

SPECIAL TERMS AND CONDITIONS OF JA PARTNER SERVICE

No. [EN_JA PARTNER No. 20161212]
effective from [1 February 2017]

BETWEEN:

- (1) the provider of the JA PARTNER service, i.e. company **JABLOTRON CLOUD Services s.r.o.**, reg. No.: 047 86 645, registered office U Přehrady 3204/61, Mšeno and Nisou, 466 02, Jablonec nad Nisou, Czech Republic, registered in the Commercial Register administered by the Regional Court in Ústí nad Labem, section C, file No. 36983 ("**Provider**");

and

- (2) Provider's partner who uses the JA PARTNER service for the activation and creation of End User Accounts in Cloud JABLOTRON ("**Partner**");

(The Provider and the Partner hereinafter collectively referred to as "**Parties**", each of them individually as a "**Party**")

WHEREAS

- (A) The Provider enables the Partner to activate, through its account created as part of JA PARTNER, End User Accounts in Cloud JABLOTRON and remotely perform certain acts for End Users.
- (B) The Partner wishes to use the functionality made available to them in JA PARTNER, under conditions stipulated in these JA PARTNER T&C.

THE PARTIES stipulate as follows:

1. DEFINITION OF TERMS

- 1.1. Capitalized terms and abbreviations not defined herein have the meanings assigned to them in the General Terms and Conditions governing the use of Cloud JABLOTRON then in force and effect.
- 1.2. The capitalized terms herein have the following meanings:

" Cooperating Partner "	means a Mounting Partner with access to JA PARTNER, where the Partner only has access to the Partner's objects;
" Duration of JA PARTNER "	means the time from JA PARTNER Activation to the end of the calendar month following the month when JA PARTNER Activation or prolongation referred to in par. 10.2 hereof occurred;
" End user(s) "	means such users of Cloud JABLOTRON who use MyJABLOTRON or SDC for their personal need and are not at the same time Mounting Partners or JA Partners;
" JA PARTNER Activation "	means a moment where the Partner logs in JA PARTNER for the first time;

"JA PARTNER"	means a <u>Service made available to Partners</u> within which a person authorized by the Provider is entitled to, through Cloud JABLOTRON, activate, configure and, where applicable, cancel accounts managed by the Partner; all this under conditions stipulated herein and in the GTC;
"JA PARTNER Successor T&C"	means draft JA PARTNER T&C published in the Duration of JAPARTNER on the Website, which in terms of subject-matter and scope of regulation are to replace these JA PARTNER T&C and their date of publication is more recent;
"JA PARTNER T&C"	means these special terms and conditions of use of JA PARTNER;
"Master Partner"	means a Partner who is at the same time a Mounting Partner and has, in JA PARTNER, access to <i>all</i> objects, i.e. the Partner's objects and objects of other Cooperating Partners;
"Regulations"	means <ul style="list-style-type: none"> • these JA PARTNER T&C; • SLA (if concluded with the Partner); • General Terms and Conditions of Cloud JABLOTRON; • conditions and contractual arrangements of Providers of support services related to JA PARTNER (if known to the Partner from its activities or provided by the Provider); • legal regulations of applicable law governing these JA PARTNER T&C.
"SLA"	means a service level agreement entered into between the Provider and the Partner; the subject-matter of this agreement is contractual framework of the level, scope, availability of services provided, support and other rights and obligations of Parties mostly of technical nature;

2. INTRODUCTORY PROVISIONS

- 2.1. The Provider enables the Partner to activate, through JA PARTNER, End User Accounts in Cloud JABLOTRON, remotely configure individual Devices and, where applicable, cancel and remove Devices from Cloud JABLOTRON. JA PARTNER is a Service within the meaning of the GTC.
- 2.2. Purpose of JA PARTNER. The purpose of JA PARTNER is to enable the Partner to activate and create End User Account in Cloud JABLOTRON, launch communication of the Device or terminate it, assuming the absence of Force Majeure;
- 2.3. Subject. The subject-matter of these JA PARTNER T&C is regulation of the contractual relationship between the Provider and the Partner, stipulation of mutual rights and obligation of the Parties with respect to JA PARTNER, and stipulation of conditions under which the Provider will allow (in the absence of Force Majeure) the Partner to access and use JA PARTNER.

3. MANAGING THE USER TRIBE

- 3.1. Limited disposal. The Partner acknowledges that the Provider will not have at its disposal neither the Accounts of Partner's End Users (and information about End

Users) not Accounts of Cooperating Partners (and information about Cooperating Partners). The Provider will not in any way access these accounts and information about End Users or Cooperating Partners and will not use or exploit them in its favour subject to the right to send Commercial Communications and the right to perform crisis management (if the conditions for crisis management hereunder have been met).

- 3.2. Proper management of the user tribe. Since the exclusive control over End User Accounts in Cloud JABLOTRON remains on the Partner, the Partner undertakes to carry out management of its End User tribe to make sure that legitimate interests and expectations of End Users are not prejudiced and the good reputation of the Provider do not suffer or are not threatened.
- 3.3. Crisis management of the user tribe. In the event that the Partner after a previous notice to remove a defective condition fails to meet (e.g. due to insolvency, bankruptcy or an essential change in the business strategy of the Partner, which would lead to not meeting the obligations towards End Users) its obligation towards its End Users and/or inflicts harm or a risk of harm of good reputation of the Provider, the Parties stipulate that the Provider is entitled to, for a necessary period of time, carry out crisis management of the End User tribe instead of the Partner to the extent of its technical capabilities. However, the Provider's right under the previous sentence terminates at the moment when **(i)** circumstances demonstrably no longer exist that justified the establishment of this right and the Provider learns this; or where **(ii)** the End User, despite a repeated invitation to do so, does not enter into contractual relationship with another partner (user of JA PARTNER), who was offering to the End User in an offered contractual relationship fulfilment of obligations related to Cloud JABLOTRON and related Services at least at the same or higher level than follows from these JA PARTNER T&C, the SLA or the GTC.

4. REGISTRATION OF THE DEVICE, ACCESS TO JA PARTNER

- 4.1. Information and registration of the Device. The Partner undertakes to always enter, during Device Registration, all Information obtained from an End User about the End User's Device truthfully, accurately and completely. In the event that the Information about the Partner becomes outdated, inaccurate or false, the Partner will inform the Provider about this fact and at the same time provide the Provider with (enter) up-to-date, true, accurate and complete Information. Negative consequences, including liability relationship arising from outdated, false, incorrect or incomplete Information (about the Device or the Partner) will be borne by the Partner.
- 4.2. Access permissions. The Partner acknowledges and agrees that is solely responsible:
- 4.2.1. for the security (keeping confidential) of login credentials to JA PARTNER;
 - 4.2.2. for all acts and any administration or control of JA PARTNER or End User Accounts or Cooperating Partners that will be carried out using the Partner's access permissions.
- 4.3. Limitation of Provider's liability. The Provider is not liable for any interventions, losses, defect, harm or other negative consequences arisen from unauthorized access or use of JA PARTNER except in cases where such consequence was caused by negligence on the part of the Provider.

5. PERMITTED USE OF JA PARTNER

- 5.1. Regulations. The Partner is to observe and adhere to Regulations then in force and effect.
- 5.2. Permitted use. The Partner undertakes to use JA PARTNER only in accordance with par. 2.2 hereof and in a manner which is not in conflict with the Regulations and legitimate interests or expectations of End Users and Cooperating Partners. The Partner is obliged to refrain from any acts or use of functionalities of JA PARTNER that

would lead or could lead to harm or a risk of harm of good reputation of the Provider.

- 5.3. Management of End Users and Cooperating Partners. The Partner undertakes to refrain from creating fictitious accounts in Cloud JABLOTRON. The Partner must not deceive End User with regards to the status of Registration of the End User's device. The Partner (or the Master Partner) is entitled to terminate the provision of Cloud JABLOTRON to End Users or Cooperating Partners only after having expressly informed the respective End Users and Cooperating Partners about the termination of provision of Cloud JABLOTRON well ahead (before effective termination).
- 5.4. Use of the content of End User Accounts in Cloud JABLOTRON. The Partner is not entitled to use the content, information or data displayed, stored or otherwise arising from Accounts of End Users or Cooperating Partners in Cloud JABLOTRON in any other manner than to the extent of authorization of a Mounting Partner.
- 5.5. Permitted Devices. The Partner acknowledges that registrable Devices are only Devices whose HW serial numbers enable registration in Cloud JABLOTRON in the given territory. The Provider reserves the right not to enable registration of HW serial numbers that were intended for other territories outside the Partner's sphere because the Provider cannot, for technical reasons, connect Devices with different language versions and settings.

6. OBLIGATIONS OF THE PARTNER AND THE PROVIDER

- 6.1. The Partner undertakes to:
 - 6.1.1. provide the Provider with all Information truthfully, accurately and completely;
 - 6.1.2. refrain from using JA PARTNER contrary to par. 5.2, 5.3, 5.4 and 5.5 hereof;
 - 6.1.3. refrain from using the JA PARTNER in a manner inconsistent with the Regulations then in force and effect or that would lead to consequences prohibited by the Regulations then in force and effect.
- 6.2. The Partner further undertakes to:
 - 6.2.1. act so as not to give rise to a threat to security of the Data;
 - 6.2.2. continuously back up Data with respect to the character of the activities carried out by the Partner;
 - 6.2.3. always at the Provider's request back up, save or by other suitable means ensure security of all Data.
- 6.3. The Provider undertakes:
 - 6.3.1. not to abuse any of its rights it has hereunder in a manner that would unreasonable interfere with the possibility of Partner's using JA PARTNER;
 - 6.3.2. to protect Information received from the Partner and use it only in a manner and within the limits laid down by these JA PARTNER T&C and the GTC;
 - 6.3.3. not to disclose the Partner's Account, Information or Data about the user tribe to any third person except the following cases: **(i)** disclosure is necessary to protect the Provider's interests; or **(ii)** disclosure is required by the law or Regulations; or **(iii)** disclosure is ordered by a public authority, an administrative authority a court or an arbitral tribunal; or **(iv)** disclosure is in the interest of the Partner and is necessary for proper operation and use of JA PARTNER (or its update or upgrade) and at the same time persons to whom the information is disclosed are bound to secrecy;
 - 6.3.4. back up Data throughout the duration of the JA PARTNER T&C and the SLA.

7. TERMINATION OF ACCESS

- 7.1. The Provider is entitled to cancel Partner's Account, prevent or restrict Partner's access to JA PARTNER and prevent their use if:
- 7.1.1. the Partner violates any of its obligations referred to in par. 6.1 and 6.2 hereof or another obligation it has under the Regulations then in force and effect in relation to JA PARTNER;
 - 7.1.2. the Partner does not use JA PARTNER and does not access their Account within one (1) year of Activation of JA PARTNER;
 - 7.1.3. the contractual relationship with the Partner is terminated under the SLA;
 - 7.1.4. it is required by the applicable Regulation or ordered by a public authority, an administrative authority a court or an arbitral tribunal;
 - 7.1.5. the Provider deems this appropriate with regard to the protection of interests of the Provider or a Related party; or
 - 7.1.6. the conditions for the performance of crisis management have been met (par. 3.3 hereof).

The Provider is entitled to exercise the right under this paragraph only after a reasonable time period for rectification has lapsed. The Provider is obliged to notify the Partner of provision of a time limit for rectification and its duration, together with specification of the defective state, without undue delay after becoming aware of the reason establishing the right to terminate access.

- 7.2. Where the Provider exercises the right under the previous paragraph, it is obliged to simultaneously ensure that all Partner's Data will be deleted from Provider's servers. The Provider shall inform the Partner of such fact in an appropriate manner.

8. MANNER OF USE AND CONTENT

- 8.1. The Partner is fully liable for the manner of use of the JA PARTNER. The Partner is liable for a defective manner of use of JA PARTNER to the Provider and to any third persons that could possibly be the injured parties (mainly to End Users and Cooperating Partners), and to public authorities or administrative authorities.
- 8.2. The Partner acknowledges and agrees that the Partner is solely liable for all Data it has access to while using JA PARTNER or that arise from using JA PARTNER because only the Partner decides on the manner of using JA PARTNER and whether or how the Data are obtained and whether they are handled in accordance with the Regulations then in force and effect or not; however, this does not apply where it is demonstrated that the Provider violated, in handling the Data, these JA PARTNER T&C or other Regulations then in force and effect.

9. LIABILITY

- 9.1. JA PARTNER is provided to the Partner *as-is* and with guarantees listed in the SLA. The Partner may not have other claims against the Provider in terms of liability for defects other than as specified in the SLA.
- 9.2. In case of liability for harm in connection with JA PARTNER, common provisions in Art. 12 hereof apply.

10. DURATION AND JA PARTNER SUCCESSOR T&C

- 10.1. Force and effect. With the exception of provisions in par. 10.2 and 10.3 hereof (whose force and effect is not limited in time), these JA PARTNER T&C are in force and effect for the Duration of JA PARTNER.
- 10.2. Prolongation. If no JA PARTNER Successor T&C are published during the Duration of JA PARTNER on the Website, the Duration of JA PARTNER of the contractual relationship between the Provider and the Partner is prolonged until the end of the

following calendar month, and such prolonged period of time is considered to be the Duration of JA PARTNER under the current JA PARTNER T&C.

- 10.3. JA PARTNER Successor T&C. In the event that JA PARTNER Successor T&C are published on the Website in the Duration of JA PARTNER, the force and effect of these JA PARTNER T&C terminate with the expiration of the Duration of JA PARTNER; before the expiration of the Duration of JA PARTNER, the Partner is entitled to unilaterally terminate the relationship established by these JA PARTNER T&C without a notice period by sending a notice from their Email address to the Provider's email address. However, where the Partner requires a notice period, the Partner is to inform the Provider of this fact in the email containing the termination act; in such case, the notice period commences on the first day of the calendar month following the sending of the email containing the termination act and it is thirty (30) days long.
- 10.4. The Parties agree that after termination of the Duration of JA PARTNER of these JA PARTNER T&C, JA PARTNER may only be used under conditions stipulated in JA PARTNER Successor T&C with the most recent publication date. Where the Partner logs in to JA PARTNER after the Duration of JA PARTNER, it will be deemed that the Partner also expressed, with this real act, agreement with JA PARTNER Successor T&C with the most recent publication date and their will to be bound by them.

11. DURATION

- 11.1. The contractual relationship regulated by these JA PARTNER T&C terminates at the latest with the Duration of JA PARTNER as referred to in par. 10.1 hereof.
- 11.2. Before the expiration of the Duration of JA PARTNER, the Partner is entitled to terminate the contractual relationship regulated by these JA PARTNER T&C at any time without cause and without a notice period, by sending a notice of termination from its Email address to the Provider's email address. The Provider is obliged to confirm, without delay, to the Partner the delivery of the termination notice by sending a notification to the Partner's Email address.
- 11.3. Before the expiration of the Duration of JA PARTNER, the Provider is entitled to terminate the contractual relationship regulated by these JA PARTNER T&C at any time without cause and without a notice period, by sending a notice of termination to the Partner's Email address. The Partner is obliged to confirm, without delay, to the Provider the delivery of the termination notice by sending a notification to the Provider's email address from which the Partner received the Provider's notice of termination.
- 11.4. The contractual relationship terminates with the effect of the termination notice of any Party, which occurs at the moment of delivery of the termination notice to the other Party.
- 11.5. If access to JA PARTNER is terminated for any reason referred to in par. 7 hereof or Art. 8 of the GTC (Termination of access), the contractual relationship between the Parties regulated by these JA PARTNER T&C also terminates.

12. PROVISIONS IN CASE OF OBLIGATION TO COMPENSATE DAMAGE

- 12.1. Harm incurred by the Partner in connection with JA PARTNER. Should the Partner become entitled, in connection with JA PARTNER, to compensation of harm due to a breach of obligation arising from these JA PARTNER T&C or a generally applicable regulation, the Provider will be liable only for harm caused by the Provider, in total not exceeding the amount of direct actual damage suffered by the Partner as an immediate and direct result of a breach of obligation based on fault, however not exceeding CZK 1,000,000 (one million Czech crowns).
- 12.1.1. The Provider, with regard to the above-mentioned limitation of harm compensation, will not compensate for especially non-material harm, including in the form of satisfaction, loss of profit and other consequential or indirect

damage or harm caused by harm of good reputation (goodwill).

- 12.1.2. The Provider is not be liable for harm caused by breach of obligation if prevented from fulfilment of such obligation by an obstacle resulting from an event of Force Majeure, including obstacles arising from their personal circumstances.
- 12.2. The agreed limitation of compensation for harm is stipulated as reasonable with regard to all circumstances related to the provision and use of JA PARTNER and at the same time defines harm foreseeable by the Parties which may be incurred by the Partner or a third person. The Partner is not entitled to claim compensation exceeding the agreed limitation of compensation for harm, with the exception of:
- 12.2.1. harm to the human natural rights,
- 12.2.2. harm caused intentionally or through gross negligence,
- 12.2.3. cases where such right is established by a mandatory provision of the applicable law governing the JA PARTNER T&C.
- 12.3. Where an entitlement arises towards the Provider for compensation of harm of third person in whose interest the fulfilment of an obligation arising from these JA PARTNER T&C should have apparently served, the Partner undertakes, with regard to the fact that such extension of obligations arising from the JA PARTNER T&C had not been obvious upon entering into these JA PARTNER T&C, compensate such third person for any harm the Provider is obligated to compensate, or reimburse the Provider if it has provided such third person with compensation in the meantime.
- 12.4. The agreed limitation of compensation for harm will always apply to the fullest extent permitted by mandatory provisions of the applicable law governing these JA PARTNER T&C or to the extent implied by the mandatory provisions of the applicable law.
- 12.5. Harm incurred by a third person in connection with JA PARTNER. Should a third person become entitled, in connection with the Partner's use of the JA PARTNER contrary to the Regulations then in force and effect, to compensation for harm by the Provider, then:
- 12.5.1. the Partner hereby assumes the obligation to compensate the harm caused to the third person, and undertakes to compensate the harm to such third person; or
- 12.5.2. where the Provider has already compensated the third person for the harm incurred, the Partner undertakes to reimburse the Provider for the amount expended and the cost incurred in connection with it, within three (3) days from the date of the Provider's sending a notification about occurrence of this obligation to the Partner's Email address. In the event of the Partner's default with the payment, the Provider and the Partner hereby stipulate on an interest on late payment of 0.5% of the due amount daily.

13. OTHER PROVISIONS

- 13.1. Unless stipulated otherwise herein, rights and obligations of the Partner and the Provider are governed by the GTC then in force and effect.
- 13.2. In the event of any discrepancy between the JA PARTNER T&C and the GTC, the JA PARTNER T&C take precedence over the GTC.
- 13.3. Severability. Should any provision herein become invalid or unenforceable or should it be found as such by a competent court or any other authority with the power to issue binding decisions or findings, this fact shall not affect the validity or enforceability of other provisions herein; however, in that case, the Partner undertakes to negotiate with the Provider without undue delay (but no later than within five (5) days of the Provider's notice) a new agreement, a valid and enforceable one, the purpose of which will, if

possible, correspond to the original provisions or will at least aim to achieve the purpose that is the closest to the original provision.

- 13.4. Language version, governing law. These JA PARTNER T&C are translated into several languages; in the case of any discrepancy between the various language versions, the Czech version takes precedence. Since the Provider has its registered office in the Czech Republic, where essential technical aspects of Cloud JABLOTRON are also located, these JA PARTNER T&C are governed and are to be interpreted in accordance with the laws of the Czech Republic. In the event of a trial with the Provider, the Parties agree on local jurisdiction of the court in the district of which the Provider has its registered office.
- 13.5. Failure to exercise a right. Should the Provider fail to exercise or enforce any of its rights or lawful means of protection of rights it is entitled under these JA PARTNER T&C or applicable Regulations or fails to insist on it, the Partner agrees that this shall not be deemed a waiver of such right by the Provider.
- 13.6. Change to the JA PARTNER T&C by the Partner. Any changes to the JA PARTNER T&C made by the Partner not expressly approved by the Provider will be disregarded.

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