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# FoCul SAAS Terms of Service

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Carefully read these FoCul Ltd. SaaS Terms of Use (Terms of Use or TOU) before using the FoCul Ltd. SaaS and any associated Enabling Software. Customer may use the FoCul Ltd. SaaS and Enabling Software only if Customer first accepts these Terms of Use. By ordering, accessing or using the FoCul Ltd. SaaS or Enabling Software or clicking on an Accept button, Customer agrees to these Terms of Use.

IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF CUSTOMER, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND CUSTOMER TO THESE TERMS OF USE. IF YOU DO NOT AGREE WITH THESE TERMS OF USE OR DO NOT HAVE FULL AUTHORITY TO BIND CUSTOMER TO THESE TERMS OF USE THEN DO NOT IN ANY MANNER USE OR PARTICIPATE IN ANY OF THE FUNCTIONALITY OFFERED AS PART OF THE FoCul Ltd. SAAS OR USE ANY ENABLING SOFTWARE.

## **1. Part 1 – General Terms**

### **1.1. Purpose**

These Terms of Use are for the following FoCul Ltd. SaaS offerings:

⇒ FoCul Ltd. Delivery Toolkit Suite

For the purpose of this ToU only, the term FoCul Ltd. SaaS refers to the specific FoCul Ltd. SaaS offering set forth in this Section 1. Customer may use the FoCul Ltd. SaaS only during a valid Subscription Period.

### **1.2. Definitions**

**Enabling Software** – any Program and associated materials provided to Customer by FoCul Ltd. or a third party as part of the FoCul Ltd. SaaS offering in order to facilitate access to and use of FoCul Ltd. SaaS.

**Privacy Practice** – the Privacy Practice, located on the Internet at <http://focul.net/terms> and any subsequent modification.

## **2. General Charge Terms**

### **2.1. Metrics**

**Authorized User** – is a unit of measure by which the FoCul Ltd. SaaS offering may be purchased. An Authorized User is a unique person who is given access to FoCul Ltd. SaaS. Customer must obtain separate, dedicated entitlements for each Authorized User accessing the FoCul Ltd. SaaS offering in any manner directly or indirectly (for example: via a multiplexing program, device, or application server) through any means. An entitlement for an Authorized User is unique to that Authorized User and may not be shared, nor may it be reassigned other than for the permanent transfer of the Authorized User entitlement to another person.

**Authorized Site** – is a unit of measure by which the FoCul Ltd. SaaS offering may be purchased. An Authorized Site may represent a collection of plants, departments or functions in a single geographical area which will be defined on a case by case basis in the Proof of Entitlement or Transaction Document.

**Authorized Business** – is a unit of measure by which the FoCul Ltd. SaaS offering may be purchased. An Authorized Business may represent a collection of plants, departments or functions in a single legal entity which will be defined on a case by case basis in the Proof of Entitlement or Transaction Document.

**Authorized Business Process** – is a unit of measure by which the FoCul Ltd. SaaS offering may be purchased. An Authorized Business Process represents a defined business process ( e.g. HSE Reporting ) and will be defined on a case by case basis in the Proof of Entitlement or Transaction Document.

## **2.2. Charges & Billing**

### **2.2.1. Billing Options**

The Subscription Period for the FoCul Ltd. SaaS offering is available to be ordered for a minimum of one (1) month up to a maximum of sixty (60) months. The amount payable for the FoCul Ltd. SaaS is specified in a Transaction Document. The billing options for the FoCul Ltd. SaaS subscription fee are as follows:

- ⇒ Entire commitment amount upfront
- ⇒ Monthly (in arrears)
- ⇒ Quarterly (upfront)
- ⇒ Annually (upfront)

The selected billing option will be valid for the length of the term specified in a Proof of Entitlement or a Transaction Document. The amount payable per billing cycle will be based on the annual subscription fee and number of billing cycles in a year.

### **2.2.2. Partial Month Charges**

The Partial Month charge is a pro-rated daily rate that will be charged to Customer. The Partial Month Charges are calculated based on the remaining days of the partial month starting on the date Customer is notified by FoCul Ltd. that their access to the FoCul Ltd. SaaS is available. The FoCul Ltd. SaaS Subscription Period begins on the date that FoCul Ltd. notifies Customer that Customer has access to the FoCul Ltd. SaaS. The end date of a Subscription Period as specified in a Transaction Document is the last day of a month, unless otherwise specified in a Transaction Document as a specific date of the month.

### **2.2.3. Overage Charges**

If Customer's actual usage of the FoCul Ltd. SaaS exceeds the entitlement specified in a Proof of Entitlement or Transaction Document, then Customer will be invoiced for the overage in accordance with the overage rates specified in the applicable Proof of Entitlement or Transaction Document.

### **2.2.4. Pay Per Use Charges**

Customer will be invoiced for usage in accordance with the pay per use rates specified in the applicable Proof of Entitlement or Transaction Document.

## **3. Account Creation and Access**

When FoCul Ltd. SaaS Users register for an account (Account), FoCul Ltd. may provide the FoCul Ltd. SaaS User with an Account identification and password. Customer is responsible for ensuring that each FoCul Ltd. SaaS User manages and keeps their Account information

current. At any time Customer may request that any Personal Data provided as part of registering for an Account or use of the FoCul Ltd. SaaS be corrected or removed from Account information and this information will be corrected or removed, but removal may prevent access to the FoCul Ltd. SaaS.

Customer is responsible for ensuring that each FoCul Ltd. SaaS User protects their Account identification and password and controls who may access a FoCul Ltd. SaaS User Account or use any FoCul Ltd. SaaS on Customer's behalf.

#### **4. Trade-Ups**

Certain FoCul Ltd. SaaS offerings may be acquired for a reduced charge to replace qualifying FoCul Ltd. SaaS offerings. Customer agrees that FoCul Ltd. will terminate Customer's use of the replaced FoCul Ltd. SaaS offering when Customer is provided access to the replacement FoCul Ltd. SaaS offering.

#### **5. Enabling Software**

This FoCul Ltd. SaaS offering may include Enabling Software provided by FoCul Ltd. or a third party supplier. If Customer downloads or installs any Enabling Software, Customer agrees not to use such Enabling Software for any purpose other than to facilitate or enable Customer's access and use of the FoCul Ltd. SaaS. If Enabling Software is presented with a separate license agreement ( or other FoCul Ltd. or third party license agreement) at the time of installation or download, such separate agreement will govern its use. Customer agrees that Customer accepts such terms by accepting this ToU or downloading, installing, or using the Enabling Software.

Enabling Software for the FoCul Ltd. SaaS includes but is not limited to:

- ⇒ IBM Lotus Notes Client Software
- ⇒ Windows operating System Software
- ⇒ Linux Operating System Software

#### **6. Suspension of FoCul Ltd. SaaS and Termination**

##### **6.1. Suspension**

In the event of a breach of the Terms of Use, Agreement, or Acceptable Use Policy, misappropriation of FoCul Ltd. intellectual property or violation of applicable law by an FoCul Ltd. SaaS User, FoCul Ltd. reserves the right to suspend or revoke the offending FoCul Ltd. SaaS User's access to the FoCul Ltd. SaaS, and/or delete the offending FoCul Ltd. SaaS User's Content, at any time. FoCul Ltd. will notify Customer of any suspension or revocation action.

##### **6.2. Termination**

FoCul Ltd. may terminate Customer's access to FoCul Ltd. SaaS for cause if Customer does not comply with the terms of the Agreement or this ToU and such noncompliance is not remedied within a reasonable time after receiving written notice from FoCul Ltd.. Upon termination, Customer's access and other rights to the FoCul Ltd. SaaS will be cancelled and cease. In such event Customer and its FoCul Ltd. SaaS Users must cease any further use of the FoCul Ltd. SaaS and destroy any copies of the associated Enabling Software within Customer's possession or control.

## **7. Renewal of a Subscription Period**

### **7.1. Automatic Renewal of a Subscription Period**

If Customer's Proof of Entitlement designates the subscription renewal as automatic, Customer may renew Customer's expiring FoCul Ltd. SaaS Subscription Period by written authorization to renew (e.g., order form, order letter, purchase order), prior to the expiration date, in accordance with the terms of the Agreement.

CUSTOMER MAY TERMINATE THE FOCUL Ltd. SaaS AT ANY TIME AFTER THE END OF THE INITIAL SUBSCRIPTION PERIOD ON ONE MONTH'S WRITTEN NOTICE, EITHER DIRECTLY TO FOCUL LTD. OR THROUGH CUSTOMER'S FoCul Ltd. RESELLER, AS APPLICABLE, IF FOCUL Ltd. HAS NOT RECEIVED CUSTOMER'S WRITTEN AUTHORIZATION (e.g., order form, order letter, purchase order) TO RENEW CUSTOMER'S EXPIRING FOCUL LTD SAAS SUBSCRIPTION PERIOD. IN SUCH EVENT, CUSTOMER MAY OBTAIN A PRORATED REFUND.

### **7.2. Customer Renewal Required**

If Customer's Proof of Entitlement designates the subscription renewal as one that terminates, the FoCul Ltd. SaaS offering will not renew at the end of the initial Subscription Period. In order to continue use of the FoCul Ltd. SaaS beyond the initial Subscription Period, Customer must obtain a new subscription for the FoCul Ltd. SaaS. Please contact an FoCul Ltd. sales representative or Customer's reseller, as applicable, to obtain a new FoCul Ltd. SaaS subscription.

## **8. Emergency Maintenance & Scheduled Maintenance**

FoCul Ltd. may perform regularly scheduled maintenance during maintenance windows defined by FoCul Ltd.. Other scheduled and non-scheduled down times may occur. FoCul Ltd. SaaS will not be available during these times.

## **9. Updates; Applicable Terms and Authorization for Auto Updates**

These Terms of Use apply to all enhancements, modifications, variations, revisions, updates, supplements, add-on components, and replacements for the FoCul Ltd. SaaS (collectively, Updates) that FoCul Ltd. may provide or make available for the FoCul Ltd. SaaS, subject to any additional terms provided by FoCul Ltd. applicable to such Updates. Customer authorizes FoCul Ltd. to, and agrees that FoCul Ltd. may, in accordance with FoCul Ltd.'s standard operating procedures, automatically transmit, access, install, and otherwise provide Updates to FoCul Ltd. SaaS without further notice or need for consent. FoCul Ltd. has no obligation to, and nothing in these Terms of Use may be construed to require FoCul Ltd. to, create, provide, or install Updates.

## **10. Updates to Terms of Use**

FoCul Ltd. reserves the right to prospectively modify these Terms of Use, to account for any Updates that FoCul Ltd. may provide or make available for the FoCul Ltd. SaaS during the Subscription Period, and as otherwise required by applicable law, by providing at least thirty (30) days prior notice of such modified terms to Customer. Subscription renewals will be governed by the Terms of Use in effect at the time of renewal.

## **11. Technical Support**

Technical support for the FoCul Ltd. SaaS is included during the Subscription Period. Technical support options are detailed at <http://www.focul.net/support>

## **Items Not Covered by Technical Support**

Technical support does not include assistance with:

- ⇒ The design and development of applications
- ⇒ Issues arising out of Customer's use of FoCul Ltd. SaaS in other than its specified operating environment
- ⇒ Assistance with Customer or third party products and services
- ⇒ Issues arising out of the use of FoCul Ltd. SaaS with Customer or third party products or services.

## **12. Data Privacy and Data Security**

### **12.1. Customer's Obligations**

In relation to all Personal Data provided by or through Customer to FoCul Ltd., Customer will be responsible as the sole data controller for complying with all applicable data protection or similar laws such as, but not limited to, EU Directive 95/46/EC (and laws implementing that Directive) that regulate the processing of Personal Data including special categories of data, as such terms are defined in that Directive (and laws implementing that Directive).

Customer agrees to obtain all legally required consents, authorizations and approvals and make all necessary disclosures before (i) including any Personal Data in Content and (ii) using the Enabling Software and FoCul Ltd. SaaS.

Customer confirms and acknowledges that it is solely responsible for any Personal Data that may be contained in Content, including any information which any FoCul Ltd. SaaS User shares with third parties on Customer's behalf. Customer is solely responsible for determining the purposes and means of processing any Personal Data by FoCul Ltd. under these Terms of Use, including that such processing according to Customer's instructions will not place FoCul Ltd. in breach of applicable data protection laws.

FoCul Ltd. SaaS is not intended for the storage or receipt of any Sensitive Personal Information or Protected Health Information (as defined below), in any form, and Customer will be responsible for reasonable costs and other amounts FoCul Ltd. may incur relating to any such information provided to FoCul Ltd. or the loss or disclosure of such information by FoCul Ltd., including those arising out of any third party claims. Sensitive Personal Information is; 1) Personal Data, the loss of which would trigger a data breach notification requirement, and includes, but is not limited to financial information, country identification number (e.g. Social Insurance Number (SIN), Social Security Number (SSN)) or other governmentally issued identification number such as driver's license or passport number, bank account number, credit card or debit card number; and 2) Personal Data relating to racial or ethnic origin, sexual orientation, or political opinions or religious, ideological or philosophical beliefs or activities or trade union membership. Protected Health Information is individually identifiable health information as defined under the Health Information Portability and Accountability Act of 1996 (HIPAA), as amended. Customer agrees that when FoCul Ltd. reasonably determines it to be useful in its provision of FoCul Ltd. SaaS, FoCul Ltd. may transfer Content, including any Personal Data, across a country border to the entities and countries notified to Customer. Customer consents to FoCul Ltd. SaaS being provided by such entities in such countries, and is solely responsible for

determining that any transfer of any Personal Data across a country border under the terms of the Terms of Use complies with applicable data protection laws. FoCul Ltd. shall reasonably cooperate with Customer, for Customer's own benefit or for the benefit of a Customer data controller, in its fulfilment of any legal requirement, including obtaining mandatory approvals.

If FoCul Ltd. makes a change to the way it processes or secures Personal Data as part of FoCul Ltd. SaaS and the change causes Customer to be noncompliant with data protection laws applicable to it, Customer may terminate the current Subscription Period for the affected FoCul Ltd. SaaS, by providing written notice to FoCul Ltd. within thirty (30) days of FoCul Ltd.'s notification of the change to Customer. Any such termination will not obligate FoCul Ltd. to issue a refund or credit to Customer.

#### **12.2. FoCul Ltd.'s Obligations**

FoCul Ltd. will only process Personal Data in a manner that is reasonably necessary to provide FoCul Ltd. SaaS, and only for that purpose.

FoCul Ltd. will only process Personal Data in delivering FoCul Ltd. SaaS as described by FoCul Ltd., and Customer agrees that the description provided by FoCul Ltd. is consistent with Customer's processing instructions.

Upon Customer's written request, following termination or expiry of either this ToU or the Agreement, FoCul Ltd. will destroy or return to Customer all Content that Customer identifies as Personal Data.

If Customer or a Customer data controller is required by applicable data protection laws to provide information about or access to Personal Data to any individual or to a relevant authority, FoCul Ltd. will reasonably cooperate with Customer in providing such information or access.

#### **12.3. Protection of Content**

Notwithstanding anything to the contrary in the Agreement, FoCul Ltd. will not intentionally disclose or use Customer's Content except to operate and perform the FoCul Ltd. SaaS as contemplated in this Agreement, subject to FoCul Ltd.'s compliance with applicable laws.

FoCul Ltd. will only process Customer Content on systems used to host and operate the FoCul Ltd. SaaS, on which FoCul Ltd. has implemented the security practices and procedures referenced below.

#### **12.4. Security Practices**

FoCul Ltd. implements and maintains practices and procedures, which may be revised periodically, regarding the systems used to host and operate the FoCul Ltd. SaaS. These practices and procedures are designed to reduce the vulnerability of our systems to accidental loss, unlawful intrusions, unauthorized access, disclosure or alteration, or wrongful conduct that may interfere with, misappropriate, or otherwise damage the Content or Customer's use of the FoCul Ltd. SaaS. A description of the practices and procedures applicable to the FoCul Ltd. SaaS, including applicable technical and operational measures, is available to Customer upon request. Customer is responsible for determining whether these practices and procedures are appropriate to meet Customer's requirements. By using the FoCul Ltd. SaaS, Customer acknowledges its acceptance of the FoCul Ltd. practices and procedures and their

adequacy for Customer's purposes. Except as specifically provided in the Security Practices for the FoCul Ltd. SaaS, FoCul Ltd. makes no representations or warranties regarding any security functions or that the FoCul Ltd. SaaS or Customer's content are secure from any intrusions or wrongful conduct.

### **13. Compliance with Applicable Export Law**

Each party agrees to comply with all applicable import and export laws and regulations, including those of the United States regarding embargo and sanctions regulations and prohibitions on export by certain end users or for any prohibited end uses (including nuclear, space or missile, and chemical and biological weapons). Customer represents that Content will not, in whole or part, be controlled under the U.S. International Traffic in Arms Regulation (ITAR). Customer acknowledges that FoCul Ltd. may use global resources (non-permanent residents used locally and personnel in locations worldwide) to remotely support the delivery of FoCul Ltd. SaaS. Customer represents that no Content accessible to FoCul Ltd. for the FoCul Ltd. SaaS will require an export license or is restricted from export to any FoCul Ltd. global resource or personnel under applicable export control laws.

### **14. Indemnity**

Customer agrees to indemnify, defend and hold FoCul Ltd. harmless against any third party claim arising out of or relating to: 1) violation of the Acceptable Use policy by Customer or any FoCul Ltd. SaaS User; or 2) Content created within FoCul Ltd. SaaS or provided, uploaded, or transferred to FoCul Ltd. SaaS by Customer or any FoCul Ltd. SaaS User.

### **15. Copyright Infringement**

It is FoCul Ltd.'s policy to respect the intellectual property rights of others. To report the infringement of copyrighted material, please email [support@focul.net](mailto:support@focul.net)

### **16. Warranty and Exclusions**

#### **16.1. No Warranty**

SUBJECT TO ANY STATUTORY WARRANTIES THAT CANNOT BE EXCLUDED, FoCul Ltd. MAKES NO WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, REGARDING THE FoCul Ltd. SAAS, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND TITLE, AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT.

FoCul Ltd. does not make any representation that it will provide uninterrupted, secure, or error-free operation of FoCul Ltd. SaaS or that FoCul Ltd. will be able to prevent third party disruptions of FoCul Ltd. SaaS or that FoCul Ltd. will correct all defects.

Customer is responsible for the results obtained from the use of the FoCul Ltd. SaaS.

### **17. General**

If any provision of these Terms of Use is held to be invalid or unenforceable, the remaining provisions of these Terms of Use remain in full force and effect. Failure by either party to insist on strict performance or to exercise a right when entitled does not prevent either party from doing so at a later time, either in relation to that default or any subsequent one. Any terms of these Terms of Use that by their nature extend beyond termination of these Terms of Use or the applicable Subscription Period remain in effect until fulfilled, and apply to respective successors and assignees.



## **18. Entire Agreement**

The complete agreement between the parties, replacing any prior oral or written communications between Customer and FoCul Ltd., consists of these Terms of Use and the Agreement. If there is a conflict among the terms of these Terms of Use and the Agreement, then these Terms of Use prevail over the Agreement.

Additional or different terms in any written communication from Customer (such as a purchase order, acknowledgement or e-mail) are void. These Terms of Use may only be amended as set forth herein.

## **19. Part 2 – Country-unique Terms**

The following terms replace or modify the referenced terms in Part 1. All terms in Part 1 that are not changed by these amendments remain unmodified and in effect. This Part 2 is comprised of amendments to this Terms of Use and is organized as follows:

Americas country amendments;  
Asia Pacific country amendments; and  
Europe, Middle East, and Africa country amendments.

### **19.1. AMERICAS COUNTRY AMENDMENTS**

#### **19.1.1. None**

### **19.2. ASIA PACIFIC COUNTRY AMENDMENTS**

#### **19.2.1. AUSTRALIA**

##### **19.2.1.1. No Warranty**

*The following is added to the end of Section 16.1:*

Although FoCul Ltd. specifies that there are no warranties, Customer may have certain rights under the Competition and Consumer Act 2010 or other legislation and are only limited to the extent permitted by the applicable legislation.

#### **19.2.2. NEW ZEALAND**

##### **19.2.2.1. No Warranty**

*The following is added to the end of Section 16.1:*

Although FoCul Ltd. specifies that there are no warranties, Customer may have certain rights under the Consumer Guarantees Act 1993 or other legislation which cannot be excluded or limited. The Consumer Guarantees Act 1993 will not apply in respect of any goods which FoCul Ltd. provides, if Customer requires the goods for the purposes of a business as defined in that Act.

### **19.3. EUROPE, MIDDLE EAST, AFRICA (EMEA) COUNTRY AMENDMENTS**

#### **19.3.1. EUROPEAN UNION MEMBER STATES**

##### **19.3.1.1. Warranty and Exclusions**

*The following is added to Section 16: Warranty and Exclusions*

In the European Union (EU), consumers have legal rights under applicable national legislation governing the sale of consumer goods. Such rights are not affected by the provisions set out in this Section 16: Warranty and Exclusions.

### **19.3.2. AUSTRIA**

#### **19.3.2.1. Warranty and Exclusions**

*If you paid a charge for the FoCul Ltd. SaaS then the Section 16 Warranty and Exclusions is replaced in its entirety by the following:*

#### **19.3.2.2. Warranties and Exclusions**

FoCul Ltd. provides the FoCul Ltd. SaaS in conformity with its descriptions as contained in the FoCul Ltd. SaaS announcement and maintains it in this condition for the term of the FoCul Ltd. SaaS. FoCul Ltd., its Affiliates and suppliers disclaim all further warranties (*Ausschluß der Gewährleistung*).

Warranties, if any, for Enabling Software supplied as part of this FoCul Ltd. SaaS may be found in their license agreements.

### **19.4. GERMANY**

#### **19.4.1. Warranty and Exclusions**

*If you paid a charge for the FoCul Ltd. SaaS then the Section 16 Warranty and Exclusions is replaced in its entirety by the following:*

#### **19.4.2. Warranties and Exclusions**

FoCul Ltd. provides the FoCul Ltd. SaaS in conformity with its descriptions as contained in the FoCul Ltd. SaaS announcement and maintains it in this condition for the term of the FoCul Ltd. SaaS. FoCul Ltd., its Affiliates and suppliers disclaim all further warranties (*Ausschluß der Gewährleistung*).

Warranties, if any, for Enabling Software supplied as part of this FoCul Ltd. SaaS may be found in their license agreements.

### **19.5. IRELAND**

#### **19.5.1. Warranty and Exclusions**

*The following paragraph is added:*

Except as expressly provided in these terms and conditions, or Section 12 of the Sale of Goods Act 1893 as amended by the Sale of Goods and Supply of Services Act, 1980 (the "1980 Act"), all conditions or warranties (express or implied, statutory or otherwise) are hereby excluded including, without limitation, any warranties implied by the Sale of Goods Act 1893 as amended by the 1980 Act (including, for the avoidance of doubt, Section 39 of the 1980 Act).

### **19.6. IRELAND AND UNITED KINGDOM**

#### **19.6.1. Entire Agreement**

*The following sentence is added at the beginning of this Section 18:*

Nothing in the following paragraphs shall have the effect of excluding or limiting liability for fraud