

## General Conditions of FREEMIUM Service

*last update: 12/08/2016*

### PREAMBLE

Société OPENDATASOFT, a simplified joint-stock company with a capital of 271,750.00 euros, located at 130, rue de Lourmel, 75015 PARIS, RCS PARIS 538 168 329 (hereinafter 'OPENDATASOFT'), operates the platform accessible at <https://www.opendatasoft.com/> (hereinafter the 'OPENDATASOFT PLATFORM').

Based on a model in SaaS and an economic approach, the OPENDATASOFT PLATFORM can provide numerous uses: Open Data portals, internal data references, smart city platforms, dataset market places ... and it allows the following:

Processing and publication of datasets for systems management.

User data search and visualization.

Reuse of data via simple and powerful API's for developers.

In order to assess the adjustment of the SERVICES offered by OPENDATASOFT to his needs, and to make his choice in full knowledge of the facts, the CLIENT acknowledges that OpenDataSoft has provided him with the necessary information, particularly via the OPENDATASOFT PLATFORM, has answered his questions and has provided all demonstrations that he has required concerning the SERVICES described hereinafter.

### ARTICLE 1. DEFINITIONS

The terms listed hereinafter shall have, in the context of these General Conditions of Service, the following definitions:

**"BACK-OFFICE"**: This designates the administrative interface of the DOMAIN provided for the CLIENT by OpenDataSoft. Using the BACK OFFICE, the CLIENT can undertake to customize the graphic interface of his DOMAIN, and define administrator rights for the DOMAIN, as well as security levels for the creation of DATASETS, their modification, publication, etc. BACK- OFFICE functionalities are specified in detail at <http://docs.opendatasoft.com>.

**"BENEFICIARY"**: This designates the end USER benefiting from a right of access to DATASETS published by the CLIENT.

**"CLIENT"**: This designates the producer of DATASETS registered on the OPENDATASOFT PLATFORM, who has subscribed to one of the offerings provided by OPENDATASOFT for the use of the SERVICE.

**"DOMAIN"**: This designates the domain name of the type <http://.opendatasoft.com> opened by the CLIENT in connection with the offer subscribed so he can publish his DATASETS. Specific DOMAINS can also be opened subject to conditions (transmission of the relevant HTTPS certificate making it possible to secure access to the domain – private code, certificate and possible intermediate certificates)

**"PUBLIC SPACE"**: This designates all of the spaces of the OPENDATASOFT PLATFORM freely accessible to all categories of USERS.

**"DATASETS"**: This designates data produced by CLIENTS, published on the OPENDATASOFT PLATFORM and made accessible to all or some of the different categories of USERS, depending on the offer subscribed by the CLIENT and the licenses offered by the latter.

**"OPEN LICENSE"**: This designates the kind of LICENSE applicable to the DATASETS published in the PUBLIC SPACE of the OPENDATASOFT PLATFORM or accessible by the BENEFICIARIES, without restriction. DATASETS published by CLIENTS with an OPEN LICENSE confer upon BENEFICIARIES a right of access and use that is non-exclusive and free of charge, for the whole world and for the total duration of the intellectual property rights pursuant to the laws in force, both national as well as international. The right of use includes: reproduction, reuse, publication, dissemination, adaptation, modification, extraction and exploitation of the DATASETS.

**"PRIVATE LICENSE"**: This designates the specific type of LICENSE applicable to the DATASETS published by the CLIENT through his DOMAIN.

**"OPENDATASOFT PLATFORM"**: This designates the platform published by OPENDATASOFT, as well as all of its graphic, audio, visual, software and textual components. The OPENDATASOFT PLATFORM is the exclusive property of OPENDATASOFT. It is accessible at <https://www.opendatasoft.com/>.

**"SERVICE"**: This designates all services offered by OPENDATASOFT via the OPENDATASOFT PLATFORM. The Services are explained in detail in Article 4 of the General Conditions of Use (CGU).

**"FREEMIUM SERVICE"**: This designates the free service package offered to CLIENTS as explained in detail at <http://www.opendatasoft.com>. To subscribe to the FREEMIUM SERVICE, CLIENTS are invited to validate the General Conditions of FREEMIUM Service accessible at <https://legal.opendatasoft.com/en/terms-of-services-freemium.html>.

**"SOLUTIONS"**: This designates software applications offered on the OPENDATASOFT PLATFORM enabling the dissemination, organization, manipulation, aggregation, importation, sorting, etc. of DATASETS via the OPENDATASOFT PLATFORM. The various software SOLUTIONS, including BACK

OFFICE, are described at <http://docs.opendatasoft.com>.

**"USERS"**: This designates the various categories of OPENDATASOFT PLATFORM users. Accordingly, those considered to be USERS are:

- BENEFICIAIRES navigating on the OPENDATASOFT PLATFORM and accessing DATASETS,
- CLIENTS, producers of DATASETS

## **ARTICLE 2. PURPOSE OF GCS – CONTRACTUAL DOCUMENTS**

These General Conditions of Service (hereinafter the 'GCS'), entered into between OPENDATASOFT, on the one hand, and the CLIENT, on the other hand (hereinafter collectively referred to as the 'PARTIES'), have the purpose of framing the rights and obligations of the PARTIES in the context of the FREEMIUM SERVICE, and are intended to supplement the General Conditions of Use published at <https://legal.opendatasoft.com/en/terms-of-use.html>.

## **ARTICLE 3. SUBSCRIPTION TO FREEMIUM SERVICE**

To subscribe to the FREEMIUM SERVICE, the CLIENT must register on the OPENDATASOFT PLATFORM, pursuant to the provisions of Article 3 of the General Conditions of Use accessible at <https://legal.opendatasoft.com/en/terms-of-use.html>.

## **ARTICLE 4. DESCRIPTION OF FREEMIUM SERVICE**

The FREEMIUM SERVICE, as set forth in detail at: <http://www.opendatasoft.com>, allows in particular the following:

The option of managing a DOMAIN

The option of publishing, modifying, organizing and consulting DATASETS via the BACK OFFICE and SOLUTIONS in accordance with the technical limits stated at the time of creation of the FREEMIUM account and/or negotiated with OPENDATASOFT.

As a corollary of the free nature of the FREEMIUM SERVICE, OPENDATASOFT reminds the CLIENT that no guarantee of level of service is granted in the context of this offering. The specific Conventions of Level of Service can be agreed upon between OPENDATASOFT and the CLIENT in the context of the paid offerings explained at <http://www.opendatasoft.com> and the related General Conditions of Services.

## **ARTICLE 5. OBLIGATIONS OF CLIENT**

In the context of the use of the OPENDATASOFT PLATFORM, the CLIENT undertakes to not violate public order and to comply with the laws and regulations in force, to respect the rights of third parties and the provisions of these General Conditions of Service (GCS), as well as the General Conditions of Use accessible at <https://legal.opendatasoft.com/fr/terms-of-use.html>.

More particularly, with regard to the FREEMIUM SERVICE, the CLIENT undertakes to do the following things:

To inform the BENEFICIARIES of the type of LICENSE and the source for each DATASET released through the OPENDATASOFT PLATFORM

To respect Law n°78-17 known as the “Computer and Freedoms” law of January 6, 1978, as amended, as well as the recommendations of the CNIL at the stage of collection of the data comprising the DATASETS.

To not infringe the rights of third parties, and particularly the intellectual property rights of third parties, at the time of the establishment, dissemination or manipulation of DATASETS created through the account opened on the OPENDATASOFT PLATFORM and distributed either through the DOMAIN or in the PUBLIC SPACE.

At all events, it is noted that the CLIENT uses the OPENDATASOFT PLATFORM and the SERVICES under his full and exclusive responsibility. The CLIENT is in particular solely responsible for the DATASETS disseminated through the OPENDATASOFT PLATFORM and for his relations with the BENEFICIARIES, with OPENDATASOFT in this context having the role of a mere technical intermediary.

## **ARTICLE 6. LIABILITY**

### **(i) General principles**

Pursuant to the provisions of the General Conditions of Use accessible at <https://legal.opendatasoft.com/en/terms-of-use.html>, it is noted that OPENDATASOFT refuses any kind of liability:

For abnormal use or illicit operation of the OPENDATASOFT PLATFORM

For use of the OPENDATASOFT PLATFORM that is not in compliance with, and not provided for by, this GCS

For the temporary impossibility of accessing the OPENDATASOFT PLATFORM as a result of technical maintenance operations or interruptions having to do with the nature of the internet network, independent of OPENDATASOFT

For viral attacks

Due to a fault of the CLIENT

Lack of compatibility of the SERVICE with the hardware and software used by the CLIENT or his BENEFICIARIES, considering that it is up to them to assess such compatibility.

It is also noted that OPENDATASOFT is subject to a general obligation to undertake its best effort, and that it is not bound by any performance obligation or best effort with no fault obligation of any kind

Generally speaking, OPENDATASOFT shall not guarantee that the use of the FREEMIUM SERVICE will generate an increase in turnover and establish its liability for any indirect damage, and by way of example, though without limitation, for any financial or commercial loss, lost profits, commercial difficulties, loss of earnings, harm to a third party, or action filed by a third party against the CLIENT, as well as their consequences, associated with these presents or their execution. The CLIENT is solely liable for any loss, direct or indirect, material or immaterial, caused by him or one of his employees to OPENDATASOFT or to third parties resulting from his use of the OPENDATASOFT PLATFORM and its related SERVICES.

It is expressly agreed between the PARTIES that the stipulations of this clause shall continue to apply even in the case of the termination of this Contract established by a final court decision.

## **(ii) Host status**

It is noted that for all DATASETS published by the CLIENT in the context of the FREEMIUM SERVICE, OPENDATASOFT shall have the status of host in the sense of Article 6 I 2) of the Law of June 21, 2004, for Confidence in the Digital Economy. In this capacity, OPENDATASOFT undertakes to remove promptly any content that is manifestly illicit as soon as it shall have knowledge thereof, pursuant to the stipulations of the General Conditions of Use accessible at <https://legal.opendatasoft.com/en/terms-of-use.html>.

## **ARTICLE 7. SECURITY AUDITS**

In order to objectively measure the OPENDATASOFT PLATEFORM security, the CLIENT can conduct, at its expenses, security audits – including penetration tests – on the OPENDATASOFT PLATFORM, in accordance with the conditions provided in this article and within the limit of one audit per year.

The CLIENT shall obtain the agreement of OPENDATASOFT at least 15 days before the beginning of the test.

During the audit, the CLIENT undertakes to comply with the general conditions of the Infrastructure provider (IaaS) who host its DOMAIN. OPENDATASOFT shall upon request communicate the relevant general conditions.

The CLIENT shall communicate all useful information concerning the penetration test, including:

Contact details of the auditor and the persons in charge of the audit.

IP addresses used for the Penetration tests

The tools used for the test.

The CLIENT will only be able to perform penetration tests from its DOMAIN and its credential.

The audit operations must not involve actions which could damage the infrastructure hosting the DOMAIN or interfere with other DOMAINS or SERVICES provided by OPENDATASOFT to other CLIENTS

All information obtained during the audit are CONFIDENTIAL INFORMATION.

If the CLIENT retains an external auditor, the latter will be asked to accept, in writing, conditions laid down in this Article.

The CLIENT shall, free of charges, submit the audit report to OPENDATASOFT which could present its observations.

## **ARTICLE 8. INTELLECTUAL PROPERTY**

Each one of the PARTIES shall retain ownership of the knowledge, know-how, processes, information, technical, industrial or commercial data, supplies, software and other creations that it possessed prior to the validation of these GCS.

### **(i) Property of the CLIENT**

The DATASETS published on the OPENDATASOFT PLATFORM by the CLIENT from his account shall remain the property of the CLIENT, who shall ensure the oversight of their dissemination and access via the BACK-OFFICE of his DOMAIN, and the establishment of OPEN or PRIVATE LICENSES.

### **(ii) Property of OPENDATASOFT**

The CLIENT acknowledges that the OPENDATASOFT PLATFORM and all of its components are the exclusive property of OPENDATASOFT.

The brands, logos, slogans, graphic elements, photographs, animations, videos, software, databases and texts created, published or recorded by OPENDATASOFT are the exclusive property of OPENDATASOFT and cannot be reproduced, used or represented without express prior authorization, under penalty of legal

prosecution.

In this light, the CLIENT is forbidden:

To use the name OPENDATASOFT in his campaigns without the prior written agreement of OPENDATASOFT;

To maintain any confusion with OPENDATASOFT in the context of his advertising campaigns and/or promotional notices;

To adapt, correct, modify or reproduce in whole or in part the OPENDATASOFT PLATFORM and the related SERVICES.

Any total or partial representation of the OPENDATASOFT PLATFORM or its components, through any behavior whatsoever, without the express prior authorization of OPENDATASOFT or, as the case may be, of CLIENTS with respect to DATASETS disseminated by their actions, is prohibited, and shall constitute a counterfeit sanctioned by Articles L. 335-2 and following, and Articles L. 713-1 and following of the Code of Intellectual Property.

Furthermore, OPENDATASOFT expressly prohibits the following:

Extraction by permanent or temporary transfer of all or a qualitatively or quantitatively substantial part of the content of the OPENDATASOFT PLATFORM, by any means and in any way whatsoever; as long as the party committing this extraction is acting without a LICENSE granted by OPENDATASOFT or its CLIENTS.

The reuse, through making available to the public all or a qualitatively or quantitatively substantial part of the OPENDATASOFT PLATFORM, in any way whatsoever as long as the party committing this reuse is acting without a LICENSE granted by OPENDATASOFT or its CLIENTS.

### **(iii) Management of LICENSES**

In the context of the administration of its DOMAIN opened in the context of the FREEMIUM SERVICE, it is up to the CLIENT to parameterize the level of security of the DATASETS that he wishes to publish (OPEN LICENSE, PRIVATE LICENSES).

It is specified that by default, DATASETS will be published in accordance with a closed LICENSE, preventing any disclosure of DATASETS to third parties.

For each DATASET, the CLIENT also undertakes to specify its source in order to inform the BENEFICIARIES thereof.

## **ARTICLE 9. PROTECTION OF PERSONAL DATA**

Each one of the PARTIES guarantees the other PARTY that it will respect the legal and regulatory obligations incumbent upon each of them in terms of each one's role concerning the protection of personal data.

### **(i) Concerning processing performed by OPENDATASOFT**

In the context of the operation of the OPENDATASOFT PLATFORM, OPENDATASOFT collects personal data when a CLIENT registers, and with the opening of his account.

Such data is necessary for processing the opening of the account, and will be processed in accordance with this purpose.

In this regard, the USER is called upon to consult the Confidentiality Policy accessible at <https://legal.opendatasoft.com/en/privacy-policy.html>, which will give him more complete information concerning the protection of personal data, and the processing performed through the OPENDATASOFT PLATFORM.

The CLIENT enjoys the right of access, and the right to correct and to challenge the processing of his personal data, pursuant to Articles 38 and following of Law n°78-17 known as the "Computer and Freedoms" Law of January 6, 1978, as amended. These rights can be exercised under the law by a simple e-mail request sent to [cil@opendatasoft.com](mailto:cil@opendatasoft.com), by standard postal delivery to the address of the company headquarters of OPENDATASOFT, with proof of his identity and a legitimate reason, if it is required by the law.

### **(ii) Concerning processing performed by the CLIENT**

In cases of processing personal data implemented by the CLIENT from his DOMAIN, OPENDATASOFT shall have the status of a subcontractor in the sense of Article 35 of the law of January 6, 1978, cited above.

It is therefore expressly agreed between the PARTIES that OPENDATASOFT:

Shall not perform any data processing operation if it is not at the instruction of the CLIENT, and shall do so always under the complete and exclusive responsibility of the CLIENT,

Shall take all steps at its disposal to ensure the security and confidentiality of the personal data with which it is entrusted.



In order to ensure contractual security and confidentiality guarantees to potential transfer of personal data outside the EU in accordance with the Law n°78-17 known as the "Computer and Freedoms" law of January 6, 1978, the CLIENT gives a mandate to OPENDATASOFT to conclude, in its name and on its behalf, Standard Contractual clauses following the model developed by the European Commission (commission decision of 5 February 2010 C(2010) 593 - 2010/87/UE).

## **ARTICLE 10. FORCE MAJEURE**

OPENDATASOFT cannot be held liable, or deemed to have failed to fulfill these General Conditions of Service (GCS) for any delay or lack of execution, if the cause of the delay or lack of execution is associated with a case of force majeure as it is defined by the jurisprudence of French courts and tribunals, in particular, in the event of hacking, unavailability of materials, supplies, hardware, peripherals, personal or other equipment; and interruption, suspension, reduction or disruptions of electricity or other things, or any interruptions of electronic communications networks.

## **ARTICLE 11. GENERAL PROVISIONS**

OPENDATASOFT reserves the option to update and amend these General Conditions of Service (GCS) at any time, it being specified that the GCS in force are those validated by the CLIENT on the first access to his DOMAIN.

No instruction or document can give rise to an obligation not included in these General Conditions of Service (GCS), if they are not subject to a new agreement between the PARTIES.

The PARTIES declare, moreover, that these General Conditions of Service cannot under any circumstances be construed as an act establishing a juridical person or any legal institution whatsoever, and that any kind of "affectio societatis" is strictly excluded from their relations.

The fact that one of the PARTIES may not have demanded the application of any of the clauses of these General Conditions of Service, whether on a permanent or temporary basis, may not under any circumstances be construed as a waiver of the said clause.

In the event of any difficulty of interpretation among any of the titles appearing in the article headings, and any one of the articles themselves, the titles will be declared non-existent.

If any one of the stipulations of these General Conditions of Service (GCS) should be found to be null in the light of a legislative or regulatory provision in force and/or a court decision with the authority of a final ruling, it will be deemed unwritten, but this will not in any way affect the validity of the other clauses, which shall remain fully applicable.

## **ARTICLE 12. APPLICABLE LAW**

These General Conditions of Service (GCS) are subject to French law.

In the event of disputes arising between the PARTIES regarding the interpretation, execution or termination of these General Conditions of Services, the PARTIES shall strive to reach an amicable settlement.

IN THE ABSENCE OF AN AMICABLE SETTLEMENT WITHIN A PERIOD OF ONE (1) MONTH COUNTING FROM THE FILING OF A CASE IN COURT BY ONE OF THE PARTIES VIA REGISTERED LETTER WITH CONFIRMATION OF RECEIPT, THE LITIGATION WILL BE SUBMITTED TO THE TRIBUNALS OF THE COURT OF APPEALS OF PARIS TO WHICH THE ATTRIBUTION OF COMPETENCE IS EXPRESSLY MADE, THIS ATTRIBUTION OF COMPETENCE APPLYING ALSO TO MATTERS OF SPECIAL URGENCY.