

# Wintro - Terms & Conditions

## 1. DEFINITIONS

**Agreement:** the collective term for all arrangements related to the Platform and the Services between the Customer and Wintro. The Agreement consists of both (i) the Order Form and (ii) these Terms;

**Customer:** every legal entity or natural person relying on the Services and the Platform of Wintro for professional use;

**Data Subject:** the natural person whose data is collected by the Customer as controller and uploaded onto the Platform;

**End-User:** any individual authorised by the Customer to access and use the Platform on behalf of the Customer (such as, but not limited to, employees of the Customer);

**Order Form:** An order form containing the practical arrangements agreed upon between Wintro and the Customer related to the Services, such as but not limited to the fees and the Term;

**Platform:** The referral automation solution and platform (including the Application Programming Interfaces or 'APIs') designed to facilitate employee referrals and streamline the recruitment process for the Customer;

**Privacy Legislation:** (i) The General Data Protection Regulation 2016/679 of April 27, 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC ('GDPR'), and/or (ii) Directive 2002/58/EC of the European Parliament and Council of 12 July 2002, concerning the processing of personal data and the protection of privacy in the electronic communications sector ('e-privacy directive');

**Services:** All services, provided by Wintro to the Customer including but not limited to: providing a right of access to the Platform and all support related thereto;

**Term:** The total term of the Agreement, consisting of consecutive periods of one (1) year (unless explicitly agreed otherwise with the Customer in the Order Form), during which the Customer and the End-Users can access the Platform and make use of the Services as described in the Agreement;

**Terms:** these Terms of Service and, the [Data Processing Agreement](#).

**Wintro:** the company incorporated and existing under the laws of Belgium, with a registered office at BE-9000 Gent, Belfortstraat 24D, with VAT/company number BE0804199680.

**Website:** <https://www.wintro.ai/>;

## 2. APPLICABILITY OF THE TERMS

**2.1.** Unless explicitly determined otherwise in writing, the offering, sale and delivery of all Services by Wintro shall be governed by the present Terms.

**2.2.** The Customer shall inform its End-User of the Terms and shall require the End-Users to comply with applicable law, regulations and the Terms. The Customer indemnifies Wintro for all violations by its End-Users (such as but not limited to violations of the Privacy Legislation).

**2.3.** The Terms apply to the entire (contractual) relationship between the Parties.

**2.4.** All transactions between Wintro and the Customer are governed by (in descending hierarchical order, with the next applying in the absence or non-application of the previous): (i) the Order Form, (ii) the Terms, and; (iii) Belgian law. In case of doubt or contradiction, the higher hierarchical document shall prevail.

## 3. PROPOSALS & QUOTATIONS

**3.1.** All proposals and quotations of Wintro either verbal or in writing: (i) are non-binding, (ii) merely provide an indication of the Services and the fees, and (iii) shall be subject to further negotiations between Wintro and the Customer. During these negotiations, the proposal or quotation shall continuously evolve. Any changes to a proposal or quotation renders the previous version null and void.

**3.2.** The specifications, capacities and other details that are included in (online) catalogues and advertisements are only meant to be approximations. These details only bind Wintro insofar as this is explicitly stated.

## 4. PERFORMANCE OF THE AGREEMENT

**4.1.** Wintro shall at all times execute the Agreement and perform the Services to the best of its knowledge and ability and with appropriate care and good faith ('best effort obligation').

**4.2.** The Platform are provided to the Customer "AS-IS" and "AS AVAILABLE". The Customer confirms it does not base its reliance on the Platform upon the development of any future functionality, feature or data connectivity.

## 5. PLATFORM

**5.1.** Wintro grants the Customer a personal, limited, non-exclusive, non-assignable and non-transferable access right to the Platform and the APIs (subject to correct and timely payment of the applicable fees described cfr. article 10) as specified in the Order Form. The Customer can authorise (the agreed upon number of) End-Users to access and use the Services.

**5.2.** The Customer shall be solely responsible for procuring, maintaining and securing its network connection(s) to the Platform.

**5.3.** The Customer and End-User are entitled to access the Platform in accordance with the Acceptable Use Policy and Data Processing Policy, and:

- can access both the data they uploaded and the data generated by the Platform of the Data Subjects at any time;
- shall use their best endeavours to prevent or terminate any unauthorised access, illegal use and/or incompatible use of the Platform. If the Customer and/or its End-User discovers such unauthorised access and/or use, the Customer shall notify

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Wintro immediately, which is entitled to take all necessary or useful measures to remedy such access and/or use.

### 6. SUPPORT AND MAINTENANCE

**6.1.** In the event the Customer is in need of assistance or has an enquiry with respect to Wintro or the Services, it may contact the helpdesk free of charge. The help desk shall be available in the Platform during the business hours as communicated by Wintro. The helpdesk always strives to assist the Customer as soon as reasonably possible.

**6.2.** For the term of the Agreement, Wintro will take all commercially and technically reasonable measures to ensure that the Platform is error/defect-free and free of malicious code. To that effect, Wintro will try to the best of its abilities to perform maintenance activities and implement updates of the Platform on a regular basis to fix bugs, errors or malicious code. Wintro will not warrant that: all defects in the Platform will be corrected. Wintro strives to minimise the impact on the availability of the Services by performing the maintenance activities and the updates during the off-peak use moments of the Platform, but cannot exclude any downtime in this respect.

### 7. OTHER CUSTOMER OBLIGATIONS

**7.1.** The Customer shall provide Wintro with (i) all necessary co-operation in relation to this Agreement; and, (ii) all necessary access to information as may be required by Wintro in order to provide the Services.

**7.2.** Whenever Wintro reasonably suspects that there has been a breach of the Terms, it is allowed to audit the Customer to verify its compliance with the Terms.

### 8. PRICES/FEES

**8.1.** The prices/fees for the Services are as stated in the Order Form (excl. VAT) and must be paid by the Customer in the indicated currency.

**8.2.** Upon automatic renewal of the Agreement (cfr. article 12), Wintro is allowed to apply the new prices of the Services to the new Term. However, Wintro will:

- Inform the Customer of the new prices at least one month in advance (i.e. before the tacit renewal of the Agreement); and,
- Inform the Customer of its possibility to prevent the renewal of the Agreement by sending a termination notice to Wintro at the latest one month before the end of the Term.

**8.3.** Insofar as the fees/prices are based on the level of payroll costs, cost of components, social security contributions and government taxes, insurance premiums, costs of materials, exchange rates and/or other costs applicable at the time, and in the event of a significant increase of one or more of these price factors, Wintro shall be entitled to increase its prices accordingly and in accordance with the legally permitted standards.

### 9. PAYMENT

**9.1.** Wintro will invoice at the beginning of each Term, unless specified otherwise on the Order Form. All invoices relating to the Services under this Agreement are due and payable within thirty (30) days following the invoice date.

**9.2.** The Customer agrees to electronic invoicing or invoicing by an online invoicing and payment provider as specified by Wintro.

**9.3.** Invoices may only be legitimately disputed by the Customer in writing within seven (7) days following the invoice date, stating (i) the invoice date, (ii) the invoice number and (iii) a detailed motivation. Invoices that are not disputed in writing within seven (7) days after their issuing will be considered to have been fully accepted. If the invoice is partially disputed by the Customer, the Customer is still obligated to pay the undisputed part of the invoice.

### 10. CUSTOM DEVELOPMENT

**10.1.** At the request of the Customer, Wintro may provide specific / non-standard enhancements and modifications of the Platform in accordance with the Customer's request and instructions ('custom development services').

**10.2.** Such custom development services shall be subject of a separate customer development offer between the Parties and will be invoiced at the day rate and in accordance with the terms and conditions as specified by Wintro in said separate offer.

### 11. LATE PAYMENT

**11.1.** If the customer does not pay the full amount of any invoice by the due date, and if Wintro sends a reminder for the unpaid invoice and the customer still does not pay within seven (7) days of receiving the reminder, the customer will be liable to pay:

- a late payment interest of 1% per month, whereby a month that has already started counts as fully completed; and,
- the amount due will be increased with all collection costs paid by Wintro in connection with the collection of the debt.

**11.2.** In the event of late payment, Wintro is entitled to suspend or postpone its obligations in connection with this Agreement and/or other current agreements between the parties, until the Customer complies with aforementioned conditions. This may include the (temporary) blocking of the use of and access to the Platform.

### 12. TERM AND TERMINATION

**12.1.** Unless specified otherwise in the Order Form, the total Term of the Agreement consists of consecutive periods of one (1) year. The Customer has the right to terminate the Agreement at the latest one (1) month before the start of the next consecutive yearly term, in which case the Agreement shall automatically end on the last date of the current yearly term in which the notice of termination was given. The Customer is obligated to give notice in writing to Wintro, after which Wintro shall confirm the termination of the Agreement in writing. Failure to do so will obligate the Customer to pay the invoice for the next yearly term, even if the Customer has no intention to continue its use of the Services.

**12.2.** Either party may terminate the Agreement for material breach, automatically and without definitive court decision if the other party has committed a material breach and fails to remedy such breach within thirty (30) days after receipt of a notice of default via registered letter or email, giving full particulars of the

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breach and requesting it to be remedied, by the claiming party. Parties will consider (amongst others) the following events as a material breach of the other Party:

- Repeated failure to pay invoices for which payment is due;
- Unauthorised or illegal use of the Platform and/or the Services;
- Confidentiality and non-solicitation infringements; and
- Intellectual property infringements.

**12.3.** The Agreement may be terminated with immediate effect by giving written notice thereof by way of a registered letter if an insolvency event occurs, i.e. a party ceases to pay its debts or ceases its activities, files for bankruptcy, liquidation of the legal entity or enters proceedings in receivership or judicial composition proceedings.

**12.4.** Wintro shall not refund the Customer when the access and/or use of the Platform and/or the Services are lowered or halted during the Term of the Agreement.

**12.5.** Regardless of the cause for termination, the following consequences will follow the termination of the Agreement:

- The Platform and the Services will be inaccessible for the Customer and its End-Users;
- Wintro is entitled to refuse any request from the Customer to enter into a (new) Agreement with regard to the Services.
- Each party will discontinue its use and will return the confidential information and proprietary materials of the other party (without prejudice to article 16 and 17).
- Articles 15, 16 and 17 shall survive the termination of the Agreement and continue in full force and effect.

**12.6.** The termination of the Agreement, for whatever reason, shall not prejudice the rights acquired by each party.

## 13. LIABILITY

**13.1.** The liability of Wintro shall always be assessed in the light of the best efforts obligation to which it has committed. The liability of Wintro is in any case limited to the mandatory liability imposed by law.

**13.2.** Wintro's liability for the Services is limited to the invoice value of the Services delivered by to the Customer under the Agreement during the twelve (12) month period preceding the date on which the applicable liability claim arose.

**13.3.** In the case of inadequate Services, Wintro's liability is limited – at the option and discretion of Wintro – to the (renewed) performance of the missing or inadequate Services. If the (renewed) provision of the Services is not (or no longer) possible or reasonable, the Customer is entitled to compensation in light of the damage suffered (without prejudice to article 14.2).

**13.4.** In addition, Wintro cannot accept any claim from the Customer for indemnification for:

- Damage resulting from the defaults in network communications, devices or infrastructure belonging to the Customer;
- Damage and/or claims from the Data Subject based on the use of the Services by the Customer and/or the End-User in a way incompatible with the rights of the Data Subject (such as but not limited to privacy legislation);

- Defects that are caused directly or indirectly by an act of the Customer or a third party, regardless of whether they were caused by a fault, negligence or carelessness;
- Damage caused by third party (i.e. third party APIs);
- Damage caused by the further use or application of the Platform and the Services by the Customer after a problem has been found;
- Damage caused by force majeure or hardship in accordance with the provisions of article 14.

**13.5.** The Customer will hold Wintro harmless against all claims from third parties arising from the incorrect or unlawful use of the Platform and/or Services by the Customer and/or its End-Users. It will cover all damages such as compensations or legal costs (including reasonable lawyer's fees) providing that Wintro has informed the Customer immediately of any claim arising from that matter.

## 14. FORCE MAJEURE & HARDSHIP

**14.1.** The following are conventionally considered as cases of force majeure or hardship: all circumstances which were reasonably unforeseeable at the time the Agreement was concluded, are unavoidable, and create (i) the inability on the part of Wintro or the Customer to carry out the Agreement, or (ii) make the implementation of the Agreement harder or more difficult than normally anticipated (financially or otherwise). For example (but not limited to): natural disasters, war, (threats of) terrorism, strikes, lock-out, epidemics, pandemics, fire, governmental restricting regulations/measures ('fait du prince'), or delays on the part of suppliers or subcontractors and failure by the Customer to provide Wintro with the correct and complete information necessary for carrying out the Services in good time.

**14.2.** Cases of force majeure or hardship give Wintro or the Customer the right to temporarily suspend the performance of its obligations, without being liable for any damages.

**14.3.** A situation of force majeure that continues beyond three (3) months shall entitle the Customer to terminate the Agreement with immediate effect by simple written notification to Wintro via both a termination letter and written notification via the helpdesk in the Platform, without judicial intervention and without any liability on the part of Wintro.

## 15. CONFIDENTIALITY AND NON-SOLICITATION

**15.1.** All information marked as confidential or reasonably to be considered confidential, disclosed by a party to the other party prior to entering into an Agreement as well as during the Agreement shall be treated by the receiving party with the utmost secrecy.

**15.2.** The receiving party shall:

- Not use, reproduce, or allocate the confidential information in any manner or for any other purpose than the cooperation between Wintro and the Customer;
- Not engage in, nor authorise others to engage in, the reverse engineering, disassembly or the decompilation of any of the confidential information; and,
- Not derive any commercial benefit from the confidential information.

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**15.3.** This confidentiality obligation applies during the course of the cooperation between Wintro and the Customer and will continue to exist for a period of one (1) year starting from the termination of the cooperation for any reason whatsoever.

**15.4.** Each party shall remain at any moment the sole owner of its confidential information. Except as expressly set forth herein, nothing in these Terms or the relationship between parties shall grant to the receiving party any rights to or interest in the confidential information and no implied licenses are granted by these Terms.

**15.5.** During the Term and for a period of one (1) year following its termination (for any reason whatsoever), each party shall not, directly or indirectly:

- Solicit nor entice away or attempt to solicit or entice away from the other party or its subsidiaries, any employee, director, partner or consultant;
- Encourage a Customer of Wintro or the Customer to (i) terminate its agreement and/or business relationship with Wintro or the Customer and/or (ii) modify the terms and conditions thereof in a negligible way for Wintro or the Customer.

## **16. INTELLECTUAL PROPERTY RIGHTS**

**16.1.** The Customer shall not use Wintro's company name, the names or trademarks of the Platform and other Services of Wintro as part of the Customer's name or in any manner capable of misrepresenting the relationship between the Customer and Wintro. The Customer shall not alter, remove or tamper with the brands, trademarks, or other means of identification on the Platform and/or other Wintro Services.

**16.2.** Wintro shall own and retain all intellectual property rights with respect to the Platform and possible related Services (including all copies, modifications, extensions and derivative works thereof), such as but not limited to rights associated with the dashboards and data models, authorship rights, design rights, know how, algorithms, technical and graphical interfaces, text, images, logos, domain names and database rights (with the exception of the data uploaded by the Customer itself).

**16.3.** The Customer explicitly authorises Wintro to use the Customer's name and/or project as a reference for publicity purposes, such as by publication on the Website. In this regard, the Customer also authorises Wintro to use the Customer's name, trademark, logo, etc.

## **17. PRIVACY**

### **17.1. Wintro as controller**

**17.1.1.** The collection by Wintro of personal data of the (potential) Customer and/or its End Users) shall take place in accordance with the provisions of Wintro's privacy policy (available on the Website). In such an event, Wintro acts as controller. This privacy policy includes information about the personal data collected by Wintro, as well as the manner in which Wintro uses and processes this personal data for certain purposes. Wintro's privacy policy can be consulted (i) when the Customer signs up to the Platform or (ii) on the Website at any time.

### **17.2. Wintro as processor**

**17.2.1.** The Customer acknowledges that – with regard to the processing of all data of the Data Subject entered and uploaded on the Platform – it shall act as controller and Wintro as processor. All arrangements made between parties in this respect shall be solely governed by the Data Processing Policy (which will be provided to the Customer with each proposal and is available on the Website).

**17.2.2.** The Customer acknowledges explicitly that by ordering the Services and entering into an Agreement with Wintro to have read and accepted the [Data Processing Policy](#) in its entirety.

## **18. COMPENSATION/NETTING**

**18.1.** In accordance with the stipulations of the Belgian Law on Financial Collateral dated 15 December 2004, Wintro and the Customer will automatically and legally compensate and offset each other for all current and future debts. This means that in the permanent relationship between parties, the largest debt balance remains due following the automatic compensation, which will in any case have legal effect against the curator and the remaining creditors, who cannot oppose this.

## **19. MISCELLANEOUS**

### **19.1. No waiver**

**19.1.1.** Any failure or delay by Wintro in exercising any right under the Agreement and/or these Terms with the Customer, any single or partial exercise of any right under such Agreement and/or these Terms or any partial reaction or absence of reaction by Wintro in the event of violation by the Customer of one or more provisions of such an Agreement and/or these Terms, shall not operate or be interpreted as a waiver (either express or implied, in whole or in part) of Wintro's rights under the Agreement or these Terms or under the said provision(s), nor shall it preclude any further exercise of any such rights. Any waiver of a right must be expressed and in writing. If there has been an express written waiver of a right following a specific failure by Wintro, this waiver cannot be invoked by the Customer in favour of a new failure, similar to the prior one, or in favour of any other kind of failure.

### **19.2. Divisibility**

**19.2.1.** If any part or any article of these Terms is for whatever reason held to be illegal, invalid or unenforceable, such provisions shall be deleted and the remaining parts or article shall not be affected and shall remain valid and enforceable as if the invalid or unenforceable parts or articles were not part of the Terms.

**19.2.2.** Any such part or article shall be replaced by a provision that, insofar as legally possible, comes closest to the intention of parties in the affected part or article. Parties shall in good faith negotiate and agree on a mutually acceptable provision that shall replace the deleted provision.

### **19.3. Modifications**

**19.3.1** Wintro may make changes to these Terms from time to time. Unless otherwise noted by Wintro, material changes to the Terms will become effective 30 days after they are posted.

### **19.4. Non-transfer**

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**19.3.1.** This Agreement and the rights and obligations ensuing from it for the Customer may not be transferred either directly or indirectly without the written consent of Wintro.

**19.3.2.** Wintro shall have the right to transfer this Agreement and the rights and obligations ensuing from it to a third party. In that case a new agreement between Customer and the third party shall be concluded with terms and conditions (rights and obligations) identical to those in this Agreement for the remaining term.

## 20. JURISDICTION AND APPLICABLE LAW

**20.1.** All claims arising out or concerning the validity, interpretation, enforcement, performance or termination of this Agreement, shall be submitted to the exclusive jurisdiction of the competent courts of Ghent.

**20.2.** The present Terms as well as any agreement between parties, of whatever nature, are governed by and construed in accordance with the laws of Belgium, with exclusion of all conflict of laws rules.