

Officient - Terms of Service for customers

Definitions

- **“OFFICIENT”**: A limited company registered under the laws of Belgium, with its registered office at 9000 Gent, Kortrijksesteenweg 181, VAT BE-0680.822.709, RPR/RPM Gent, division Gent.
- **“Accounts”**: Either the Customer Account or the User Account and all Services related thereto.
- **“Customer Account”**: A personal login to the core app that allows the Customer to access and use the Services. The customer account entails:
 - an admin account for the creation and managing of User Accounts and account settings (hereinafter the **“Admin Account”**);
 - a default account for the set-up of the User Accounts;
 - a read-only account for an overall overview of the User data uploaded by the Users;
 - a team-only account for the overview of User data of a certain team uploaded by the Users.
- **“Customer”**: Any legal person who enters into an agreement with OFFICIENT with regard to the Services in order to make this available to its Users.
- **“User Account”**: A personal login to the employee self-service that allows the Users to access and use the Services. The User Account can either give the right:
 - to upload information about the User him/herself;
 - in case the User is a manager, to upload information about the Users of its team.
- **“Services”**: The services OFFICIENT offers to its Customers through an online HR-SaaS-platform consisting of (i) the core app and (ii) the employee self-service. The services entail both the Customer Account and the User Account.
- **“Users”**: Every employee of the Customer or any third party designated by the Customer that makes use of the Services.

Scope

- All commercial relationships between OFFICIENT and the Customer are governed by (in descending hierarchical order): (i) where applicable the written agreement between OFFICIENT and the Customer (including but not limited to the DPA), (ii) these terms of service and (iii) Belgian law.
- By ordering the Services or entering into an agreement with OFFICIENT – including registration for the Demo – the Customer acknowledges to have read these terms of service as well as the data processing agreement that will be made available to the Customer as annex hereto and thereby accepts them. The terms of service always take precedence over the Customer’s terms and conditions, even if they stipulate that they are the only valid conditions.
- The (repeated) failure by OFFICIENT to exercise any right may only be construed as the toleration of a particular situation and shall not give rise to a forfeiture of rights.
- The invalidity of one or more provisions of these terms and conditions or any part thereof, shall not affect the validity and enforceability of the other clauses and/or the remainder of the provision in question. In such case, OFFICIENT and the Customer shall negotiate in order to replace the invalid provision by an equivalent provision in accordance with the spirit of these general terms and conditions. Should OFFICIENT and the Customer not reach an agreement, the competent court can mitigate the invalid provision to what is (legally) permitted.

Offer

- Announcements on the website (<https://www.officient.io/>) and/or on the social media of OFFICIENT are entirely non-binding, and may only be regarded by the Customer as an invitation to order the Services, unless explicitly specified otherwise.
- An offer shall only be valid for (i) a specific order and shall thus not automatically apply to subsequent (similar) orders as well as for (ii) the duration as indicated thereon, however never longer than ninety (90) days after reception of the offer.

Demo version

- Each potential Customer will be given the opportunity to use a demo of the Services through a demo account for a duration of 14 calendar days, free of charge. This demo has the single purpose of informing the Customer about the functioning and the features of the Services. The Customer cannot derive any other rights from the provision of the demo.
- At the expiry of the demo period, OFFICIENT will automatically disable the use of the demo account without any action by the user being required.
- If the Customer wishes to place a definitive order upon (or even before) termination of the demo period, article 5 of the underlying terms and conditions will apply.

Conclusion of the agreement

- In the event the Customer has requested a demo of the Services and was assigned a demo account, the Customer can order the Services through the demo account by following the ‘upgrade your account’ instructions. Notwithstanding the preceding, the Services can also be ordered via email (info@officient.io).
- In order for an order to be considered valid by OFFICIENT, certain information needs to be provided by the Customer to OFFICIENT in a truthful manner including but not limited to the number of Users.
- An agreement shall become effective upon (i) electronic confirmation of the agreement by a person authorized to commit OFFICIENT, or (ii) the moment when OFFICIENT starts with the performance of the Services.
- OFFICIENT always reserves the right to request additional information regarding the Customer, its activities or creditworthiness, and, if such information is not forthcoming, to refuse or suspend the performance of the Services.

Accounts

- Following the conclusion of the agreement the demo account shall be converted into an Admin Account (as part of the Customer Account) or an Admin Account will be assigned to the Customer, granting the Customer access to the Services, which is provided as 'Software as a Service (SaaS)'.
- Via the Admin Account, the Customer can create other Accounts according to its needs.
- The Customer undertakes to inform its Users about the functionalities and restrictions of the User Account and about provisions of these terms of service. The Customer shall always remain responsible for every use of every Account and immediately cease and sanction any improper or unauthorized use of the Services it is informed about.
- The Customer shall be solely responsible for taking the appropriate security measures to guarantee the security of the Accounts. It is advised for every User and the Customer to create a unique password, to change it frequently and to use two-factor authentication.
- The Accounts are non-exclusive and non-transferable with exception to the reassignment of Accounts as stipulated in article 6.6.
- The Customer may reassign Accounts from former Users who no longer require ongoing use of their Account, to new Users.

Delivery of the Services

- Providing the Admin Account (as part of the Customer Account) to the Customer will be considered delivery of the Services.
- Upon delivery, the Customer is obliged to carry out an initial verification involving, among other things: number of Users. The Customer is obliged to inform OFFICIENT within 48 hours following delivery of any non-conformity through the helpdesk or by sending an email to info@officient.io.
- If no complaints were made within the abovementioned timeframe, the Customer is deemed to have approved and accepted the delivery.
- Unless expressly agreed otherwise, the expected time of delivery of the Services is always approximate and non-binding. Exceeding the scheduled delivery time can therefore not give rise to a fine, damages, substitution or termination of the agreement at the expense of OFFICIENT.
- The scheduled delivery time shall automatically lapse in case (i) OFFICIENT has not received all the information, necessary for the performance of the Services, in due time; (ii) of force majeure and/or hardship, as described in Article 20.

Performance of the Services

- With regard to the performance of the Services, OFFICIENT undertakes to use its best efforts and shall act in good faith and with due care in accordance with the criteria, to be determined independently by OFFICIENT.
- In case of issues with the performance, OFFICIENT shall do its utmost to solve such issue as soon as reasonably possible, without making any guarantees relating thereto.
- Furthermore, OFFICIENT shall have the right to perform maintenance activities and updates on a regular basis. OFFICIENT undertakes to minimize the impact of such maintenance/ updates on use of the Services by the Customer and the Users but does not give any guarantees concerning downtime in this respect. OFFICIENT will however undertake to inform the Customer about such maintenance/ updates, if seen fit. If the Customer desires to be contacted personally about maintenance activities or updates, the Customer shall turn on the subscription to the status updates at its Account.
- Issues with performance of the Services nor maintenance/ updates shall entitle the Customer to any compensation with regard thereto.

Changes of the Services

OFFICIENT has the right to change the offer and composition of the Services at any time. In such event, OFFICIENT will inform the Customer thereof within a reasonable term prior to such change (i) through the status page: status.officient.io in case of changes to the Services or (ii) via e-mail in case of changes to the offer. If the Customer desires to be contacted personally about changes of Services, the Customer shall turn on the subscription to the status updates in its Account.

Use of the Services

- The Customer acknowledges and undertakes to inform its Users that the Services shall only be used for internal business/HR purposes and in compliance with all applicable laws and regulations relating thereto. The Services shall not be used in any way other than explicitly allowed under these terms of service.
- The Customer in particular agrees not to and forbid its Users to (without being limitative):
 - Ask for the login-data of other Users;
 - Login to the Account of other Users/ hack the Account of other Users;
 - Sell, resell, license, sublicense, rent, lease or distribute the Services to any third party;
 - Copy, modify, adapt, alter, translate or make derivative works based upon the Services (other than any copies, modifications or derivative works made exclusively from the input/ reports/ overviews which are created solely for Customer's internal business purpose);
 - Use computer technology that may damage, interfere with, overloads or expropriates the Services including viruses, Trojan horses, worms, time bombs, or cancel bots. Customers should also refrain from any content that may burden or disturb the Services infrastructure and its proper functioning;
 - Access the Services without permission, including attempting to probe, scan or test the vulnerability of the Services or to breach any security or authentication measures used by the Services
 - Engage in, nor authorize others to engage in reverse engineering, disassembly or decompilation of the Services;
 - Remove or alter the respective copyright indications;
 - Send unsolicited and/or commercial messages, such as junk mail, spam and chain letters;
 - Use the Services (nor encourage, promote, facilitate or instruct others to use the Services) for the transmission of data which is illegal, defamatory, obscene, misleading, offensive, invasive of any person's privacy, abusive, threatening, harmful, infringing someone's intellectual property or otherwise objectionable, nor use the Services for illegal/ unlawful/ harmful purposes in general.

- The Customer shall indemnify and/or hold OFFICIENT (and its Users) harmless for (i) any (direct/ indirect) damage caused to OFFICIENT or the Services by the Customer or its Users, and (ii) for all claims of whatever nature that might arise within the framework of the Services and which have been caused by the negligence or fault of the Customer or those of its Users.

Suspension

- Officient reserves the right to suspend one or more Accounts in case:
- Of late payment as stipulated in article 17.2;
- In case Customer's or its Users' use of the Services pose a security risk to Officient, the Services, the Customers, the Users or any third party;
- In case the Customer and/or its Users fail to comply with any of the provisions of these terms of service.
- Suspension of the Accounts shall not entitle the Customer/Users to any compensation relating thereto whatsoever.

Helpdesk

- If the Customer is in need of assistance or has an enquiry with respect to the Services, it can appeal on the helpdesk and the online knowledge base.
- The helpdesk is available through email (support@officient.io), telephone (+32 474 36 86 41) and chat function in the Officient App.

Integrations

- The Customer is entitled to create integrations via the open API's foreseen by OFFICIENT, within the framework of article 10 and these terms of service in general.
- OFFICIENT does not under any circumstance guarantee the compatibility of the Services with the integrations of the Customer and is under no circumstance responsible or liable for any (direct/indirect) damage arising there from.

Price

- The Services for Customers with up to five hundred (500) Users is offered by OFFICIENT to the Customer at a fixed monthly price depending on the number of Users. The price for the Services for Customers with more than five hundred (500) Users will be communicated by OFFICIENT on a case-by-case basis to the Customer and upon request of such Customer.
- Multiple Accounts can be granted to a single User. These accounts are included in the price.
- In case the number of Users of the Customer increases during the term of this agreement, OFFICIENT shall be entitled to increase its monthly price pro rata at its own discretion in accordance with the increased number of Users of the Customer. If the number of Users increases over 500, article 14.1 shall apply and parties engage to renegotiate the price. In case the number of Users of the Customers decreases during the term of this agreement, the Customer shall not be entitled to any form of price reduction.
- All prices are expressed in Euro and are exclusive of VAT and any insurance and administration cost, unless expressly agreed otherwise. The prices shall be billed annually.
- In so far the prices are based on the then applicable wage costs, social security contributions and government levies, insurance premiums, costs of materials and infrastructure, exchange rates and/or other costs, OFFICIENT shall, in the case of an increase of one or more of these pricing factors, be entitled to increase its prices accordingly, in accordance with the legally permitted standards. In the event of an increase of its prices, OFFICIENT undertakes to notify its existing Customers through email at least one month prior to the application of the new prices.

Payment

- OFFICIENT reserves the right to request full payment of the yearly contribution from the Customer before starting with the performance of the Services of that year.

If the Customer fails to carry out such advanced payment in due time when requested by OFFICIENT, the performance of the Services shall automatically be suspended and shall, without prior notice of default, be increased with a late payment interest of one percent (1 %) per month, whereby a month that has already started counts as fully completed

Moreover, OFFICIENT shall be entitled to consider the Services as cancelled, in which case the Customer shall be obliged to pay a fixed compensation fee of € 250 (excl. VAT), without prejudice to OFFICIENT's right to claim higher compensation.

- In all other events, the Customer must pay all invoices of OFFICIENT in full by bank transfer to the account as communicated by OFFICIENT within the payment term as stated on the invoice and without discount on the invoice date.
- Invoices may only be legitimately disputed by the Customer by email within seven (7) days following invoice date, stating (i) the invoice date, (ii) the invoice number and (iii) detailed motivation.

Such dispute does not discharge the Customer from its obligation to pay.

- The unconditional payment by the Customer of (a part of) the invoice amount is considered explicit acceptance of the invoice.
- Partial payments by the Customer are always accepted subject to change and without any prejudice, and first allocated to the collection costs, next to the damages, the interest due and, finally, to the principal sum, with preference given to allocation to the oldest outstanding principal sum.

Electronic billing

By entering into an agreement with OFFICIENT, the Customer expressly agrees to the use of electronic billing by OFFICIENT.

Consequences of late or non-payment

- Any invoice that remains fully or partially unpaid by the Customer on the due date shall, without prior notice of default, be increased with a late payment interest of one percent (1 %) per month, whereby a month that has already started counts as fully completed, plus € 250 (excl. VAT) by way of lump sum damages, without prejudice to OFFICIENT's right to claim higher compensation.

- Furthermore, OFFICIENT shall be entitled to cancel or suspend any further performance of the Services, and all other invoices shall immediately become due and payable, even if they have not yet fallen due. All permitted payment conditions will cease to apply.
- The same applies in the event of an imminent bankruptcy, judicial or amicable dissolution, suspension of payment, as well as any other fact showing that the Customer is insolvent.

Term and termination of the agreement

- **Term**
 - 18.1.1. The agreement shall continue in effect for a definite duration of one (1) year, unless explicitly agreed otherwise. The term shall automatically be prolonged with one (1) year if the agreement is not terminated by the Customer, nor by OFFICIENT by the latest fourteen (14) calendar days before termination thereof, which shall entitle OFFICIENT to invoice the Customer for the renewed term.
 - 18.1.2. The notice of termination must be done by email, containing the start and the end of the notice period.
- **Termination of the agreement due to material breach or exceptional circumstances**
 - 18.2.1. Notwithstanding any provisions to the contrary in these terms and conditions, both OFFICIENT is entitled to terminate the agreement at any time and without legal intervention in the event:
 - The Customer materially breaches any of the provisions of the agreement and, notwithstanding an email from the other party to refrain from such a breach and to rectify the situation, fails to comply with such a request within twenty (20) days following the receipt of such email, without prejudice of the other party to claim from the defaulting party an additional compensation as a result of this contractual breach;
 - Of exceptional circumstances which make it impossible to continue any professional cooperation between OFFICIENT and the Customer.
 - 18.2.2. Parties agree that the following circumstances should be considered as exceptional circumstances:
 - If the Customer ceases its payments, files a declaration for bankruptcy, is declared bankrupt, enters into a liquidation or similar proceedings or is liquidated;
 - Every circumstance which affects the ability of the Customer to comply with its contractual obligations in a thorough manner or where it cannot reasonably be expected that the Customer fulfils its contractual obligations;
 - Force majeure or hardship which continues for an uninterrupted period of more than consecutive two (2) months following the moment on which OFFICIENT, which is confronted with this force majeure, notifies the Customer thereof.
- **Consequences of termination of the agreement**
 - 18.3.1. Upon termination of the agreement:
 - OFFICIENT undertakes to deactivate the Account within fourteen (14) calendar days as of termination;
 - The Customer shall have the possibility during a term of fourteen (14) calendar days as of termination to export its data and the data of its Users through the available export tools;
 - Each party will discontinue its use and will return the Confidential Information and proprietary materials of the other party.
 - 18.3.2. Articles 21 and 23 shall survive and continue in full force and effect in accordance with their terms, notwithstanding the expiration or termination of their agreement for whatsoever reason.
 - 18.3.3. The termination of the agreement, for whatsoever reason, shall not prejudice the rights acquired by each party.

Liability

- OFFICIENT's liability shall be limited to the lower of the following two amounts: (i) the invoice value of the Services performed by OFFICIENT in the year when the liability arose, or (ii) the amount of the payment of the insurance policies entered into by the OFFICIENT and in any case be limited to the liability mandatory under Belgian law.
- OFFICIENT is under no circumstances whatsoever obliged to compensate for indirect and/or consequential damages (including, but not limited to loss of income or damages to third parties) or damages due to force majeure/hardship (cfr. Article 20).
- Neither shall OFFICIENT be liable for damages caused directly or indirectly by an act or omission of the Customer or a third party, regardless of whether these were caused by a fault or negligence. Nor shall OFFICIENT be liable for:
 - Damage caused by using the Services for a different purpose than the purpose for which the Services have been developed or were intended by Officient;
 - Damage caused by non-compliance with any advice/ guidelines/terms of service/terms of use/ provided by OFFICIENT, which the latter always provides on a discretionary basis;
 - Damage caused by loss or incorrect use of input of Users and other data, unless this damage was caused willingly entirely due to OFFICIENT
 - Additional damage caused by continued use by the Customer and/or its users after a defect has been detected.
- The Services are provided by OFFICIENT on an "as is" basis (to the maximum extent permitted by law). OFFICIENT does its utmost to inform the Customer about the content and functionalities of the Services prior to and after its order since every Customer has the right to make use of the demo (cfr. Article 4) and can ask OFFICIENT for extra information on the Services at all times. Following the aforementioned, the Customer hereby declares to have been and still be sufficiently informed about the content and functionalities of the Services. The intended use of the Services by the Customer is determined under its full responsibility and at its own risk. OFFICIENT cannot be held liable in any way for non-compliance of the Services with this intended use, nor for any direct or indirect damage resulting from this intended use.
 - Without prejudice to article 8, OFFICIENT does not guarantee (i) that the performance of the Services is free of errors, bugs, etc. nor that these errors, bugs, etc. will be remedied (within a reasonable timeframe), (ii) that the Services will be constantly available and free of viruses (iii) nor that the Services will fully function in case of lack of an internet connection or the use thereof in combination with non-common or dated operating systems, browses, plugins, scripts or all other software/hardware.
 - In case the Customer provides OFFICIENT (through the Services) with its passwords/ logins or any other confidential information to any third party service, the Customer does so at its own discretion and OFFICIENT will not under any circumstance be liable for the receipt thereof.

- The Customer acknowledges that OFFICIENT's liability can only be invoked by the Customer directly and not by any third party such as the Users. In light of the aforementioned, the Customer shall indemnify and/or hold OFFICIENT (including its Users) harmless from all claims of whatever nature that might arise within the framework of the Services and which have been caused by its own negligence, fault or carelessness of those of its Users.

Force majeure/hardship

- OFFICIENT is not liable for any breach of its obligations that is caused by force majeure or hardship. Cases of force majeure or hardship are conventionally considered as: all circumstances that were reasonably unforeseeable at the time the agreement was concluded and that are unavoidable, and that, on the part of OFFICIENT, create the inability to carry out the agreement, or that would make the implementation of the agreement, financially or otherwise, harder or more difficult than normally anticipated (such as, but not limited to hacking that is not reasonably foreseeable, war, natural disasters, fire, confiscation, delays on the part of third parties or bankruptcy of third parties with whom OFFICIENT cooperates, shortages of personnel, strikes, organisational circumstances, threat or act of terrorism).
- The aforementioned situations entitle OFFICIENT to apply for the revision and/or suspension of the agreement by simple electronic notification to the Customer, without OFFICIENT becoming liable for any damages whatsoever. If a situation of force majeure and/or hardship lasts longer than 2 months, the parties have the right to terminate the agreement.

Intellectual rights

- OFFICIENT is and remains the sole owner of all copyrights and other intellectual property rights with respect to the OFFICIENT Services, software and all documents, advises, reports, slides, drawings and pictures provided to the Customer during the performance of the Services.
- Consequently, the Accounts provided to the Customer implies the right to use – at a charge – the Services. No implied licenses shall be granted under this agreement. Under no circumstances such account:
 - Entails a transfer of ownership of the Services by OFFICIENT to the Customer;
 - Grants the Customer any rights to (use) the Services, trade names, brand name and/or trademarks of OFFICIENT;
 - Grants the Customer the right to request OFFICIENT to deliver a copy of any source codes, software or other means utilized by OFFICIENT to provide the Services.
- Without prejudice to the right of the Customer or any third party to challenge the validity of any intellectual property of OFFICIENT, the Customer shall not perform or authorize any third party to perform any act which would or might invalidate or be inconsistent with any intellectual property of OFFICIENT and shall not omit or authorize any third party to omit to do any act which, by its omission, would have that effect.

The Customer undertakes to notify OFFICIENT of any actual, threatened or suspected infringement of any intellectual property rights of OFFICIENT which comes to the Customer's notice, and of any claim by any third party due to use of the Services.

The customer acknowledges and explicitly agrees that OFFICIENT has the right to use/publish/share Customer its trademarks, business names and logo's on its website, social media and Services for (amongst others) reference and marketing purposes.

Privacy

- OFFICIENT as controller:

The processing of personal data of the (potential) Customer by OFFICIENT, in its capacity of controller, shall take place in accordance with the provisions of the OFFICIENT privacy declaration. Please read these terms of service together with the OFFICIENT privacy policy, which is available on the website.

- OFFICIENT as processor:

The Customer acknowledges that – with regard to the processing of the data of the Customer and its Users – it shall act as controller and OFFICIENT as processor. All arrangements made between parties in this respect shall be governed by the data processing agreement between parties.

Following the above the Customer acknowledges explicitly that by ordering the Services or entering into the agreement with OFFICIENT, the Customer is deemed to have read and accept the data processing agreement in its entirety.

OFFICIENT reserves in any case the right to collect metadata of the Customer and the User. The collection of metadata has no privacy related consequences whatsoever and has the sole purpose of optimising the Services and their usability.

Applicable law & jurisdiction

- Belgian law shall apply.
- Disputes are subject to the exclusive jurisdiction of the courts of the district where OFFICIENT has its registered office.