training, the number of trainees is higher than that agreed when the order was placed, the invoicing will be adjusted based on the actual number of trainees present on the day of training, and on the fee schedule.

In case of cancellation by the Publisher for any reason whatsoever (unavailability of the trainer for health-related or other reasons, labour disputes, weather conditions, power failures, number of participants, etc., without this list being considered exhaustive), the training may be postponed to a later date, without any compensation or penalty being due to the Customer.

Cancellation by the Customer of inter-company training (as defined in the Appendix) must meet the following conditions:

- any cancellation of a registration must be done in writing,
- any cancellation made more than ten (10) working days before the start of the training will not result in any cancellation fee for the Customer,
- any cancellation made between ten (10) and six (6) working days before the start of the training will result in a charge equal to 50% of the amount of the Service, as lump sum compensation,
- any cancellation made less than six (6) working days before the start of the training will result in a charge equal to 100 % of the amount of the Service, as lump sum compensation,
- any training commenced will be due in full.
- If the participants fail to attend a training session without having complied with the cancellation procedures set out above, the invoice must be paid as if the participants had attended this session.

Cancellation of distance training by the Customer must be made in writing within a maximum period of 48 hours before the date of the training session. Otherwise, the training will be considered performed and therefore charged.

The Publisher may cancel inter-company training when it is found, one week (5 working days) before the training, that there are less than three participants.

## **5. PROVISION OF THE SOLUTION**

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### **5.1 The software and options**

These General Conditions apply to all solutions published by the Publisher, including Sphinx Déclic - Sphinx iQ2 - Sphinx IQ Quali - Sphinx Scanner - Sphinx Mobile - SphinxOnline - Sphinx Community - Dataviv, etc.

The Customer indicates the Software and Offer it has chosen in the Purchase Order. It must first have familiarised itself with the characteristics of the Solution and the Offer. The characteristics of the Solution are included in the Documentation.

The Solution is made available via one of the modalities described in the following Articles, the Customer previously indicating the Offer in the Purchase Order:

### **5.2 On-Premises Offer**

**5.2.1. Delivery - Installation/Prerequisites.** The Publisher makes the ordered Solution available to the Customer under the conditions described in Article 14.1. The Customer is responsible for installing the software.

To be used, the software must be installed and configured. The software is installed by the Customer in accordance with the Documentation provided to it with the delivery. The Customer configures the software as specified in the Documentation.

The Sphinx software runs on personal computers equipped with the Windows 8/10 operating system with .NET Framework in the version indicated in the Purchase Order installed.

The Customer must comply with the Prerequisites. Otherwise, the Publisher cannot be held responsible.

The Publisher also recommends the use of a recent system and Processor with at least 2.5 Ghz (Intel® Core recommended). The complete installation of files requires approximately 2 Go on the hard drive. All items are copied in a single directory (no copy in the system directory). The installation of a single-user license modifies the database records of the system which must therefore be accessible in write mode during the installation. The installation of a site licence can be done automatically with the usual deployment tools.

**5.2.2. Data Hosting - Options.** The Customer's Data is hosted:

- either on the Customer Platform.
- or on the Publisher's data Servers (Option [Sphinx Online]). In this case, the Customer, via the Solution, queries the database hosted on the Publisher's Server.

In case of Hosting on the Publisher's data Servers, the Customer chooses between Dedicated or Shared Hosting.

The Customer accesses its account using a login and password provided by the Publisher when it is opened, which the Customer is then responsible for changing.

**5.2.3. Content of the Offer.** In consideration of the payment of a licence fee, the cost of which depends on the number of Users and Solution ordered, the Customer acquires:

- a perpetual or temporary licence,
- and the corrective maintenance of the latest version of the Solution,
- possible Hosting on the Publisher's Servers depending on the Option [Sphinx Online].

**5.2.4. Maintenance.** Maintenance includes remote support and access to minor updates as described in the maintenance contract, which should be referred to.

**5.2.5. Major Update.** Major Updates are subject to a specific Purchase Order.

The Publisher only undertakes to maintain the last current version. The Customer is therefore obliged to proceed with updates of the Solution no later than 6 months after it is made available. Otherwise, the Publisher will be relieved of its obligation to maintain the Solution, which the Customer accepts.

**5.2.6. Test account [Sphinx Online].** With any On-Premises licence, the Customer can freely use a test account to host and manage its online surveys. This account allows the Customer to perform publication tests. Surveys are kept for one week and the responses kept are limited to five (5). At the end of this free period, the Customer can order the option, in accordance with the general and special conditions in force. Otherwise, the surveys and responses will be destroyed.

The Publisher is discharged from all liability concerning the free use of this test account for demonstration purposes.

### **5.3 Full SaaS Offer**

**5.3.1. Access to the Solution - Prerequisites - Account.** The Publisher provides the Customer with the Solution in SaaS (Software as a Service) mode via an Account created as described in Article 14.2. The Solution, whose features are described in the Documentation, is accessible via the Internet and an account specific to the Customer.

To access and use the Full SaaS Offer, the Customer must comply with the technical Prerequisites it has previously familiarised itself with. In particular, it must have internet access subscribed from the supplier of its choice, a configured computer.

The Customer accesses its account using a login and password.

**5.3.2. Content of the Offer.** Against payment of a fixed fee, the cost of which depends on the Subscription and options chosen, the Offer includes:

- the licence to use the Solution, including the licence for the options Ordered,
- hosting of the Solution and Data on the Servers,
- corrective maintenance of the Solution and Servers.

Maintenance includes remote assistance and regular updating of the Solution.

**5.3.3. Types of Subscription.** The Customer indicates the type of hosting chosen in the Purchase Order:

- either Dedicated Hosting for a period defined in the Order.
- or Shared Hosting:
  - charged according to the volume of surveys hosted,
  - charged for a period with a maximum volume defined when the Order is placed.

## 6. USE OF THE SOLUTION – LICENCE

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### 6.1 Licence

The Publisher grants the Customer a personal, non-exclusive, non-transferable and non-assignable right to use the Solution, for its own needs and for the period defined in the Purchase Order.

The Customer can only use the Solution in accordance with its intended purpose. In particular, the Solution licence is only granted for the sole purpose of allowing the User to use the Solution, to the exclusion of any other purpose.

The right of use means the right to represent and implement the Solution in accordance with its intended purpose, via a connection to a communications network (for the Full SaaS Offer). Accordingly, any other use of the Solution is prohibited. As such, the Customer shall refrain from any dissemination, distribution, direct or indirect provision of the Solution for the benefit of a third party or of the public, free or against payment. In addition, the Customer shall refrain from any temporary or permanent reproduction of the software by any means whatsoever, and any translation, adaptation, arrangement, decompiling or modification of the Solution, in particular in view of creating a similar solution.

The Publisher is holder of the copyrights on the software and its Documentation. It is expressly agreed that the software is and shall remain the property of the Publisher. The licence granted by the Publisher does not entail any transfer of intellectual property for the benefit of the Customer.

Accordingly, the Publisher reserves the right to change its technical specifications.

### 6.2 On-Premises Licence - Audit

**Regarding the On-Premises Offer**, the Customer undertakes to install and use the software observing the number of licences Ordered. The Customer is authorised to make a single backup copy of the software, provided that it does not install or use it on any computer, taking all necessary precautions to avoid its dissemination.

The Customer agrees to allow an audit of the conditions under which the software is used, by any person commissioned for this purpose by the Publisher, in any place and at any time.

### 6.3 SaaS Full Licence

#### 6.3.1 Technical limitation

For the Shared Hosting offer, the daily limit of the total amount of Data exchanged (input of responses, access to results, mailings, etc.) is 1 Giga bytes.

In the Shared Hosting offer (unless otherwise specified in the purchase order), this service must be used in accordance with the following limits:

- 10,000 queries per hour
- 10 seconds for calculation query
- 2 Giga bytes of disk space per account
- 10 webreporting users access

- Size of a survey:
  - 500 questions
  - 20,000 responses per survey
  - 100 pages
  - 100 objects per page

For the Dedicated Hosting offer, the daily limit of the total volume of Data exchanged (input of responses, access to results, mailings, etc.) is 10 Giga bytes.

The size limit of data stored on dedicated hosting is 30 Giga bytes of data (includes: surveys, emailing data, additional files, etc.).

### **6.3.2 Full SaaS Offer Limitation**

If the defined volume is exceeded, the Publisher sends an alert by email to the Customer for it to observe the ceiling or order additional space. If the situation is not redressed within 24 hours, the Customer is warned and accepts that the Publisher will block the Customer Account, which interrupts access to the Solution.

To unlock the account, the Customer must pay the excess recorded and possibly place a new Order corresponding to the volume actually used.

The Customer undertakes to observe this limitation.

## **7. CUSTOMER'S OBLIGATIONS**

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For the duration of the Contract, the Customer undertakes to comply with the following obligations:

- to comply with the laws and regulations in force in France and any regulations applicable to the Data and content, including respect for intellectual property (copyright, trademarks, etc.);
- not to use the Solution to transmit, receive, disseminate or use in any way whatsoever information that is illegally acquired, offensive, defamatory, abusive, likely to cause harm, undermine public order or privacy;
- to take personal responsibility for all its obligations, declarations and/or legal and administrative authorisations with the French data protection authority (CNIL), in accordance with regulations on the protection of personal data (Law of January 6, 1978 called the Information Technology and Freedoms Law) and the Customer guarantees the Publisher that it will inform the individuals concerned of the use made of said personal data.

The Publisher also cannot be held liable in case of a breach by the Customer of the provisions of the Information Technology and Freedoms Law. The Customer undertakes to hold the Publisher harmless against any action, remedy, complaint or claim brought against it in this respect.

The Customer is solely responsible for the Data (quality, lawfulness, relevance), the content and information it publishes, transmits or disseminates, and the Customer undertakes to compensate and hold the Publisher harmless against any action that may be brought as a result of its acts.

The Customer shall guarantee the Publisher on first request against any injury resulting from a claim by a third party made against it for any breach of this guarantee.

For the Full SaaS Offer and Sphinx Online Option, the Customer undertakes to install and update the antivirus software on the workstations so as not to impair the physical or technological integrity of the Servers by using programs and/or files infected by viruses and other computer programs.

Otherwise, the Customer shall be solely responsible for any such violation and the damage that could result for the Publisher. If it fails to use efficient antivirus software and to update it, the rehabilitation of the hacked and/or attached and/or deteriorated Server and the consequent loss of third party data hosted on the Service may be subject to financial compensation in favour of the Publisher and/or other customers that also use the Server.

The Data it places on the Server may be refused by the Publisher if they impair the proper functioning of the Server and/or overall performance of the Solution.

The Customer undertakes to inform the Publisher without delay and in writing of any change in its situation, in particular its information and contact details, in particular to be informed of any maintenance operation on the Servers, closure of the Account or any problem with the surveys which could lead to a malfunction of the Solution.

The Customer undertakes not to exceed the disk space allotted and indicated in Articles 5.3.3 and 6.3. The Publisher undertakes to block a survey if one of the limits is exceeded and it cannot be held responsible for the defective operation of a survey if one of the limits is exceeded;

If the Customer does not comply with its obligations, the Publisher may automatically suspend all or part of the Services. In this case, the Publisher shall in no case be held responsible for any damage that the Customer may suffer due to this interruption.

## **8. Full SaaS Offer AND HOSTED OPTION - SLA**

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### **8.1 Continuity of service**

The Publisher's Servers are installed in the datacentre of OVH company in Roubaix and Strasbourg (France) ([www.ovh.com](http://www.ovh.com)).

The Publisher undertakes to take all the necessary measures to ensure continuity of SPHINX Online, in accordance with the agreed service quality levels expected by the Customer. In this respect, the Publisher guarantees an availability of at least 99.9%, 7 days a week, i.e. calculated in 23h/24, from 0h to 3h then from 4h to 0h (French time zone).

In case of failure of the Server, the service will be restored within a maximum period of eight (8) hours following notification of the failure, it being noted that the applications are configured to restart automatically in case of a software problem.

In addition, the availability rate is guaranteed outside scheduled maintenance periods, previously communicated to the Customer. Therefore, access may be interrupted to perform the necessary technical maintenance or improvement interventions on the Servers and software. The Publisher undertakes to perform these interruptions outside working hours (French hours) and to notify the Customer within fifteen (15) days preceding the interruption.

### **8.2 Security of Servers and Data**

The Publisher guarantees the physical and logical integrity of the Servers. It undertakes to make every effort to ensure the integrity of the network and Servers against any external malicious act or any known computer attack.

The Server is protected against intrusions by a firewall. The security updates of the operating systems and antivirus are installed automatically.

System security is ensured under the following conditions:

- room equipped with fire detection and protection,
- maintenance of temperature and humidity,
- uninterruptible power supply, redundant, end-to-end,
- monitoring and access control 24/7

In case of failure of the Server, the service will be restored within a maximum period of eight (8) hours following notification of the failure by the Customer, it being noted that the applications are configured to restart automatically in case of a software problem.

Data is backed up daily locally then replicated on geographically remote servers. Saved data is kept for a maximum period of six (6) months. It can be retrieved on request, up to two (2) months after expiry of the Subscription. The survey data is also saved on each publication made from the Solution from the Sphinx IQ software.

### **8.3 Data integrity and confidentiality**

The Publisher guarantees the confidentiality of Data, information and documents communicated by the Customer. The Publisher's staff is not authorised to open data files.

Access to Servers is reserved solely for network administrators for maintenance tasks.



The Customer's Data remains its sole property, and the Publisher undertakes not to use the Data, information, documents and results of surveys hosted for the Customer for its own purposes.

## 9. PROTECTION OF PERSONAL DATA

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### 9.1 Personal Data processed in connection with the use of the Solution

In the meaning of Law No. 78-17 of January 6, 1978 amended "Data Protection Act" and Regulation (EU) No. 2016/679 called "General Data Protection Regulation" (together "Applicable Law"), the Customer is the person in charge of the processing of Personal Data carried out in connection with the use of the Solution by the Users. As such, the Customer undertakes to implement appropriate technical and organizational measures to ensure and be able to demonstrate that the processing performed is in accordance with the **Law Applicable to the Protection of Personal Data**.

In application of the Contract, the Publisher may be required to process Personal Data on behalf of the Client and on the instructions of the latter. As such, he acts as subcontractor of the Customer and is responsible to him/her for the respect of the requirements of the Law Applicable to the Protection of Personal Data. Consequently, the Publisher commits to respecting the following obligations and to have them respected by his staff:

- To treat the Personal Data in the strict and necessary framework of the Services agreed between the Parties under the Contract and to act only on the basis of the documented instructions of the Customer;
- Ensure the confidentiality of Personal Data and ensure that each person authorized to process such data undertakes to respect confidentiality or is subject to an appropriate confidentiality obligation;
- Ensure the security and integrity of the Personal Data. As such, the Publisher implements and maintains appropriate security measures of its information system, in accordance with the requirements of the Law Applicable to the Protection of Data. These measures aim to (i) protect the Personal Data against their destruction, loss, alteration, disclosure to unauthorized third parties, (ii) ensure the reinstatement of the availability of Personal Data and access to it in a timely manner in the event of a physical or technical incident;
- Not to use the Personal Data for purposes other than those provided for in the Contract and strictly related to the performance of the Services agreed between the Parties, and not to retain them beyond the duration of the Agreement or any other period specified by the Client. In any case, the Publisher undertakes to delete and destroy any copy or return to the Customer any Personal Data at the end of the Agreement, except for a copy kept by the Publisher for the purpose of proof of the good performance of its contractual obligations;
- Not to give, rent, assign or otherwise communicate to any other person, all or part of the Personal Data;
- Not to subcontract the performance of the Services that involves the processing, in whole or in part, of Personal Data, without the prior written consent of the Customer. Without prejudice to the foregoing, the Client acknowledges and agrees that the Publisher subcontracts (i) the development and maintenance of the Solution to ERGOLE Informatique (RCS Grenoble 408 088 433) and (ii) the hosting of the Solution by the company OVH (RCS Lille Métropole 424 761 419). The Publisher guarantees that any subcontractor that is presented to the Client offers sufficient guarantees as to the implementation of appropriate technical and organizational measures so that the processing meets the requirements of the Law Applicable to the Protection of Personal Data, and guarantee the protection of the rights of the persons concerned;
- Provide assistance to the Customer to enable him/her to respond to any request for the exercise of a right, request or complaint of a person concerned, within the deadlines and in accordance with the conditions provided by the Law Applicable to the Protection of Personal Data or a data protection authority or other regulator;
- To assist the Customer in carrying out privacy impact assessments and / or as part of formalities to be performed by the Client. The Customer acknowledges and agrees that the provision of assistance to be performed in this context will be the subject of a separate service proposal from the Publisher;
- Make available to the Customer, subject to compliance with a confidentiality agreement, all the information necessary to demonstrate compliance with the obligations provided for in this article and to enable audits to be carried out, including inspections, by the Customer or any auditor appointed by him/her and contribute to these audits;
- Not to transfer Personal Data processed under the Contract to countries outside the European Economic Area that have not been recognized by the European Commission as providing an adequate level of protection (i) without first obtaining the express written authorization of the Client and (ii) without the establishment of legal instruments recognized as appropriate by the Law Applicable to the Protection of Personal Data to supervise the transfer (s) concerned.

The Publisher undertakes to immediately alert the Client in the event of a breach of the Personal Data and to assist it in the implementation of any action to deal with this data breach, including notifications to the competent authorities and persons concerned by the deficiencies and to provide any useful information allowing to assess the extent of the violation



of Personal Data and to identify the means to its remedy.

## **9.2 Personal Data of the Customer and Users**

The supply of the Services and, more generally, the proper performance of the Contract implies the collection, by the Publisher, of the Personal Data of the Customer and the Users.

The Client acknowledges and agrees that the Publisher may use the Personal Data of the Customer and Users for marketing and promotional information on the Solution and / or other products and services of the Publisher.

The Publisher implements and maintains appropriate security measures of its information system in order to protect the confidentiality of Personal Data, in accordance with the requirements of the Law Applicable to the Protection of Data.

The Publisher agrees not to assign, rent or transmit the Personal Data of the Client and Users to third parties other than the server host and the developer of the Solution as mentioned in article 9.1 above, except legal or judicial obligation to do so.

In accordance with the Law Applicable to the Protection of Personal Data, the Customer and the Users have a right of access, rectification, limitation, deletion and portability of the Personal Data concerning them. The Client and the Users also have the right to oppose, for legitimate reasons, that their Personal Data is subject to processing. These rights can be exercised at any time from the Publisher by email at the following address: [dpo@lesphinx.eu](mailto:dpo@lesphinx.eu)

## **10. LIABILITY**

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### **10.1 Scope of compensation**

Each Party is liable for the consequences of its faults, errors or omissions and for the faults, errors or omissions of any subcontractors and causing direct damage to the other Party.

The computer processing of personal data that presents specific risks of infringement of rights and freedoms must, before implementation, be subject to authorisation from the French data protection authority (CNIL): the Customer must make this declaration and informs the persons concerned by the survey it conducts.

The Customer is solely responsible for the use it makes of the results of the study.

The Publisher may in no case be held liable for any unsuitability between the Solution and the services and the Customer's needs, in particular when the Customer has received a free trial. It must familiarise itself with the functional and technical characteristics of the Solution and services and, where appropriate, validate the deliverables.

In addition, in case of proven fault by the Customer, the Publisher will only be required to compensate the pecuniary consequences of direct and foreseeable damage due to the use of the Solution and (non)-performance of the service. Accordingly, the Publisher shall under no circumstance incur any liability for losses or indirect or unforeseeable damage of the Customer, which includes any loss of earnings, loss, inaccuracy or corruption of files or Data, commercial damage, loss of turnover or profits, loss of customers, loss of opportunity, cost of obtaining a replacement product, service or technology, relating to or due to the non-performance or faulty performance.

In all cases, the amount of the Publisher's liability is strictly limited to 10% of the amounts, excluding tax, actually paid on the date of occurrence of the damaging event, over the last twelve (12) months by the Publisher, in respect of the Solution or service concerned.

### **10.2 - Limitations and exclusion of liability**

Given the specificity of the provision in SaaS mode, the Customer is advised of the technical risks inherent in the internet, and the access interruptions that may result. Accordingly, the Publisher cannot be held responsible for any downtime or slowdown of the Solution. The Publisher is unable to guarantee the continued availability of the Solution beyond the obligations described in Article 8, which the Customer acknowledges.

The Publisher is in no case responsible for the direct or indirect consequences of any damage the Customer may suffer as a result of:

- the introduction of a computer virus on the Server affecting its proper operation,

- changes made by a third party not commissioned by the Publisher,
- illegal or unauthorised intrusions by any third party on the Server,
- a temporary overload of bandwidth,
- in general, any event beyond the Publisher's control.

### **9.3 Force majeure**

It is expressly agreed that the events such as interruptions, failures, sabotage of telecommunications, fire, flood, damage, riots, wars, strikes and lockouts affecting the Publisher and/or host, constituting a force majeure event as admitted by the Courts, exempt the Publisher from any liability.

## **11. MAINTENANCE and MAJOR UPDATES**

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### **11.1 Corrective maintenance**

A maintenance contract including Minor Updates is concluded between the Parties, which should be referred to.

The maintenance contract is subject to these General Conditions.

### **11.2 Major Updates**

In the Full SaaS Offer:

- Minor and major updates or new versions of the Solution related to the evolution of the software technology and addition of new features are made available automatically.

In the On-Premises Offer:

- New versions are subject to an additional charge. The Publisher will make the new version available, at no additional cost, if the Customer has ordered the Solution in the six (6) months preceding the provision of the new version.

## **12. FINANCIAL CONDITIONS**

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The prices charged to the Customer are those in force on the date of the Order less, where applicable, any reductions, discounts or rebates applicable to the Order.

Product prices are indicated in Euros, excluding taxes. Processing and postage costs are specified on the Purchase Order. It should be noted that shipping costs are borne by the Customer if the software is sent by mail.

All taxes and duties applicable to the amounts payable are charged extra and vary according to the laws and regulations in force.

Unless otherwise provided, invoices are established annually, payable in advance.

Invoices issued by the Publisher shall be payable according to the payment and financing terms specified in the Purchase Order.

Otherwise, the payment period shall be thirty (30) calendar days from the invoice date.

Failing payment on the agreed date, penalties will be due without the need for prior notice. Following the due date, the unpaid amounts will automatically bear interest equal to three (3) times the legal interest rate in force, and a lump sum of forty Euros (40€).

Any recovery by means of litigation will automatically result, at the expense of the Customer, in reimbursement of all costs incurred.

The Publisher may suspend access to the Solution or its Services, or even terminate this agreement, if any amount due by the Customer has not been paid within the contractual time limits.

Specific conditions may be determined depending on the Service.

### **13. REVERSIBILITY**

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Within two (2) months following the end of the Full SaaS Offer or Sphinx Online Option, regardless of the cause, the Publisher undertakes to delete the Customer's account.

### **14. DELIVERY - OPENING OF THE ACCOUNT**

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#### **14.1 On-Premises Offer: Delivery**

The provision of the Solution is done electronically. The Customer is responsible for downloading it.

#### **14.2 Full SaaS Offer: Opening of the Account**

The Customer communicates by any means and as soon as possible:

- its account name
- its email address
- for a time-based Subscription, the opening date of the reserved space desired.

The Customer is informed that this information is essential to open the reserved space. The Publisher cannot be held responsible for a delay caused by failure to communicate this information.

Upon receipt, the Publisher undertakes to set up the space reserved for the Customer on the site.

A temporary password is sent to the Customer, who must then change it.

### **15. Ownership**

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All documents handed over during training, in particular, are original works and as such are protected by intellectual property.

Accordingly, the Customer and any person under its responsibility undertakes not to use, copy, transmit and generally exploit all or part of these documents, without the prior written agreement of an authorised official of the Publisher.

The Customer and any person under its responsibility undertakes not to make any copies of the software used during training, except for the exercises carried out, provided that the files do not include in any way parts of the programme protected by copyright, and with the formal agreement of the trainer.

### **16. MISCELLANEOUS**

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These General Conditions are governed, interpreted and applied in accordance with French law.

ANY DISPUTES SHALL BE BROUGHT BEFORE THE COMPETENT COURTS IN THE JURISDICTION OF THE REGISTERED OFFICE OF THE PUBLISHER.

If any provision of the Contract is considered invalid, inapplicable or unenforceable by any competent court, the other provisions will remain valid, applicable and enforceable. The Parties nevertheless agree that in such an event, they will negotiate in good faith and during a reasonable period replacement provisions that will be (i) valid, applicable and enforceable and (ii) consistent with the initial intention of the Parties.

The fact that one of the Parties does not invoke a breach by the other Party of any of the obligations hereunder, cannot be interpreted, for the future, as a waiver of the obligation in question.

## **Annex Support and study services**

### **SUPPORT SERVICE**

Following the Order, one of the Publisher's project managers will contact the Customer to organise an appointment.

For each subsequent intervention, the Customer must first make an appointment with the Publisher's project manager, to agree on the terms of the intervention (period, etc.).

Interventions are carried out either by telephone (the project manager contacts the Customer on the number and at the appointment time previously defined), or by email.

Any on site intervention will be charged extra, according to an estimate previously communicated and accepted.

It is specified that a minimum of ten (10) minutes is systematically counted for each intervention.

It is recalled that the support contract is nominative and can only be transferred to a third party on the written request of the holder of the contract.

### **STUDY SERVICES**

The Study Services chosen by the Customer are listed in the Purchase Order.

Depending on the services ordered, the Parties' obligations are as follows:

#### **a) Online questionnaire**

The Customer undertakes to precisely describe the objectives of its study, and to send the Publisher:

- its draft questionnaire (in WORD, EXCEL or POWER POINT format)
- its graphic charter and associated images
- the invitation message to include in the mailings (in WORD format)
- the email addresses of the persons concerned by the mailings (in EXCEL format).

The exchanges between the Customer and the project manager are exclusively by telephone (fixed line) or by email.

All travel on site will be charged extra, according to an estimate previously communicated and accepted.

This service includes:

- advice on the content of the questionnaire:
  - o the Publisher undertakes to advise the Customer on the content and form of the questionnaire, prior to its deployment.
- placing the questionnaire online:
  - o the Publisher undertakes to place the questionnaire online, adapting the graphic charter (provided by the Customer) and integrating the controls, references, display conditions enabling its interactivity. The publication is made on an internal account of one of the Publisher's servers; the Customer has no rights of access or publication on this account.
  - o The Publisher offers several versions, it being specified that only three comprehensive requests for modifications and/or corrections can be taken into account (concerning the content and form).
  - o In case of a "multi-language" online questionnaire, the Publisher makes available to the Customer, after validation of the reference version, an online translation platform accessible via a simple internet connection.
  - o The Customer is then responsible for integrating the translations into this platform, and can transmit the access link to the platform to its translators or the translation company chosen.
  - o The translation is performed under the sole responsibility of the Customer, and the responsibility of the Publisher may under no circumstances be sought in this respect.

- dissemination of the survey and management of reminders:
  - o the Customer and Publisher draft together the message of invitation to participate in the survey, which can be personalised with fields linked to each email address (for example surname, first name, department).
  - o The graphic charter common to all messages must be validated as of the first version.
  - o However, and in the case of a multi-language online questionnaire, the Customer must provide the invitation message in a single language of its choice. The invitation message then gives access to a space to select the language of the questionnaire whose translation has been previously done by the Customer, who is solely responsible.
  - o In all cases, only the Customer will appear in the message as "sender) (surname, email address, signature).
  - o If the Customer wants the Publisher to appear as sender of the message, an additional estimate may be established at the Customer's request.
  - o The Publisher sends the message to the attention of the recipients and undertakes, if necessary, to send out two reminders to the persons who have not responded.

The Publisher may provide, at the Customer's request, a URL allowing it to directly monitor the responses to its survey, i.e. daily monitoring of the number of responders in the form of a graphic curve, and the table of raw data.

#### **b) Paper questionnaires – Level 1 Assistance**

The Customer also undertakes to precisely describe the objectives of its study, and to send the Publisher:

- its draft questionnaire (in WORD, EXCEL or POWER POINT format),
- its graphic charter and associated images
- the invitation message to include in the word processing,
- the postal addresses of the persons concerned by the mailing (in EXCEL format).

Exchanges between the Customer and the project manager are exclusively by email or by telephone, and in case of a request to travel to the site, the service will be charged extra according to an estimate previously sent to and accepted by the Customer.

This service includes:

- advice on the content of the questionnaire:
  - o the Publisher undertakes to optimise the Customer's questionnaire and to advise it on its content and form prior to deployment.
- formatting the questionnaire:
  - o the Publisher is responsible for formatting the questions and response modalities.
  - o The Publisher offers several versions of the questionnaire, it being specified that only three comprehensive requests for modifications are taken into account (concerning the content and form).
- In the case of the order for routing and paper dispatches:
  - o the Publisher contacts the post office services to establish a file of "T" envelopes (return envelopes) so that the responses are sent directly to the Publisher.

It is specified that the Publisher is free to choose its service provider (printer and routing company).

#### **c) Paper questionnaires - Level 2 Assistance**

It is recalled that the exchanges between the Customer and the project leader are exclusively by email or by telephone.

In case of travel on site, the travel costs will be charged extra, according to an estimate previously communicated to and accepted by the Customer.

This service includes:

- management of the project:
  - o the Customer undertakes to send the paper questionnaires by letter removed from their envelopes (if the Customer centralises the receipt of questionnaires) and to describe precisely the elements to be considered for entering responses, and any particular instructions to be given to data entry operators.
  - o The Customer also undertakes to send the Publisher an online version of the questionnaire, as soon as the Order is signed, to enable the Publisher to prepare the data entry.

- Capture of paper questionnaires:
  - o the Publisher's operators proceed with the manual entry of questionnaires in the SPHINX software.
  - o The Publisher's operators only capture the questionnaires filled in with at least one response.

The Publisher is not responsible for the documents sent by the Customer other than questionnaires.

Unless the Customer expressly indicates otherwise, the Publisher keeps the paper questionnaires for a maximum period of three (3) months after the end of the Service.

#### **d) Collection by telephone**

The Publisher uses a service provider to perform the response collection phase. The Publisher is free to choose its service provider.

#### **e) Analyses**

The Customer must precisely describe the objectives of its study.

The deliverables in terms of analyses be may the following according to the Order:

- The study report:
  - o delivered to the Customer in French (unless otherwise specified in the Purchase Order),
  - o in editable electronic format (WORD or POWER POINT) and in printed format in accordance with what is agreed in the Purchase Order.
  - o After a first version, a second version of the report may be established on the basis of all the Customer's remarks.
- The online Annexes:
  - o in parallel to the submission of the report, the Publisher provides the Customer with access to an online analyses module. This will allow Customer to perform additional analyses (flat or crossed) on all questions of its survey; these annexes will also allow the Customer to access its raw data table. This link to the online annexes will be active for the duration specified in the Purchase Order.
- The table of data in Excel format:
  - o transmission in electronic format by the project manager after closure of the survey on request

### **TRAINING SERVICE**

#### **Three categories of training are proposed:**

- Intra-company training:
  - o training that takes place in the Customer's premises or in the Publisher's premises in Annecy. This training is planned for one or more participants on the dates agreed with the Publisher's training department,
- Inter-company training:
  - o training bringing together several companies conducted in PARIS, in the region or in the Publisher's premises in Annecy, on the dates indicated in the training catalogue.
- Distance training:
  - o online training allows telephone training sessions of 1hour 30mns to be organised for one person.

The training alternates methodology and the manipulation of software, and is organised in accordance with the programme chosen by the Customer with the Publisher's training department, either on a specific topic (Discovery, Initiation, online surveys, results analysis, statistics, etc.) or personalised (choice between several modules offered in the training catalogue), and depending on the level of the trainees.

#### **Several types of training are offered:**

- Standard training:
  - o training courses on sample surveys based on programmes tailored to the Customer's needs and its level of practice. This training is offered in inter-company or intra-company sessions,
- Advisory training:
  - o training on the Customer's site or in the Publisher's premises in Annecy and based specifically on the Customer's own data, to assist in the conduct of its projects. The trainer follows the programme selected by the Customer, using its own surveys and data previously sent at least one week before the start of the training. It is recalled that these interventions remain training sessions and that the trainer shall in no



case have the role of performing the Customer's work,

- Personalised training:
  - o training on the Customer's site which takes place over one or more days and which covers a personalised programme, addressing the content of several standard training sessions, and based on sample surveys. The programme is to be determined with the Publisher's training service, depending on the number of modules selected in the training catalogue.

A training day lasts for six (6) hours.

The Publisher provides a training agreement on the Customer's request.

To be able to establish the agreement, the Customer must quickly provide the Publisher with all necessary information requested by the training service, as soon as possible.

**Practical arrangements:**

For some courses, a level of knowledge or experience is necessary to allow a satisfactory assimilation of the teaching provided: depending on the training programme chosen, trainees must therefore satisfy the prerequisites indicated in the training catalogue. The Customer is responsible for assessing the level of participants, and must be able to evaluate and monitor the adequacy of the skills required to attend the training courses. The Publisher cannot be held responsible if trainees have different levels.

Before the training, the Customer must validate the programme selected by the trainees and inform them of the practical arrangements.

The Customer must observe the number of trainees agreed in the Order.

If it wishes to add one or more people, it must contact the Publisher's sales department. An amendment to the Order will be established.

On the day of the training, the trainees and trainer must sign the attendance sheet provided by the trainer or the Publisher's training service, in two copies.

The material used on the day of the training by the trainer will only be communicated by him if he agrees.

Following the training, trainees are asked by the Publisher to reply to an online survey, to assess the training in which they participated.

- Intra-company training:

This training takes place on the Customer's site or in the Publisher's premises in ANNECY, on a programme agreed with the training service, which may be a standard programme chosen in the training catalogue, or a personalised programme.

The programme is based on SPHINX sample surveys chosen by the trainer for the standard training and on the Customer's data for Advisory training.

The training day lasts for six (6) hours, and the conventional hours are from 9:30 am to 12:30 pm and from 2:00 pm to 5:00 pm, which may however be adjusted by the Customer and/or trainer, after consultation between them.

**Publisher's obligations:**

- On receipt of the Order, the Publisher's training service contacts the Customer to set the training dates.
- These dates are agreed within 4 to 6 weeks after the date of receipt of the order, according to the availability of the SPHINX trainers.
- Once the training date has been scheduled, the Publisher sends the Customer a confirmation email detailing the practical arrangements of the training.
- To organise the training and complete the file, the Customer must send an email with all the various information requested in the confirmation email (exact address of the training, names of the trainees, etc.).
- The Publisher undertakes to provide the Customer with temporary training licences by email.
- At the end of the training, the Publisher delivers training material (paper and possibly electronic) corresponding to the programme chosen: this material is delivered on the day of the training by the trainer or sent by post by the

Publisher at the end of the training.

- The material used by the trainer can only be delivered to trainees with his agreement.

#### **Customer's obligations:**

- When the training takes place in the Customer's premises, it must make computers available to the trainer with licences of the SPHINX software that must be installed on the trainees' computers before the training date, by the Customer's IT department.
- This provisional licence to install is provided by the Publisher.
- The Customer must also make available a video projector to the trainer (if there are more than 2 trainees), and access to the internet, in particular access to <http://www.sphinxonline.com/>
- As regards advisory training, the Customer must send its data and topics to the trainer as soon as possible (at least one week before the date of the training), to allow him to properly prepare his intervention. A single project (survey) is dealt with per training session.

- Inter-company training:

This training brings together several companies and is conducted either in PARIS, or in the region, or in the Publisher's premises in ANNECY, on the dates indicated in the training catalogue.

Inter-company training sessions may be cancelled or postponed to a later date if, one week before the date of the training, it is found that there are less than three (3) participants.

In this case, the cancellation or postponement will be without compensation or penalty for the Customer.

#### **Publisher's obligations:**

- Upon receipt of the order, the Publisher undertakes to send an Order confirmation email.
- Ten (10) days before the date of the training, the Publisher undertakes to send an invitation email indicating the address, map, access and times of the training.
- The Publisher provides trainees with a room equipped with computers with SPHINX licences and internet access.
- At the end of the training, the Publisher delivers training material (paper and possibly electronic) corresponding to the programme delivered: this material is delivered on the day of the training by the trainer or sent by post by the Publisher at the end of the training.

#### **Customer's obligations**

- The Customer must complete the file sent by the Publisher and provide the missing information.

- Distance training:

The Customer must ensure that the trainee meets the prerequisites of the training programme selected from the training catalogue.

The Customer must ensure before the date of the training that the SPHINX software is installed on the computer of the trainee(s) and that the internet connection is available, in particular for access to the following addresses:

[http://download.teamviewer.com/download/TeamViewerQS\\_fr.exe](http://download.teamviewer.com/download/TeamViewerQS_fr.exe)

(to download the online conference solution)

- o online training:

Online training sessions are individual training sessions (one person only) delivered remotely by telephone using remote access software that the Customer must ensure to have installed before the date of the training.

The programme for this training is agreed directly with the Publisher.

On receipt of the Order, the Publisher undertakes to send a confirmation email to put the Customer into contact with the trainer. The trainer and the Customer will then agree together on the dates and times of the training sessions, according to their respective availabilities.

Online training takes place by sessions of a maximum duration of 1h 30 mns.

The Customer must call the trainer on the agreed date and times, on the telephone number indicated by the trainer.

If the Customer encounters an impediment, it undertakes to notify the trainer at least 48 hours in advance: any session not cancelled at least 48 hours before the date of the training will be considered delivered and accordingly charged in full.

Electronic training materials corresponding to the training will be provided to the trainee on request, it being specified that the material used by the trainer is only provided to the trainee with the trainer's agreement.