

# UPGRADE CONTRACT FOR THE SOFTWARE SUITE DATALAB PANTHEON

## 1. Definitions

**1.1. Provider** is the company Datalab SI, družba za poslovno informacijske rešitve d.o.o., based at Hajdrihova ulica 28c, SI-1000 Ljubljana, tax identification number SI99654717. The Provider concludes this License Agreement on its own behalf and for its own account with the Client.

**1.2. Client** is a legal or natural person that received a preliminary invoice or invoice from the Provider based on an order for the Software Suite and a possible conclusion of additional agreements, paid the preliminary invoice or invoice, and received in return a serial number and the status of a registered Client, which makes it possible to activate the Software Suite.

**1.3. Software Suite** is the computer program Datalab PANTHEON and the Support Tools and Materials.

**1.4. Computer Program** is the computer program Datalab PANTHEON in any of its available editions, composed of a group of files in the form of source or compiled or executable code.

**1.5. Support Tools and Materials** are information intended for operating or illustrating the operation of the Software Suite, training materials, videos and other materials provided by the Provider to the Client in exchange for compensation or for free. Support Tools and Materials also include written (digital or printed), audio and video documentation for the Software Suite and a knowledge base about using the Software Suite, available at the Provider's online UserSite portal. Support Tools and Materials may be made available under the terms of specific licenses.

**1.6. Written Documentation** means written instructions on how to use the Software Suite. Only written documentation is relevant for defining an error. Notwithstanding clause 1.5, the Provider shall always provide the Client with written instructions for the use of the Software Suite free of charge. The Client can access written documentation on the Provider's website.

**1.7. Upgraded Software Suite** is the Software Suite that inseparably contains the latest updates for legislation changes, improvements, fixes, changes and new features; the Client is entitled to it with a concluded Software License Agreement and an annual Upgrade Contract. All terms of the Software License Agreement apply to the Upgraded Software Suite as well, except the terms of Article 2 (Grant of License), and Article 6 (Limited Warranty).

**1.8. Intellectual Property Rights** are all proprietary, neighboring and other rights, including *sui generis* rights of the database system provider as regulated by the **Copyright and Related Rights Act of Slovenia**; furthermore including all other intellectual property rights, especially industrial property rights as regulated by the **Industrial Property Act of Slovenia**, and other rights similar to intellectual property rights that are subject to the license agreement or any other agreement between the Provider and the Client.

**1.9. Software License Agreement** is the license agreement which covers the use of the Software Suite and additional Client's rights and defines the terms of Software Suite use. The License Agreement is signed by the Provider and the Client.

**1.10. Additional Agreements** are agreements that are or can be concluded by the Provider and the Client regarding the Software Suite, most notably the Upgrade Contract and the other service agreements.

**1.11. Client User** is a natural person who can use or access the Software Suite through a Workstation and/or access the Client's data that is being processed by the PANTHEON Software Suite through the Software Suite.

**1.12. Vertical Solution** is a software, hardware or similar solution that complements or upgrades the PANTHEON Software Suite and enables the use of or access to the Software Suite and/or the Client's data that is being processed by the PANTHEON Software Suite.

**1.13. Connector** is each individual person, computer program or other similar device or technology that uses or is part of each individual Vertical Solution.

**1.14. Connector License** is an agreement between the Provider and the Client, which enables the use of or access to the Software Suite and/or the Client's data that is being processed by the PANTHEON Software Suite by Connectors. All provisions of the License Agreement are valid for the Connector License, except when the License Agreement provides special provisions for the Connectors.

**1.15. Upgrade Contract** is this Agreement, which regulates the Provider's and Client's rights and obligations in relation to upgrades of the Software Suite.

**1.16. Upgrading** is the right to download the Upgraded Software Suite and the right to use it, as well as the right to access and use other data sources, like updated master data and the company register; the Provider grants those rights to Clients who have concluded a valid Upgrade Contract.

**1.17. Upgrade Price** is the Current Upgrade Price plus the Historical Value.

**1.18. Current Upgrade Price** is the payment for Upgrading. It is expressed as part of the market price that depends on when the Upgrade Contract was concluded.

**1.19. Historical Value** is the payment for the period when a Client did not have an Upgrade Contract in effect based on the number of started calendar months in which the Client did not have an Upgrade Contract in effect, according to the valid price list published at the Provider's website.

**1.20. Order** is an order that the Client places at the Provider's website or some other way and thus shows the interest for concluding a Software License Agreement for the desired edition of the Software Suite and for any additional agreements; the Order includes the number of users and connectors, who may concurrently use the Software Suite.

**1.21. Preliminary Invoice** is issued by the Provider to the Client based on the received Order. It includes the edition of the Software Suite, the Market Price, the Purchase Price, the Price of Additional Agreements, the license's area of validity, and the number of Client Users, who may concurrently use the Software Suite, and the number of Connector Licenses. The Preliminary Invoice also contains the payment plan for the Purchase Price or Price of Additional Agreements, for example the number of installments over a given period. The Preliminary Invoice includes a reference to the validity of the provisions of this Software License Agreement and a link to the website where the Software License Agreement is published. The Preliminary Invoice becomes a part of the Software License Agreement in the part where the Software Suite edition, the license's area of validity, the Purchase Price, the number of Client Users, who may concurrently use the Software Suite, the number of Connector Licenses, and the payment plan are stated.

**1.22. Market Price** is the Provider's recommended sale price, at the moment of price calculation for the use of a Software Suite edition and for additional Client's rights related to the Software Suite from the Software License Agreement, multiplied by the number of Client Users, who may concurrently use the Software Suite. The Market Price includes the price of any Connector Licenses.

**1.23. Purchase Price** is equal to the Market Price at the moment of placing the Order, reduced by any Provider's discounts and increased by any additional cost and the value-added tax. The Purchase Price is stated on the Preliminary Invoice or invoice.

**1.24. Support Providers** are legal entities or private individuals that provide support and other ServiceDesk Services for the Software Suite based on a contractual or other relationship with the Provider. Support Providers shall obtain a certificate for providing support services for the Software Suite and other ServiceDesk services.

**1.25. HelpDesk Support Tool** is a web application at the Provider's user community portal UserSite (<https://usersite.datalab.eu/>) used for support and other ServiceDesk services, messaging, reporting errors (including cases of warranty) and other communication between the Client and the Provider. The Client can access it when logged in at UserSite, but also by email after registering their email address; sending an e-mail to [pomoc@datalab.si](mailto:pomoc@datalab.si) or including the e-mail in the carbon copy recipients will process and save that e-mail message as a HelpDesk Application incident.

**1.26. Error** is the Software Suite's functioning or content that is not according to the specifications or intended function as described in Written Documentation.

**1.27. Error Report** is the submission of a written description of an Error by the Client in the HelpDesk application, which sent to a Support Provider.

## **2. Conclusion of an Upgrade Contract**

2.1. The Client sends the Provider an Order for the conclusion of an Upgrade Contract that has to include the Client's full name/company name, address/company head office address, tax number, and other identifying information, including the Client's e-mail address. The Client is solely responsible for the accuracy and truthfulness of the identifying data provided to the Provider. Based on the Order, the Provider sends the Client a Preliminary Invoice or Invoice.

2.2. Once the Preliminary invoice has been paid by the Client, the Provider shall enable the Client to conclude the Upgrade Contract.

2.3 The Client concludes the Upgrade Contract by declaring in the electronic form, by clicking on the "I agree" button, that they accept all the provisions of the Upgrade Contract, which shall be binding on them consequently. During this process, the computer workstation from which the Client performs this action must be connected to the Internet for the entire duration of the process so that the Provider can record the acceptance of the Upgrade Contract.

2.4 By clicking on the "I agree" button, the natural person performing the action declares that they are the legal representative of the Client or the person authorized by the Client to perform that action.

2.5 By clicking on the "I agree" button, the Client declares that they agree to the version of this Upgrade Contract, which is published on the Provider's website, as applicable in each case.

2.6. The Client is considered to be informed about the content of this Upgrade Contract, if they have been explicitly directed to it in the Preliminary Invoice or invoice and the content of the Upgrade Contract is available on the website as stated on the Preliminary Invoice or invoice.

2.7. If the Client does not agree with any of the provisions of the Upgrade Contract, they may not conclude an Upgrade Contract and download, install or use the Upgraded Software Suite.

2.8. The Client may conclude a Single Upgrade Contract For 3 (three) days, but a renewal is not possible. In that case, the conclusion procedure is generally the same as in paragraphs 2.1. through 2.3.

## **3. Intellectual Property Rights for the Upgraded Software Suite and Terms of Use for the Upgraded Software Suite**

3.1. The Provider guarantees the Client that the Provider has legally acquired all intellectual property rights for the Software Suite that are required for the Client to use the Software Suite, or that the Provider is the holder of all intellectual property rights for the Software Suite.

3.2. The Client uses the Upgraded Software Suite based on a concluded Software License Agreement and Upgrade Contract.

3.3. All terms of the Software License Agreement apply to the Upgraded Software Suite as well, except the terms of Article 2 (Grant of License), and Article 6 (Limited Warranty).

#### **4. Upgrading**

4.1. The Client is entitled to Upgrading the Software Suite based on the concluded Upgrade Contract.

4.2. The Provider shall release an Upgraded Software Suite at least four times per calendar year. The detailed schedule of releases is at the sole discretion of the Provider and is published at the Provider's website.

4.3. The Client can download the Upgraded Software Suite only from the Provider's server using internet technology integrated in the Software Suite, regardless of whether the Client has internet access or not.

4.4. The Client must start the download and installation process for the Upgraded Software Suite on their own.

4.5. The Provider's obligations in relation to debugging and providing support to the Client exist only if the Client has the latest version of the Upgraded Software Suite installed.

4.6. The Provider shall fix an Error that was properly reported in the HelpDesk Support Tool by the Client within a reasonable time based on the type of Error, but not later than 45 (forty-five) days after its proper reporting.

4.7. The Provider will endeavor to release an Upgraded Software Suite with updates for legislation changes at least 7 (seven) days before the legislation changes become binding for the Client, provided that all documentation for the legislation changes are clear and published appropriately in advance.

4.8. If the Client or a third party made any changes or modifications to the Software Suite (based on any agreement with the Provider) that complicate or interfere with the installation or use of the Upgraded Software Suite, the Client may not demand the ensuring of normal installation or operation of the Upgraded Software Suite from the Provider on the grounds of any provision of the Upgrade Contract, the Software License Agreement or any Additional Agreements.

## **5. The Upgrade Price**

5.1. The Upgrade Price is billed to the Client in accordance with the Provider's valid price list, which is published at the Provider's website.

5.2. If the Client does not have an Upgrade Contract in effect for more than 14 (fourteen) consecutive days, they shall, in addition to the Current Upgrade Price, pay also the Historical Value, which together form the Upgrade Price. The same applies for the Single Upgrade Contract from paragraph 2.8. of this Upgrade Contract.

5.3 In the event that the Upgrade Price exceeds a certain amount, the Upgrade Price may be paid in several installments. The amount referred to in the preceding paragraph and the number of installments are set out in the Provider's operating policy, which is available on the Provider's website.

5.4. The Provider may change the way the Upgrade Price is calculated and/or the amount during the time that the Client has an Upgrade Contract in effect. In this case, the Provider shall carry out the Agreement with unchanged terms until the end of the 12-month period since the conclusion of the Upgrade Contract or its last renewal. The Agreement is then carried out with the Provider's new terms in the next 12-month period. The Client agrees with the Provider's new terms regarding the way the Upgrade Price is calculated and/or the amount if the Client does not terminate this Upgrade Contract in accordance with the provisions of this Agreement related to the termination of this Agreement. The Provider shall notify the Client in time and through appropriate channels about the intended changes in the way the Upgrade Price is calculated and/or the amount as well as about the options of terminating the Agreement.

## **6. Exclusion of the Provider's Liability**

6.1. The Provider, its suppliers, co-contractors and support providers, considering only minimal legal limitations of exclusion of liability, are in no case liable to the Client or third Parties for any damages to the Client or a third party that occurred or may occur for any reason arising from the Upgrade Contract. For the avoidance of doubt, the listed damages include, but are not limited to, property damage (ordinary damage), loss of profit or revenue, the infliction of physical or mental pain or distress to another and the tarnishing of the reputation of a legal person (non-pecuniary damage).

6.2. The Provider, its suppliers, co-contractors and support providers are in no case liable to the Client or third Parties for any damages to the Client or third Parties that occurred or may occur, because the Client allowed persons who are not the Provider's certified Support Providers to provide support, maintenance, debugging or upgrading services or any other modifications of the Software Suite.

6.3. The Provider's total liability is in no case higher than the Purchase Price that the Client paid for the conclusion of the Software License Agreement and any other additional contracts, considering only minimal legal limitations of exclusion of liability.

## **7. Term and Termination**

7.1. This Upgrade Contract is concluded for a period of 12 months. At the end of this 12-month period, the Agreement is extended for another 12 months automatically, except if the Client terminates the Upgrade Contracts at least 8 days before the end of the 12-month period.

7.2. The termination statement shall be submitted in writing and the counterparty shall be notified in the usual manner.

7.3. If the Client terminates this Agreement in accordance with the previous paragraphs of this article, they are not entitled to a refund of any advance payments made for Upgrading in a particular period.

7.4. If the Client has not paid the Preliminary Invoice or Invoice for Upgrading the Software Suite in accordance with the Provider's price list for the next 12-month period, the Provider may immediately discontinue the Upgrading of the Software Suite and stop providing other services related to this Agreement as well as terminate the Upgrade Contract with immediate effect without having to extend the payment deadline for the Client.

7.5. The provisions of the previous paragraphs are not in effect for the Single Upgrade Contract from paragraph 2.8. of this Upgrade Contract.

7.6. The termination of the Upgrade Contract does not affect the terms of the Software License Agreement.

7.7. By terminating the Software License Agreement, the Upgrade Contract is automatically terminated in accordance with the provisions of the Software License Agreement. In this case, the Client is not entitled to a refund of any advance payments made for Upgrading in a particular period.

7.8. If the Client is in breach of any of the provisions of this Agreement, the Provider may immediately prevent the Client from using the Software Suite or Upgrading the Software Suite. The Provider may also terminate this Agreement or the Software License Agreement. In the latter case, the provisions of the Software License Agreement concerning the termination of the Software License Agreement due to breaches by the Client are in effect.

7.9. In case of breach of contract by the Client, the Provider is entitled to compensation of any damage that would occur due to the breach.

## **8. Final provisions**

8.1. The Client may not transfer any rights from the Upgrade Contract to third parties without written permission of the Provider.

8.2. If any of the provisions of the Upgrade Contract might prove to be void, other provisions are not affected and remain effective.

8.3. The Upgrade Contract is the whole Upgrade Contract for the Software Suite and it replaces any other arrangements about the subject of the Upgrade Agreement, except if the Upgrade Contract states that it is supplemented by additional provisions of a contract or document, the Preliminary Invoice or the Invoice being such documents.

8.4. This Software License Agreement is concluded without the signature of either party in accordance with the provisions of Article 2 of this Agreement.

8.5. A court in Ljubljana with proper jurisdiction over the subject matter in question has jurisdiction over any dispute arising from the Upgrade Contract. The law of the Republic of Slovenia applies.

Effective as of: 25 May 2018