Terms of Use

for

foreknown Accounts

(Valid from: 08.07.2023)

These general terms and conditions govern the contractual relationship between our customers (hereinafter referred to a s "Customer" and us, foreknown GmbH, Brückenstr. 7, 48231 Warendorf, Germany (hereinafter referred to as "Provider").

§ 1 Subject of Contract

(1) The Provider provides SaaS services for the Customer via the medium of the Internet in the area of business software.

(2) Subject matter of the contract is

- (a) provision of the Provider's software "foreknown" (hereinafter referred to as "SOFTWARE") for use via the Internet and
- (b) granting of storage space on the Provider's servers.

(3) The Provider is permitted to involve subcontractors in the granting of storage space, the operation of a server and the operation of the software. The use of subcontractors does not release the Provider from its sole obligation to the Customer to fully perform the contract.

(4) Access Authorization: This Cloud Software and its Services are intended solely for customers located in the European Union (EU). By using our Services, you confirm that you are a company or person legally established in an EU member state. We reserve the right to deny access to our services or block accounts if we determine that a customer is located outside the EU. Please note that use of our Services outside the EU may violate local laws and regulations. By accepting these Terms of Use, you agree that you are authorized to use our Services in accordance with the laws and regulations of the European Union.

§ 2 Software Licensing

(1) The Provider shall make the SOFTWARE available to the Customer in the respective current version via the Internet against payment for the duration of this Agreement. For this purpose, the Provider shall set up the SOFTWARE on a server that is accessible to the Customer via the Internet.

(2) The respective current scope of functions of the SOFTWARE (performance description) results from the documentation on the Provider's website, which is available at www.foreknown.io.

(3) The Provider shall immediately eliminate all software errors according to the technical possibilities. An error shall be deemed to exist if the SOFTWARE does not fulfill the functions specified in the service description, delivers faulty results or does not function properly in any other way, so that the use of the SOFTWARE is impossible or limited.

(4) The Provider is continuously developing the SOFTWARE and will improve it through ongoing updates and upgrades.

§ 3 Rights of Use of the SOFTWARE

(1) Provider grants Customer the non-exclusive and non-transferable right to use the SOFTWARE designated in this Agreement for the duration of the Agreement within the scope of the SaaS Services as intended.

(2) The customer may process the SOFTWARE only to the extent that this is covered by the intended use of the SOFTWARE according to the respective current service description.

(3) The customer may only copy the SOFTWARE as far as this is covered by the intended use of the software according to the respective current service description. Necessary duplication includes loading the SOFTWARE into the RAM on the Provider's server, but not the even temporary installation or storage of the SOFTWARE on data carriers (such as hard disks or similar) of the hardware used by the Customer.

(4) The customer is not entitled to make the SOFTWARE available to third parties for use against payment or free of charge. Thus, the customer is expressly not permitted to sublet the SOFTWARE.

§ 4 Granting of Storage Space

(1) The Provider shall provide the Customer with a defined storage space on a server for storing its data. The Customer may store content on this server up to an amount of 10 GB. If the storage space is no longer sufficient to store the data, the Provider shall notify the Customer of this. The Customer may reorder corresponding contingents subject to availability at the Provider.

(2) The Provider shall ensure that the stored data can be accessed via the Internet.

(3) The Customer is not entitled to transfer this storage space to a third party for use, in part or in full, against payment or free of charge.

(4) The customer undertakes not to store any content on the storage space whose provision, publication or use violates applicable law or agreements with third parties.

(5) The Provider is obliged to take appropriate precautions against data loss and to prevent unauthorized access to the Customer's data by third parties. For this purpose, the Provider shall make daily backups, check the Customer's data for viruses and install firewalls according to the state of the art.

(6) In any case, the customer remains the sole owner of the data and can therefore demand the return of individual or all data at any time.

The data of the SOFTWARE are provided as PostgreSQL SQL dump (https://www.postgresql.org/docs/14/backup-dump.html). Files that have been uploaded to the server via the SOFTWARE will be provided as a zip archive.

(7) Upon termination of the contractual relationship, the Provider shall immediately surrender to the Customer all data stored on the storage space allocated to it.

(8) The data shall be surrendered at the Customer's option either by handing over data carriers or by sending them via a data network. The Customer shall not be entitled to also receive the software suitable for the use of the data.

(9) The Provider shall have neither a right of retention nor the statutory landlord's lien (§ 562 BGB) with respect to the Customer's data.

§ 5 Interruption / Impairment of Accessibility

(1) Adjustments, changes and additions to the SaaS services that are the subject of the contract, as well as measures that serve to determine and remedy malfunctions, will only lead to a temporary interruption or impairment of accessibility if this is absolutely necessary for technical reasons.

(2) The monitoring of the basic functions of the SaaS services takes place daily. The maintenance of the SaaS services is basically guaranteed from Monday to Friday 09:00 - 18:00. In case of serious errors - the use of the SaaS services is no longer possible or seriously limited - the maintenance is performed within 3 hours from the time of knowledge or information by the Customer. The Provider shall notify the Customer of the maintenance work immediately and perform it in the shortest possible time according to the technical conditions. If it is not possible to eliminate the error within 12 hours, the Provider will notify the Customer by e-mail within 24 hours, stating the reasons and the estimated time for the elimination of the error.

(3) Customers acknowledge that 100% availability of the Service is technically impossible to realize. However, the Provider shall endeavor to keep the Service available as constantly as possible and assures 97% availability on an annual average in accordance with the following restrictions in this section.

(4) The Provider cannot guarantee the accessibility of the Service at times when they are unavailable due to technical or other problems beyond the Provider's control (force majeure, fault of third parties, necessary maintenance, disruption of the Customer's IT infrastructure or Internet access, etc.). If the security of the network operation or the maintenance of the network integrity is endangered due to reasons that are not within the Provider's sphere of responsibility, the Provider may temporarily restrict access to the service, depending on requirements.

(5) The Customer shall be notified in good time and within a reasonable period in advance of any foreseeable downtime due to maintenance work. Claims cannot be derived in this respect.

(6) The guaranteed availability does not apply to availability problems:
- due to factors beyond the Provider's control (e.g., natural disasters, wars, terrorist attacks riots or government actions),
- caused by services, hardware or software of the Customer.

§ 6 Duties of the Customer

(1) The Customer undertakes not to store on the storage space provided any unlawful content that violates the law, official requirements, or the rights of third parties.

(2) The Customer is obliged to prevent unauthorized access of third parties to the protected areas of the SOFTWARE by taking appropriate precautions. For this purpose, the Customer shall, to the extent necessary, instruct its employees to comply with copyright law.

(3) Notwithstanding the Provider's obligation to back up data, the Customer itself is responsible for entering and maintaining its data and information required to use the SaaS Services.

(4) The Customer is obligated to check its data and information for viruses or other harmful components before entering them and to use state-of-the-art virus protection programs for this purpose.

(5) The Customer shall generate a "User ID" and password itself for accessing the use of the SaaS Services, which are required for further use of the SaaS Services. The Customer is obliged to keep the "User ID" and password secret and not to make them accessible to third parties.

(6) The contents stored by the Customer on the storage space intended for him may be protected by copyright and data protection laws. The Customer hereby grants the Provider the right to make the content stored on the server accessible to the Customer upon the Customer's queries via the Internet and, in particular, to reproduce and transmit it for this purpose and to be able to reproduce it for the purpose of data backup

§ 7 Remuneration

(1) A distinction is made between three different packages, which in turn include different types of remuneration in some cases. The applicable monthly prices per package can be found on the website https://www.foreknown.io/en/pricing.

- **Starter Package:** This package is aimed at freelancers or small teams and allows a maximum of 5 active users. The remuneration is billed monthly and calculated as follows:
  - The number of active users is determined several times a day. The highest value per month is multiplied by the monthly price of the starter package. The resulting remuneration is due at the end of each month. The remuneration is net, plus statutory value added tax.

- **Standard Package:** This package is intended for all companies that do not meet the criteria of the Starter Package. The number of active users is not limited. A distinction is made between a "Power User" and an "Employee" in terms of remuneration:

  - **Power User:** A user who has been assigned other roles in foreknown in addition to the "Employee" role is considered a "Power User". The amount of compensation for "Power User" is calculated as follows:

    Several times a week, the number of active "Power User" users is determined. The highest value per month is multiplied by the monthly price of a "Power User" from the standard package. The resulting remuneration is due at the end of each month. The remuneration is understood to be net, plus statutory value added tax.

  - **Employee:** A user who has been assigned exclusively the "Contributor" role in foreknown is considered an "Employee". The amount of remuneration for "Employees" is calculated as follows:

    The number of active "Employee" users is determined several times each working day. The highest value per working day is summed up monthly and multiplied by the daily price for "Employees" of the standard package. A maximum of 20 working days per "Employee" user will be charged. The resulting remuneration is due at the end of each month. The remuneration is net, plus statutory value-added tax.

  If there is a role change from "Power User" to "Employee" or "Employee" to "Power User" within the billing period, the user will be billed as "Power User".

- **Enterprise Package:** This package is intended for companies that have more than 200 active users and individual requirements for the SOFTWARE. The remuneration is negotiated individually.

(2) The Provider reserves the right to change the amount of the remuneration at any time. The change takes place for current contracts only at the beginning of the following contract period.

(3) The Customer may settle the remuneration by means of the payment methods offered by the Provider.

(4) The deadline for sending advance notices by the Provider to the Customer under the SEPA Direct Debit Scheme is one day.

(5) The invoices shall be made available to the Customer electronically on the day the remuneration is booked or in the event of a change of tariff.

(6) If an invoice cannot be collected, the Customer shall bear all resulting costs. This includes, in particular, bank charges in connection with the return of direct debits and comparable charges to the extent that the Customer is responsible for the event triggering the costs. The Provider may send payment reminders to the Customer electronically.

(7) If the Customer is in default with payments, the Provider has the right to refuse to fulfill due services to the Customer and to block access to the Customer's account until the default is eliminated. In such cases, the Provider shall notify the Customer of the blocking with a period of notice of 10 working days for the elimination of the default. The Provider's other legal and contractual rights due to default of payment by the Customer remain unaffected. The Provider may charge interest on arrears in the amount of eight percentage points above the base interest rate. The assertion of a higher damage caused by default remains reserved.

(8) Offsetting is only possible with claims already acknowledged by the other contracting party or established by a court of law unless these are claims for main performance and defects. A right of retention may only be asserted for claims arising from the respective contract.

§ 8 Liability for Defects / Liability

(1) The Provider guarantees the functional and operational readiness of the SaaS services in accordance with the provisions of this Agreement.

(2) The Provider reserves the right to expand, change or restrict functions, insofar as this serves technical progress, is necessary to prevent misuse, or the Provider is obligated to do so due to legal regulations. If the change in the scope of functions not only insignificantly impairs the contractual use of the service by the Customer, the Customer has the right to adjust the fees or to terminate the contract.

(3) Defects are to be reported immediately, at the latest within 7 days, by the Customer by e-mail to info@foreknown.io and to give notice of defects.

(4) The Provider shall remedy defects by rectification. Only if this fails or is impossible, the Customers can demand a reduction or assert a right of withdrawal after setting and expiration of a rectification period of at least two weeks. All claims for defects of the Customers are subject to a limitation period of one year. The relevant point in time for the notification, complaint and limitation of defects is the point in time from which the Customer was aware of the defect or should have been aware of the defect without gross negligence.

(5) In the event that the Provider's services are used by unauthorized third parties using the Customer's access data, the Customer shall be liable for any charges incurred as a result within the scope of civil liability until receipt of the Customer's order to change the access data or notification of the loss or theft, provided that the Customer is at fault for the access of the unauthorized third party.

(6) The Provider is entitled to immediately block the access to the SOFTWARE and the storage space if there is a reasonable suspicion that the stored data are illegal and/or violate the rights of third parties. A reasonable suspicion for an illegality and/or an infringement is especially given if courts, authorities and/or other third parties inform the provider about it. The Provider shall notify the Customer of the block and the reason for it without delay. The block is to be lifted as soon as the suspicion is invalidated.

(7) Claims for damages against the Provider are excluded, regardless of the legal grounds, unless the Provider, its legal representatives or vicarious agents have acted with intent or gross negligence. The Provider is only liable for slight negligence if one of the essential contractual obligations has been violated by the Provider, its legal representatives or executive employees or vicarious agents. The Provider is only liable for foreseeable damages, which can typically be expected to occur. Material contractual obligations are those obligations which form the basis of the contract, which were decisive for the conclusion of the contract and on the fulfillment of which the Customer may trust.

(8) The Provider shall not be liable for the loss of data insofar as the damage is based on the Customer's failure to perform data backups and thereby ensure that lost data can be restored with reasonable effort.

(9) The Provider is liable without limitation for damages caused intentionally or negligently by the Provider, its legal representatives or vicarious agents resulting from injury to life, body or health.

§ 9 Term and Termination

(1) The contract term between the Provider and the Customer is determined by the selected payment interval. The contract is automatically renewed for the same period after the expiration of the contract period with the current scope at the end of the contract, unless it has been previously terminated with a notice period of seven days to the end of the contract. The notice of termination must be sent by e-mail to the address info@foreknown.io.

(2) The right of each contractual party to terminate the contract without notice for good cause remains unaffected. In particular, the Provider shall be entitled to terminate without notice if the Customer fails to make due payments despite a reminder and a grace period or if the Customer violates the contractual provisions regarding the use of the SaaS services. Termination without notice requires in any case that the other party is warned in writing and requested to eliminate the alleged reason for termination without notice within a reasonable period of time.

(3) Termination of the contract is possible at any time during the 14-day test phase.

(4) The Customer may increase the number of active Users at any time (referred to as "Upgrade"). In doing so, the general conditions of the currently used package ("Starter Package", "Standard Package" or "Enterprise Package") are to be taken into account.

- **Starter Package:** If the increase of active users is within the maximum allowed active users of 5, then a billing according to §7 (1) compensation takes place. If the increase exceeds the maximum allowed active users, an upgrade to the "Standard Package" is required. The upgrade can be done informally by sending an e-mail to the address info@foreknown.io.

- **Standard Package:** The increase of active users (power users / employees) is possible in the "Standard Package" without restrictions. An upgrade to the "Enterprise Package" is possible after joint negotiation of individual prices and payment terms and can be requested informally by sending an e-mail to the address info@foreknown.io.

(5) A reduction in the number of active users (referred to as a "downgrade") depends on the selected package and the type of remuneration:

- **Starter Package:** With monthly billing, users can simply be set to inactive and will therefore no longer be billed for the following month.

- **Standard Package:** This package distinguishes between "Power User" and "Employee" users.

  - **Power users:** These users can simply be set to inactive and will no longer be billed for the following month.

  - **Employees:** These users are billed on a daily basis. As soon as an "Employee" user is set to inactive, there will be no more billing from the following day.

  A downgrade from the "Standard Package" to the "Starter Package" is not possible.

- **Enterprise Package:** It is only possible to downgrade from the "Enterprise Package" to the "Standard Package". The downgrade can be done informally by sending an e-mail to the address info@foreknown.io.

(6) Cancellation or downgrade before the end of a payment interval does not entitle the Customer to a refund of the remuneration paid in advance.

§ 10 Data Protection / Privacy

(1) The Customer is responsible for compliance with the provisions of the GDPR. In the event of commissioned processing, the parties shall conclude a data processing agreement.

(2) The contracting parties undertake to treat all confidential information of which they become aware during the performance of this contract as confidential and to use it only for contractually agreed purposes in accordance with the data protection requirements. The contracting parties shall oblige their employees, freelancers, and other companies (independent and affiliated) involved by them accordingly.

(3) Confidential information within the meaning of this provision shall be information, documents, details, and data which are designated as such or which by their nature are to be regarded as confidential.

(4) The rights and obligations under this section on confidentiality shall not be affected by any termination of this Agreement.

(5) Further data protection provisions and notices can be found in the data protection provisions (www.foreknown.io/en/privacy-policy) of the Provider.

§ 11 Applicable Law, Place of Jurisdiction

(1) This contract shall be governed by German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

(2) The exclusive place of jurisdiction for disputes arising from this contract shall be Münster, Germany.

§ 12 Miscellaneous

(1) Verbal collateral agreements have not been made. Amendments, supplements, and additions to this contract shall only be valid if they are agreed in writing between the contracting parties. This shall also apply to any amendment to this provision of the contract.

(2) Should any provision of this contract be or become invalid, this shall not affect the validity of the remainder of the contract. The invalid provision shall be deemed to be replaced by a valid provision which comes as close as possible to the economic purpose of the invalid provision. The same shall apply in the event of a gap in the contract.