

## Terms and Conditions – Grip on SQL B.V.

Version:

1.1

Date: April 12, 2021

These Terms and Conditions apply to all agreements and services provided by Grip on SQL B.V., established in Amsterdam and registered with the Chamber of Commerce under registration number 71387226, hereafter referred to as 'Provider'.

### Article 1. Definitions

- 1.1 **Agreement:** all agreements between Provider and Customer of which these Terms and Conditions form an integral part;
- 1.2 **Bugs/Errors:** an unexpected defect, fault or imperfection in regard to the functioning of the Service;
- 1.3 **Customer:** a legal entity that concludes an Agreement with Provider in order to use the Service;
- 1.4 **Customer Confidential Information:** any information disclosed by or on behalf of the Customer to the Provider that at the time of disclosure:
  - (1) was marked as 'confidential'; or
  - (2) should have been reasonably understood by the Provider to be confidential; and
  - (3) data of the Users;
- 1.5 **Dutch Office Hours:** 08:00 – 18:00 CET/CEST, from Monday till Friday, excluding National Holidays;
- 1.6 **Expiration Date:** the date the Production License Key expires;
- 1.7 **Instances:** SQL Server Instances;
- 1.8 **Intellectual Property:** all intellectual property rights and related rights, including but not limited to copyrights, database rights, domain name rights, trademark rights, brand rights, model rights, neighbouring rights, patent rights and rights to know-how.
- 1.9 **National Holidays:** a public holiday established by the Dutch Government;
- 1.10 **Personal Data:** any information relating to an identified or identifiable natural person as stated in article 4 of the General Data Protection Regulation (GDPR);
- 1.11 **Production License Key:** the key that enables the use of the Service;
- 1.12 **Quotation:** a document to accompany these terms and conditions containing a detailed description and pricing of the Service and/or consultancy services;
- 1.13 **Service:** any services that the Provider provides to the Customer or has an obligation to provide to the Customer under this Agreement;
- 1.14 **SQL Server Databases:** relational database management servers;
- 1.15 **Support Ticket:** form on the website of Provider where a User can report a bug or malfunction;
- 1.16 **Terms and Conditions:** the terms in this document;
- 1.17 **Trial Period:** a period of forty-five (45) days, when the Service can be used free of charge;

- 1.18 **User Interface:** everything designed into the Service with which a User may interact;
- 1.19 **Users:** a person that uses the Service;

## Article 2. Conclusion of the Agreement

- 2.1 At request of the Customer, the Service can be ordered as described on the website of Provider: <https://griponsql.org>.
- 2.2 Orders will be manually processed, and the Customer will be verified before downloading is enabled. Provider reserves the right to refuse an order without any further explanation.
- 2.3 After the Trial Period, the Service will stop working, unless the Customer orders a Production License Key.
- 2.4 The Customer can order a Production License Key for the use of the Service on the website of Provider, where Customer receives a Quotation from Provider, specifying the price of the Service.
- 2.5 The Agreement is deemed to have come into effect when Customer has completed the ordering process as described on the website of Provider for receiving the Production License Key and Customer has been accepted by Provider.

## Article 3. Renewal and duration

- 3.1 The Production License Key has a duration of one (1) year. If the Production License Key expires within fourteen (14) days, a pop-up will appear when starting the User Interface of the Service. Customer can order a new Production License Key at any time by completing the ordering process as described on the website of Provider.
- 3.2 If the Production License Key has expired, the Customer may no longer use the Service and access will be blocked.
- 3.3 In case Customer terminates the Agreement, by sending a notification to Provider, before the Expiration Date, no refund will be given, unless expressly otherwise provided in these Terms and Conditions.
- 3.4 If the Customer wishes to downgrade its Production License Key, this can only be done when renewing the current Production License Key. No refund will be given.
- 3.5 If the Customer wishes to upgrade its Production License Key, the Expiration Date will remain the same and the Customer will be billed for the difference between the old Production License Key and the new Production License Key for the remaining period.
- 3.6 The Agreement shall be valid up and until the Expiration Date, unless the Agreement is renewed by the Customer.
- 3.7 Provider reserves the right to discontinue the Service at any given time. In this case, Customer will receive a refund of fees for the Service not used on a pro rata basis.

## Article 4. Grant of License

- 4.1 Provider grants to Customer a non-exclusive license to use the Production License Key for the duration of one (1) year.
- 4.2 This license for the Production License Key does not include the right to sublicense, sell or otherwise copy or disclose the Service in any way.

- 4.3 Customer can terminate the Production License Key, as the case may be, in accordance with article 3.2 and 3.3.

#### Article 5. **Intellectual Property**

- 5.1 The Service is the Intellectual Property of Provider (or its licensor). The Service may not be copied or used without the prior written permission of Provider, except and to the extent permitted by mandatory law.
- 5.2 Information which the Customer stores or processes using the Service is and remains Customer's property (or the property of Customer's suppliers or licensors). Provider receives a limited license to use this information for the Service, including for future aspects thereof.
- 5.3 Except to the extent expressly permitted in this Agreement or required by law on a non-excludable basis, the license granted by Provider to Customer under 4.1 is subject to the following prohibitions:
- i) the Customer may not sub-license its right to access and use the Service, unless specified otherwise in the Quotation;
  - ii) the Customer may not permit any unauthorized person to access or use the Service;

#### Article 6. **Support**

- 6.1 In possession of a Production License Key, the Customer is requested to submit a support-request by sending a message on Whatsapp to +31(0)638 176 624 or by opening a Support Ticket on the website of Provider.
- 6.2 Response time will be within eight (8) Dutch Office Hours. Solutions are on a best effort basis.
- 6.3 Reported Bugs/Errors will be solved as soon as possible and released after thorough testing.

#### Article 7. **Maintenance and updates**

- 7.1 Provider does not give any guarantees regarding to availability of the Service.
- 7.2 Provider may from time to time update the Service. Updates will be made available through the website of Provider. Customer will receive a notification that an update can be downloaded from the website of Provider.
- 7.3 Customers are encouraged to suggest new features and improvements. The final decision to implement any of the changes is solely up to Provider.

#### Article 8. **Consultancy**

- 8.1 In case the Customer requests for consultancy services in regard to the Services, Customer will determine an hour rate to provide the consultancy services.
- 8.2 Based on the determined hour rate, Provider will send Customer the Quotation for providing the consultancy services. The Quotation will also state the term for providing the consultancy services.
- 8.3 If Customer has confirmed and agrees with the Quotation, Provider and Customer will jointly determine when the consultancy services will take place.
- 8.4 These Terms and Conditions will also apply to consultancy services.

- 8.5 Provider will send Customer a monthly invoice for the consultancy services and the payment period will be fourteen (14) days from the moment the invoice was sent. Article 9.3 and article 9.4 also applicable for providing consultancy services.

#### Article 9. **Compensation for the service**

- 9.1 As compensation for the granted license to use the Production License Key, the Customer is required to pay the agreed upon price as stated in the Quotation in accordance with the payment method as stated on the invoice that will be send by Provider.
- 9.2 The price is to be paid upfront for the period of one year. Payment can be made through a direct bank transfer. The Product License Key will be made available after Provider has received full payment of the Customer.
- 9.3 If Provider has not received payment within the payment term, and without prejudice to its other rights and remedies hereunder: (a) Provider shall be under no obligation to provide any or all of the Service while the invoice(s) concerned remain unpaid, and (b) Customer shall be liable for payment of the statutory commercial interest, referred to in article 6:119a of the Dutch Civil Code, on the outstanding amount, without notice of default being required.
- 9.4 All prices are in the EURO (€) currency and excluding VAT unless the Quotation states otherwise.

#### Article 10. **Privacy and Security**

- 10.1 For the avoidance of doubt, all terms regarding the processing of personal data stated in this Agreement are only applicable insofar not otherwise agreed upon between Provider and Customer in a separate data processing agreement.
- 10.2 In the event personal data are being processed by using the Service, Provider shall perform the role of processor (or sub-processor) within the meaning of applicable data protection laws and regulations, such as the EU General Data Protection Regulation (hereinafter referred to as: "GDPR"). Insofar required by applicable law, Customer shall request Provider to agree upon additional privacy related terms. Parties will then discuss such request in good faith. Customer is responsible for entering into contractual arrangements with its end-users regarding the processing of their personal data, having regard to the agreements between Provider and Customer as contemplated in this Agreement, or as otherwise agreed to in writing.
- 10.3 Customer shall notify Provider of the purposes of the processing to the extent not already specified in the Agreement. Insofar required by applicable law, Customer makes sure that both Parties are familiar with the categories of personal data to be processed by Provider and the categories of data subjects from which the personal data is processed. In case applicable privacy legislation requires a Data Protection Impact Assessment (DPIA), or when a prior consultation within the meaning of article 36 of the GDPR must be conducted before the intended processing under the Agreement may be carried out, then Provider shall provide Customer with assistance to the extent necessary and reasonable. Provider may charge reasonable costs for the aforementioned assistance.

- 10.4 Provider may process the personal data in countries within the European Economic Area. Processing of personal data in countries outside the European Economic Area is allowed when the legal requirements for such processing have been fulfilled.
- 10.5 Within the framework of the Agreement, Provider is hereby authorized to engage third parties (sub-processors). On request of Customer, Provider shall inform Customer about which sub-processors are engaged by Provider. Provider shall inform Customer about any planned changes in the used sub-processors, in which case Customer has the right to object to the proposed change in sub-processors. Such objection must be received by Provider in writing and within two weeks after the date on which Provider has informed Customer about the proposed change in sub-processors. Furthermore, such objection must be supported by valid and reasonable arguments. Should Customer object to such change, then the Parties will jointly endeavour to find a reasonable solution. If Parties cannot come to a solution, then Provider is allowed to make the planned change in the used sub-processors and Customer is allowed to terminate the Agreement on the date that Provider will actually make the change in the used sub-processors.
- 10.6 Where a data subject submits a request to Provider regarding his/her personal data (for example, to inspect, correct or delete the data, or to receive a copy of the data), Provider will forward the request to Customer and the request will then be dealt with by Customer. Provider may notify the data subject hereof. On request of Customer, Provider will provide assistance with handling such request to the extent necessary and reasonable. Provider may charge reasonable costs for such assistance.
- 10.7 Provider will use its best efforts to take appropriate technical and organizational measures with respect to the processing of the personal data against loss or against any form of unlawful processing (such as unauthorized disclosure, damage, alteration or transfer of personal data). These measures should guarantee a suitable protection level, taking into account the state of technology, the costs of implementation, the risks associated with the processing and the nature of the information to be protected.
- 10.8 The Parties acknowledge that technology is constantly improving, therefore Provider is allowed to change the technical and organizational measures from time to time. Provider may update and amend these measures provided that the level of protection is not significantly reduced.
- 10.9 Provider will use its best efforts to inform Customer of a personal data breach as soon as reasonably possible, but in any event not later than 48 hours after discovery of the personal data breach. A personal data breach is understood as a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, personal data transmitted, stored or otherwise processed as described in article 4(12) of the GDPR. To the extent required by applicable law, Provider will cooperate with the process of informing all relevant supervisory authorities and data subjects of the personal data breach. However, Customer and/or its Users will remain responsible for reporting the personal data breach in an appropriate and timely manner.

10.10 Customer has the right to have audits performed by an independent third party bound by confidentiality to verify Provider's compliance with its obligations regarding the processing of personal data under this Agreement.

10.11 Such audits may only take place after:

- i) Customer has requested (from Provider) similar audit reports from independent third parties that are already in Provider's possession; and
- ii) Customer has reviewed the aforementioned audit reports and can still provide legitimate reasons to initiate an audit.
- iii) An audit may only be undertaken once per calendar year. Customer shall inform Provider of the audit at least two weeks before the audit shall take place.
- iv) Provider shall cooperate with the audit and provide all information reasonably relevant for the audit, including supporting data such as system logs, and employees, as promptly as possible.
- v) The costs of the audit, including the costs that Provider has to make to cooperate with the audit, shall be borne by Customer.

10.12 The findings of the conducted audit will be assessed by the Parties in mutual consultation and, may or may not be implemented by one of the Parties or by both Parties together.

#### **Article 11. Notifications**

11.1 In the User Interface there is a message system to notify Users when Errors/Bug occur. If the number of Instances and/or Users has been reached, a notification will be issued by the Service.

11.2 If the Production License Key expire within forty-five (45) days, all Users will receive a notification.

11.3 Neglecting these notifications can be fatal. The Service will stop working and the User Interface will be blocked, when the Production License Key is expired.

#### **Article 12. Warranties and Indemnifications**

12.1 The Service is provided on an "as is" and "as available" basis. Support of the Service is provided on a reasonable endeavours' basis. Provider shall use reasonable endeavours to meet any performance dates, but any such dates shall be estimates only and shall not be deemed to constitute deadlines.

12.2 Customer represents and warrants that:

- i) it has full right to enter into this Agreement and to perform its obligations hereunder, without violating any agreement it has with a third party;
- ii) it shall not breach the terms of this Agreement;
- iii) its authorized users shall not use the Service in violation of anyone's legal right, in violations of the terms of this Agreement, or in violation of applicable law,

12.3 Customer shall indemnify and hold harmless Provider from and against all claims, damages or losses resulting from Customers breach of its warranties above.

#### **Article 13. Confidentiality**

13.1 Provider shall not disclose confidential Information to any third party except upon express written authorization by Customer and except any portion of confidential

information which is required to be disclosed by law, court order, or government regulation.

- 13.2 Parties accept the duty to observe strict secrecy towards third parties with respect to all that has been arranged in this Agreement. In addition, the Parties accept the duty to observe strict secrecy with respect to all information regarding the activities and organization of the other party, except as far as such information was already part of the public domain without any involvement of the other party.
- 13.3 The Provider must:
- i) keep the Customer Confidential Information strictly confidential;
  - ii) not disclose the Customer Confidential Information to any person without the Customer's prior written consent, and then only under conditions of confidentiality approved in writing by the Customer;
  - iii) use the same degree of care to protect the confidentiality of the Customer Confidential Information as the Provider uses to protect the Provider's own confidential information of a similar nature, being at least a reasonable degree of care;
  - iv) act in good faith at all times in relation to the Customer Confidential Information; and
  - v) not use any of the Customer Confidential Information for any purpose other than the Service.
- 13.4 Notwithstanding 13.3, the Provider may disclose the Customer Confidential Information to the Provider's officers, employees, professional advisers, insurers, agents and subcontractors who have a need to access the Customer Confidential Information for the performance of their work and who are bound by a written agreement or professional obligation to protect the confidentiality of the Customer Confidential Information.

#### Article 14. **Liability**

- 14.1 Provider's liability for loss and/or damages resulting from a failure in the performance of the Agreement, an unlawful act or otherwise, shall on a yearly basis (regardless of the number of events) be limited to the amount that was paid to Provider in the year the damage occurred.
- 14.2 Any limitation or exclusion of liability stipulated in the Agreement shall not apply in the event that the loss and/or damage is attributable to (1) wilful misconduct or deliberate recklessness of Provider's management, (2) death or bodily injury, or (3) any other matter for which it is unlawful to limit or exclude liability.
- 14.3 Unless performance by Provider is permanently impossible, Provider shall only be liable due to an attributable failure in the performance of a contract if Customer declares Provider to be in default in writing without delay and grants Provider a reasonable term to remedy the breach, and Provider culpably fails to fulfil its obligations also after this term has passed. The notice of default must describe the breach as comprehensively and in as much detail as possible in order to give Provider the opportunity to respond adequately.

- 14.4 Any right to claim compensation is at all times subject to the condition that Customer notifies Provider of the loss and/or damage in writing within no more than thirty (30) days of its discovery.
- 14.5 Provider is only liable for direct loss and/or damage arising from an attributable failure in the performance of the Agreement. Direct loss and/or damage is solely understood to mean any and all loss and/or damage consisting of:
- i) the damage caused directly to tangible objects (“property damage”);
  - ii) reasonable and demonstrable costs Customer has had to incur in demanding that Provider properly performs the Agreement, unless the defective performance is not attributable to Provider;
  - iii) reasonable costs to determine the cause and the extent of the direct loss and/or damage;
  - iv) reasonable and demonstrable costs incurred by Customer to prevent or limit the direct loss and/or damage, insofar as Customer can demonstrate that such costs have resulted in limitation of the direct loss and/or damage;
  - v) reasonable and demonstrable costs for having the Agreement fulfilled by a third party, where Provider, after receiving notice from Customer, fails to ensure proper performance within the reasonable term stipulated in the notice.
- 14.6 In the event of force majeure, Provider will under no circumstances be liable for compensation and Provider will under no circumstances be bound to comply with its obligations under the Agreement. Force majeure includes failures or outages of the Internet or the telecommunication infrastructure, a (D)DOS or comparable attack, power failures, civil unrest, mobilization, war, transport disruptions, strikes, lockouts, business interruptions, stagnation in deliveries, fire and floods.

#### **Article 15. Changes to the Terms and Conditions**

- 15.1 These Terms and Conditions may be amended or supplemented at any time. Provider will inform the Customer of any changes one (1) month prior to the date the changes take effect.
- 15.2 Provider may amend these Terms and Conditions at any time if the changes are not significant or are required by applicable mandatory law.
- 15.3 If the Customer does not want to accept a change or addition, not being a change or addition pursuant to article 15.2 of these Terms and Conditions, the Customer can terminate the Agreement until the date the changes take effect. In this case, Customer will receive a refund of fees for not using the Service on a pro rata basis.
- 15.4 Use of the Service after the date of effect shall constitute Customer’s acceptance of the changed or added-to terms and conditions.

#### **Article 16. Miscellaneous**

- 16.1 The Agreement shall be governed by Dutch law, excluding any conflict of law provisions contained in Dutch law.
- 16.2 To the extent not otherwise provided for in mandatory law, all disputes related to the Service or in connection with the Agreement will be submitted to the competent Dutch court in the jurisdiction where Provider has its registered office.



- 16.3 The version of any communication of information as recorded by Provider shall be deemed to be authentic, unless Customer supplies proof to the contrary.
- 16.4 If any provision of the Agreement will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of the Agreement is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.
- 16.5 Provider has the right to transfer its rights and obligations under the Agreement to a third party that takes over the relevant business activity from it.