

## **General Terms and Conditions (GTC)**

### **1.-Object and scope**

The following general terms and conditions (hereinafter referred to as 'contract' or 'conditions' or 'GTC') apply to and govern any purchase of any service or product (collectively and hereinafter referred to as 'SERVICES') offered by SESAME HR in the version in force at the time the order is placed.

In the event that a specific contract/agreement has been concluded with SESAME HR for the same SERVICES as the order placed, the contents of such specific contract/agreement shall prevail over the provisions of these GTC.

SESAME HR reserves the right to modify any term of these GTC, which will be notified to the CUSTOMER. This is without prejudice to any updates of the GTC on the websites owned by SESAME HR.

These GTC shall apply in addition to any SPECIFIC CONDITIONS governing each of the SERVICES offered by SESAME HR.

### **2.- Contracting entity**

The entity with which you are contracting will be:

When contracting from Mexico: HROSESAMEX SA de CV. with registered address at Calle Socrates 141 Piso 2 in Polanco II Sección, Miguel Hidalgo in Mexico City and RFC HRO2305265Y7.

When contracting from the rest of the world: SESAME LABS, S.L. with registered office at Calle de la Travesía, s/n, Base nº1, 46024 Valencia (Spain) CIF B98719818 and registered in the Mercantile Register of Valencia Volume: 9938, Book 7220, Folio 87, page V.164478, 1st Inscription (hereinafter 'SESAME HR').

The address for the purpose of complaints shall correspond to the address indicated as the registered office of SESAME HR.

### **3.- Definitions**

These definitions shall apply both to these GTC and to the applicable SPECIFIC CONDITIONS.

*SESAME HR*: The relevant entity from point 2 'Contracting Entity'.

*SERVICES*: Any product or service offered and marketed by SESAME HR.

*CLIENT:* Any natural, legal or other person who contracts any of the SERVICES offered by SESAME HR.

*AUTHORISED USER:* Users who maintain a contractual relationship with the CLIENT and use any of the SERVICES.

*PRICE:* The amounts to be paid by the CLIENT to SESAME HR for the provision of any of the contracted SERVICES.

*ACCOUNT:* Combination of a username and password required to authenticate a user to access the SERVICES contracted by the CLIENT, which are granted to both the CLIENT and the AUTHORISED USERS.

*AFFILIARY:* means for SESAME HR any company in which it owns or controls, directly or indirectly, 50% or more of the voting rights; for the Customer: any company in which the Customer's ultimate holding company owns or controls, directly or indirectly, 50% or more of the voting shares.

*SPECIFIC CONDITIONS:* The conditions are applicable to each of the SERVICES specifically.

#### **4.- Economic conditions and duration**

The CLIENT shall be obliged to pay the PRICE, in due time and form, and SESAME HR reserves the right to suspend the provision of the SERVICES and to claim the amounts owed up to that date in the event of non-compliance by the CLIENT with its payment obligations.

The PRICE shall be that which at the time of contracting the SERVICES is in force on the SESAME HR website from which the contracting of the SERVICES has been made. Without prejudice to the application of appropriate discounts that have been specifically agreed between SESAME HR and the CLIENT. SESAME HR reserves the right to modify the PRICE on its websites at its own discretion.

SESAME HR may modify the PRICE, giving at least 60 calendar days notice prior to its effective application, giving the CLIENT the right to cancel the SERVICE in the event of non-acceptance of the new conditions, provided that the CLIENT is notified at least 30 calendar days prior to its effective application.

In the event of failure to communicate the aforementioned cancellation with the minimum notice, SESAME HR will proceed to apply the new PRICE 60 calendar days after its effective notification, in the event that the last day of this period does not coincide with the first calendar day of the month, for the purpose of calculating whole months, this period will be considered to be extended until the first calendar day of the following month.

The duration of these GTC will be from the acceptance of the same by the CLIENT until the moment when each and every one of the SERVICES that the CLIENT has contracted is cancelled.

## **5.- SERVICE cancellation**

The CLIENT may terminate the contract, but such termination shall not entitle the CLIENT to any reimbursement of the amounts already paid to SESAME HR.

Notice of termination of the contract must be given at least thirty (30) days prior to the date of issue of the next invoice.

The CLIENT may terminate the contract through the ACCOUNT panel.

## **6.- SERVICE Terms of Use**

### Usage Rights

SESAME HR grants CLIENTS and AUTHORISED USERS the personal, non-exclusive, non-transferable and non-sublicensable right to use the SERVICES that have been hired globally for the duration of these GTC and their renewals exclusively for the purposes of their professional activity, in exchange for the PRICE.

### Usage Restrictions

CLIENT shall not: (a) reverse engineer, decompile, disassemble or otherwise attempt to obtain or derive the source code, underlying ideas, algorithms, file formats or non-public APIs of the SERVICES, or translate, modify or create derivative works of the SAAS, the SERVICES or any part thereof, except to the extent permitted by applicable law ; (b) copy/reproduce, lend, sell, rent, sublicense, broadcast, distribute, edit, transfer to third parties or provide access to the SAAS, or adapt the SERVICES or any part thereof in any way whatsoever; (c) use the SERVICES for the benefit of any third party; (d) use the SERVICES for any commercial purpose or in a product or SERVICES that the CLIENT provides to a third party; (e) circumvent, modify, remove, delete, erase, alter or otherwise tamper with any security, encryption or other technology or software that is part of the SERVICES; (f) access or use the SAAS or the SERVICES for the purpose of competitive analysis or to create a similar or competitive product or SERVICES; (g) use the SAAS for any purpose that is unlawful or unauthorised by SESAME HR, including unsolicited advertising and spamming; (h) create, collect, transmit, store, use or process any data through the SAAS that violates any applicable law, or breaches the intellectual property rights or other rights of any third party; (i) introduce or spread content or software (viruses and malware) that may cause damage to the computer systems of SESAME HR, its technology service providers or third party users; o (j) encourage, allow or assist any third party to do any of the above.

### Updates and new versions

Updates, future versions of the SERVICES provided to the CLIENT during the duration of the GTC shall be subject to the same GTC and SPECIFIC CONDITIONS of each SERVICE will be subject to the same terms.

## **7.- Technical service**

Technical Support Services. SESAME HR will provide CLIENTS with technical support through a support form and chat, accessible via <http://app.sesametime.com/> during SESAME HR's business hours. This support is intended to assist CLIENTS in resolving questions, identifying, and correcting issues related to any of the SERVICES. In the event the platform is down, a help form will be available in Sesame's Help Center. Throughout the duration of any SERVICE provision, the CLIENT authorizes SESAME HR, through its personnel and upon the CLIENT's prior request, to access the ACCOUNTS of AUTHORISED USERS or the CLIENT to carry out the necessary actions to resolve questions or incidents related to the SERVICES.

Availability. SESAME HR will make commercially reasonable efforts to ensure 98% availability of the SERVICES and will make commercially reasonable efforts to give the CLIENT at least 48 hours notice of scheduled maintenance within normal business hours. SESAME HR may give less than 48 hours' notice in case of urgency.

## **8.- Account Access**

The CLIENT and the AUTHORISED USERS shall maintain the security of the passwords to access the ACCOUNTS. SESAME HR shall in no event be liable for any loss of information or damage resulting from failure to comply with this security obligation.

Restrictions. (i) The sharing of one (1) ACCOUNT among several AUTHORISED USERS; and (ii) the creation of accounts by "bots" or other automated methods are not allowed. The CLIENT shall be responsible for all actions taken and all data uploaded by AUTHORISED USERS to the SERVICES.

Account Management. The CLIENT commits to immediately block or deactivate the ACCOUNT of an AUTHORISED USER in the event that: (i) the employment relationship between the CLIENT and the AUTHORISED USER is suspended or terminated, or (ii) it is considered that an AUTHORISED USER has misused his or her passwords to access the ACCOUNT. If SESAME HR becomes aware that an AUTHORISED USER is in one of the aforementioned situations, SESAME HR may suspend access to the offending ACCOUNT temporarily or indefinitely, and SESAME HR shall, in such case, notify the CLIENT of the detected infringement and the action taken with respect to the ACCOUNT of the AUTHORISED USER.

## **9.- Intellectual and industrial property**

Intellectual and Industrial Property in relation to the SERVICES. SESAME HR shall retain its position as the owner of all intellectual and industrial property rights related to all components of the SERVICE, and any other developments, improvements, updates or works derived from this Agreement. Intellectual and industrial property rights shall cover all data, source and object code, scripts, designs, concepts, applications, texts, images, any

related documentation, copies, modifications and documents or documentation derived from the foregoing (in whole or in part) and all related copyrights, patents, trademarks, trade secrets and other proprietary rights, and are and shall remain the exclusive property of SESAME HR and/or its licensees.

Intellectual and industrial property of the CLIENT. All rights, titles and interests in relation to the Database, trademarks, trade names, and logos of the CLIENT, as well as those that may exist in the CLIENT's own computer system, shall remain the property of the CLIENT.

The CLIENT expressly authorises SESAME HR to use the CLIENT's trademark and trade name for the purpose of including them on the web portals owned by SESAME HR for purely promotional purposes.

## **10.- Confidentiality**

Confidential Information Definition. "Confidential Information" means any material or information disclosed orally or in writing labelled or marked as confidential or which by its nature would reasonably be understood to be confidential which has been delivered or provided by either Party to the other in connection with this Agreement, including information relating to the computer systems and systems' architecture of the planned or existing systems of the Parties, including hardware, software, the SERVICES themselves, Documentation, Database, processing methods and operating methods.

Exceptions. Confidential Information shall not include information that (i) was in the public domain at the time it was disclosed to the receiving Party; (ii) entered the public domain through use, publication or similar, subsequent to disclosure to the receiving Party, through no fault or act of the receiving Party; (iii) was in the possession of the receiving Party lawfully and free from any obligation of confidentiality at the time it was disclosed to the receiving Party; (iv) is lawfully communicated to the receiving Party by a third party entitled to disclose such Confidential Information subsequent to the time it was disclosed to the receiving Party.

Confidentiality Duty. The Parties commit to not use, reveal, copy, publish, exploit, spread, or distribute the other Party's Confidential Information, or allow the Confidential Information received to be exploited or distributed by third parties, without the prior written consent of the disclosing Party, except to the extent necessary to perform their obligations or exercise their rights under the contract. The Parties commit to treating this Confidential Information with the same degree of care as they use to protect their own Confidential Information, and in no case with less than a reasonable degree of care. The obligation of confidentiality shall remain in force indefinitely and extends equally to the Parties' employees and representatives, as well as to any external advisors engaged by either Party in connection with this contract.

Disclosure of Confidential Information. The Parties may only disclose Confidential Information in the following instances: (i) in response to an order of a court or other governmental body, or as otherwise required by law, (in which case the disclosing Party shall be notified in advance in writing of such potential disclosure and shall limit such disclosure as much as possible); (ii) where the Party receiving such Confidential Information is required

to disclose it to its employees, representatives or its outside advisors (if any) whom it has hired for the purpose of performing its obligations hereunder and only to the extent necessary; (iii) where a Party has received express written authorisation from the other Party to disclose its Confidential Information (or any part thereof).

Confidentiality duty breach. The breach of the confidentiality obligations set forth in this contract, or the fraudulent or negligent actions carried out by any of the Parties, their employees or managers, shall entitle the non-breaching Party to claim by legal means, the liabilities, direct or indirect or against third parties, including judicial, extrajudicial and defence costs that the breaching Party may have incurred, as well as to compensate the damages that such breach may have caused to the non-breaching Party.

## **11.- Data protection**

Contractors' Details. The Parties inform each other that the personal data of the signatories, as well as of the people working for the respective Parties, and the contact data indicated for notification purposes, will be processed by the other Party for the sole purpose of managing and executing the contractual relationship. The data shall be stored for as long as the relationship exists and, once it has ended, shall be stored only for as long as it is necessary to comply with the fiscal, legal and administrative obligations to which the Parties are bound.

The basis that legitimates this treatment is the need to execute the present contract. The data will not be communicated or transferred to third parties with the exception of those that are essential for the execution of the contract (necessary service providers) and for compliance with legal obligations (Public Administrations, auditors, financial institutions, insurance companies where appropriate, among others).

### Clause only applicable to CLIENTS subject to GDPR

In the case of necessary service providers, they may be based outside the EU and an international transfer of data may take place. In such an event, the Parties commit to ensuring that their international providers have sufficient guarantees in accordance with applicable law.

The Parties may request to exercise their rights of access, rectification, deletion, opposition, limitation and portability at the address designated in this contract or at the e-mail address [legal@sesametime.com](mailto:legal@sesametime.com), clearly indicating the right they wish to exercise.

Likewise, the Parties are mutually informed that they have the right to file a complaint with the Spanish Data Protection Agency ([www.aepd.es](http://www.aepd.es)). Nevertheless, the Parties will use their best efforts and will try to resolve any issue relating to personal data in an amicable manner.

### Database included by the CLIENT

The processing of the personal data contained in the Database to be carried out by SESAME HR as a result of the provision of the Services shall be subject to the Processing Agreement contained in these terms and conditions.

## **12.- Warranties**

Ownership guarantee.

SESAME HR warrants to the CLIENT that it is the owner or rightful holder of all intellectual property rights necessary to provide the SERVICES.

Exclusions.

Except as expressly stated in the preceding paragraph, the SERVICES are provided "AS IT IS" and "as available" and SESAME HR excludes all other warranties, including, but not limited to, implied warranties of availability, performance, non-infringement, merchantability or adequacy for a particular purpose, without prejudice, where applicable, to any warranties required by law. The CLIENT accepts that he/she is solely responsible for the results obtained from the use of the SERVICES and their functionalities. No claims will be accepted for alleged specifications that, in the opinion of the CLIENT, the SERVICES must comply with.

## **13.- Liabilities**

Limitation of Liability. The CLIENT agrees to compensate and hold SESAME HR harmless from any direct, indirect, incidental or consequential third party claim, action or demand, as well as from any expense, liability, damage, settlement or fee arising from the CLIENT's misuse of the SERVICES, or from the violation of any of the terms of the GTC. SESAME HR shall also not be liable for any claims, losses or damages arising from the use by the CLIENT or any AUTHORISED USER of any third-party products, services, software or websites accessed through links from the SERVICES or the SESAME website.

Consequential Damages. SESAME HR shall not be liable (except as otherwise provided by law) to the CLIENT for any damages, compensation or indemnity based on consequential damages (including, but limited to, emerging damages, loss of use, loss or inaccuracy of data, loss of profits, failure of security mechanisms, business interruption, costs of delay) or any special, incidental or indirect damages of any kind, even if the Client is advised of the possibility of such damages in advance.

Maximum Liability. SESAME HR's maximum liability for any claim arising under the GTC and the SPECIFIC CONDITIONS, whether for breach of contract, breach of warranty, negligence or otherwise, and the CLIENT's sole remedy, is limited to direct damages in an amount not exceeding the pro rata share of the sum of the amounts paid or payable by the CLIENT as the PRICE to SESAME HR in the last twenty-four (24) months before the claim.

Nothing in this contract shall limit or exclude the liability of a Party that cannot be excluded or limited under applicable law.

Acts of God. Neither party shall be liable to the other for any failure to perform its obligations under the terms and conditions to the extent that such failure or delay is the result of a cause

or circumstance beyond the reasonable control of the affected Party which could not have been avoided or overcome by acting reasonably and prudently (such as but not limited to, fire, flood, strikes, labour disputes or other industrial unrest, war - declared or otherwise -, embargoes, blockades, legal restrictions, riots, insurrections, governmental regulations).

Regulatory compliance. The CLIENT shall be solely responsible for full compliance with all laws applicable to his/her business in his/her jurisdiction. The mere contracting of the SERVICES does not in any way equate to or guarantee compliance with the regulations applicable to workday management. SERVICES are tools subject to use by the CLIENT, who is responsible for compliance with his/her obligations.

#### **14.- Termination**

SESAME HR reserves the right to terminate the GTC as of right and to terminate the provision of the SERVICES, without notice or compensation, in the event that the CLIENT or an AUTHORISED USER compromise in any way the integrity of the SERVICES, the intellectual and industrial property rights of SESAME HR on the SERVICES or the reputation of the brands or products of SESAME HR, the non-payment or delay in the payment of any amount in favour of SESAME HR or performs any of the actions provided for in Clause.

Termination Effects. Upon expiry of the contract or its termination for any reason: (i) the CLIENT shall not be reimbursed any of the amounts paid as PRICE to SESAME HR under the GTC and SESAME HR shall invoice all fees due for the remaining time of the current year; (ii) upon the CLIENT's request, SESAME will provide the CLIENT with a copy of the Database in a standard technical format. Such request must be made within one (1) month of the termination of the contract; (iii) all the provisions of the GTC shall cease to have effect, except for the provisions of this contract that, by their nature, must remain in force, even if the contract is terminated, including the provisions on confidentiality, intellectual property and data protection.

#### **15.- Miscellaneous**

Headings. The headings of the clauses are set out for illustrative purposes only and shall have no legal effect.

Notifications. The Parties provide the designated email addresses, in the case of SESAME HR the designated email address is [legal@sesametime.com](mailto:legal@sesametime.com).

Transfer. The CLIENT may not assign or transfer the GTC or the SPECIFIC CONDITIONS without the prior written consent of SESAME HR. However, the contract may be assigned or transferred by SESAME without the consent of the CLIENT, and prior written notice of the assignment to the CLIENT shall be sufficient for such assignment to be effective. Once the assignment has been formalised, any reference to the assigning Party contained in this contract shall be understood as a reference to the assignee entity or entities.



Waiver. No delay in exercising any right shall be deemed a waiver thereof, nor shall any waiver of any right or remedy in any particular case constitute a waiver of such right or remedy generally.

Partial invalidity. If any provision of the GTC or the SPECIFIC CONDITIONS is determined to be unenforceable or invalid, the remaining provisions of the GTC or the SPECIFIC CONDITIONS shall not be affected and shall remain in full force and effect.

Independence. This contract is of a commercial nature and in no case shall there be any employment relationship between the Parties, who shall be independent for all purposes.

## **16.- Applicable law and jurisdiction**

Applicable law. The terms of these GTC and, where applicable, of the SPECIFIC CONDITIONS, shall be governed by and interpreted in all respects in accordance with the legislation of the country of the entity with which the CLIENT is contracting in accordance with point two.

Jurisdiction. The Parties jointly declare that, to the extent reasonable, any dispute arising in connection with the GTC, and if applicable the SPECIFIC CONDITIONS, or arising therefrom, shall be resolved by mutual negotiations and consultations

In the event that a satisfactory solution is not reached, such dispute shall be submitted to the courts of the city of the domicile with which the CLIENT is contracting in accordance with point 2.