



## **TOMRA COLLECTION DIGITAL SERVICES - LICENSE TERMS**

### **1. TOMRA COLLECTION DIGITAL SERVICES**

- 1.1 TOMRA Collection Digital Services (hereinafter “Digital Services”) comprise all digital services for which these license terms apply.
- 1.2 The Digital Services are software products comprised of TOMRA Software and Third-Party Software (if any) as delivered to the Licensee as a service via cloud under these license terms.
- 1.3 Commercial details, product descriptions, SLA, API documentation and other relevant material may be agreed by the parties in writing.
- 1.4 TOMRA and Licensee acknowledge that they have entered into an agreement regarding the Digital Services which include these license terms (the “Agreement”) and that in case of any discrepancies between the Agreement and/or other local arrangements or agreements between the parties, these license terms shall prevail regarding the subject matter herein.

### **2. GRANT OF LICENSE**

- 2.1 TOMRA hereby grants Licensee, and Licensee accepts, a limited, non-sublicensable, non-exclusive, and non-transferable, license to use the Digital Services on an ongoing basis for the Licensee’s internal business operations and in accordance with the license terms herein. This is a license to use the Digital Services only and in no way constitutes a sale or any other form of disposition.
- 2.2 The Licensee shall not use the Digital Services for any purposes beyond the scope of the license granted herein, save for provisions of applicable, mandatory law. All rights not expressly granted to Licensee are reserved by TOMRA. Without limiting the foregoing and except as otherwise expressly set forth in these license terms, Licensee shall not at any time, directly or indirectly: (i) copy, modify, vary or create derivative works of the Digital Services, in whole or in part (ii) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Digital Services; (iii) collect any information from or through the Digital Service using any automated means (other than the Digital Services’ own functionalities), including any script, spider or screen or database scraping applications; (iv) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Software, in whole or in part; or (v) remove any proprietary notices from the Digital Services.

### **3. PILOT AND PREVIEW LICENSE**

- 3.1 TOMRA may offer Licensee testing of a commercially available Digital Service free of charge (“Pilots”) or a technical preview test of a non-commercially available Digital Service (“Previews”). During Pilots and Previews, Licensee shall use the Digital Services for evaluation purposes only and for the time period specified by TOMRA. If required, Pilots and Previews shall be conducted in a development- or other environment suitable for the specific service.
- 3.2 During Previews Licensee shall test the digital product in accordance with any conditions specified in the readme file and/or any accompanying documentation, and shall gather and report test data, feedback, comments and suggestions to TOMRA. Test in production environments may be made available to Licensee from time-to-time (typically in a period prior to a new digital product release).

- 3.3 If Licensee does not subscribe to the Digital Services, the rights to use the Digital Services will terminate immediately upon expiry of the Pilot or Preview period. TOMRA makes no warranty it will release a commercial version of the Preview Digital Services, or that a commercial version will contain the same or similar features as the Preview Product.
- 3.4 Digital Services provided as Pilots or Previews and are provided “as-is” to the extent permitted by law. TOMRA makes no warranties in relation to such Pilot or Preview and shall in no event be liable to Licensee or its affiliates for any damages or losses of any kind, even if TOMRA has been advised of the possibility of such damages.
- 3.5 Licensee shall have sole responsibility for the protection of its own data during Previews and TOMRA shall have no liability in any circumstances whatsoever, including without limitation any data loss or data corruption.

#### **4. DATA**

- 4.1 Data means the data made available to the Licensee through the Digital Services and which TOMRA owns or has a right to sublicense to the Licensee, including TOMRA Data and Licensee Data.
- 4.2 “Licensee Data” means data generated by the Digital Services (if any) as specified in the Agreement.
- 4.3 Licensee shall have a right to access and use the Data made available to the Licensee by TOMRA through the Digital Services during the Term and subject to these license terms.
- 4.4 If the Data made available to the Licensee contains Licensee Data, it will solely be the Data related to the Licensee itself. TOMRA will not make available Data related to other customers or third parties and has procedures to keep Data logically separated to reduce the risk of damage and/or wrongful access to data in connection with the Digital Services.
- 4.5 TOMRA shall follow its archiving procedures for Data in line with good industry practice. In the event of loss or damage to Data, TOMRA shall use all reasonable commercial endeavors to restore the lost or damaged Data from the latest back-up of such Data maintained by TOMRA, which shall be the Licensee’s sole and exclusive remedy. TOMRA shall not be responsible for any loss, destruction, alteration or disclosure of Data caused by any third party (except those third parties sub-contracted by the TOMRA to perform services related to Data maintenance and back-up for which it shall remain fully liable).

#### **5. THIRD PARTY SOFTWARE**

- 5.1 Third-Party Software is software which is owned by third parties and to which TOMRA or TOMRA Systems ASA holds the right to sublicense, including open-source software.
- 5.2 The Digital Services may contain software from third-party sources, including open-source software (e.g., GNU Linux) (“Third-Party Software”). Licensee acknowledges that its right to use the Third-Party Software is subject to the third-party license terms, respectively, and expressly agrees to be bound by these.
- 5.3 These license terms shall apply to all Third-Party Software to the extent applicable and permitted under the Third-Party Software license terms. However, the Third-Party Software license terms may grant Licensee (and any third party) the right to obtain a copy of the source code and a license to modify, use and redistribute such Third-Party Software. TOMRA does not impose any limitations, e.g., to the copying, decompiling, disassembling, modification, redistribution, or reverse engineering, of open-source software, to a greater extent than permitted under the open-source license terms. In case of conflict, the Third-Party Software license terms shall prevail. Licensee may request the prevailing Third-Party Software overview by sending an email to [opensource-tcs@tomra.com](mailto:opensource-tcs@tomra.com)

## **6. INFORMATION SECURITY**

- 6.1 Both Parties shall have in place appropriate and commercially reasonable technical and organizational measures to protect its IT systems, data and information. TOMRA undertakes to take reasonable measures to prevent nonauthorized access (hacking) to the Digital Services in accordance with good industry practice.
- 6.2 Licensee is responsible for all activities that occur in its name and undertakes to keep any passwords and other access and authorization credentials confidential. Any situation or incident that may potentially impact information security shall be handled, documented, and reported to TOMRA as soon as practicable.

## **7. TOMRA OBLIGATIONS**

- 7.1 TOMRA shall:
- a) provide the Digital Services in accordance with good market standards and with reasonable skill and care;
  - b) ensure that the Digital Services fulfils the requirements and descriptions in the Agreement within the agreed deadlines and service levels; and
  - c) correct any non-conformance promptly or provide the Licensee with an alternative means of accomplishing the agreed performance. The undertaking in this clause shall not apply to the extent of any non-conformance which is caused by use of the Digital Services contrary to TOMRA's instructions, or modification or alteration of the Digital Services by any party other than TOMRA or TOMRA's duly authorized contractors or agents.

## **8. LICENSEE OBLIGATIONS**

- 8.1 Licensee shall:
- a) carry out all responsibilities under the Agreement in a timely and efficient manner. In the event of any delays in the Licensee's provision of such assistance as agreed by the parties, TOMRA may adjust any agreed timetable or delivery schedule as reasonably necessary;
  - b) comply with all onboarding processes, instructions, guidelines and user manuals included in the Agreement and other mandatory documentation provided by TOMRA under this license terms;
  - c) provide all necessary cooperation and grant TOMRA such minimum access to computer systems and information as may reasonably be required to ensure connection and performance of the Digital Services;
  - d) ensure that its network and systems comply with the relevant specifications provided by TOMRA from time to time;
  - e) notify TOMRA immediately upon any change of address or other contact information; and
  - f) promptly notify TOMRA and at the latest within thirty (30) days in the event of errors, discrepancies, or inadequacies in the Digital Services. The notification shall be in writing.
  - g) not provide access to the Digital Services to any third party or share passwords and/or user ID with unauthorized users unless this is in accordance with the requirements and descriptions in the Agreement.

## **9. SERVICE LEVEL**

- 9.1 Unless otherwise specified in the Agreement or in other agreed and binding terms with the Licensee, TOMRA shall i) respond to support issues and initiate corrective actions to restore the Digital Services to normal operations, ii) provide the Licensee with standard support services during normal business hours; and iii) use commercially reasonable endeavors to make the Digital Services available 24 hours a day, 7 days a week.

- 9.2 In the event any errors or maintenance work will disrupt the usage of the Digital Services, TOMRA reserves the right to perform i) planned maintenance carried out during normal business hours and ii) unscheduled maintenance, provided that TOMRA has used reasonable endeavors to give the Licensee at least six (6) business hours' notice in advance.
- 9.3 TOMRA does not warrant that the Licensee's use of the Digital Services will be free from vulnerabilities, uninterrupted or error-free.

#### **10. THIRD PARTY CLOUD SERVICE**

- 10.1 TOMRA shall perform a prudent assessment to ensure that the Cloud Service Provider fulfils mandatory legal requirements and the Licensee's requirements regarding information security and certifications.
- 10.2 The Licensee acknowledges and agrees that TOMRA does not undertake any obligations towards the Licensee which go beyond the obligations that the Cloud Service Provider has undertaken against TOMRA.

#### **11. UPDATES**

- 11.1 TOMRA reserves the right, in its sole discretion, to make any changes to the Digital Services that it deems necessary or useful. TOMRA may develop and provide updates to the Digital Services, which may include upgrades, bug fixes, patches, and other error corrections and/or new features (collectively, "Updates") at any time, including also changes and security enhancing measures to improve end-user experiences, in its sole discretion, and without notice to Licensee, though TOMRA will endeavor to provide prior notice when possible.

#### **12. INTELLECTUAL PROPERTY**

- 12.1 The Digital Services is the intellectual property of and is owned by TOMRA Systems ASA unless explicitly stated otherwise, and the structure, organization and source code of the Digital Services are its valuable trade secrets and confidential information. TOMRA subsidiaries and distributors holds and shall hold all necessary rights in the Digital Services to grant Licensee such user rights as explicitly stated herein.
- 12.2 In these license terms "IPR" means all intellectual and industrial property rights, whether registered or not, including, without limiting the generality of the foregoing, any patent, trade mark, design rights, trade name, trade secret, business name, domain name, discovery, invention, process, formula, know-how, improvement, technique, copyright including rights in the Digital Services and other computer software, Data, technical information or drawing, and database and topography rights, and rights in the nature of unfair competition and rights to sue in passing off, and including in each case any pending applications or rights to apply for registrations of any of these rights, and any analogous rights to any of these rights, wherever in the world arising.
- 12.3 TOMRA Systems ASA is and shall remain the sole owner of all proprietary IPR related to the Digital Services or other proprietary products and material provided by TOMRA. Nothing in this Agreement shall be construed as a transfer or grant of ownership to any proprietary IPR, neither any pre-existing nor future, to Licensee. Licensee acknowledges that it has no right to access the Software Service in source code form.
- 12.4 TOMRA shall have a right to perform an audit to investigate whether Licensee has breached the terms of the Agreement. Licensee undertakes to give TOMRA necessary access and information to perform such audit.

### **13. LIMITED WARRANTY AND WARRANTY DISCLAIMER**

- 13.1 TOMRA warrants that, to the best of its knowledge, the Digital Services are developed in accordance with good programming practice. TOMRA does not warrant that the Licensee's use of the Digital Services will be uninterrupted, free from vulnerabilities or error-free.
- 13.2 TO THE EXTENT PERMITTED BY LAW, TOMRA PROVIDES NO OTHER WARRANTIES (WHETHER IMPLIED OR OTHERWISE) IN RELATION TO THE DIGITAL SERVICES UNDER THIS LICENSE, INCLUDING THE QUALITY, PERFORMANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE EXCLUDED.

### **14. LIMITATION OF LIABILITY**

- 14.1 TOMRA SHALL NOT IN ANY CIRCUMSTANCE BE LIABLE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE, ARISING UNDER OR IN CONNECTION WITH THIS LICENSE FOR ANY: (A) LOST PROFITS, LOSS OR CORRUPTION OF INFORMATION OR DATA, LOSS OF SALE OR BUSINESS, (B) BUSINESS INTERRUPTION, (C) ANY SPECIAL, INDIRECT, PUNITIVE, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, ARISING IN ANY WAY OUT OF THE SALE OF, USE OF, OR INABILITY TO USE ANY TOMRA PRODUCT, (D) WASTED EXPENDITURE, (E) LOSS OF GOODWILL OR REPUTATION.
- 14.2 OTHER THAN THE LOSSES SET OUT IN CLAUSE 14.1 ABOVE (FOR WHICH TOMRA IS NOT LIABLE), TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE OVERALL MAXIMUM LIABILITY OF TOMRA, ITS SUBSIDIARIES, AFFILIATES, SUPPLIERS AND DISTRIBUTORS, FOR ANY CLAIM RELATED TO THESE SAAS TERMS, INCLUDING ANY WARRANTIES THAT MAY NOT BE LEGALLY EXCLUDED, SHALL NOT EXCEED THE ACTUAL MONEY LICENSEE PAID TO TOMRA TO USE THE SOFTWARE SERVICE IN THE TWELVE (12) MONTHS PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

### **15. AMENDMENTS OF DIGITAL SERVICES LICENSE TERMS**

- 15.1 TOMRA reserves the right to amend and modify these License Terms at any time.

### **16. GOVERNING LAW AND DISPUTE RESOLUTION**

- 16.1 These license terms shall be governed by and construed exclusively in accordance with the laws of Norway, without regard to principles of conflicts of law.
- 16.2 Should the Parties fail to resolve any claim or dispute by negotiations, the dispute shall be settled by the Courts of Oslo, Norway.