



Master Service Agreement

V 1.0 (February 2024)



This BySide - Master Service Agreement ("MSA") is effective between the parties identified in the relevant order form (the "Order Form"). Service recipient is following stated as "Subscriber" or "The Subscriber" and Service Provider is stated as "BySide". Each of them is also referred to as a "Party" and collectively referred to as the "Parties" herein.

BySide is the developer of certain BySide software ("Product Software") and provides and operates the Engagement Cloud which is a so called software as a service ("SaaS"). Subscriber owns mobile applications and/or websites (the "Subscriber Applications"). BySide will enable the provisioning and operation of the Subscriber Application as defined in the Order Form.

The BySide - Master Service Agreement, together with the Order Form(s) and Exhibit 1 (Product Description), Exhibit 2 (Service Description), Exhibit 3 (Support Terms & Service Level), Exhibit 4 (Regional Specific Terms) and Exhibit 5 (Data Processing Agreement), is the complete agreement for the services provided by BySide (collectively, this "Agreement") and governs the use of the BySide Service, effective as of the date set forth in the Order Form(s).

1. Definitions

1. **"Affiliated Company"** means any entity that directly or indirectly Controls, is Controlled by, or is under common Control with a Party.
2. **"AUP"** means the then-current acceptable use policy for the Services attached hereto as Exhibit 2, Annex 1, as updated from time to time with notice from BySide.
3. **"BySide's Active Tag"** is a snippet of HTML/Javascript code inserted into a web page's content, normally in all web pages of a website. Reference is made to **Exhibit 1**. Adding BySide Tag will enable BySide collecting information about the visitors, generating events and displaying online campaigns through the insertion of dynamic content to visitors.
4. **"Control"** means control of greater than 50% of the voting rights or equity interests of a Party.
5. **"Documentation"** refers to the user and/or developer manuals for the Product Software and Services.
6. **"End-Subscriber"** means those entities or Affiliated Companies, as applicable, authorized by the Subscriber in accordance with this Agreement to use the Engagement Cloud.
7. **"End User"** means an individual that Subscriber permits to access and use a Subscriber Application.
8. **"Production Zone"** is an independent deployment of the BySide multi-tenant platform serving a set of Subscribers. Current production zones are defined by geography and



timezones. New Subscribers will be assigned to a production zone when enabling BySide service.

9. **“Indemnified Liabilities”** means any (a) settlement amounts approved by the indemnifying Party, and (b) damages, fines, penalties, deficiencies, losses, liabilities (including settlements and judgments) and expenses (including interest, court costs, reasonable fees and expenses of attorneys, accountants and other experts or other reasonable fees and expenses of litigation or other proceedings or of any claim, default or assessment) up to an amount of one times of the Fees paid BySide under this Agreement in the one year period preceding the event giving rise to the claim.
10. **“Maintenance Services”** means the services as described in **Exhibit 2**.
11. **“Product Software”** means the software as stated in **Exhibit 1**.
12. **“Professional Services”** means training, implementation, and expert consultation services provided by BySide.
13. **“Support Services”** means support services rendered by BySide and described in **Exhibit 3**.
14. **“User(s)”** means those employees and contractors, as applicable, authorized by the Subscriber or on the Subscriber behalf to use the Services in accordance with this Agreement. For Services that are specifically designed to allow the Subscriber’s clients, agents, subscribers, suppliers or other third parties to access the Services to interact with the Subscriber, such third parties will be considered “Users” subject to the terms of this Agreement.
15. **“User Data”** means any and all personal information and data that: (a) a Party or its Affiliated Companies or their respective representatives or Users input into the Services; or (b) is generated by a Party’s and/or its’ Affiliated Companies’ use of the Services or a Party’s End Users’ engagement or interaction with the Services.

2. Services

1. BySide will provide the services specified in the relevant Order Form (the “Services”) in accordance with this Agreement; and Subscriber may access and use such Services in accordance with this Agreement. Services are rendered during the term stated in the Order Form(s), unless earlier terminated in accordance with this Agreement.
2. The Services include the use of the Product Software. Reference is made to **Exhibit 2** for an overview of the Services. Product Software is described in **Exhibit 1** to this Agreement. The Services and the Product Software are provided in a modular form. Which Services resp. Product Software is subscribed is listed in the relevant Order Form.



3. As part of the Services BySide also provides Support Services as defined in **Exhibit 3**, and Maintenance Services as stated in **Exhibit 2**.
4. The Services may further include training, implementation, and / or expert consultation services provided by BySide for all aspects of the Engagement Cloud ("Professional Services"). Any given Professional Services are also stated in the relevant Order Form.
5. If stated in the Order Form, some Services are subject to usage limits. If usage limits are exceeded, additional charges might apply.

3. Fees and Payment

1. All fees for Services (the "Fee") and payment terms are stated in the relevant Order Form and are due and payable by the Subscriber within fourteen (14) days after receipt of an invoice. Once placed, the Order Form is non-cancelable, and the sums paid are non-refundable.
2. The Subscriber understands that the Subscriber may receive multiple invoices for the Services ordered if the Fees are not fully prepaid upfront for the Services during the Term.
3. If the Subscriber, any Affiliated Company or End-Subscriber exceeds the Usage Limits as set out in the Order Form, then the Subscriber is obliged to pay Fees for the excess of Usage Limits on the basis of the then current pricelist in arrears within fourteen (14) days after receipt of an invoice.
4. It is the Subscriber's responsibility to provide valid billing contact information and inform BySide on changes.
5. Fees that have not been timely paid are subject to the lower of (a) the finance charge of 1.5% per month on any outstanding balance or (b) the maximum interest permitted by law, and shall include all costs of collections (including, but not limited to, reasonable attorneys' fees).
6. Subscriber agrees to pay all taxes with respect to the provision of Services under this Agreement, which may be assessed against BySide or Subscriber. At its option, BySide may include applicable taxes in its invoices in which event Subscriber shall pay to BySide the taxes so invoiced. If Subscriber provides BySide with an applicable exemption certificate, issued by an applicable Governmental Authority. Fees for Services listed in an Order Form are exclusive of taxes and expenses.



7. If the Subscriber wishes to extend this Agreement beyond the Term, BySide reserves the right to revise the Fees charged for any applicable renewal period upon written notification to the Subscriber.
8. The Fee for the Engagement Cloud increases annually after the Initial Term by 7%.

4. Confidentiality

1. The Recipient will only use the Disclosing Party's Confidential Information to exercise its rights and fulfill its obligations under this Agreement, and will use reasonable care to protect against the disclosure of the Disclosing Party's Confidential Information. Notwithstanding any other provision in this Agreement, the Recipient may disclose the Disclosing Party's Confidential Information (a) to its Delegates who have a need to know and who are bound by confidentiality obligations at least as protective as those in this **Section 4 (Confidentiality)**; (b) with the Disclosing Party's written consent; or (c) as strictly necessary to comply with Legal Process, provided the Recipient promptly notifies the Disclosing Party prior to such disclosure unless the Recipient is legally prohibited from doing so. The Recipient will comply with the Disclosing Party's reasonable requests to oppose disclosure of its Confidential Information.
2. To the extent required by applicable law, lawful order or requirement of a court or governmental authority, a Party may disclose the other Party's Confidential Information and any other information related to this Agreement, in accordance with such law, order or requirement; provided, however, if permitted under such law, order or requirement, the Party will provide notice to the other Party prior to furnishing the requested information and, upon request of and at the expense of the other Party, cooperate in seeking reasonable arrangements to protect the confidential nature of such information.
3. Upon the expiration or any termination of the Term of this Agreement, each Party's Confidential Information shall be destroyed within thirty (30) days after such expiration or termination; provided, however, that either Party may retain copies of the other Party's Confidential Information, unless otherwise prohibited by applicable Law, (i) necessary for its internal practices and procedures (including without limitation for legal and accounting purposes) but not for use otherwise, and (ii) in its backup media, system logs, accounting records, and other data archives until such media are destroyed or overwritten in the normal course of business, provided that such Party shall not be permitted to make active, intentional use of such backed-up or archived Confidential Information and the such Party shall continue to be bound by the provisions of this **Section 4 (Confidentiality)** with respect to such Confidential Information.



5. Data Use and Compliance

1. BySide will only access, process and use User Data in accordance with the Data Privacy Addendum which is incorporated by reference to this Agreement. Both Parties shall comply with their respective obligations under this Data Privacy Addendum.
2. BySide shall be responsible for establishing and maintaining a data privacy and information security program. Certain data security obligations of the Parties are set forth in the Data Privacy Addendum.
3. BySide may process data based on extracts of User Data on an aggregated and non-identifiable form, for BySide's legitimate business purposes, including for testing, development, controls and operations of the Services, and may share and retain such data at BySide's discretion. BySide may (i.) compile aggregated anonymized statistical and other information related to the performance, operation and use of the Services, and (ii.) use data from the Services in aggregated form for security and operations management, to create statistical analyses, and for research and development purposes i. and ii. are collectively referred to as "Service Analyses"). BySide may make Service Analyses publicly available; however, Service Analyses will not incorporate the Subscriber Content or Confidential Information, and Service Analyses do not constitute personal data. BySide retains all intellectual property rights in Service Analyses.
4. Subscriber will ensure that Subscriber, the Subscriber Applications and Subscriber's End Users' access and use of the Services resp. the use of the Subscription Applications comply with the provisions of this Agreement and Subscriber will prevent any unauthorized access or use of the Services. Subscriber is responsible for obtaining any consents, notices and approvals of any third parties including, without limitation of any governmental authority or End User, and for any further action required according to applicable law to permit (a) Subscriber's use and receipt of the Services in accordance with the provisions of this Agreement, and (b) BySide's accessing, storing, and processing of data provided by Subscriber or any Subscriber's End Users under this Agreement. Subscriber shall meet the requirements of, and do not conflict with the laws of any country or jurisdiction and Subscriber shall be responsible for any fines or penalties imposed on Subscriber or BySide by a Governmental Authority due to the use of Services is conflicting with the laws of any country as a result of Subscriber's business operations.

6. Audit

1. Upon request from the other Party, the audited Party will retain an auditor, to be paid for by the auditing Party, and the audited Party will provide the auditor with access to all information needed to assess compliance with this Agreement. Any output created by the auditor will be protected as Confidential Information of the audited Party in accordance with Confidentiality.



2. Reconciliation. Should any audit reveal that the Services has been underpaid, within thirty days after the date of the Parties' receipt of a copy of the audit report:
 - a. the Subscriber owing an amount shall pay BySide the difference revealed by the audit; and
 - b. the third-party costs charged by auditor in respect of the audit, if such underpayment is more than five percent (5 %) of the total Fees for the period(s) audited; and
 - c. any Subscriber who has sublicensed the Services to an End-Subscriber will owe the foregoing amount directly to BySide if such Subscriber fails to pay.
3. The audited Party will afford the auditor all reasonable assistance in the performance of the audit at its sole cost and expense (including, without limitation, for staff hours incurred in connection with such audit). The auditor will deliver a copy of its preliminary observations to the audited Party to provide that Party with an opportunity to comment on any inconsistencies or inaccuracies. The audited Party shall submit its comments back to the auditor within ten business days of receipt of the auditor's observations, following which the auditor will finalize its report and provide a final version to both Parties. The audited Party acknowledges that when submitting its final report, the auditor will also provide the auditing Party with a summary of any amendments made to the report as a consequence of the audited Party's comments.
4. Once the auditor has finalized its findings, the auditing Party will not thereafter have the right to re-examine the period covered by such audit or otherwise dispute such findings.

7. Term and Termination

1. This Agreement shall commence on the Effective Date and continue for an initial period specified in the relevant Order Form (the "Initial Term") and thereafter automatically renew for successive terms of one year each (each a "Renewal Term," and together with the Initial Term, the "Term"), unless either Party provides written notice three months prior to the end of the Initial Term or any Renewal Term, or this Agreement is earlier terminated in accordance with the provisions of this Agreement.
2. Either Party may terminate the Term of this Agreement with written notice if the other Party (i) is in material breach of this Agreement and fails to cure that breach within 30 days after receipt of written notice, (ii) ceases its business operations, or (iii) becomes subject to insolvency proceedings and such proceedings are not dismissed within ninety (90) days.
3. Upon the expiration or any termination of the Term this Agreement, Subscriber shall, as of the date of such expiration or termination, immediately cease accessing and otherwise utilizing the Services. For a period of no less than thirty (30) days after the end of the Term, BySide will make the Subscriber Content (as it existed at the end of the Term) available for retrieval by the Subscriber. At the end of such thirty (30) day period, and except as may be required by law, BySide will delete or otherwise render inaccessible any of the Subscriber Content that remains in the Engagement Cloud.



4. BySide may suspend the Subscriber or the Subscriber's Users' access to, or use of, the Services if BySide believes that (a) there is a significant threat to the functionality, security, integrity, or availability of the Engagement Cloud or any content, data, or applications in the Services; (b) the Subscriber or the Subscriber's Users are accessing or using the Engagement Cloud to commit an illegal act; or (c) there is a breach of this Agreement. When reasonably practicable and lawfully permitted, BySide will provide the Subscriber with advance notice of any such suspension. BySide will use reasonable efforts to re-establish the Engagement Cloud promptly after BySide determines that the issue causing the suspension has been resolved. During any suspension period, BySide will make the Subscriber Content (as it existed on the suspension date) available to the Subscriber. Any suspension under this paragraph shall not excuse the Subscriber from the Subscriber's obligation to make payments under this Agreement.
5. The following Sections will survive expiration or termination of this Agreement: Section 4 (Fees and Payment), Section 8 (Ownership & Usage Rights), Section 4 (Confidentiality), Section 5 (Data Use, Processing and Security), Exhibit 4 Section 1 (Representations and Warranties), Exhibit 4 Section 2.6 (Disclaimer), Exhibit 4 Section 4 (Indemnification), this Section 7.5 (Survival), Section 6 (Audit), Exhibit 4 Section 4 (Miscellaneous), and Section 1 (Definitions). In addition, any provision which, by its nature, must survive the termination of this Agreement, shall survive the termination of this Agreement.

8. Ownership & Usage Rights and Restrictions

1. BySide or BySide's licensors retain all ownership and intellectual property rights in and to BySide's Services, derivative works thereof, and anything developed or delivered by or on behalf of BySide under this Agreement. In addition, the Subscriber acknowledges that, in the course of performing BySide's Services, BySide may use software and related processes, instructions, methods and techniques that have been previously developed by BySide (the "Pre-existing Materials"), and the same shall remain the sole and exclusive property of BySide. Except for the limited and temporary right of the Subscriber and the Subscriber's Users to use the BySide Services, BySide retains all right, title and interest in and to BySide's Confidential Information (as defined in **Section 4**), the Pre-existing Materials and any other aspects of BySide's Services, including, without limitation, all software used to provide BySide's Services and all logos, trademarks and service marks reproduced through BySide's Services, and this Agreement does not grant the Subscriber with any intellectual property rights in or to BySide's Confidential Information, the Pre-existing Materials or any other aspect of the Services.
2. Subject to the provisions of this Agreement and dependent on full payment, during the Term BySide grants to Subscriber a non-exclusive, limited, non-transferable, revocable, and non-sublicensable right and license to access and use the Services for the purpose of utilizing the Services, and providing the Services and access to the Subscriber and Subscriber's End Users, all in accordance with the terms and conditions of this Agreement. Only the agreed number of Concurrent Users is entitled to use the BySide Services on the agreed number of Sites and the agreed Usage Limits.



3. Subscriber grants BySide a limited license to use the Subscriber's Content to provide the Services in accordance with this Agreement. The Subscriber shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of Subscriber's Content, and for obtaining all rights related to the Subscriber's Content required by BySide to perform the BySide Services.
4. Solely if stated in the Order Form Subscriber shall be entitled to grant the usage rights under this Agreement to Affiliated Companies and / or End-Subscriber. In this case all rights and obligations under this Agreement shall apply mutatis mutandis to such Affiliated Companies and / or End-Subscriber, too.

9. Miscellaneous

1. Entire Agreement. This Agreement states all terms agreed between the Parties, and supersedes any prior or contemporaneous agreements between the Parties relating to the subject matter of this Agreement. In entering into this Agreement, neither Party has relied on, and neither Party will have any right or remedy based on, any statement, representation, or warranty (whether made negligently or innocently), except those expressly described in this Agreement. For the avoidance of doubt, BySide may update the Engagement Cloud and Additional Services Description (**Exhibit 2**) and the Product Description (**Exhibit 1**) and other, including by posting updated documents, without the Subscriber's Consent and such updated documents shall govern the Subscriber's use of the Services if the Subscriber is notified of any such update and/or the Subscriber agrees to such update and the Subscriber continues to use the Engagement Cloud thereafter.
2. Amendments. Except as specifically described otherwise in this Agreement, any amendment to this Agreement must be in writing, expressly state that it is amending this Agreement, and be signed by both Parties.
3. Conflicting Terms. If there is a conflict among the documents that make up this Agreement, then the documents will control in the following order: the applicable **Order Form, the MSA, Exhibit 5, Exhibit 4, Exhibit 1, Exhibit 2, Exhibit 3**.
4. Counterparts. The Parties may execute this Agreement in counterparts, including facsimile, PDF, and other electronic copies, which taken together will constitute one instrument.
5. Electronic Signatures. The Parties consent to electronic signatures.





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