



# WRITEBACK

## Write-Back Cloud Product Agreement

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BY PROCEEDING TO ACCESS OR USE THE SOFTWARE IN WHICH THIS AGREEMENT IS ELECTRONICALLY EMBEDDED OR BY OBTAINING A LICENSE KEY FOR, OR ACCESS TO, THIS SOFTWARE, YOU ARE ACCEPTING ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT AS PUBLISHED ON THE [WRITE-BACK'S WEBSITE](#). XPAND IT URGES YOU TO CAREFULLY READ THIS AGREEMENT AND ASSESS YOUR USE OF THE SOFTWARE PRIOR TO ACCESSING, OR USING THE SOFTWARE OR MAKING ANY DECISION TO USE OR PURCHASE IT. YOU AGREE THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN AGREEMENT SIGNED BY YOU AND LEGALLY BINDING BETWEEN YOU AND XPAND IT. IF YOU DO NOT AGREE TO ALL OF THESE TERMS AND CONDITIONS, DO NOT ACCESS OR USE WRITE-BACK CLOUD PRODUCT. IF YOU WISH TO USE WRITE-BACK CLOUD PRODUCT AS AN EMPLOYEE, CONTRACTOR, OR AGENT OF A CORPORATION, PARTNERSHIP OR OTHER ENTITY, THEN YOU MUST BE AUTHORIZED TO SIGN FOR AND BIND THE ENTITY IN ORDER TO ACCEPT THE TERMS OF THIS AGREEMENT AND YOU REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT AND AUTHORITY TO DO SO.

This Write-Back Cloud Product Agreement (“Agreement”) states the terms and conditions agreed between Customer (“Customer”) (either an individual or, an entity and its affiliates whose details are provided to Xpand IT), and Xpand Solutions - Informática e Novas Tecnologias, Lda. (“Xpand IT”), to use Write-Back Cloud for Tableau (“Write-Back Cloud Product”). This agreement applies from the date when the Customer receives the Software from a Reseller or Xpand IT. An amendment or addendum to this Agreement may accompany the Write-Back Cloud Product and any such amendment or addendum whose terms shall be considered part of and shall prevail over the Agreement.

## 1. Definitions

“**Accessible Code**” means source code that is unprotected and accessible.

“**Agreement**” means this master software as a service subscription agreement, together with all exhibits, schedules, annexes, and Purchase Orders made a part hereof in accordance with the terms of this Agreement and all amendments, modifications, supplements and alterations thereto effected in accordance with the terms of this Agreement.

“**Customer**” means in the case of an individual accepting this Agreement on his or her own behalf, such individual, or in the case of an individual accepting this Agreement on behalf of a company or other legal entity, the company or other legal entity for which such individual is accepting this Agreement, and Affiliates of that company or entity (for so long as they remain Affiliates) which have agreed with the terms of this Agreement.

“**Authorized User**” means a person subject to an Access Grant who is authorized by the Customer to use and access Write-Back Cloud Product, regardless of whether those individuals are actively using the product at any given time.

“**Administration User**” means a person responsible for the administration of the Write-Back Product who is responsible for Customer-specific technical configurations and providing access grants to authorized users.

“**Cloud Products**” means Xpand IT Software hosted in the cloud.

“**Customer Data**” means all electronic data or information inputted or uploaded by or for Customer to the Write-Back Cloud Product.

“**Embedded Software**” means any third-party software that may contain Accessible Code, Protected Code, or Media licensed by Xpand IT from a third party and embedded in the Software.

“**Error**” means any error, defect, or omission that (i) is discovered in the Write-Back Cloud Product, (ii) is reproducible and (iii) prevents the operation of the Write-Back Cloud Product substantially in accordance with the Licensed Documentation.

“**Fees**” means all fees and expenses payable by the Customer to Xpand IT to use the Software and any Maintenance or User Licenses as applicable.

“**Trial License**” means a free license for which the Fees are waived by the Xpand IT allowing to evaluate the product features for a limited amount of time.

**“Maintenance”** means the provision by the Xpand IT to the Customer, of Software updates and/or enhancements made generally available to customers from time to time, and online technical support for the sole purpose of addressing technical issues relating to the use of the Software.

**“Paid License”** means a license for which Fees have not been waived by Xpand IT.

**“Party”** means Xpand IT or the Customer or both (Parties).

**“Products”** means the Software, Maintenance, Cloud Products, and other services or data, distributed by Xpand IT or any Reseller.

**“Product Usage Data”** Corresponds to metadata used to configure products as well as information about actions performed, namely the type of action and the timing when it occurred.

**“Protected Code”** means any source code that is protected against access by the Customer and any third party without Xpand IT’s prior written permission and is otherwise not accessible under this Agreement.

**“Purchase Order”** Xpand IT’s standard price quote, purchase order, order form, or purchase confirmation (including such price quotes, order forms, and purchase confirmations as may be delivered through the use of an online store or marketplace, or email).

**“Reseller”** means a third-party seller and distributor of Products under authorization from Xpand IT.

**“SQL”** means Structured Query Language and is a standardized programming language that is used to manage relational databases.

**“Term”** means the moment up to which one License is valid.

**“User License”** means a license granted under this Agreement to the Customer to permit an Authorized User to use the Write-Back Cloud Product. The number of User Licenses granted to the Customer depends on the Fees paid by the Customer.

**“Write-Back Cloud Product”** means the Xpand IT’s branded software that accompanies this Agreement, which may include computer software, Accessible Code and Protected Code, associated media, Media, printed materials, electronic or online documentation, Internet-based services and Embedded Software.

**“Write-Back Cloud Product Database”** means the Customer's underlying database where data submitted through the Write-Back product is stored.

**“Xpand IT”** means Xpand Solutions - Informática e Novas Tecnologias, Lda.

## 2. Write-Back Cloud Product

### 2.1 Provision of Write-Back Cloud Product

Write-Back Cloud Product is a hosted service permitting the Customer to access it, as such products may be modified, enhanced, and/or updated from time to time. Provision of Write-Back Cloud Product to the Customer involves the ongoing operation, support, and improvement of Write-Back Cloud Product for all users. Write-Back Cloud Product is fully described in the then-current version of supporting product help and technical specifications documentation provided by Xpand IT at <https://documentation.writeback4t.com/> (“Documentation”). Write-Back Cloud Product is provided on a subscription basis for a set term designated herein. This Agreement applies only to Write-Back Cloud Product and does not grant the Customer rights to any other Write-Back services or software. All-access rights and technical capabilities for each Authorized User are as set forth in the Documentation and Ordering Document.

### 2.2 Evaluation Access

If Xpand IT has made available to you a free trial or evaluation access to Write-Back Cloud Product (“Evaluation Access”), you may use such access solely for the purpose of evaluating Write-Back Cloud Product to determine whether to purchase a subscription from Xpand IT. The Customer may not use Evaluation Access for any other purposes, including but not limited to competitive analysis, commercial, professional, or for-profit purposes. Evaluation Access is limited to thirty (30) days from the date you activate your Evaluation Access unless otherwise specified by Xpand IT in a separate writing form (“Evaluation Period”). Unless the Customer purchases a subscription for Write-Back Cloud Product, the Customer’s Evaluation Access may be terminated, and, in any event, the Customer’s right to access and use Write-Back Cloud Product automatically expires at the end of the Evaluation Period. Upon any termination or expiration of the Evaluation Period, the Customer’s Evaluation Access will cease, and the Customer will no longer have access to any Customer Data used in connection with such Evaluation Access. Xpand IT may terminate the Customer’s Evaluation Access at any time for any reason and without liability of any kind. IF THE CUSTOMER SUBSEQUENTLY PURCHASES A SUBSCRIPTION OF A WRITE-BACK CLOUD PRODUCT, THE CUSTOMER’S EVALUATION ACCESS SHALL IMMEDIATELY TERMINATE AND THE CUSTOMER EXPRESSLY AGREE THAT, UNLESS THE CUSTOMER HAS A SEPARATE SIGNED AGREEMENT GOVERNING THE CUSTOMER’S ACCESS TO AND USE OF WRITE-BACK CLOUD PRODUCT, THIS AGREEMENT, AND THE TERMS AND CONDITIONS HEREIN, SHALL GOVERN THE CUSTOMER’S USE OF SUCH NON-EVALUATION VERSION.

### 2.3 Access to Write-Back Cloud Product

Subject to the terms and conditions of the Agreement, and except as set forth in Section Term and Termination) Xpand IT hereby grants to the Customer a temporary, non-exclusive, non-transferable, worldwide right to access and use Write-Back Cloud Product during the applicable Subscription Term, solely for your business purposes but only in accordance with the terms of the Agreement. The Customer will use reasonable efforts to prevent any unauthorized access to or use of Write-Back Cloud Product, and will promptly notify Xpand IT in writing of any unauthorized access or use of which the Customer becomes aware and provide all reasonable cooperation to prevent and terminate such access or use.

## **2.4 Authorized Users**

The Authorized Users will receive authorization and instructions from the Customer to take up a seat on the license to access the Write-Back Cloud Product. These authorizations are granted to individuals, and named persons and may not be shared. The Customer will ensure that all Authorized Users keep this authorization strictly personal. Seats assigned on Write-Back Cloud Product may be reassigned between authorized users over time, provided it is not done so frequently as to enable a single license to be shared between multiple users. The Customer may allow Contractors and Affiliates to access Write-Back Cloud Product as Authorized Users in accordance with this Agreement, provided the Customer shall remain liable for all acts and omissions of your Affiliates and Contractors as if their breach were your own.

## **2.5 Third-Party Code**

The Write-Back Cloud Product may contain or be provided with components that are licensed from third parties (“Third Party Code”), including components subject to the terms and conditions of “open source” software licenses (“Open Source Software”).

## **2.6 General Restrictions**

As a condition to the rights granted to the Customer hereunder, the Customer shall not (and shall not allow any third party to):

(a) decompile, disassemble, or otherwise reverse engineer Write-Back Cloud Product or any Third Party Code or attempt to reconstruct or discover any source code, APIs, underlying ideas, algorithms, file formats, data or programming interfaces of Write-Back Cloud Product or the Third Party Code by any means whatsoever; (b) distribute, sell, sublicense, rent, lease or use Write-Back Cloud Product or any Third Party Code (or any portion thereof) for time sharing, hosting, service provider or like purposes; (c) modify any part of Write-Back Cloud Product or any Third Party Code, create a derivative work of any part of Write-Back Cloud Product or any Third Party Code; (d) use Write-Back Cloud Product to develop a product which is competitive with any Xpand IT product offerings; (e) use

unauthorized License or distribute or publish such License; (f) enable access to Write-Back Cloud Product for a greater number of Authorized Users than the sum quantity of License seats purchased; (g) assert, nor will the Customer authorize, assist or encourage any third-party to assert, against Xpand IT or any of its affiliates, customers, vendors, business partners, or licensors, any patent infringement or other intellectual property infringement claim regarding Write-Back Cloud Product or any support the Customer have purchased or used hereunder; or (h) use Write-Back Cloud Product in a way that has a detrimental impact on Xpand IT's and its licensors ability to provide Write-Back Cloud Product to their other customers.

### 3. Customer Data and Obligations

#### 3.1 Customer Obligations

**General.** The Customer is solely responsible for the accuracy and content of all Customer Data. The Customer represents and warrants to Xpand IT that (i) the Customer has sufficient rights in the Customer Data to authorize Write-Back Cloud Product to process, distribute, and display the Customer Data as contemplated by this Agreement and the Documentation, (ii) the Customer Data and its use hereunder will not violate or infringe the rights of any third party, and (iii) the Customer use of Write-Back Cloud Product and all Customer Data is at all times compliant with all applicable local, state, federal and international laws, regulations and conventions, including without limitation those related to data privacy, such as General Data Protection Regulation ("GDPR"), international communications and the exportation of technical or personal data.

Customer is solely responsible for obtaining all consents necessary to process any Customer Data, including any personally identifiable information inputted or uploaded into the Write-Back Cloud Product by Customer or Authorized Users and Customer shall fully comply with all applicable laws governing the processing, disclosure, transmission, or protection of personally identifiable information.

**Health Information.** You will not upload to Customer Data or publish thereon any patient, medical, or other protected health information regulated by HIPAA or any similar federal or state laws, rules, or regulations ("Health Information") and acknowledge that Customer Data is not HIPAA compliant. "HIPAA" means the Health Insurance Portability and Accountability Act, as amended and supplemented. Xpand IT shall have no liability under this Agreement for Health Information, notwithstanding anything to the contrary herein.

#### 3.2 Storage of Customer Data



Write-Back Cloud Product does not provide an archiving service. It is the responsibility of the Customer to provide and store at its own system a database and make the corresponding configuration on the Write-Back Cloud Product. Write-Back Cloud Product acts as an SQL engine storing the data submitted by authorized users on tables. Whenever an Authorized User makes a new configuration on Write-Back Cloud Product a table is provisioned on the Authorized User database. With the exception of the Product Usage Data, any other data submitted on the Write-Back Cloud Product will be stored in the Authorized User database.

Xpand IT agrees it shall not intentionally delete any Customer Data from Write-Back Cloud Product prior to termination or expiration of your applicable Subscription Term. Except as otherwise set forth herein, Xpand IT expressly disclaims all other obligations with respect to the storage of Customer Data.

## **4. Write-Back Cloud Product & Subscription Types**

### **4.1 Write-Back Cloud Product**

Write-Back Cloud Product is an extension that enables Authorized Users to submit data directly from a dashboard to your Write-Back Cloud Product Database, allowing them to implement any actionable use case without leaving the analysis flow.

### **4.2 Renewal of subscription term**

Upon expiration of each Subscription Term, unless otherwise specified in the applicable Purchase Order, all limited subscription licenses granted under this Agreement shall automatically renew for an additional Subscription Term equal to the preceding Subscription Term, and Customer will be invoiced at the then-current subscription-based price for such additional Subscription Term, unless (i) Xpand IT is notified by Customer in writing within thirty (30) days from the date of receipt of Xpand IT's notice of renewal that Customer elects not to renew such limited subscription license for an additional Subscription Term.

## **5. Subscription terms, Fees & Payment / Payment Terms**

### **5.1 Subscription term**

Each Subscription Term shall begin on the effective date of the applicable invoice and expire twelve (12) months thereafter. All applicable fees for such renewals will be at Xpand IT's then-current rates. If your subscription is not renewed, your access to Write-Back Cloud Product will terminate at the end of the then-current Subscription Term.

### **5.2 Payment to Xpand IT**

For all subscription licenses purchased directly from Xpand IT, Xpand IT requires that all subscription fees be paid (by either credit card or bank transfer) at the time of purchase. In the event that Xpand IT agrees in writing to invoice Customer in lieu of credit card payment, then upon delivery of a Purchase Order by Customer, Xpand IT shall deliver an invoice to Customer specifying the subscription fees payable pursuant to such Purchase Order for the subscription term and Customer shall pay all subscription fees, immediately ( 0 days) therein receipt of such invoice and shall pay such amount in the currency designated therein by Xpand IT. In the event that Customer elects to purchase a Write-Back Cloud Product online through the use of Xpand IT's website or online store, Customer is required to pay all fees due hereunder with a credit card, and Customer (i) shall provide Xpand IT with a valid form of credit card payment at the time of such purchase and to keep all such credit card information current and accurate in respect of all renewal fees, (ii) shall promptly notify Xpand IT if its credit card has changed or has been declined and (iii) hereby consents to Xpand IT automatically processing and charging all fees due by Customer hereunder as they become due, including all renewal fees, to the credit card submitted by Customer. Any late payment of any amount owing hereunder shall accrue interest at a rate equal to the lesser of (i) 15% per annum and (ii) the maximum rate permitted by law.

### **5.3 Payment to a Reseller**

For all subscription licenses purchased from a Reseller, the Customer shall pay all subscription fees in accordance with the terms set forth by the reseller.

### **5.4 Fees/Taxes**

All payments referred to in this Agreement are exclusive of added value-added tax, sales tax, and any other applicable taxes, duties, or imposts which (with the exception only of those based on Xpand IT's income) shall also be payable by Customer in accordance with applicable law.

### **5.5 Suspension of services**

If the Customer account is thirty (30) days or more overdue, in addition to any of its other rights or remedies (including but not limited to any termination rights set forth herein), Xpand IT reserves the right to suspend Customer access to Write-Back Cloud Product without liability to the Customer until such amounts are paid in full. Within a reasonable time after written notice by Xpand IT that your use of the Write-Back Cloud Product is having a detrimental impact on Xpand IT's ability to provide Write-Back Cloud Product to its other customers, Xpand IT reserves the right, at its sole discretion, to suspend or limit your access to Write-Back Cloud Product.

## 6. Proprietary Rights / Intellectual Property

### 6.1 Ownership and Reservation of Rights

Xpand IT retains all rights, title, and interest in and to the Write-Back Cloud Product, as well as all intellectual property rights (such as copyright, patent, and trademark) in and to the Write-Back Cloud Product not expressly granted to the Customer in this Agreement. The Write-Back Cloud Product is protected by copyright and other intellectual property laws and treaties. The Customer does not acquire any rights of ownership in the Write-Back Cloud Product hereunder.

Customer shall not reproduce the Write-Back Cloud Product or the Licensed Material or other confidential or proprietary information of Xpand IT, except as provided in this Agreement. The customer shall promptly notify Xpand IT of any infringement of Xpand IT's proprietary rights of which it becomes aware.

### 6.2 License shall not remove markings

Unless allowed by the Write-Back Cloud Product feature, The Customer may not remove any titles, trademarks or trade names, copyright notices, legends, or other proprietary markings on or in the Software. The Customer is not granted any rights to any trademarks or service marks of the Xpand IT.

## 7. Warranty and Disclaimer

### 7.1 Due Authority

Each party represents and warrants that it has the legal power and authority to enter into this Agreement, and that, in case of the Customer being an entity, this Agreement and each Order is entered into by an employee or agent of such party that is empowered with all necessary authority to bind such party to the terms and conditions of this Agreement.

### 7.2 Warranty Disclaimer

ALL PRODUCTS ARE PROVIDED "AS IS," AND XPAND IT AND ITS RESELLERS EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND, INCLUDING ANY WARRANTY OF NON-INFRINGEMENT, TITLE, FITNESS FOR A PARTICULAR PURPOSE, FUNCTIONALITY, OR MERCHANTABILITY, WHETHER EXPRESS, IMPLIED, OR STATUTORY WITH REGARD TO THAT PRODUCTS. YOU MAY HAVE OTHER STATUTORY RIGHTS, BUT THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW. XPAND IT SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF XPAND IT. TO THE MAXIMUM EXTENT PERMITTED BY LAW,

NEITHER XPAND IT NOR ANY OF ITS THIRD-PARTY SUPPLIERS MAKES ANY REPRESENTATION, WARRANTY, OR GUARANTEE AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY, OR COMPLETENESS OF ANY PRODUCTS OR ANY CONTENT THEREIN OR GENERATED THEREWITH, OR THAT: (A) THE USE OF ANY PRODUCTS WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE; (B) THE PRODUCTS WILL OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM, OR DATA; (C) THE PRODUCTS (OR ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE PRODUCTS) WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS); (D) ANY STORED DATA WILL BE ACCURATE OR RELIABLE OR THAT ANY STORED DATA WILL NOT BE LOST OR CORRUPTED; (E) ERRORS OR DEFECTS WILL BE CORRECTED; OR (F) THE PRODUCTS (OR ANY SERVER(S) THAT MAKE A HOSTED SERVICE AVAILABLE) ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

## 8. Maintenance

Xpand IT does not warrant that the Write-Back Cloud Product will operate error-free or may be used error-free. The customer's right to use the Write-Back Cloud Product during the Subscription Term shall include the provision of Maintenance Services by Xpand IT at no additional fee. Upon Customer's payment of the subscription fees associated with the Subscription Term purchased by Customer for the Write-Back Cloud Product specified in a Purchase Order, Xpand IT shall provide Maintenance Services following this <https://writeback4t.com/sla/>. Xpand IT Maintenance Services shall entitle Customer to receive, at no additional cost, all Updates. Write-Back Cloud Product is a cloud-hosted service, as such it may be modified, enhanced, and/or updated from time to time. These modifications shall be considered accepted by the Customer unless the Termination clause is activated in the next fifteen days by the Customer.

## 9. Term and Termination

### 9.1 Term

This Agreement is effective as of the Effective Date and expires on the date of expiration or termination of the Subscription Term(s).

### 9.2 Termination

9.2.1 Without prejudice to any other rights and in addition to any other termination rights in this Agreement, Xpand IT may terminate with immediate effect this Agreement, through a written notification sent to the Customer, if

(a) the Customer fails to comply with the terms and conditions of this Agreement and does not amend that breach within fifteen (15) days from the date the Customer receives from the Xpand IT the notification of said breach; or b) the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay (its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts; or (c) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer; or (e) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer (being a company); or (f) the holder of a qualifying floating charge over the assets of the Customer (being a company) has become entitled to appoint or has appointed an administrative receiver; or (g) a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer; or (h) a creditor or encumbrancer of the Customer attaches or Customer take possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of your the Customer's assets and such attachment or process is not discharged within 14 days; or (i) the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

9.2.2 Immediately upon termination of a license granted under this Agreement, the Customer must at its own cost:

(a) cease permitting access to and ensure that all Authorized Users immediately cease all use of the Write-Back Cloud Product;

9.2.3 Upon at least thirty (30) days' notice, Xpand IT reserves the right to terminate any Internet-based services provided to the Customer or made available to the Customer through the use of the Write-Back Cloud Product.

**9.2.4** Each Party can terminate this Agreement and associated Licenses for convenience by giving the other party 90 days prior written notice to the end of the then-current Term, but the Customer will have no right to recover any amount already paid to Xpand IT.

## 10. Indemnification

### 10.1 Indemnification by Xpand IT

Subject to Clause 12, Xpand IT will indemnify and hold harmless the Customer against all costs, expenses, losses, and claims made against the Customer as a result of any infringement of a third-party's intellectual property rights arising from the Customer or its Authorized User's use of the Write-Back Cloud Product. The Customer must notify promptly Xpand IT of the charge of infringement or the legal proceeding, give Xpand IT sole control of the defense and related settlement negotiations, and Customer must provide Xpand IT, at Xpand IT's expense, with reasonable assistance and information, but no cost or expense shall be incurred for the account of the Customer without its prior written consent.

If the Write-Back Cloud Product becomes, or in the opinion of Xpand IT may become, the subject of a claim of infringement of any third-party's intellectual property rights, Xpand IT may, at its option and at its discretion: (a) procure for the Customer the right to use the Write-Back Cloud Product free of any liability; (b) replace or modify the Write-Back Cloud Product to make it non-infringing; or (c) refund any license Fees related to the Write-Back Cloud Product paid by the Customer. The foregoing states the sole liability of Xpand IT and the exclusive Customer remedy for any infringement of intellectual property rights by the Write-Back Cloud Product or any other items provided by Xpand IT under this AGREEMENT.

### 10.2 Indemnification by the Customer

The Customer will indemnify and hold harmless the Xpand IT against all costs, expenses, losses, and claims made against the Xpand IT as a result of any infringement of a third-party's intellectual property rights arising from the Customer's or its Authorized User's unauthorized use of the Write-Back Cloud Product under this Agreement.

The Xpand IT must notify the Customer of the charge of infringement or of the legal proceeding promptly, give the Customer sole control of the defense and related settlement negotiations, and Xpand IT must provide the Customer, at the Customer expense, with reasonable assistance and information, but no cost or expense shall be incurred for the account of the Xpand IT without its prior written consent.

## 11. Limited Warranty

### 11.1 Cloud Service Disclaimer of Warranties

The Customer acknowledges that the Xpand IT's Cloud Service are hosted by third-parties, and that the availability of those Write-Back Cloud Product is subject to the third-party's Service Level Agreement.

### **11.2 Non-excludable Remedies**

The Customer may have remedies against Xpand IT imposed by law or statute that cannot be excluded by Xpand IT and its third-party suppliers. To the extent the Customer has such legal remedies against Xpand IT or its third-party suppliers then to the fullest extent permitted by law, Xpand IT and its third-party suppliers' liability are limited (a) at Xpand IT's option, to: (i) in the case of the Write-Back Cloud Product: 1) repairing or replacing the Write-Back Cloud Product; and (ii) in the case of Maintenance; 1) resupply of the Maintenance; or 2) the cost of having the Maintenance supplied again; or (b) if the limitation is not applicable, then Xpand IT's maximum liability shall be equal to last civil year fees actually paid by the Customer for the Write-Back Cloud Product license.

## **12. Limitation of Liability**

### **12.1 The Licensor shall not be liable to the Licensee where faults arise from:**

- (a) the possession, use, development, modification or maintenance of the Write-Back Cloud Product (or any part thereof) by the Customer other than in accordance with this Agreement, if the infringement would have been otherwise avoided;
- (b) misuse, incorrect use of or damage to the Write-Back Cloud Product from whatever cause (other than any act or omission by Customer);
- (c) any breach of the Customer's obligations under this Agreement;
- (d) any modification not authorized by Xpand IT resulting in a departure from this Agreement; or
- (e) any operator error on the part of the Customer.

### **12.2 Limitation on Damages**

Notwithstanding anything in this Agreement and except for liabilities arising from

- (i) the indemnity obligations under Clause 10 (Indemnification) and 11 (Limited Warranty),
- (ii) the gross negligence or willful misconduct of a party, or
- (iii) the breach of a party's obligations under Clause 6 (PR/IP), in no event shall

(a) the Xpand IT or Xpand IT's third-party suppliers be liable with respect to any subject matter of this Agreement under any contract; tort including negligence or strict liability; indemnity or other legal, contractual or equitable theory for any indirect, special, punitive, incidental or consequential damages, however, caused and whether or not advised in advance of the possibility of such damages; damages for lost profits or lost data; or cost of procurement of substitute goods, technology or services; or

(b) the Xpand IT's aggregate liability arising under, with respect to, or in connection with this Agreement exceeds the last civil year fees actually paid by the Customer for the Write-Back Cloud Product license.

### 13. Confidential Information

Customer acknowledges that the Write-Back Cloud Product and the Licensed Materials incorporate confidential and proprietary information developed or acquired by or licensed to Xpand IT and that all results of testing of the Write-Back Cloud Product, whether performed by Customer or another third party, are confidential. A party that receives Confidential Information (the "Receiving Party") from the other party (the "Disclosing Party") shall not: (i) export or re-export (within the meaning of Portuguese laws or other export control laws or regulations) any Confidential Information, except in strict compliance with Portuguese laws; (ii) reverse engineer any Confidential Information; or (iii) disclose or make available the Disclosing Party's Confidential Information to any of the Receiving Party's employees, agents, contractors or consultants or to any third parties, except those that have agreed in writing to be bound by terms and conditions substantially similar to, and no less restrictive with respect to limitations on use and disclosure, than those contained in this Agreement and each of which have a "need to know" in order to carry out the purposes set forth in this Agreement. Each party shall take all reasonable precautions necessary to safeguard the confidentiality of all Confidential Information disclosed by the other party, including those precautions (A) taken by the Disclosing Party to protect its own Confidential Information and (B) which the Disclosing Party or its authorized representative may reasonably request from time to time. Neither party shall allow the removal or defacement of any confidentiality or proprietary notice placed on the Confidential Information disclosed by the Disclosing Party. The placement of copyright notices on Confidential Information shall not constitute publication or otherwise impair their confidential nature of such information.

(b) **Disclosure** – If an unauthorized use or disclosure of the Disclosing Party's Confidential Information occurs within the recipient party's enterprise, the recipient party will immediately notify the Disclosing Party or its authorized representative and take, at the recipient party's expense, all steps which may



be available to recover such Confidential Information and to prevent its subsequent unauthorized use or dissemination.

**Privacy Statement:** Xpand IT may collect certain personal information in connection with the Customer use of Write-Back Cloud Product, including registration data and Product Usage Data, in accordance with Write-Back Cloud Product's Privacy Policy, a current version of which is available at <https://writeback4t.com/privacy-policy/>.

## 14. Customer Publicity Rights

During this Agreement's validity, the Customer grants Xpand IT the right to include the Customer as a customer in the Write-Back Cloud Product promotional material, including the Customer logo. The Customer can deny Xpand IT this right at any time by submitting a written request via e-mail to [marketing@xpand-it.com](mailto:marketing@xpand-it.com), requesting to be excluded from Write-Back Cloud Product promotional material. Requests generally are acted upon within thirty (30) calendar days.

## 15. Reporting & Audit

Xpand IT reserves the right to gather metadata on usage of the Write-Back Cloud Product by Customer, including server IP addresses, the number of Authorized Users, domain counts, the number of Uses, and applications processed and other information deemed relevant, to ensure that the Write-Back Cloud Product is being used in accordance with the terms of this Agreement and for Xpand IT's internal purposes to improve and develop the Write-Back Cloud Product features, capacities and performance. Customer hereby consents to Xpand IT gathering and processing such usage information and agrees not to block, electronically or otherwise, the transmission of data required for compliance with this Agreement. Any unauthorized use of the Write-Back Cloud Product by Customer or other use by Customer in violation of the restrictions contained in this Agreement shall be deemed a material breach of this Agreement.

## 16. Reseller

If the Customer received the Write-Back Cloud Product under an agreement ("Partner Agreement") with an authorized Xpand IT Reseller then, notwithstanding anything to the contrary in this Agreement: (a) the Customer use of Write-Back Cloud Product is subject to any additional terms in the Partner Agreement, including any limitations on use of Write-Back Cloud Product in conjunction with third-party applications; and (b) The Customer agrees to pay the Reseller the fees agreed in the Partner Agreement and the Customer have no direct payment obligations to Xpand IT for that

purchase. If the Customer warranty and support terms stated in your Partner Agreement are different than what is stated in Sections 11 and 7, then Xpand IT has no warranty or support obligations to the Customer under this Agreement (although the disclaimers of warranties in Section 7.2 still apply to you). If the Customer warranty and support terms passed on in the Partner Agreement are as stated herein, then Sections 11 and 7 shall apply to the Customer as written. Notwithstanding anything in this Agreement to the contrary, (i) the Partner Agreement may not modify any of the remaining terms of this Agreement and (ii) the Partner Agreement is between the Customer and the Reseller and is not binding on Xpand IT. Xpand IT may terminate this Agreement (including your right to use Write-Back Cloud Product) in the event Xpand IT fails to receive payment for the Customer use of Write-Back Cloud Product from the Reseller or if the Customer breaches any term of this Agreement.

## **17. Anti-Corruption**

Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction.

## **18. Assignment**

The Customer may not assign this Agreement without Xpand IT's previous written authorization. Any permitted assignee shall be bound by the terms and conditions of this Agreement.

Xpand IT may assign its rights and obligations under this Agreement without the consent of the Customer. Any permitted assignee shall be bound by the terms and conditions of this Agreement.

### **18.1 Force Majeure**

Neither Party shall be liable for any facts beyond its reasonable control, including but not limited to acts of God, acts of government, war, civil commotion, natural catastrophe, strikes, demonstrations, stoppage of supplies, energy or communications cuts, or any other fact not within the control of the Parties.<sup>1</sup>

The Party affected by the Force Majeure event shall immediately notify the other Party and shall provide evidence of the occurrence of such event duly indicating the impact such Force Majeure event shall have on the execution of the Agreement.

## **19. Governing Law and Exclusions**

### **19.1 Governing Law and Venue**

This Agreement and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of Portugal and any legal action or proceeding arising out of it will be brought exclusively in the Tribunal da Comarca de Lisboa and each party irrevocably submits to the jurisdiction and venue of that court.

### **19.2 Exception from Jurisdiction**

Notwithstanding the foregoing, the parties reserve the right to seek and obtain injunctive relief, whether in the form of a temporary restraining order, preliminary injunction, injunction to enforce an arbitration award, or other order of similar import, including obtaining full payment of all fees and costs under this Agreement from any court of competent jurisdiction (e.g. local courts at the Customer place of residence) prior to, during, or after commencement or prosecution of any other court or arbitration proceedings or the final decision and award of the arbitrators.

### **19.3 Exception of UN Convention**

The terms of the United Nations Convention on Contracts for the Sale of Goods do not apply to this Agreement.

## **20. Entire Agreement**

This Agreement (and any addendum or amendment to this Agreement which is included with the Write-Back Cloud Product) is the entire agreement between the Customer and Xpand IT relating to the Write-Back Cloud Product and is the complete and exclusive statement of the mutual understanding of the parties regarding the Write-Back Cloud Product, and they supersede all prior or contemporaneous oral or written communications, proposals and representations with respect to the Write-Back Cloud Product or any other subject matter covered by this Agreement.

Each Party acknowledges that, in entering into this Agreement (and the documents referred to in it), neither relies on any statement, representation, assurance or warranty (“Representation”) of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement or those documents.

The Customer acknowledge that Write-Back Cloud Product is a cloud, subscription-based product, and that in order to provide improved customer experience Xpand IT may make changes to Write-Back

Cloud Product (which may include making available different or substitute code compared to those available as of the Effective Date), and Xpand IT will update the Documentation accordingly.

## 21. Notices

All notices to Xpand IT must be sent to

Xpand IT: Ed. Ageas Tejo, Praça Príncipe Perfeito 2 3º Piso, 1990-278 Lisbon, Portugal

E-mail: [mail@writeback4t.com](mailto:mail@writeback4t.com)

All notices to the Customer will be sent to the physical address or the email address provided by the Customer upon purchase of the software.

Notice will be deemed received and properly served twenty-four (24) hours after an electronic communication (including e-mail) is sent, or three (3) days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an electronic communication, that such e-mail was sent to the specified e-mail address of the addressee.

## 22. Severability

If any provision of the Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable and to give effect to the commercial intention of the parties.

No changes to this Agreement (and any addendum or amendment to this Agreement which is included with the Write-Back Cloud Product), shall be valid unless it is in writing and signed by, or on behalf of the Parties.

Failure to exercise, or any delay in exercising, any right or remedy provided under this Agreement, (and any addendum or amendment to this Agreement which is included with the Write-Back Cloud Product), shall not constitute a waiver of that (or any other) right or remedy, nor shall it preclude or restrict any further exercise of that (or any other) right or remedy.



## Change History

Version	Review date	Comments