

Translation for Information Purposes only. The original German version of this Agreement shall prevail. Übersetzung nur zu Informationszwecken. Es gilt die deutsche Originalfassung dieses MSA.

channelXperts ChannelOS Master Service Agreement

Status: December 9, 2020

The provisions of this Master Service Agreement shall apply whenever the Customer uses the ChannelOS branded services of channelXperts GmbH (“channelxperts”), against a charge or free of charge.

channelxperts reserves the right to amend this Master Service Agreement at any time. Such amendments shall also apply to any existing contracts. channelxperts will inform the Customer about any such amendments no less than 30 calendar day prior to the envisaged amendments taking effect. Unless the Customer raises objections within 30 days from its reception of the notification of amendment and provided that the Customer continues to use the services following expiry of the aforementioned objection period, the said amendments shall be deemed to have been effectively agreed upon expiry of the objection period. Where the Customer objects to the amendments, the contract will be continued subject to its present terms and conditions, unless it is duly terminated by channelxperts. In its notification of amendment channelxperts shall inform the Customer of the latter’s right to object and the consequences of such an objection.

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1. Definitions

- Third Party Products: Software, middleware or applications edited/published or licensed by a third party.
- Customer: Organisation which commissions channelxperts to provide a Portal.
- Login Data: User names and passwords.
- User: Any person having created an active user account with access to at least one ChannelOS Portal.
- Terms of Use: Agreement between channelxperts and the individual User – contained in Annex 1, which forms an integral part of this Agreement.
- Portal: Offering at: www.ChannelOS.net or as mutually agreed
- Subscription Level: channelxperts offers various editions (Subscription Levels) to meet different customer needs and requirements. Such editions (Subscription Levels) are different in terms of their maximum number of available user accounts, deployment options, maximum of usable storage space and availability of Pages – ChannelOS’s own Content Management System.

2. Services

2.1 The provisions of this Agreement (failing any separate written agreement signed by both parties on the contracted services) shall apply whenever the Customer uses the services or works of channelxperts. The scope and contents of the services and works are subject to the respective contractual agreements and, moreover, to the functionalities available on the Portal at the respective time.

2.2 The services available on the Portal may also include some services provided by third parties, to which channelxperts merely provides access. The use of such services – which are identified as third party services – may be subject to provisions that derogate from the MSA or subject to additional provisions, as indicated by channelxperts in each case.

2.3 The right to use the services available on the Portal shall only exist subject to the technical and operational possibilities existing at channelxperts. channelxperts shall endeavour to provide uninterrupted usability of its services to the extent possible. However, due to technical faults (such as an interruption of the power supply, hardware or software defects, technical problems in the data cables) temporary restrictions or interruptions may occur.

channelxperts provides the services available on the Portal only subject to its own technical and operational possibilities. channelxperts at any time reserves the right to change free services into pay services. Vice versa channelxperts at any time reserves the right to change pay services into free services.

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2.4 Under its Disaster Recovery Strategy, channelxperts performs daily data backups of all data. Data restoration is only possible by overwriting the latest data. Therefore, access to individual datasets within the backup is impossible.

2.5 channelxperts shall at any time be entitled to amend any of the free services made available on the Portal, make available new services, either free of charge or against a charge, and to discontinue making any of its free services available. When so doing, channelxperts will take into consideration the Customer's legitimate interests.

2.6 Should the Customer request any amendments/changes or should it wish to purchase further services or functions from channelxperts, such a request must be placed by means of a separate inquiry. channelxperts will check such inquiries promptly where possible and provide the Customer with a relevant offer.

2.7 channelxperts shall be entitled to contact Users wherever these have authorised channelxperts to do so. The same shall apply in relation to any Users brokered by the Customer.

3. Terms and Conditions

3.1 Offers and Orders

Customers may place their orders via the available online order form. All orders are subject to acceptance by channelxperts. channelxperts reserves the right to refuse orders without giving any reasons. Where a legal entity places the order, registration must occur by a natural person of full legal capacity authorised to represent the entity. channelxperts will provide the Customer with Login Data. By accepting and using such Login Data, the Customer accepts and confirms the validity of the Terms of Use.

Within their respective organisation, the Customer and channelxperts are responsible for keeping the Login Data confidential and to protect such data from unauthorised third party access. It is the responsibility of the Customer to ensure that the Login Data and the available services are exclusively used by the Customer and/or the persons authorised by the Customer as the case may be. If there is reason to believe that unauthorised third parties have gained or will gain knowledge of the Customer's Login Data, channelxperts must be informed without delay. The Customer is liable for any use and/or other activity occurring under its access data, in accordance with the relevant legal and statutory provisions.

3.2 Prices

All prices for services acquired hereunder are those for the selected Subscription Level applicable at the time within the relevant channelxperts sales region or according to the offer made by channelxperts. To the extent that channelxperts has submitted a fixed price offer and that the Customer subsequently asks for the performance of additional works, such additional works will either be billed according to an agreement with channelxperts or – failing any such agreement – according to channelxperts's prices applicable at the time for time spent and material used. Down-payments, once made, will not be reimbursed. All prices are subject to Value Added Tax at the appropriate rate as well as to all other applicable taxes, levies or customs duties.

The Customer shall at any time be entitled to upgrade its Subscription Level to a higher grade. Payments already made will be credited against the higher fees applicable. Downgrading is only admissible at the end of a given contractual period. Payments already made will not be reimbursed.

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3.3 Invoicing and Payment

Failing any agreement to the contrary, services will be billed in advance on a monthly basis. All payments shall be due and payable within 14 days from the date on the invoice. Failing any agreement to the contrary, the Customer shall pay any amounts due to channelxperts in EURO. Additional fees may be charged where the Customers requests services that are performed outside of the contractually agreed hours or which are outside of the usual scope of the specific services in question. channelxperts reserves the right to charge statutory default interest on all amounts due in relation to any invoice not settled by the due date and to suspend the performance of further services. channelxperts shall in particular be entitled to disable Portal access after 30 days from the date on the relevant invoice if the invoice amount is not received in our account within 14 days from the due date. Moreover, channelxperts may - without waiving any rights or remedies it may be entitled to - decide to refuse any further orders placed by the Customer and/or submit for debt collection all due amounts including any reasonable legal and debt collection costs.

The Customer shall only be entitled to set off undisputed counter-claims or counter-claims established by a court of law. The Customer may only assert rights of retention based upon the same contract.

3.5 Term and Termination

The term of each contract shall begin with the date of channelxperts's acceptance of the order and each contract shall be concluded for an indefinite period of time, this failing any agreement to the contrary, or unless the contract is terminated pursuant to the present terms.

Where a given contract has no term or where the Customer has chosen to pay on an annual basis, a minimum contractual period of twelve (12) months shall apply, which period shall start upon expiry of the test period. Upon expiry of the minimum contractual period, the contract shall be renewed tacitly by periods of one (1) year respectively, unless it is terminated by one of the contract parties at fourteen (14) calendar days' notice of termination prior to expiry of the minimum contractual period or the respective renewal period.

Each party may terminate this Agreement if the respective other party commits a material breach of any of its duties or obligations hereunder and if such breach is not remedied within thirty (30) days from reception of a relevant written notification from the injured party. In the event of a termination any and all of the parties' rights and obligations hereunder shall lapse, except for any claims arising prior to contract termination, any existing payment obligations or any duties and obligations explicitly or tacitly surviving the contract period.

Termination must be addressed to: channelXperts GmbH

contact@channelxperts.com or +49 6341 994971 (facsimile)

channelxperts may, vis-à-vis the Customer, terminate this Agreement with immediate effect in writing if the Customer fails to meet its payment obligations vis-à-vis channelxperts.

Each party shall in the following cases be entitled, vis-à-vis the respective other party, to terminate this Agreement in writing with immediate effect:

- a) if the respective other party resolves upon its liquidation or if a court orders its liquidation or resolution (except for the purpose of a merger to restore its liquidity, or a reorganisation);

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- b) if a petition in insolvency has been filed against the respective other party, or if it is put under insolvency administration, or if its assets pass to a secured party or are sold by such a secured party; or
- c) if the respective other party enters into an agreement or a settlement with its creditors, applies to a court for general creditor protection or initiates similar measures in the respective country.

channelxperts shall be entitled to irretrievably delete any and all data accruing within the framework of the Customer's use of the services upon expiry of 30 calendar days from the termination taking effect and upon expiry of any statutory periods of record-keeping.

4. Property Rights

4.1 Most of the contents available on the Portal are protected by copyright or related rights and are the respective property of channelxperts or third parties which have made the respective contents available. As the case may be, the compilation of the contents as such may be protected as a data base or data base work within the terms of Sections 4(2), 87a(1) UrhG (German Copyright Law). The Customer may only use such contents in accordance with these present terms of participation and use and within the limits defined on the Portal.

4.2 The contents available on the Portal are partly channelxperts's contents and partly third party contents. channelxperts does not check any third party contents for completeness, accuracy or legitimacy and therefore does not assume any liability, responsibility or guarantee for the completeness, accuracy, legitimacy or up-to-dateness of third party contents. The same applies in relation to the quality of third party contents and their fitness for a particular purpose, and in relation to third party contents linked to external websites.

4.3 The Customer confirms that the services do not comprise any development of intellectual property rights, do not constitute any particular intellectual property of the Customer and are not based upon any confidential information of the Customer. Therefore, the Customer agrees to the following:

- a) channelxperts is and remains the owner of all intellectual property rights to and in relation to the services and the software those services are based on;
- b) channelxperts remains the owner of all intellectual property rights used in the performance of the services und based on business secrets or information which are/is the property of channelxperts, or which channelxperts is otherwise entitled to or which have/has been licensed by channelxperts;
- c) channelxperts shall be free to use any ideas, concepts and know-how used, developed or created in the performance of the service and the totality of which constitutes channelxperts's intellectual property rights to all technologies potentially developed to enable the performance of the service; and
- d) channelxperts remains the owner of all rights to reproducible processes and reusable forms, templates or results, created or otherwise used by or on behalf of channelxperts in the course of the performance of the services without any reference to intellectual property rights or the use of such rights. This also applies where the Customer has explicitly requested the reproducible process and reusable forms, templates and results by means of a Feature-Request.

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4.4 channelxperts herewith grants the Customer a free, non-transferable, non-exclusive licence to use such embedded tools, remaining technologies and generic components exclusively in conjunction with the use of the services during the term of this Agreement.

4.5 channelxperts undertakes to protect the Customer and its representatives from and to hold them harmless against any damage occurring from or in connection with any alleged or actual infringement of intellectual property rights occurring in connection with the performance of the services, this subject to the proviso that the Customer:

- a) immediately informs channelxperts of the claim or the possibility of such a claim;
- b) cooperates with channelxperts in the defence against such a claim; and
- c) does not settle any claim raised without the prior approval of channelxperts.

channelxperts shall keep the Customer at any time informed on its endeavours and shall consult with the Customer on its endeavours. Furthermore, channelxperts shall not settle any claim without the Customer's prior written consent.

If a third party asserts a claim, channelxperts may proceed as follows: (a) channelxperts may acquire the respective rights such that the services can be continued in their present form; (b) channelxperts may change the services in such a way that they no longer infringe third party rights; or (c) channelxperts may replace the services with equivalent services, which do not infringe any third party rights. If channelxperts is unable to fulfil any of those options, channelxperts shall be entitled to terminate the performance of the services. channelxperts does not assume any liability for claims arising from the infringement of third party rights in so far as such claims are based upon the following: (a) changes made by the Customer which have not been made or approved of by channelxperts; (b) use of the services in connection with another product or service (i.e. the combination causing the actual infringement of a right) not covered by this Agreement or not approved of by channelxperts; or (c) channelxperts's compliance with the Customer's written specifications or instructions. This clause is an exhaustive declaration of channelxperts's liability and responsibility in relation to any claims arising from the infringement of third party rights.

5. User's Mailing Data

Within the framework of the mailing function, Users may upload csv-files with email addresses in order to use email templates provided by Customer for mass mailings. The terms and conditions require User to upload only email addresses that he/she may use for a newsletter under the applicable law.

Customer may use these email addresses only for reporting and analysis and he/she may not use them for any other purpose without the explicit consent of User.

6. Customer's Content

When posting its own contents, the Customer must comply with the following provisions:

6.1 By posting content the Customer grants channelxperts in each case a free and transferable right to use the respective contents, which right shall be limited to the contract term, in particular

- a) to store on channelxperts's servers and to publish such contents, in particular to make such contents publicly available (e.g. by making such contents visible to authorised users on the Portal),

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- b) to process and multiply the contents to the extent that this is necessary for the provision and/or publishing of the respective contents.

To the extent that the Customer removes from the Portal any contents put on the Portal by it, the right to use and utilize such contents granted to channelxperts shall lapse. channelxperts will not check if the Customer is in fact entitled to delete any data put up by users which/who are partners of the Customer. However, channelxperts shall remain entitled to keep any copies made for security reasons and/or substantiation purposes. The Customer is not entitled to delete individual Users. However, the Customer may block Users from accessing the Portal.

6.2 The Customer is fully responsible for any contents posted by it. channelxperts will not check any contents for completeness, accuracy, legitimacy, up-to-dateness, quality or fitness for a particular purpose.

The Customer declares and guarantees vis-à-vis channelxperts that it is the sole owner of any and all rights to the contents posted by it on the Portal or that it is otherwise entitled (e.g. by virtue of a valid permission by the actual rightsholder) to post the contents on the Portal and to guarantee the rights of use and utilization according to the foregoing paragraph.

6.3. The Customer alone is responsible for the administration of Users and the granting of rights to individual Users. channelxperts itself will not check any Users where these have logged on via a registration link created by the Customer. If the Customer wishes to block individual Users, it will also have to do so itself.

7. Support

For the services on offer channelxperts provides technical email support, which is available to the Customer on weekdays between 09:00 and 17:00 (CET) via our Helpdesk system. The Helpdesk system can be accessed via an online link at www.channelxperts.net or a clearly visible support button on the ChannelOS Portals. channelxperts does not provide any support with respect to Customer and partner data.

8. Confidentiality

The Customer and channelxperts agree that each party may in the course of business transactions by and between the parties obtain information or materials concerning the respective other party or the latter's business activities and transactions, technical information, client data and business secrets as well as other information owned by the respective other party (either in writing and/or verbally), which information or materials are confidential or proprietary. Information is deemed confidential if (a) it is clearly and quite visibly identified as "confidential" or branded similarly or accompanied by documents branded accordingly; (b) prior to, during or immediately after its presentation or communication it is identified as confidential by the disclosing party; or (c) its disclosure should be considered confidential due to the nature of the information or circumstances surrounding it. Each party must apply the same care and diligence - however, no less than a reasonable degree of care and diligence - which it applies to its own, comparable information, in order to protect the said information and to prevent (a) any use not authorised under this Agreement; (b) any dissemination of the information to any of the party's staff who do not need to know of the information; (c) the communication of the information to third parties; or (d) the publishing of the information. Each of the parties shall ensure that any of their staff to whom such information has been disclosed are bound by confidentiality obligations equivalent to those set out in the present paragraph. Neither party may use such information for any other purpose than for the

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purpose of performing their duties and obligations hereunder; likewise, they shall prohibit their staff from using such information for any other purpose than that. This confidentiality agreement does not apply to any information (a) which was known to the obtaining party before it obtained the said information from the disclosing party; (b) which is or becomes publicly accessible without any fault on the part of the obtaining party; (c) which the obtaining party has legitimately obtained from a third party not bound by any duty of confidentiality; (d) which the disclosing party discloses to a third party without any duty of confidentiality; (e) which is developed by the obtaining party independently and without violating this Agreement; or (f) which is disclosed by the obtaining party with the prior written consent of the disclosing party. If an obtaining party is requested by a public authority or a court of law to disclose confidential information, the obtaining party must inform the disclosing party of such request first, and this within a reasonable period of time such that the disclosing party is able to object to the disclosure or seek an interim injunction. Each of the parties assures that it is authorised to disclose its confidential information. Each of the parties is obliged to return to the respective other party or to destroy, any materials containing confidential information of the other party (and to confirm to the other party in writing that the materials have been destroyed), this regardless of the data carrier used and irrespective of the person who created them. The said return or destruction must occur within ten (10) days from the request to return the materials and, in any case, within ten (10) days from the termination or end of this Agreement. Furthermore, the parties agree that the provisions of the present paragraph shall remain valid for a period of three (3) years after the end of this Agreement. The provisions contained in this Agreement are deemed confidential information. The Customer may only publish press releases or make public announcements regarding this Agreement or any matter related to this Agreement with the prior written approval of the responsible department at channelxperts (channelxperts Corporate Communications Department).

9. Warranty and Liability

9.1 Limitation of Warranty

channelxperts shall be responsible for performing the services using reasonable care and competence and in compliance with the time schedules set out in the service documents. As a matter of precaution it should be noted that such time schedules are estimates and that channelxperts endeavours to comply with or be ahead of those. Apart from the foregoing, channelxperts does in particular not give any explicit or implicit warranty or representation (a) with regard to the products or services of third parties; (b) with regard to the performance of the hardware or software used in the performance of services; (c) with regard to any results or possible results that may be achieved from [the use of] the services due to any recommendation that channelxperts may have made, and (d) with regard to the performance of the works/services, degree of satisfaction, merchantability, suitability, non-violation of third party rights or fitness of the end products for a particular purpose or system, which may result from the implementation of a channelxperts recommendation.

9.2 Limitation of Liability

Within the limits of Customer's use, the liability of channelxperts shall be governed by the following provisions:

The services provider shall have unlimited liability for any damage intentionally or grossly negligently caused by channelxperts or its legal representatives, managers/executives or simple vicarious agents.

channelxperts shall not be liable in the event of a slightly negligent breach of a mere non-cardinal contractual obligation. In all other respects channelxperts's liability for damages caused by slight negligence shall be limited to typically foreseeable damages (damages which might typically occur under

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contract). The same shall apply to slightly negligent breaches of obligations on the part of channelxperts's legal representatives, managers/executives or simple vicarious agents. channelxperts's liability per calendar year for individual damages or connected damages (whether contractual or other) arising from or in connection with this Agreement shall be limited to a maximum of 110% of the amount paid or payable hereunder in the same calendar year for the services to which the claim in damages relates.

In all other respects, channelxperts shall not be liable (whether contractually or otherwise) for any direct, indirect, incidental, specific or consequential damage resulting from or arising in connection with the services and products supplied by channelxperts or its subcontractors or otherwise supplied in connection with this Agreement, even where the possibility of such damages occurring had been pointed out. channelxperts shall not be liable for any indirect damage suffered, such as lost earnings, lost profits or lost savings, or lost or damaged data or software.

The above limitation of liability shall not apply in cases of malice, injury to life, limb and health and personal damages, the violation of guarantees or for product liability claims.

9.3 Statute of Limitation

Except in cases of liability due to intent, the Customer shall not be entitled to bring any action in connection with this Agreement after a period of more than two (2) years from the point in time at which the Customer gained knowledge of the reason for such action.

10. Data Security

The terms used in this clause shall have the meaning defined in Article 2 of the European Data Protection Directive 95/46/EC, and the following terms shall have a specific meaning: "Data Protection Law" shall mean directive 95/46/EC in its amended, latest version together with all other applicable data protection provisions. "European Economic Area" shall mean the respective member states of the European Union plus Norway, Iceland and Liechtenstein. "channelxperts Staff" shall mean all employees, managing directors, representatives or consultants of channelxperts charged with the performance of the services.

As the case may be, the Customer may supply personal data to channelxperts Staff, together with other information potentially reasonably necessary for the performance of the services.

channelxperts represents the following:

- a) channelxperts processes personal data in accordance with the Customer's legitimate instructions existing at the relevant point in time. channelxperts only acts on the basis of instructions given by duly designated representatives of the Customer;
- b) channelxperts ensures that only the Customer and channelxperts Staff whose task it is to support channelxperts's fulfilment of its obligations hereunder shall have access to personal data;
- c) channelxperts only processes personal data in accordance with Data Protection Laws and the provisions of this Agreement;
- d) to the extent that it should become necessary to transfer personal data from one location to another location within the organisation or to third parties charged with the performance of the services, such a transfer will be performed in compliance with adequate security measures, which measures will be implemented in compliance with Data Protections Laws;
- e) channelxperts will not disclose any personal data to third parties, unless it has been ordered to do so by a public authority or a court of law.

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channelxperts represents that it will maintain adequate operational and technological processes and procedures to protect against any unauthorised access, loss, destruction, theft, use or disclosure of personal data.

Each party undertakes to hold harmless and defend the respective other party against all costs, claims, damages or expenses incurred by that other party due to any failure of the first party or its staff or representatives to comply with any obligation of the first party hereunder or in relation to which the other party becomes liable.

channelxperts shall not be liable for any claims raised due to any actions or omissions of channelxperts Staff to the extent that such actions or omissions directly result from the Customer's instructions.

11. General Provisions

11.1 Assignment; Subcontracting

The Customer shall not be entitled to transfer or assign this Agreement without the prior written consent of channelxperts. channelxperts shall be entitled to (fully or partly) subcontract the performance of services hereunder to subcontractors or to transfer such services to one of its affiliates.

11.2 Written Form Requirement

Any supplements or amendments to this document must be made in writing and signed by both parties' authorised representatives in order to be valid. Should any part of this Agreement be or become invalid or unenforceable, this shall not affect the remaining provisions of this Agreement.

11.3 Force Majeure

Neither party shall be liable to the other party for non-compliance with any obligation whatsoever (except for payment obligations) existing hereunder while they are prevented from performing such obligation due to any circumstance beyond their control, including but not limited to fire, flood, war, embargo, strike, civil commotion or any intervention on the part of a government authority ("Force Majeure"). However, in such an event the defaulting party is obliged to inform the other party immediately in writing that such a Force Majeure event has occurred. The defaulting party's period of performance shall then be extended for the duration of the Force Majeure event. Should the Force Majeure event last longer than thirty (30) days, the other party shall be entitled to immediately terminate in writing the relevant service agreement, agreement on performance or technical specifications form vis-à-vis the defaulting party.

11.4 Notifications

This agreement may only be terminated in writing. Termination of this Agreement must be sent by post, courier, facsimile or email to the address shown on the Customer's invoice or to an address communicated by one party to the other party in writing for this purpose. Such a termination shall take effect upon receipt.

11.5 Applicable Law, Legal Venue and Language

This Agreement shall be governed by the laws of the Federal Republic of Germany. Both parties submit to the exclusive jurisdiction of the German courts. The German version of this Agreement shall be decisive for its interpretation. The seat of channelxperts shall be the exclusive legal venue for any disputes arising from this Agreement to the extent that such a legal venue agreement is admissible.