

Alkaes Consulting SAS - Minyaa Suite - End User License Agreement

1. Definitions

- **Accessible Code** means source code contained within the Product that is unprotected and accessible under this agreement.
- **Authorised Machine** means a single installation of a copy of the Product on a single physical computer.
- **Authorised Server Node** means a single installation of a copy of the Product within a J2EE application server on a single physical server, which is either stand alone or within a connected cluster.
- **Authorised Use** means the defined number of copies or instances of the Product that may be used by Licensee, and where applicable, limited to the number of **Authorised Users**, the number of **Authorised Server Nodes** and/or the number of **Authorised Machines**, as designated in the Quote/Invoice issued by **Alkaes Consulting SAS**.
- **Authorised User** means a person or user account who is Licensed to use the Product, regardless of whether that person is an employee, contractor, subcontractor, vendor, partner or customer of the Licensee.
- **Commencement Date** means the date that **Alkaes Consulting SAS** processes payment of the License or Maintenance Fees from Licensee.
- **Embedded Software** means third party software licensed by **Alkaes Consulting SAS** from a Licensor and embedded in the Product.
- **License** means the right to use the Product as defined by **Authorised Use**.
- **Licensee** means the individual or entity (inclusive of subsidiaries) that has licensed the Product under the terms and conditions of this agreement.
- **Licensor** means the licensor of the **Embedded Software**.
- **OEM Distribution** means distribution of the Product as either a bundled add-on to, or embedded component of, another application with such application being made available to its users as, but not limited to, an on-premises application, a hosted application, a Software-as-a-Service offering or a subscription service for which the distributor of the application receives a license fee or any form of direct or indirect compensation.
- **Alkaes Consulting SAS** means **Alkaes Consulting SAS**, located at **21, rue de la Villa Flamande, 92340 Bourg-La-Reine, FRANCE**.
- **Product** means the **Alkaes Consulting SAS** product defined in the Quote/Invoice delivered by **Alkaes Consulting SAS** to **Licensee**, and which may contain **Embedded Software**, including any updates provided under the terms of this agreement in accordance with Section 5.
- **Protected Code** means source code contained within the Product that is protected against access by **Alkaes Consulting SAS** and is not accessible under this agreement.
- **USD** means United States dollars. **EUR** means Euros.

2. License Fee

A one-time fee paid by **Licensee** to **Alkaes Consulting SAS**, as designated by Product, in consideration for the **Authorised Use** of the Product. License fee is non-refundable and payable upon acceptance of the terms and conditions set out herein.

3. Grant of Licence

Subject to the terms of this agreement, including limitations defined by the License, **Alkaes Consulting SAS** grants to **Licensee**, and **Licensee** accepts from **Alkaes Consulting SAS**, a perpetual, worldwide, non-exclusive, non-transferable, non-sublicensable License to use the Product as defined by **Authorised Use**.

4. No Warranty

Save as provided in Sections 13 and 14 below, the Product is provided on an "as is" and "as available" basis without warranty, express or implied, of any kind or nature, including, but not limited to, any warranties of performance or merchantability or fitness for a particular purpose, including without limitation that **Alkaes Consulting SAS** does not warranty that the Product will be error-free, complete, or correct. **Alkaes Consulting SAS** provides evaluation copies of the Product so that customers can assess the Product.

5. Alkaes Consulting SAS Obligations

Upon receipt of Licensee Fee from **Licensee, Alkaes Consulting SAS** will :

1. supply the **Licensee** with the Product via electronic download; and
2. provide Software Maintenance as defined in Section 6, for a period of twelve (12) months from the **Commencement Date** (the "Initial Maintenance Period").

6. Software Maintenance

Software Maintenance includes **Alkaes Consulting SAS's** provisioning to **Licensee** Product updates and/or enhancements made generally available to customers from time to time, and online technical support (and where applicable, phone support) to one Licensee-designated technical contact for the sole purpose of addressing technical issues relating to the use of the Product (excluding any form of on-site visits by **Alkaes Consulting SAS** personnel or contractors).

The Initial Maintenance Period may be renewed for additional twelve (12) month periods ("Renewal Period") at the then-current rate for Software Maintenance. Subsequent Renewal Periods commence upon the expiration of the prior Software Maintenance regardless of when it is purchased.

7. Licensee Obligations

The **Licensee** must at all times:

1. ensure that only an **Authorised User** may use the Product and only for **Authorised Use** in accordance with the terms and conditions of this agreement;
2. install, within forty-five (45) calendar days, those updates and enhancements specifically provided by **Alkaes Consulting SAS** to avoid or mitigate claims addressed by Sections 13 or 14 below;
3. advise **Alkaes Consulting SAS** in writing within thirty (30) calendar days if the **Licensee** becomes aware of any unauthorised use or distribution of the Product by any person.

8. Unauthorised Use or Distribution

Licensee may not, whether through deliberate or negligent act or act of omission:

1. distribute or cause the distribution of the Product to any third party other than an **Authorised User**; or
2. directly access or use any **Embedded Software** independently of the Product.

Licensee is required to report its discovery of any such violations to **Alkaes Consulting SAS**, in writing within thirty (30) calendar days.

Any such violations will entitle **Alkaes Consulting SAS** to, in addition to any other right or claim that **Alkaes Consulting SAS** may have against **Licensee**, retroactively charge the **Licensee**, in addition to any other fees payable by the **Licensee** under this agreement, a fee calculated based on the number of prohibited distributions times the respective list prices that **Alkaes Consulting SAS** and/or the Licensor charges for the Product or **Embedded Software** respectively.

9. Unauthorised Use or Distribution

If **Alkaes Consulting SAS** reasonably suspects that the Product has been distributed to or obtained by any person or party without **Alkaes Consulting SAS's** prior written consent, or that **Embedded Software** is being accessed or used independently of the Product, **Alkaes Consulting SAS** has the right to request from the **Licensee** an unqualified certificate executed by the Licensee's auditor at the Licensee's cost for the purpose of verifying compliance with **Authorised Use** of the Product or **Embedded Software**.

In the event of such requests, which shall be made no more frequently than once per calendar year, **Alkaes Consulting SAS** will provide at least thirty (30) calendar days written notice.

10. License's Restrictions

Licensee must not, without the prior written consent of **Alkaes Consulting SAS**, which may be withheld and which may include certain conditions :

1. decompile, reverse engineer, disassemble, modify, adapt, create derivative works from, or otherwise attempt to derive, the **Protected Code**;
2. sell, sublicense, redistribute, reproduce, transmit, circulate, disseminate, translate or reduce to or from any electronic medium or machine readable form the Product or any data/information provided to the **Licensee** through the Product to a person (except that nothing in this paragraph (b) is intended to prevent an Authorised Person undertaking **Authorised Use**);
3. vary or amend the **Authorised Use** without **Alkaes Consulting SAS**'s prior written approval;
4. publish, promote, broadcast, circulate or refer publicly to the **Alkaes Consulting SAS** name, trade name, trademark, service mark or logo, without the prior written consent of **Alkaes Consulting SAS**;
5. commit any act or omission the likely result of which is that **Alkaes Consulting SAS**'s reputation will be brought into disrepute or which act or omission could reasonably be expected to have or does have a material and adverse effect on **Alkaes Consulting SAS**'s interests.

For avoidance of doubt, and subject to the terms and conditions contained herein, **Licensee** is permitted to modify the **Accessible Code** to develop bug fixes, customizations, or additional features, solely for the purpose of using the Product as defined in, and during the term of, this Agreement.

Under no circumstance may **Licensee** distribute the Product via OEM Distribution without entering into a separate OEM Distribution Agreement with **Alkaes Consulting SAS**. **Licensee** shall also not copy or embed elements of the **Accessible Code** into other applications.

In addition, the Product includes license protection mechanisms that are designed to manage and protect the intellectual property rights of **Alkaes Consulting SAS**. **Licensee** must not modify or alter those features to try to defeat the Product use rules that the license protection mechanisms are designed to enforce.

11. Terms

The term of this agreement begins on the **Commencement Date** and will continue in full force and effect until terminated in accordance with Section 12.

12. Termination

This agreement may be terminated by either party if the other party commits a material breach. Either party will have thirty (30) calendar days following receipt of written notice to remedy any material breaches. Immediately upon termination, any **Accessible Code** in possession, custody or control of **Licensee** must be destroyed and written confirmation of such destruction provided to **Alkaes Consulting SAS**.

Sections 1, 2, 4, 8 - 10, 13 - 15, 18, and 19 shall survive any termination of this agreement.

13. Infringement Indemnification

- (a) **Alkaes Consulting SAS** will defend or settle, at its expense, any action brought against **Licensee** based upon the claim that the Product, if used within the scope of the License granted under this agreement, directly infringe a registered United States, European Union or Commonwealth patent or copyright; provided, however, that:
 1. **Licensee** shall notify **Alkaes Consulting SAS** promptly in writing of any such claim;
 2. **Licensee** shall not enter into any settlement or compromise any claim without **Alkaes Consulting SAS**'s prior written consent;
 3. **Alkaes Consulting SAS** shall have sole control of any such action and settlement negotiations; and
 4. **Licensee** shall provide **Alkaes Consulting SAS** with information and assistance, at **Alkaes Consulting SAS**'s request and expense, necessary to settle or defend such claim.

Alkaes Consulting SAS agrees to pay all damages and costs finally awarded against **Licensee** attributable to such claim. The foregoing states the sole liability of **Alkaes Consulting SAS** and the exclusive remedy of **Licensee** for any infringement of intellectual property rights by the Product or any other items provided by **Alkaes Consulting SAS** hereunder.

- (b) If the Product becomes, or in the opinion of **Alkaes Consulting SAS** may become, the subject of a claim of infringement of

any third party right, **Alkaes Consulting SAS** may, at its option and in its discretion:

1. procure for **Licensee** the right to use the Product free of any liability;
 2. replace or modify the Product to make it non-infringing; or
 3. refund any license fees related to this Product paid by **Licensee**.
- (c) **Licensee** will defend or settle, at its expense, any action brought against **Alkaes Consulting SAS** based upon the claim that any modifications to the Product or combination of the Product with products infringes or violates any third party right; provided, however, that:
 1. **Alkaes Consulting SAS** shall notify **Licensee** promptly in writing of any such claim;
 2. **Alkaes Consulting SAS** shall not enter into any settlement or compromise any such claim without **Licensee's** prior written consent;
 3. **Licensee** shall have sole control of any such action and settlement negotiations; and
 4. **Alkaes Consulting SAS** shall provide **Licensee** with information and assistance, at **Licensee's** request and expense, necessary to settle or defend such claim. **Licensee** agrees to pay all damages and costs finally awarded against **Alkaes Consulting SAS** attributable to such claim.
 - (d) Notwithstanding Subsection (a) above, **Alkaes Consulting SAS** assumes no liability hereunder for, and shall have no obligation to defend **Licensee** or to pay costs, damages or attorney's fees for, any claim based upon any modifications to any of the Product not approved by **Alkaes Consulting SAS** or combination of any of the Product with products not approved by **Alkaes Consulting SAS**.

14. Limitation of Liability

Except for the indemnification obligations of Section 13 or breach of Sections 2, 8 or 10, neither party will be liable to any person for any loss, damage, cost, expense or other claim (including consequential, direct, indirect, special, punitive or other damages and loss of data or profits) in relation to the Product including, without limitation:

- (a) any use or reliance on a Product by the person (including the form and content of errors in and/or omissions from any information contained in a Product);
- (b) any delay, interruption or other failure in the provision of the Product; or
- (c) any change in the form or content of the Product. In no event will **Alkaes Consulting SAS's** and Licensors' aggregate liability under any claims arising out of this agreement exceed the fees paid by **Licensee** under this agreement.

Except for each party's indemnification obligations or breach of Sections 2, 8 or 10, neither party will be liable for lost profits or for special, indirect, incidental or consequential damages, regardless of the form of action, even if such party is advised of the possibility of such damages. The foregoing liability limitations shall apply to the maximum extent allowed by applicable law. To the extent the foregoing liability limitations or the warranty disclaimers of Section 4 are not allowed by applicable law, then the liability of **Alkaes Consulting SAS**, and the remedy of **Licensee**, shall be limited to:

1. the re-supply of any defective Product; or
2. the refund of any license fees paid by **Licensee** for such defective Product

15. Intellectual Property

The **Licensee** acknowledges that the Product and all intellectual property rights in relation to the Product are the property of **Alkaes Consulting SAS** or the Licensors and **Alkaes Consulting SAS** is entitled to take whatever action it may decide in order to protect its intellectual property rights in the Product.

Alkaes Consulting SAS and the **Licensee** agree to maintain each other's confidential information in strict confidence. The parties agree to not reveal each other's confidential information to any third party or to use each other's confidential information for any reason other than to exercise rights or obligations clearly contemplated by this Agreement.

16. Publicity Rights

The **Licensee** grants **Alkaes Consulting SAS** the right to include the **Licensee** as a customer, in any Product promotional material (Web-Site, Presentation Slides).

Licensee can deny **Alkaes Consulting SAS** this right at any time by submitting a written request via email to sales@minyaa.com, requesting to be excluded partially (mentioning usable informations) or totally from Product promotional material.

17. No Assignment or Amendment

Licensee may assign this agreement to:

1. succeeding parties in the case of a merger, acquisition or change of control; or
2. if **Licensee** is a supplier to a government agency; provided, however, that in each case,
 - o (a) **Alkaes Consulting SAS** is notified in writing within ninety (90) days of such assignment,
 - o (b) the assignee agrees to be bound by the terms and conditions contained in this agreement and
 - o (c) upon such assignment the assignee makes no further use of the software licensed under this agreement.

Alkaes Consulting SAS may assign its rights and obligation under this agreement without consent of **Licensee**. Any permitted assignee shall be bound by the terms and conditions of this Agreement.

18. Tax

Payments made by the **Licensee** under this agreement exclude any taxes or duties payable in respect of the goods or services supplied in the jurisdiction where the payment is made or received. To the extent that any such taxes or duties are payable by **Alkaes Consulting SAS**, the **Licensee** must pay to **Alkaes Consulting SAS** the amount of such taxes or duties in addition to the license fee under this agreement unless **Licensee** is exempt from paying such taxes or duties at the time such taxes or duties are levied or assessed. **Alkaes Consulting SAS** will provide the **Licensee** with documents requested by **Licensee** necessary to enable the **Licensee** to obtain a tax or duty refund or credit.

19. Governing Law

This agreement is governed by the laws of **France**, and the parties irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of **France**.