

Terms & Conditions

Terms & Conditions for usage of the Admin By Request SaaS (software as a service)

Agreement

between

Your company name goes here after log in
Please log in and download the PDF document again
(Hereinafter "Customer")

and

FastTrack Software Aps
VAT No DK31938112
Hindegade 6
1303 Copenhagen
Denmark
(Hereinafter "FastTrack")

Version 5.0

Effective date: March 3rd, 2022

PREFACE

FastTrack provides Admin By Request as a standard SaaS Product which is the same product for all customers. This means that FastTrack does not provide its customers with any custom deliverables, professional services, custom software development or any services on-site. To be able to provide a standardized product such as Admin By Request, it is imperative that FastTrack offers the same terms for all of its customers to ensure most possible predictability in contractual matters and reduce the complexity of introducing new features, changing internal security procedures, etc. This Agreement has been developed, adjusted, and assessed by our risk advisors, external legal counsel, internal legal counsel, and compliance department, not to mention reviewed by thousands of customers. This way, our customers can be certain that this Agreement reflects a set of fair and balanced terms for both parties in line with market practice.

For other relevant documents, such as ISO certification, Data Processing Agreement, Data Privacy options and penetration tests, please refer to the Trust Center (<https://www.adminbyrequest.com/TrustCenter>).

Note that section 5 does not apply to you, if you are licensed or have a proof-of-concept license.

1. DEFINITIONS

1.1 Except to the extent expressly provided otherwise in this Agreement:

"Affiliate" means any entity, including without limitation, any individual, corporation, company, partnership, limited liability company or group which on or after the Effective Date, directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with Customer.

"Affiliate Partner" means a company which FastTrack has appointed as an approved partner to market and sell its SaaS Products.

"Agreement" means these terms including any schedules, orders of license and any amendments to this Agreement from time to time;

"Confidential Information" means:

- any information disclosed by or on behalf of a Party to the other Party during the Subscription Term (whether disclosed in writing, orally or otherwise) which at the time of disclosure:
 - was marked as "confidential"; or
 - should have been reasonably understood by the other Party to be confidential;
- the Customer Data;
- the FastTrack's software code (including but not limited to object code, intermediate code, source code and Documentation)

"Customer Data" means all data, works and materials: uploaded to or stored on the SaaS Product by the Customer; transmitted by the SaaS Product at the request of the Customer; supplied by the Customer to FastTrack for uploading to, transmission by or storage on the SaaS Product; or generated by the SaaS Product as a result of the use of the SaaS Product by the Customer;

"Documentation" means the documentation for the SaaS Product produced by FastTrack and delivered or made available by FastTrack to the Customer, including user guides, installation documents and security fundamentals documentation;

"Effective Date" means the date on which the Customer either accepts the Agreement or the SaaS Product is made available to Customer (whichever happens first);

"FastTrack" means FastTrack Software Aps which is the developer of the SaaS Product.

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, pandemics, floods, riots, terrorist attacks and wars);

"Free Plan Services" has the definition as outlined in section 5 of this Agreement.

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"Maintenance Services" means the general maintenance of the SaaS Product including Updates and Upgrades;

"Order" means the purchase of licenses listed in an order or order confirmation;

"Payment" means the following amounts:

- the amounts specified in the Order;
- such amounts as may be agreed in writing by the parties from time to time; and
- amounts calculated by multiplying FastTrack's standard time-based charging rates by the time spent by FastTrack's personnel performing any time-based Services;

"Permitted Purpose" means with respect to the other Party, the purposes of:

- carrying out its obligations under this Agreement;
- exercising its rights under this Agreement; and
- complying with its obligations under applicable laws;

"SaaS Product" means the software "Admin By Request" as a service, as specified in the order and in the Documentation (including any Updates and Upgrades to the SaaS Products provided by FastTrack at its sole discretion, and any software, systems and locally-installed software agents and connectors which interact with the SaaS Products as may be provided by FastTrack Software in connection with the SaaS Products).

"SaaS Product Defect" means a defect, error or bug in the SaaS Product having a material adverse effect on the operation, functionality or performance of the SaaS Product, but excluding any defect, error or bug caused by or arising as a result of:

- any act or omission of the Customer;
- any use of the SaaS Product contrary to the Documentation, whether by the Customer or by any person authorised by the Customer;
- a failure of the Customer to perform or observe any of its obligations in this Agreement; and/or
- an incompatibility between the SaaS Product and any other system, network, application, program, hardware or software not specified as compatible in the SaaS Product specification;

"SaaS Product Scope" means the scope and purpose of the SaaS Product. The SaaS Product is limited to management of privileged access by "Just In Time" privilege elevation on a per application or time limited session basis and does not extend to the actions or uses by the User once such access has been granted.

"Services" means any services which FastTrack provides to the Customer, or has an obligation to provide to the Customer, under this Agreement. This includes providing the SaaS Product, Maintenance Services and Support Services.

"Subscription Term" means the period of time during which the Customer subscribes to the SaaS Products, as specified in the order and which shall begin upon the Effective Date.

"Support Services" means technical support assistance provided by FastTrack to Customer for problem resolution, bug reporting, and technical assistance.

"Supported OS" means the operating systems Microsoft Windows, macOS and Linux;

"Update" means a hotfix, patch or minor version update to the SaaS Product;

"Upgrade" means a major version upgrade of the SaaS Product;

"User" means employees, agents, consultants, contractors, or vendors authorized by the Customer to use the SaaS Products solely for the internal use of the Customer and its Affiliates, subject to the terms and conditions of this Agreement; and

"User Account" means an account enabling a person to access and use the SaaS Product, including both administrator and user accounts.

2. BACKGROUND AND PURPOSE

2.1 This Agreement sets out the terms and conditions for the delivery of the SaaS Product by FastTrack to the Customer.

2.2 Notwithstanding any specifications or details in the Customer's order confirmation, invoice or the Customer's general sales and delivery conditions, similar documents or schedules, this Agreement shall prevail and apply to any delivery or service performed by FastTrack.

3. TERM

3.1 This Agreement comes into force upon the Effective Date.

3.2 This Agreement will continue in force indefinitely, subject to termination in accordance with Clause 7, and will govern the provision of any SaaS Product Order placed hereunder.

4. ACCESS AND USE

4.1 Subject to Payment of all applicable fees set forth in the Order or Payment in accordance with an indirect order through FastTrack's Affiliate Partners and the terms and conditions of this Agreement, FastTrack grants the Customer, during the Subscription Term, a non-exclusive, non-transferable right to access and use the SaaS Products and applicable Documentation solely for Customer's internal business purposes in accordance with the Documentation and in the quantity specified in the applicable Order.

4.2 The Customer will operate the SaaS Products in accordance with the Documentation and is responsible for the acts and omissions of its Users.

4.3 The SaaS Product is compatible with the Supported OS.

4.4 Except to the extent expressly permitted in this Agreement, the access granted by FastTrack to the Customer is subject to the following prohibitions:

- the Customer must not sub-license its right to access and use the SaaS Product;
- the Customer must not permit any unauthorized person to access or use the SaaS Product;
- the Customer must not republish or redistribute any content or material from the SaaS Product; and
- the Customer must not make any alteration to the SaaS Product.

4.5 The Customer shall use reasonable endeavours, including reasonable security measures relating to administrator login details, to ensure that no unauthorized person may gain access to the SaaS Product using an administrator account.

4.6 The Customer must comply with these terms and must ensure that all Users using the SaaS Product with the authority of the Customer or by means of an administrator account comply with these terms.

4.7 The Customer must not use the SaaS Product in any way that causes, or may cause, damage to the SaaS Product or impairment of the availability or accessibility of the SaaS Product.

4.8 The Customer must not attempt to gain unauthorized access to the SaaS Product or perform unauthorized penetrating testing on the SaaS Product.

4.9 For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the SaaS Product, either during or after the Subscription Term.

4.10 FastTrack may suspend the provision of the SaaS Product if any amount due to be paid by the Customer to FastTrack or its Affiliate Partner under this Agreement is overdue, and FastTrack or its Affiliate Partner has given to the Customer at least 14 days' written notice, following the amount becoming overdue, of its intention to suspend the SaaS Product on this basis.

5. FREE PLAN

5.1 If the Customer is using the SaaS Product on any free-of-charge basis as specified in the Order including any related Support Services to the extent provided by FastTrack at its sole discretion (collectively, "Free Plan Services"), FastTrack makes such Free Plan Services available to Customer until the earlier of

- the end of the free plan specified in the Order,
- the Effective Date of any purchased version of the SaaS Product, or
- written notice of termination from FastTrack ("Free Plan Services Period").

5.2 FastTrack grants the Customer, during the Free Plan Services Period, a non-exclusive, non-transferable right to access and use the Free Plan Services for the Customer's business purposes in accordance with the Documentation and subject to the access and usage restrictions set forth in this Agreement.

5.3 The number of granted licenses to the Customer under the Free Plan Services are maximized to 25.

5.4 Any data entered by the Customer into the Free Plan Services and any configurations made to the Free Plan Services by or for Customer during the term of such Free Plan Services will be permanently lost unless the Customer

- has purchased a subscription to the same SaaS Products as covered by the Free Plan Services or
- exports such data or configurations before the end of such free period.

5.5 There is no guarantee that features or functions of the Free Plan Services will be available, or if available will be the same, in the general release version of the SaaS Products, and Customer should review the SaaS Products features and functions before making a purchase.

5.6 FASTTRACK WILL BE UNDER NO OBLIGATION TO PROVIDE ANY MAINTENANCE, MAINTENANCE SERVICE OR SUPPORT SERVICES WITH RESPECT TO THE FREE PLAN SERVICES TO THE CUSTOMER. NOTWITHSTANDING ANYTHING TO THE CONTRARY, FASTTRACK PROVIDES THE FREE PLAN SERVICES "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND. TO THE EXTENT PERMITTED BY LAW,

FASTTRACK DISCLAIMS ALL IMPLIED WARRANTIES AND REPRESENTATIONS, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

5.7 The Customer assumes all risks and pays all costs associated with its use of the Free Plan Services. The Customer's sole and exclusive remedy in case of any dissatisfaction or FastTrack's breach of the Agreement with respect to such Free Plan Services is termination of the Free Plan Services. Any obligations on behalf of FastTrack to indemnify, defend, or hold harmless under this Agreement are not applicable to Customers using Free Plan Services.

6. SERVICE LEVEL

6.1 The SaaS Product is hosted by Microsoft Azure. Fasttrack provides the Customer access to the SaaS Product with a monthly uptime percentage (defined below) of at least 99,9%.

Monthly uptime percentage will be calculated as follows: The number of minutes the SaaS Product is accessible and not suffering from a service outage as reported to Fasttrack by the Customer during each calendar month, divided by the total number of minutes in the calendar month. If the Customer fails to report a service outage within five (5) days of the occurrence of such, the Customer shall not be entitled to any service credits. A monthly uptime percentage of 99.9% means that Fasttrack guarantee the Customer will experience no more than 43 minutes and 49.7 seconds per month of service outage.

Monthly uptime percentage	Rating	Service credits
99,9% or above	Meets or exceeds target	None
Between 99.0% and 99.9%	Below target	10 % of monthly subscription
At or below 99.0%	Unacceptable	25 % of monthly subscription
At or below 98.0%	Unacceptable	100% of monthly subscription

The Customer must submit a claim by submitting a support ticket. If the monthly Uptime percentage of such request is confirmed by Fasttrack and is less than the service commitment, Fasttrack will confirm a service credit to the Customer within seven (7) days.

6.2 FastTrack may schedule Maintenance Service on the SaaS Product on Saturdays or Sundays, which is excluded from counted monthly uptime.

6.3 Microsoft warrants that the underlying infrastructure is available to FastTrack with uptime of 99.99%. In the event that this is not the case, and a documented Microsoft Azure outage is documented at <https://status.azure.com/en-us/status>, such outage is excluded from monthly uptime, as this is not within FastTrack's reasonable control.

6.4 For the avoidance of doubt, downtime caused directly or indirectly by any of the following will not be considered a breach of this Agreement:

- a Force Majeure Event;
- a fault or failure of the Internet or any public telecommunications network;

- a fault or failure of the Customer's computer systems, networks or scheduled Maintenance Services carried out in accordance with this Agreement.

7. TERMINATION

7.1 The Customer subscribes for 12 months at a time.

7.2 At least 30 days prior to the end of the 12-month period, Fasttrack will contact the Customer for renewal of the SaaS Product. If Fasttrack cannot get in contact with the Customer or the Customer does not renew the Agreement, the Agreement will expire at the end of the 12-month period.

7.3 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if the other party commits a Material Breach of this Agreement and fails to cure such breach within thirty (30) days of its receipt of written notice from the other party outlining the nature of the breach.

7.4 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if the other party:

- is dissolved;
- ceases to conduct all (or substantially all) of its business;
- is or becomes unable to pay its debts as they fall due; or
- becomes insolvent or is declared insolvent.

8. EFFECTS OF TERMINATION

8.1 Upon termination or expiration of this Agreement:

- Customer will have no further right to access or use the SaaS Products; and
- each Party shall within thirty (30) days after written request return or destroy any tangible Confidential Information of the other Party within its possession or control which is not contained in the SaaS Products.

8.2 Any Customer Data contained in the SaaS Products will be deleted within sixty (60) days of termination/expiration of Customer's Subscription Term. Customer acknowledges that it is responsible for exporting any Customer Data to which Customer desires continued access after termination/expiration, and FastTrack will have no liability for any failure of Customer to retrieve such Customer Data and no obligation to store or retain any such Customer Data after such sixty (60) day period. Following termination of the SaaS Products, FastTrack may immediately deactivate Customer's User Account.

9. PAYMENTS

9.1 FastTrack or an Affiliate Partner will invoice you 12 months of subscription at a time in advance.

9.2 The Customer must pay the Payment to FastTrack or its Affiliate Partner in accordance with the payment and invoice terms set out in the invoice.

10. SUPPORT SERVICES

10.1 FastTrack will provide the Support Services on Business Days and during the Business Hours to the Customer during the Subscription Term. FastTrack aims at making first response within one business hour and guarantees that first response is a maximum one business day.

11. DATA PROTECTION

11.1 The Customer warrants to FastTrack that it has the legal right to disclose all personal data that it does in fact disclose to FastTrack under or in connection with this Agreement, and that the processing of that personal data by FastTrack for the Permitted Purpose in accordance with this Agreement will not breach any applicable data protection or data privacy laws.

11.2 To the extent that FastTrack will process personal data disclosed by the Customer, FastTrack warrants that:

- it will act only on instructions from the Customer in relation to the processing of that Personal Data;
- it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of that Personal Data and against loss or corruption of that personal data;
- it will not pass on or sell personal data to any third party.

11.3 The Parties must also agree to the Data Processing Agreement for this Agreement to be valid. Archived PDF copies of both agreements, signed by FastTrack's CEO, issued to you, are legally binding at any time in the future. Such PDF copies can be downloaded at <https://www.adminbyrequest.com/trustcenter>. FastTrack Software reserves the right at any time to adjust or make changes within both agreements. Any changes must be accepted by the Customer. If the Customer cannot agree to the changes, the Customer has 180 days to discontinue the use of the SaaS Product, in which term existing Agreements are valid.

12. INTELLECTUAL PROPERTY RIGHTS

12.1 Nothing in this Agreement operates to assign or transfer any Intellectual Property Rights from FastTrack to the Customer, or from the Customer to FastTrack.

12.2 The Customer owns all right, title and interest in all Customer Data. Nothing in this Agreement shall be construed as granting FastTrack any rights in Customer Data beyond those expressly provided herein.

13. ASSIGNMENT

13.1 Neither party may assign any of its obligations or rights under this Agreement to a third party without the prior written consent of the other party, except in the case of a merger, acquisition, corporate reorganization or sale of assets.

14. ACKNOWLEDGEMENTS AND WARRANTIES

14.1 The Customer acknowledges that complex software is never wholly free from SaaS Product Defect; and subject to the other provisions of this Agreement, FastTrack gives no warranty or representation that the SaaS Product will be wholly free from SaaS Product Defect.

14.2 The Customer acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this Agreement, FastTrack gives no warranty or representation that the SaaS Product will be entirely secure.

14.3 The Customer acknowledges SaaS Product Scope.

14.4 The Customer acknowledges that the SaaS Product are designed to be compatible only with that software and those systems specified as compatible in these terms; and FastTrack does not warrant or represent that the SaaS Product will be compatible with any other software or systems.

14.5 The Customer may not reverse engineer, decompile, disassemble, modify, translate, make any attempt to discover the source code of the SaaS Product, or create derivative works from the SaaS Product.

14.6 Notwithstanding any of the above, FastTrack warrants that:

- it shall provide the SaaS product in a professional manner consistent with general industry standards and the Documentation
- the SaaS Product, and the use thereof, will not infringe any Intellectual Property Rights of a third party
- it will use industry standard measures designed to detect unintended malicious or destructive code in the SaaS Product, including scanning all released files with VirusTotal's multi-engine scanning

14.7 FastTrack shall not be liable for a breach of warranty under Section 14.6 that is the result of:

- a defect in any third-party products (including both hardware and software products) not provided by FastTrack as part of the SaaS Product;
- blocking of the execution of the SaaS Product by third-party products (including both hardware and software products) not provided by FastTrack as part of the SaaS Product;
- a failure by Customer to perform its obligations expressly stated in this Agreement;
- Customer Data;
- use of the SaaS Product by Customer that is not in conformity with this Agreement.

14.8 Customer shall be required to report any breach of warranty to FastTrack within a period of thirty (30) days of the date on which the incident giving rise to the claim occurred. FastTrack's sole and exclusive liability, and Customer's sole and exclusive remedy, for breach of these warranties will be for FastTrack, at its expense, to use reasonable commercial efforts to correct such nonconformity within thirty (30) days of the date that notice of the breach was provided; and, if FastTrack fails to correct the breach within such cure period, Customer may terminate the affected order and, in such event, FastTrack shall provide Customer with a pro-rata refund of any unused pre-paid fees paid for the period following termination.

14.9 Any and all warranties, expressed, incorporated or implied, are limited to the extent and period mentioned in 14.8.

14.10 FastTrack shall, at its own cost, maintain in full force and effect during the Subscription Term of the Agreement the minimum insurance coverage that a prudent person in the business of FastTrack would maintain. Customer hereby confirms that it has reviewed the Certificate of Insurance made available by FastTrack. The most recent Certificate of Insurance will always be available in the Trust Center (<https://www.adminbyrequest.com/TrustCenter>). Should FastTrack at some point in time replace the current insurance, the Customer's sole and exclusive remedy in case of any dissatisfaction with the new insurance, is to terminate the Agreement immediately upon written notice to FastTrack.

15. LIMITATIONS OF LIABILITY

15.1 Each party is liable for any damage incurred due to its breach of the Agreement, subject to the limitations in this Section 15.

15.2 A party's annual liability for damages under this Agreement is limited to an amount equal to all fees paid under the Agreement during the twelve (12) month period preceding the event giving rise to the damages, or in case the Agreement has been in force less than twelve (12) months, all fees anticipated to be paid during a twelve (12) months' period starting from the signing of the Agreement.

15.3 In no event will either Party's maximum aggregate liability arising out of or related to this Agreement, regardless of the cause of action and whether in contract, tort (including negligence), warranty, indemnity or any

other legal theory, exceed the total amount paid or payable to FastTrack under this Agreement during the twelve (12) month period preceding the date of initial claim. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

16. INDEMNIFICATION

16.1 FastTrack shall defend and indemnify Customer and/or its Affiliate Partners and their officers, directors and employees against all third-party claims, suits and proceedings resulting from the violation, misappropriation, or infringement of such third party's patent, copyright, trademark or trade secret caused by Customer's use of the SaaS Product in accordance with this Agreement and the Documentation, and all directly related losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees). However, total liability for either party is maximized to the subscription amount paid by Customer for the last 12 months. THIS PROVISION SHALL SURVIVE THE EXPIRY OR OTHER TERMINATION OF THIS AGREEMENT.

16.2 If the use of the SaaS product is restricted due to an infringement claim, FastTrack shall at its cost and expense and at its option:

- procure for Customer the right to continue use; or
- replace or modify the SaaS Product so that they cease to infringe the third party rights, without breaching the Agreement.

16.3 FastTrack shall not be obliged to defend or indemnify Customer to the extent that a claim of infringement results from:

- Customer's unauthorized modifications of the SaaS product;
- Customer's use of the SaaS product in contradiction with the Documentation provided therewith; or
- a combination of the SaaS product and equipment or third party software other than equipment or third party software provided or approved by FastTrack, to the extent that the infringement is due solely to such combination.

17. CONFIDENTIALITY

17.1 The Parties must:

- keep Confidential Information of the other Party strictly confidential;
- not disclose the Confidential Information to any person without the other Party's prior written consent, and then only under conditions of confidentiality approved in writing by the other Party;
- use the same degree of care to protect the confidentiality of the other Party's Confidential Information as used to protect own confidential information of a similar nature, being at least a reasonable degree of care;
- act in good faith at all times in relation to the other Party's Confidential Information; and
- not use any of the other Party's Confidential Information for any purpose other than the Permitted Purpose.

17.2 Notwithstanding Clause 17.1, the Parties may disclose Confidential Information to the Party's own officers, employees, professional advisers, insurers, agents and subcontractors who have a need to access the Confidential Information for the performance of their work with respect to the Permitted Purpose and who are bound by a written agreement or professional obligation to protect the confidentiality of the Confidential Information.

17.3 This Clause 17 imposes no obligations upon the Parties with respect to Confidential Information which:

- is known to the Parties before disclosure under this Agreement and is not subject to any other obligation of confidentiality;
- is or becomes publicly known through no act or default of the Parties; or
- is obtained by the Parties from a third party in circumstances where the Parties has no reason to believe that there has been a breach of an obligation of confidentiality.

17.4 The restrictions in this Clause 17 do not apply to the extent that any Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request.

17.5 The provisions of this Clause 17 shall continue in force for a period of 5 years following the termination of this Agreement, at the end of which period they will cease to have effect.

18. FORCE MAJEURE EVENT

18.1 Neither Party will be liable to the other Party for any Force Majeure Event.

19. BREACH

19.1 In the event of Material Breach by the Customer FastTrack is entitled to:

- terminate this Agreement with immediate notice;
- discontinue the provision of any Services under this Agreement;
- deactivate the User Account and delete the Customer Data; and
- claim damages.

19.2 The Customer is not entitled to claim damages for any direct or indirect losses incurred as a result of FastTrack's decision to enforce any of its rights under this Clause 19.

20. CONTACT

FastTrack Software Aps
Hindegade 6
1303 Copenhagen
Denmark
Mail: support@fasttracksoftware.com

21. GOVERNING LAW AND JURISDICTION

21.1 This Agreement is to be governed by and construed in accordance with Danish law.

21.2 The courts of Denmark is to have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.