



## SOFTWARE AS A SERVICE AGREEMENT

BETWEEN

SWIPEGUIDE B.V.

AND

CUSTOMER

**PARTIES:**

1. **SWIPEGUIDE B.V.**, a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) incorporated under the laws of the Netherlands, having its corporate seat in John M. Keynesplein 12-46, Amsterdam, The Netherlands trade register number 62.58.47.74 ("**SwipeGuide**");  
  
And
2. **The Customer**; a company, or its legal representative with a confirmation or order with SwipeGuide for the purchase of the service or a user of a free trial version of SwipeGuide. ("**Customer**");

The parties mentioned above hereinafter also to be referred to as the "**Parties**" and each individually as a "**Party**".

**INTRODUCTION:**

At SwipeGuide we understand that service interruptions impact the just-in-time delivery and user experience of instructions. That's why SwipeGuide puts great effort in delivering services with the highest standards in performance, reliability and availability. Customer should be able to fully depend on SwipeGuide for the creation and delivery of user guides and instructions. At SwipeGuide we understand that the business of Customer relies on us.

**CONSIDERING:**

- A. SwipeGuide offers ready to use software application for creating user manuals and work instructions, hereafter referred to as the "**Service**". See [www.swipeguide.com](http://www.swipeguide.com) for more information. This "**Service**" is offered on a subscription basis plus usage.
- B. Customer wants to use the Service.
- C. SwipeGuide and Customer want to enter into this Software as a Service Agreement (the "**SaaS Agreement**"). The SaaS Agreement will hereafter govern Parties' respective rights and obligations towards each other.

**AGREEMENT:****1 DEFINITIONS**

SaaS Agreement:	This Software as a Service agreement.
XLA:	The Experience Level Agreement entered into by SwipeGuide and Customer upon approval of the confirmation of order.
Fee:	The fee that Customer must pay to SwipeGuide for the temporary use of the Software as provided at section 5 hereof.
Personal Information:	Information or pieces of information that could (directly or indirectly) allow individual persons to be identified.
Software:	The computer software offered by SwipeGuide to Customer, inter alia see <a href="http://www.swipeguide.com">www.swipeguide.com</a> for reference, including but not limited to source code, object code, net lists, design tools, user interfaces, application programming interfaces, protocols, formats, documentation, annotations.
Intellectual Property Rights:	In particular but not limited to copyrights, trademarks, tradename rights, (un)registered design rights, database rights, patents, as well as all (enforcement) rights relating to domain names, trade secret rights, know-how, computer software, source code and technical documentation, inventions, discoveries, specifications, developments, methods, algorithms.
Data:	All customized information which is made available by means of the Service upon request or desire of Customer, such as but not limited to personal data of customers within the meaning of the Dutch Personal Data Protection Act (Wet bescherming persoonsgegevens ("Wbp")), feedback given by customers, questionnaires, default texts, messages to customers, follow up feedback, lists of users, reports and evaluation, as well as all designs, logo's, trademarks and tradenames that Customer requests to incorporate in the visual appearance of the Software.
Wbp:	Dutch Personal Data Protection Act (Wet bescherming persoonsgegevens, which will be replaced by the General Data Protection Regulation 2012/011 (COD)) per 25 May 2018.
Force Majeure Event:	Means an event, or a series of related events, that is outside the reasonable control of the party affected (including but not limited to failures of the internet or any public telecommunications network,

	hacker attacks, denial of service attacks, virus or other malicious software attacks or infections and power failures).
Term:	The aggregated period of the Initial Term and the Indefinite Term.

## **2 USE OF SOFTWARE AND DURATION**

- 2.1 SwipeGuide gives Customer during the Term of this Agreement the permission to make use of the Software under the terms in this SaaS Agreement. This permission is non-exclusive and non-transferable.
- 2.2 Parties enter into this SaaS Agreement for the duration of 12 months. Please be referred to Chapter 6 for the conditions to cancel or terminate this Agreement.
- 2.3 Customer will use the Software with the only goal to create user manuals, -guides and instructions for use. In case Customer would like to use the Software for other reasons, Customer will request prior written consent from SwipeGuide.
- 2.4 Customer will get full access to the Software by means of the Internet.
- 2.5 Customer, will not:
  - 2.5.1 use the Software for any unlawful act;
  - 2.5.2 create competing versions of the Software;
  - 2.5.3 attempt to, directly or indirectly, (i) copy or republish the Software, (ii) make the Software subject to reverse engineering, (iii) lease, sub-license, encumber, lent, amend, merge into or with other software, decompile, disassemble, transfer, exchange, translate, hack, distribute or otherwise attempt to derive the source code, techniques, or other information of the Service or permit or induce the foregoing, or (iv) cause damage to or with the software or in any other way abuse the Software.
- 2.6 In case SwipeGuide has the reasonable suspicion that a user account of Customer is used in violation of any user restriction provisions in this Chapter or elsewhere in the SaaS Agreement, SwipeGuide is allowed to immediately block the account. This does not affect the right of SwipeGuide to attach other consequences mentioned in this SaaS Agreement or provided by law when Customer is in violation of any user restriction provisions in this Chapter or elsewhere in the SaaS Agreement.

## **3 OBLIGATIONS CUSTOMER**

- 3.1 Customer will provide SwipeGuide with all the information and cooperation necessary for SwipeGuide to perform the obligations under this SaaS Agreement and the XLA Agreement. When Customer does not provide the necessary information or cooperation, Customer acknowledges that this can lead to delay in performance on the side of SwipeGuide or failure of SwipeGuide to meet the obligations under the SaaS Agreement and/or the XLA Agreement.
- 3.2 Customer is solely responsible for the technical operation and maintenance of its internet connection, internal network, and all other systems that are relevant or necessary for undisturbed use of the Service.
- 3.3 Customer guarantees not to upload any inappropriate or obscene content. Customer also guarantees to notify SwipeGuide of content of this nature. After this notification, SwipeGuide will examine the content and reserves the right to remove it.

## **4 DATA, DATA PROCESSING AGREEMENT, ACCESS TO DATA**

- 4.1 Customer is the exclusive owner of all the Data that is collected, processed and stored by means of the Software, and is the exclusive owner of all rights and claims associated therewith.
- 4.2 Customer is fully responsible for the accuracy, reliability and quality of the Data and also carries the full responsibility that the collection, processing and storage of the Data is in compliance with all applicable laws and regulations (especially the Wbp). Customer acknowledges that it acts as the “Controller” regarding the collection, processing, editing and storage of the Data within the meaning of the Wbp.
- 4.3 SwipeGuide will store the Data on behalf of Customer. SwipeGuide qualifies as the “Processor” within the meaning of the Wbp. In that context, Customer and SwipeGuide will also enter into a Processor Agreement annexed to this Agreement in Appendix 1, in which agreement further agreements have been made regarding, *inter alia*, following the instructions of Customer, confidentiality, security measures, Data loss and Data location. Under article 14 (2) of the Wbp Customer is required to enter into such a Processor Agreement with SwipeGuide.
- 4.4 SwipeGuide is not entitled to provide itself access to the Data unless it occurs at the express consent of Customer or in case of a legal obligation SwipeGuide is held to provide (access to) the Data.

## **5 FEE**

- 5.1 As compensation for the use of the Software and the services SwipeGuide provides, SwipeGuide will receive a fee as reflected in the confirmation of order. All prices mentioned are without taxes.
- 5.2 Customer will pay the fee under 5.1 in 1 term by means of a bank transfer (pre-payment or automated online payment). The bank details are reflected on <http://swipeguide.com/>. Customer will pay the fee to SwipeGuide within 30 days after the invoice date.
- 5.3 If Customer fails to pay the agreed fees to SwipeGuide in accordance with the above provisions, SwipeGuide is entitled to deny Customer access to the Software, for example, by blocking user accounts provided to Customer. This does not affect that SwipeGuide may also attach all other consequences as arranged in this Agreement or provided by law to such a situation.

## 6 DURATION

- 6.1 This SaaS Agreement comes into effect per sign date of the confirmation of order (the “Start Date”) and shall continue for a period of 12 months (the “Initial Term”). During the **Initial Term** termination is not possible. After aforementioned Initial Term, the Agreement will continue for an indefinite period (“**Indefinite Term**”), subject to termination as provided in clause 6.2.
- 6.2 Both parties shall be entitled to terminate this SaaS Agreement after the Initial Term has expired, during the Indefinite Term, without liability, cost, or penalty on 30 days written notice to the other party, for any or no reason whatsoever.
- 6.3 If the SaaS Agreement is ended for any reason whatsoever under clause 6.2, SwipeGuide will deny Customer access to the Software immediately after termination of the 30 days notice period.
- 6.4 A Party may terminate this SaaS Agreement with immediate effect, without any notice being required and without being liable for any damages as a result of the termination, implying that SwipeGuide is entitled to immediately deny Customer access to the Software, in case the other Party :
- 6.4.1 has been dissolved or liquidated, or is in dissolution or liquidation.
  - 6.4.2 has been granted suspension of payments; or
  - 6.4.3 has been declared bankrupt.

## 7 INTELLECTUAL PROPERTY

- 7.1 SwipeGuide is and remains the exclusive owner of all the current and future “**(Intellectual Property) Rights**” and other (propriety) rights vesting in and relating to the Software.
- 7.2 Customer acknowledges that, under this SaaS Agreement, it will only be allowed to use the Software and will not and shall not make any claims to the before mentioned Intellectual Property Rights.

## 8 INDEMNIFICATION

- 8.1 Customer indemnifies SwipeGuide for all third-party claims that relate to (the content of) the Data that Customer collects, distributes or processes by means of the Software, including at least the personal data that has been collected and processed in the sense of the Wbp by means of the Software.

## 9 LIABILITY

- 9.1 SwipeGuide represents and warrants to Customer and acknowledges Customer is relying thereon, that the Software will perform as stipulated in the XLA Agreement.
- 9.2 Although the Service has been designed with the greatest care, without prejudice to the XLA Agreement, SwipeGuide does not guarantee that the Software will work perfectly and/or without omissions in all circumstances. Customer further acknowledges that the Software is provided over the internet, as well

as by means of personal devices and/or technical infrastructure of Customer, and thus the quality and availability of the Software may be affected by factors outside SwipeGuide's reasonable control.

- 9.3 SwipeGuide is not liable for any damage caused by unprofessional use of the Software by Customer, e.g. wrong instructions.
- 9.4 Customer is solely responsible for the content that is uploaded using the Software. SwipeGuide is not responsible nor liable for any inappropriate or obscene content uploaded by the Customer.
- 9.5 SwipeGuide is not liable for the incorrectness or incompleteness of the processed Data as mentioned in Clause 4.1 and is not liable for the application thereof.
- 9.6 SwipeGuide is not liable for the Data provided by Customer in relation to the Service.
- 9.7 If and in so far as Customer is to blame for failing to observe any of its duties, or is in breach of any of its representations and warranties provided in this SaaS Agreement, Customer is liable to SwipeGuide for compensation for loss suffered or to be suffered by SwipeGuide.
- 9.8 If a Force Majeure Event gives rise to failure or delay in either party performing any obligation under this SaaS Agreement, the Party whose performance of its obligations under the SaaS Agreement is affected by the Force Majeure Event will promptly notify the other Party. SwipeGuide will be authorized to suspend its services fully for the duration of the Force Majeure Event. In case of suspension of services by SwipeGuide attributable to a Force Majeure Event, SwipeGuide will never be liable for any damages of Customer nor will SwipeGuide be obliged to repay Customer a proportional part of the Fee. SwipeGuide will resume its services as soon as possible.
- 9.9 If and in so far as SwipeGuide is to blame for failing to observe any of its duties or is in breach of any of its representations and warranties provided in this SaaS Agreement, SwipeGuide is only liable for the direct loss, whereby the maximum compensation for which SwipeGuide may be held liable cannot exceed the value of the fees (excluding applicable taxes and other public authority charges) that Customer has actually paid and that SwipeGuide has received for the acquisition of the right to use the Software.
- 9.10 SwipeGuide is never liable for the indirect loss of Customer.
- 9.11 The limitations in Articles 9.8 and 9.9 do not apply in the event of a Party's gross negligence, intentional act or deliberate recklessness.
- 9.12 Any right from Customer to claim damages ceases when Customer has not taken the measurements necessary to mitigate the damage or to prevent further and/or other damage. This right will also cease if Customer did not inform SwipeGuide within 30 calendar days after noticing the damage and all relevant information thereto.

## **10 CONFIDENTIALITY**

- 10.1 The Parties are obliged to observe strict confidentiality concerning all confidential information with which the Parties or persons whose services they use in the fulfilment of this Agreement come into

contact. Information is considered confidential if designated as confidential by the other Party or if confidentiality results from the nature of the information. In any event, confidential information includes “personal information” and all materials, documents, ideas, data or other information that concerns the research and development, company secrets or company information of the other Party.

## 11 MISCELLANEOUS

- 11.1 This Agreement may only be amended by mutual agreement between Parties in writing.
- 11.2 If any provision of this Agreement shall be held by any court of competent jurisdiction to be invalid or unenforceable, (i) the invalidity or unenforceability of such provision shall have no effect upon and shall not impair the validity and enforceability of any other provision of this Agreement, and (ii) Parties shall reach agreement on the replacement of the invalid and/or unenforceable provision by a valid and enforceable provision that complies – as much as possible – with the objectives of the Parties as expressed in this Agreement.
- 11.3 This Agreement shall be binding upon, inure to the benefit of, and be enforceable by the Parties and their respective successors and assignees.
- 11.4 No Party hereto may assign this Agreement or any part hereof without the prior written consent of the other Party hereto. Subject to the foregoing, this Agreement shall endure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns, as applicable.

## 12 GOVERNING LAW AND JURISDICTION

- 12.1 This Agreement shall only be governed by and construed in accordance with the laws of the Netherlands.
- 12.2 All disputes arising out of or in connection with this Agreement, including disputes concerning the existence and validity thereof, shall be exclusively submitted to the competent court in Amsterdam.

## SWIPEGUIDE B.V.

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Signature

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A.W.G. Schneyder-Valbracht

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Proud Founder/CEO