

## Spacewise Software-as-a-Service Contract

This document governs your use of the Spacewise Online Platform as a Software-as-a-Service Agreement ("**SaaS Agreement**" or "**Agreement**"). This Agreement is between you (hereinafter "**Customer**") and Spacewise Ltd., Rotfluhstrasse 63, 8702 Zollikon, Switzerland (hereinafter referred to as "**Spacewise**"), individually also referred to as "**Party**" or collectively referred to as "**Parties**".

### 1. Definitions

**"Rental Object"** means product and service which are published by the Customer on the Platform, offered for rent and (if applicable) rented out.

**"Platform"** means the software, website and all other products and services provided by Spacewise to the Customer online under the portal [www.spacewise.net](http://www.spacewise.net), [www.popupshops.com](http://www.popupshops.com) or other URLs for the rental of Rental Objects, including any documentation.

**"Service Fee"** means a one-time, recurring or performance-based fee charged by Spacewise for the use of the Platform.

**"We," "us" or "our"** means Spacewise Ltd., Rotfluhstrasse 63, 8702 Zollikon, Switzerland.

**"Customer, "You" or "Your"** means You, the natural person accepting this Agreement and/or, where applicable, the company or other legal entity for which You accept this Agreement.

**"Your Data"** means any electronic data or information you submit to Spacewise or the Platform.

### 2. Subject matter of the contract

2.1. Spacewise offers an online platform for the marketing and rental of rental properties. The subject matter of this agreement is your use of the platform, which is operated on Spacewise's servers.

2.2. The Platform enables the publication of the Customer's rental properties on the Customer's website (with a widget), a separate platform accessible through a domain of the Customer as well as the POP UP SHOPS marketplace and enables the conclusion of a rental agreement between the Customer as landlord and its end customers as tenants. Spacewise is not a party to that rental agreement.

### **3. Structure and ranking**

- 3.1. The structure and ranking of this SaaS Agreement in relation to further agreements is governed by the Service Agreement.
- 3.2. The general terms and conditions of the Customer are expressly excluded for this legal transaction.

### **4. Delivery**

- 4.1. The Customer can access the Platform online. After online registration by the Customer, Spacewise will send the Customer the necessary login information for the platform.
- 4.2. Unless otherwise agreed, Spacewise offers the Platform in the respective current version, which is made generally available to Spacewise's Customers. The functional scope of the platform corresponds to the plans selected by the Customer. Partial deliveries are permitted.

### **5. Payment collection and settlement**

- 5.1. For the Rental Objects managed via the Platform, Spacewise shall take over the collection of the rent and pay it to the customer with the retention of the contractually agreed Service Fees. The determination of the rent as well as the further conditions is exclusively incumbent on the Customer.
- 5.2. Unless otherwise agreed, Spacewise shall duly settle with the Customer within 30 days for the Rental Objects rented in the previous month and shall pay the rentals collected, less the Service Fees, to the deposited account within 30 days.
- 5.3. For Switzerland only: The Customer can activate the payment method "*On account*" for tenants selected by it and optionally take care of the payment collection itself. Spacewise does not take any responsibility for invoices not paid (in time). The Service Fees agreed between Spacewise and the Customer are due even if such invoice has not (yet) been paid.
- 5.4. If the Customer cancels a confirmed booking, Spacewise will charge a Service Fee which will be deducted from the first payout after the cancellation.

### **6. Support services**

- 6.1. The customer support can be reached at [support@popupshops.com](mailto:support@popupshops.com), which usually

responds to inquiries within one business day. However, the response time may be longer. We make commercially reasonable efforts to keep response time as short as possible.

- 6.2. Spacewise offers the Customer technical email support for the platform on weekdays during working hours and without service levels: support@popupshops.com.
- 6.3. This technical support shall only be provided for application errors or malfunctions on the platform that are documented by the Customer and reproducible by Spacewise. The Customer shall provide accurate information about the application error and malfunction upon request. Spacewise does not guarantee that all application errors or malfunctions on the platform will be remedied.

## **7. Ownership and use rights**

- 7.1. The Platform is and shall remain owned by Spacewise or Spacewise's licensors, as the case may be, and all copyright and other intellectual property rights therein shall also vest in Spacewise.
- 7.2. The Customer receives the non-exclusive, non-transferable, time-limited, fee-based and revocable right to use the platform for the display, offer and rental of rental objects. The Customer may adapt the graphical user interface of the platform to his corporate identity as follows: the colors, the background image, as well as the logo and / or trademark.
- 7.3. The Customer is prohibited from copying, translating, disassembling, deriving the source code from the object code, e.g. by decompiling, or otherwise reverse engineering the platform in whole or in part.
- 7.4. To the extent necessary for the performance of this Agreement, Customer grants Spacewise a non-exclusive, perpetual, transferable, perpetual, worldwide, royalty-free license to any copyrighted material, trademarks and data uploaded to the Platform. The Service under this Agreement includes the right to use, exercise, display, reproduce, perform, disclose, prepare derivative works for adaptation of the Platform, translate and back up such copyrighted works, trademarks and data. This right of use also includes the right to grant third parties this same right of use.

## **8. Term and termination**

- 8.1. This contract begins on the day on which the Customer agrees to the SaaS contract during the registration process or with the signature of the parties. It lasts for the agreed contract period. The contract shall be renewed in each case for the agreed renewal period (12 months unless stated otherwise), unless it is terminated by one of the parties in compliance with the notice period. The right of the parties to extraordinary termination shall remain unaffected.

- 8.2. Upon termination of this agreement, the right to access the servers and the right of the Customer to use the platform shall expire immediately. The Customer is obliged to irrevocably delete any documentation of the platform and all copies or partial copies made thereof as well as the login information for accessing the platform and to inform Spacewise thereof in writing without being requested to do so. Should the Customer fail to comply with this obligation or still access Spacewise's servers, Spacewise shall have the right to charge the Customer the Service Fees until further notice. The right of retention according to Art. 895 SCC is excluded.

## **9. Remuneration**

- 9.1. The Customer undertakes to pay the agreed Service Fee for the use of the platform in due time in accordance with the current fee table. In consultation with the Customer, other remuneration models may also be agreed.
- 9.2. Customer-specific changes to the platform (change requests), support and configuration work after the implementation has been completed will be invoiced at cost or in accordance with a separate offer.
- 9.3. Upon termination of this contract, all Service Fees for bookings made until the booking function is blocked will be due immediately.
- 9.4. Invoices are payable net within thirty (30) days of the invoice date. In the event of late payment, Spacewise is entitled to charge a reminder fee of at least CHF 40.00 (or equivalent in another currency) in addition to the default interest.

## **10. Responsibility of the Customer**

- 10.1. The Customer is responsible for accurately providing the necessary information about the rental property, the rental terms and conditions and the rental agreement on the platform.
- 10.2. The Customer is obliged to promote the Platform by displaying "Powered by Spacewise" [figuratively] on its website.
- 10.3. The Customer shall protect its login information for access to the Platform from access by unauthorised third parties and shall not disclose such information to unauthorised third parties. In the event of indications that such login information could be or has been misused, the Customer shall immediately inform Spacewise.
- 10.4. The Customer shall not misuse the Platform. In particular, the Customer shall not upload to Spacewise's servers, nor allow others to do so, any data or content and/or information that is illegal or infringes the copyright and/or other intellectual property rights of third parties. The Customer may not upload and offer any rental objects on the platform for which he does not have the necessary rights to rent.

10.5. Should data or content and/or information of the Customer infringe the rights of third parties, Spacewise shall be entitled to deactivate or delete such data or content and/or information in part or in whole. In such a case, the Customer must submit or acquire the necessary rights of use. Should the Customer not comply with this request, Spacewise is entitled to terminate this contract without notice for good cause. The right to claim damages remains reserved.

## **11. Warranty**

11.1. We will use commercially reasonable efforts to maintain the availability of the platform. The platform is delivered "as is" and "as available" and to the exclusion of any warranty, in particular without warranty of merchantability, non-infringement of third party rights and special purpose.

11.2. Spacewise does not warrant that the Platform will be available at all times, error-free, secure or free of viruses or other harmful components. The Customer uses the Platform at its own risk and peril.

11.3. The Customer agrees that upon termination of this Agreement, all access to the Platform shall cease and all data or content and/or information may be deleted from the Platform and Spacewise's servers.

## **12. Limitation of Liability & Indemnification**

12.1. Subject to mandatory legal provisions, Spacewise excludes any liability under this agreement for damages or warranty, including but not limited to: loss or corruption of data; special, incidental, indirect or consequential damages; or loss of profits, business, revenue, goodwill or anticipated savings.

12.2. The Customer warrants that it has the necessary rights and authorisations to publish, offer and rent a rental object on the platform.

12.3. The Customer shall indemnify Spacewise and its affiliates, including its directors, employees, agents and/or subcontractors against third party claims, losses, liabilities and costs (including legal costs) arising from:

- i. Infringement of copyrights and other proprietary rights by making the Rental Object available on the Platform; and/or
- ii. Renting out the rental property via the platform.

## **13. Data protection**

13.1. The provisions of the privacy policy apply to personal data of the Customer.

13.2. For personal data of third parties that Spacewise processes for the performance of this contract, the commissioned Data Processing Agreement shall apply.

#### 14. **General provisions**

14.1. All notices of failure to perform under this Agreement or any termination of this Agreement shall be in writing.

14.2. Each of the parties is an independent contractor and independent in determining the prices and terms for its services and/or products. Neither party is, nor will it purport to be, a legal representative of the other party. This Agreement does not create a joint venture or an employment or agency relationship between the parties.

14.3. Spacewise may name the Customer as such for its own marketing and PR purposes. The Customer hereby grants Spacewise a non-exclusive, perpetual, royalty-free and worldwide right to use the Customer's trademark for these purposes. This license is valid until revoked in writing by the Customer.

14.4. The Customer shall not assign or otherwise transfer its rights under this Agreement or delegate its obligations under this Agreement without Spacewise's prior written consent.

14.5. Except as required by mandatory law, neither party shall bring any action arising out of this Agreement, regardless of form, more than one (1) year after the cause of action accrues, except for claims arising under Sections 7, 9, 10, 12 and 13.

14.6. Should individual provisions of this contract be invalid or ineffective or the fulfillment become impossible, this shall not affect the validity of the remaining parts of the contract. In this case, the contracting parties undertake to immediately replace the invalid, ineffective or impossible provision with a permissible, effective and possible agreement which, in terms of its content, comes as close as possible to the original intention. The same shall apply in the event of a loophole in the contract.

14.7. This contract is subject to **Swiss law to the exclusion of the PILA and the Vienna Sales Convention**. The place of jurisdiction is **at the registered office of Spacewise**.

#### 15. **Annexes**

Unless otherwise provided in a service agreement, the following attachments apply:

- Privacy Policy
- Data Processing Order

9 May 2022